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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

REPLIES TO THE QUESTIONNAIRE

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- pecuniary compensation
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- 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)

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ALBANIA

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

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

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

Yes.

Case-law of the European Court of Human Rights

In *Qufaj Co. Sh.P.K. v. Albania*, (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.

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

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

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

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

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

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

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

Article 4 of the Albanian Civil Procedure Code provides that:

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

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

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

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

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

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

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

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

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

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

> "The Constitutional Court shall decide in:
>
> (f) final adjudication of the complaints by individuals for the violation of their constitutional rights to a fair hearing, after all legal remedies for the protection of those rights have been exhausted."
>
> The European Court of Human Rights holds that the fair trial rules in Albania should be interpreted in a way that guaranteed an effective remedy for an alleged breach of the requirement under Article 6 § 1 of the Convention. But until now there are no examples of Albanian jurisprudence endorsing this understanding of the fair trial concept as comprising the celerity of proceedings as well.
>
> The Albanian Civil Procedure Code, Criminal Procedure Code and Administrative Procedures Code do not provide for any available remedy for excessive delays.
>
> The deadline for lodging the application with the Constitutional Court is provided in Article 30 of the Law No. 8577 of 10 February 2000 on the Organisation and Functioning of the Constitutional Court of the Republic of Albania: "The application of persons regarding the violation of a constitutional right are to be presented no later than 2 (two) years from the time at which evidence of the violation becomes available to them. If the law provides that the applicant may address another authority, he/she may present the application to the Constitutional Court after all the other legal means in protection of such rights have been exhausted. Under such a case, the deadline for

lodging the application is 6 (six) months from the date on which the decision of the relevant authority is announced".

Article 611

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

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

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

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

10. What are the available forms of redress:

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

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

Article 610 of the Civil Procedure code provides:

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

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

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

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

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

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

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

ANDORRA

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

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

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

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

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

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

Article 10 of the Andorran Constitution provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

No.

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

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

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

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

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

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

10 What are the available forms of redress:

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

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

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

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

Is the taking of these measures co-ordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?

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

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

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

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

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

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

No.

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

No.

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

We have no statistical data on this point.

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

We do not know.

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

No, it has not been assessed so far.

ARMENIA

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

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

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

There is no case, where the delays of judicial proceedings have been acknowledged by national courts' decisions. In regard to the judgments of the European Court of Human Rights, we inform that the Republic of Armenia has ratified the European Convention on Protection of Human Rights and Fundamental Freedoms and has recognized the compulsory jurisdiction of the European Court in 2002, February 20. The European Court has not yet adopted any judgment on the application against the Republic of Armenia, including judgments on the violation of the reasonable time of judicial proceedings.

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

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

The Code of Civil Procedure of the RA, Article 111, require the courts of first instance to examine the civil case and adopt a judgment within two months beginning from the date of the admission of the application. According to Article 214 of the same Code, the Appellate Court on Civil Cases has to examine the case and adopt a judgment within two months beginning from the date of the admission of the appellate appeal. According to Article 232, the Cassation Court has to examine the case and adopt a decision within one month beginning from the admission of the case.

The Code of Criminal Procedure does not determine any period for examination of criminal cases.

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

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

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

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

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

AUSTRIA

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

There are isolated cases of excessive delays.

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

Yes.

Case-Law of the European Court of Human Rights.

Among other, the European Court declared violation of Article 6 §1 of the Convention with respect to Austria in the following cases : *Holzinger v. Austria* (judgment of 30 January 2001), *Maurer v. Austria* (judgment of 17 April 2002*), G.H. v. Austria* (judgment of 3 January 2001) in respect of criminal proceedings, *Alge v. Austria* (judgment of 22 January 2004) in respect of administrative proceedings and *Schredder v. Austria* (judgment of 13 December 2001) in respect of civil proceedings

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

Yes.

Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*), in force since 1 January 1990, provides as follows:

> "(1) If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step; unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith.
>
> (2) If the court takes all the procedural steps specified in the request within four weeks of receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.
>
> (3) The request referred to in sub-section (1) shall be determined with special expedition by a Chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal."

This Section provides an effective remedy expediting proceedings before courts of law, and administrative proceedings (except for administrative criminal cases), including cases of private prosecution and tax offences.

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

> "(1) Subject to any contrary provision in the administrative regulations, the authorities must give a decision on applications by parties ... and appeals without unnecessary delay, and at the latest six months after the application or appeal has been lodged.
>
> (2) If the decision is not served on the party within this time-limit, jurisdiction will be transferred to the competent superior authority upon the party's written request (*Devolutionsantrag*). ...This request has to be refused by the competent superior authority if the delay was not caused by preponderant fault of the authority.
>
> (3) The period for giving a decision by the superior authority runs from the date the request for transfer of jurisdiction was lodged with it."

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress :

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

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

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

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

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

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

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

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

AZERBAIJAN

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

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

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

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

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

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

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

The statistics available concern only non-compliance with the relevant time-limits established in the procedural legislation (but not the violation of reasonableness of the duration of the proceedings). So, in 2004 out of 48.633 civil cases examined by the Azerbaijani courts 119 (i.e. 0.2%) were accompanied with delays. Violations of certain time-limits in criminal cases last year were as following: 169 (1.3%) out of 12.533 cases; in 116 cases (0.9%) the materials of cases were not submitted to the appellate courts within the established period (10 days).

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

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

BELGIUM

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

Criminal proceedings

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

Civil proceedings

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

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

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

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

National case-law

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

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

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

ECHR case-law

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

An example for the investigative stage is to be found in the *Stratégies et Communications and Dumoulin v. Belgium* judgment (15 July 2002).

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

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

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

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

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

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

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

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

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

With regard to pending proceedings:

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

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

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

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

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

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

d.

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

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

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

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

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

No deadline is set for Indictments Chamber decisions on lengthy investigations (Articles 136 and 136 *bis* of the Code of Criminal Investigation). If the chamber is slow in taking its decision the unnecessary delay will be taken into account in determining whether reasonable time has been exceeded, either at the end of the investigation or by the trial court.

10. What are the available forms of redress:

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

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

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

No.

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

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

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2 Which does not preclude a ruling on civil claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. What is the general assessment of this remedy?

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

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

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

Fewer cases are now pending before the European Court of Human Rights for unreasonably long proceedings, in particular because of the penalties available to the lower courts. As a rough guide, over the past five years we find only four judgments in criminal cases: one concerned criminal law only indirectly (ECHR, *Sablon v. Belgium*, 10 April 2004), one found no violation of Article 6 with respect to reasonable time (ECHR, *Coëme and Others v. Belgium*, 20 June 2000), one took formal note of a friendly settlement (ECHR, *L.C. v. Belgium*, 17 October 2000) and, last but not least, one – already mentioned several times before – found that the proceedings had become unreasonably long even before the end of the investigation (ECHR, *Stratégies et Communications and Dumoulin v. Belgium*, 15 July 2002).

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

In its judgment of 15 July 2002 in *Stratégies et Communications and Dumoulin v. Belgium* the European Court held that Article 136 of the Code of Criminal Investigation did not constitute an adequate remedy within the meaning of Article 13, construed as necessitating an independent remedy in the event of unreasonably long proceedings. Its ruling relied on the fact that the Court was not satisfied that Article 136 of the Code of Criminal Investigation was an effective remedy available both in theory and in practice: on the one hand, it raised certain issues of domestic law, in particular whether the “remedy” was available not only to a party claiming damages in criminal proceedings and a person formally charged but also to a person under investigation who had not been formally charged; on the other hand, the Belgian Government had not cited any examples of domestic practice confirming that the Indictments Chamber had granted an application based on Article 136, paragraph 2, by a person not formally charged.

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

However, the Court has not had a chance to rule on the effectiveness of Article 21 *ter* of the preliminary part of the Code of Criminal Investigation, which provides for unreasonably long proceedings to be penalised at the trial stage. That approach is perfectly consistent with the Court's case-law.

Questions 5 to 21 with particular reference to civil proceedings

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

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

A. Methods of expediting proceedings

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

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

Even if a litigant can take steps to expedite preparation of a case for trial, Belgian civil procedure is characterised by the *principe dispositif* (whereby, in civil proceedings, the court is required to make decisions on all the questions submitted to it and on nothing else), which does not recognise the institution of an active court endowed, as in other countries, with considerable powers of initiative and supervision with regard to conduct of proceedings. However, it is increasingly being held that while recourse to the courts is a human right, litigants cannot be left totally free to exercise it; a balance must be struck by applying principles that compel parties to observe a certain procedural fairness and by strengthening a court's powers to ensure that this is effective. "While the parties obviously have control over the subject-matter, it is the court which determines the conduct of the proceedings. It is only natural that the justice system – as

a public service for whose failings the state is liable – should have the means of functioning normally in order to provide a judicial response within a reasonable time" (J.C. Magendie, *Célérité et qualité de la justice* ("Speed and Quality of Justice", a French report to the Minister of Justice), *Gaz. Pal.*, 22-23 December 2004, p. 11). It seems legitimate to dwell on this fundamental aspect inasmuch as preliminary draft legislation amending the Judicial Code in order to strengthen court powers over preparation of cases for trial is shortly to come before the Belgian Parliament.

B. Methods of compensation

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

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

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

APPENDIX

Administrative proceedings

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

The problem

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

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

The problem of a reasonable time-limit

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

Firstly, subjectivity plays a large part in determining what is reasonable. It may of course be argued that the case's complexity and the applicant's goodwill are relevant considerations,[6] but the fact remains that reasonableness is an unsatisfactory criterion in this day and age, which has a preference for knowing the pace of proceedings beforehand in order to estimate their length and plan accordingly.

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

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4 M. Pâques, "Aménagement du territoire, urbanisme, patrimoine et questions diverses de droit administratif notarial", in *Chronique de droit à l'usage du notariat*, Faculté de droit de Liège et Bruxelles, Larcier, Vol. XXXIX, 1 April 2004, pp. 254-263.

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

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

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

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

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

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

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

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

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

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

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

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

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

At present:

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

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

> *Article 121. Within 75 days from receipt of the appeal, the Government shall send its decision to the applicant, the mayor and deputy mayors, and the regional planning officer.*
>
> *Failing this, the applicant may send a reminder to the Government by registered post whilst at the same time notifying the mayor and deputy mayors and the regional planning officer.*

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

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

12 Conseil d’Etat, 30 June 2000, Botton, *Rev. Rég. Dr.*, 2000, p. 398; Conseil d’Etat, 31 May 2000, Regout, 87736, *A.P.M.*, 2000, p. 111; Conseil d’Etat, 29 October 2002, Notre Dame et Gyssels, 112002; Conseil d’Etat, 12 December 2002, Qwewet et Quairiaux, 113604.

If the Government does not send a decision within thirty days from receiving the registered letter, the decision being appealed is confirmed.

Reminder formalities

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

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

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

No decision in mandatory time-limit

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

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

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

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

Examples of how time-limits are calculated

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

Example 2: Appeal lodged on 28 December 2000 against a decision of 24 November to refuse permission. Received on 28 December 2000 (confirmed by an acknowledgement of receipt issued on 10 January). The 75-day period for the regional government to adopt and notify its decision began on 29 December and ended on 13 March 2001. A reminder was sent on 14 March 2001 and received on the same day (according to the acknowledgement of receipt dated 15 March). Withdrawal of the reminder by fax on 11 April was held to be ineffective (see next case below). The decision of 27 July was out of time (Conseil d'Etat, 6 November 2003, Decaluwe et Provoyeur, 125118).

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

Withdrawal of the reminder

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

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

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

Withdrawal of the reminder was held to be ineffective and the ground citing an infringement of Article 121 was held to involve a question of public policy (Conseil d'Etat, 20 November 2003, Van Hoof, 125559); in the interests of legal certainty, the Conseil d'Etat set aside the ministerial decision (Conseil d'Etat, 6 November 2003, Romano, 125114; Conseil d'Etat, 6 November 2003, Decaluwe et Provoyeur, 125118; Conseil d'Etat, 23 September 2003, Ville

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

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

de Chiny, 123291; also a decision taken in time but notified late (set aside), Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

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

Further time-limit for appealing against confirmed decision

In addition, applicants have a further period of 60 days from notification of the judgment to lodge an appeal, where appropriate, against a decision confirmed by a decree (Conseil d'Etat, 16 September 2003, Verbrugghe et Clercq, 122876; also on this point, Conseil d'Etat, 23 September 2003, SA G.C., Valeco, 123292).

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

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

Coercive penalty

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

Tacit decision

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

The legislature can choose between tacit permission and tacit refusal. The interest served is not the same in each case. In its judgment of 3 July 1998 (Van Der Stichelen, 74948) the Conseil d'Etat highlighted the policy options inherent in the choice between tacit refusal and tacit permission. In the latter case, it was a question of encouraging freedom of trade and industry or, at the very least, economic activity.[19] Tacit permission thus nullifies the point of making the proposed action subject to planning permission. Tacit refusal is in the interests of law and order which justified the introduction of planning permission, in this case sound regional

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15 Additional examples.

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

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

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

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

planning and the right to protection of a healthy environment (Article 23 of the Constitution). But neither of these implicit solutions is satisfactory, since each has disproportionate effects. Both inevitably sacrifice the other interests that the authority responsible for permission should also take into account.

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

Does tacit permission, an option favouring the applicant, constitute statutory permission to act without a licence or is it merely an implied authorisation?[20] The question is important, for in the former case there is no administrative decision that can be challenged, whereas in the latter case there is. In the context of town planning, it was the first alternative that the Court of Cassation adopted in a judgment of 19 April 1991.[21] The Conseil d'Etat took the same line in its judgment of 3 July 1998 (Van Der Stichelen, 74948) regarding Article 41 of the Order on Environmental Planning Permission of 30 July 1992.[22] [23] For this judgment, in the absence of a decision open to challenge, the Conseil d'Etat was unable to consult the Administrative Jurisdiction and Procedure Court (AJPC) on the compatibility of this legislation with Articles 10 and 11 of the Constitution.

Implied authorisation condemned by the AJPC

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

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

21 *J.T.*, 1992, p. 76, and commentary by M. Boes, "L'acte notarié au risque de l'infraction", in *L'urbanisme dans les actes*, Brussels, Bruylant, 1998, p. 695; P. Nicodeme, "L'arrêt 78/2001 de la Cour d'arbitrage: une atteinte disproportionnée aux droits du demandeur de permis d'urbanisme?", in *Am.-Env.*, 2002/1, p. 45 (p. 50).

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

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

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

for whom a judicial review is provided."[25] The Brussels legislature has admitted defeat. Article 137 is currently under review.[26]

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

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

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

Tacit authorisation condemned by the Court of Justice

When a Community directive renders a project subject to prior authorisation, a process of tacit authorisation is not considered appropriate for enforcing Community law (ECJ, 28 February 1991, C-360/87, Commission v. Italy, Reports I, p 791, concerning groundwater). This decision was confirmed, for tacit authorisations, in the judgment of 14 June 2001, Commission v. Belgium, C-230/00, regarding a case in which the Commission had criticised a series of Belgian laws in the light of a large number of environmental protection directives. The Court of Justice held that the national authorities were required "to examine individually every request for authorisation".[29]

This decision can only be approved: in the absence of authorisation, there is no guarantee that a project will actually be examined, there is no assessment of the project's impact on the environment, and no specific operating requirements are laid down. As J. Sambon points out, this criticism extends even to laws allowing tacit authorisation subject to compliance with regulatory emission standards.

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

Authorities' liability for refusal or late granting of permission

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[25] Administrative Jurisdiction and Procedure Court, 7 June 2001, 78/2001, *J.L.M.B.*, 2001, pp. 1203 et seq., comments J. Sambon, "Le «permis tacite» censuré par la Cour de Justice des Communautés européennes et par la Cour d'arbitrage"; *T.R.O.S.*, 2001, p. 212, comments J. Verkest; *Am.-Env.*, 2002/1, p. 45, comments P. Nicodeme, "L'arrêt 78/2001 de la Cour d'arbitrage: une atteinte disproportionnée aux droits du demandeur de permis d'urbanisme?"; J.-F. Neuray, "Vie et mort du permis tacite", *A.P.T.*, 2002, pp. 55 et seq.

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

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

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

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

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

Fixed fine

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

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

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

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

In *Vanpraet v. Belgium* the applicant likewise complained of the length of the proceedings that he had initiated before the Conseil d'Etat, the latter having declared inadmissible on 9 June 1998 an appeal that he had lodged on 29 November 1991. The government raised an objection to admissibility based on failure to exhaust all domestic remedies within the meaning of Article 35 of the Convention. It held that "the applicant should have sued the Belgian state in the domestic courts in order to have it ordered, on the basis of Article 1382 of the Civil Code, to pay damages for any injury sustained". Amongst other things, it here argued "that, since a judgment of 19 December 1991, the Belgian Court of Cassation has accepted the principle whereby the State may incur civil liability for injury caused by negligence by members of the court in the performance of their duties". It then cited "a number of rulings by the courts below that had ordered the State to pay damages for violations of the right to a hearing within a reasonable time". The European Court of Human Rights found that the Belgian Court of Cassation had, at the time when Mr Vanpraet lodged his application, already accepted the principle whereby State liability could be incurred for negligence by members of the court in the performance of their duties. It pointed out, however, that the various rulings by the lower courts cited by the government as applying this principle had all occurred after August 1998, apart from one decision "which nevertheless concerned excessive length of non-judicial proceedings". The Court consequently held that "at the time when the application was lodged, the possibility of raising the question of the State's liability for injury caused by negligence by members of the

court who had failed to comply with the requirements of 'reasonable time' within the meaning of Article 6 of the Convention had not yet acquired a degree of legal certainty such that it could or should have been used for the purposes of Article 35 § 1 of the Convention". It concluded that the government's objection that domestic remedies had not been exhausted was not admissible and adjourned examination of the merits, considering that the latter raised "serious questions of fact and law".[30]

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

BOSNIA AND HERZEGOVINA

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

Yes.

Case-law of the Constitutional Court

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

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

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

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

Yes, a complaint on the basis of Article 6 § 1 of the Convention before the Constitutional Court. A complaint against the excessive length of proceedings can be lodged by a party in the proceedings.

There are no special requirements (distinct from the general procedural law) for submission of the complaint.

There is a prescribed time-limit for lodging a complaint for excessive length of proceedings - for the ended proceedings it is six months after the completion of the proceedings.

With regard to administrative proceedings, parties may appeal to a second instance body if the first instance body hasn't taken a decision within the time-limit prescribed by the Law. The second instance body will request a written explanation from the first instance body and may, if a decision was not taken due to legitimate reasons, determine a deadline for the first instance body to take a decision. In case the reasons for delay are not justified, the second instance body will take the final decision. If the second instance body fails to take a decision on the party's appeal within a fixed period, the party may raise an administrative dispute.

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

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

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

No.

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

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

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

There is no specific deadline.

10. What are the available forms of redress :

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

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

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

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

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

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

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

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

BULGARIA

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

Yes.

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

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

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

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

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

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

> "1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgment or the transmitting of an appeal against a judgment is unduly delayed.
>
> 2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time.
>
> 3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed.
>
> 4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action."

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

There are no remedies for completed proceedings.

Articles 368-369 of the new Code of Criminal Proceedings provide for a defendant to ask for the transfer of his or her case to a competent court once a period of 1 or 2 years has elapsed since the beginning of the preliminary investigation, according to the gravity of the charges. The court to which the case is referred may order the prosecutor to bring the preliminary investigation to an end within two months or put an end to the penal proceedings.

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

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

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

No. There is no fee for using the remedy.

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

No, but the complaint shall be dealt with “immediately”.

10. What are the available forms of redress:

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

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

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

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

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

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

CROATIA

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

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

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

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

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

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

2.1. Case-law of the Constitutional Court:

The Constitutional Court found in numerous cases a violation of the right to a trial within reasonable time as guaranteed by Article 29 § 1 of the Constitution of the Republic of Croatia ("Narodne novine", Official Gazette, no. 41/01; hereinafter: the Constitution), and by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: the European Convention) because of the excessive length of proceedings (see for example: decision U-IIIA/2033/2003 of 8 February 2005, and decisions U-IIIA/2751/2004 and U-IIIA/2854/2004 of 14 February 2005).

2.2. Case-law of the Supreme Court:

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

2.3. Case-law of the European Court

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

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

proceedings, *Camasso v. Croatia* (judgment of 13 January 2005) in respect of criminal proceedings, and *Cvijetić v. Croatia* (judgment of 26 February 2004) in respect of enforcement proceedings.

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

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

Article 29 § 1 of the Constitution provides that:

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

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

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

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

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

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

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

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

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

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

5.1. Article 63 of the 2002 Constitutional Act provides that:

> "(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ...
>
> (2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits...
>
> (3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment."

A constitutional complaint can be lodged by a party in the proceedings.

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

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

5.2. The 2005 Courts Act prescribed a new legal remedy for the protection against the excessive length of judicial proceedings. It is a request for the protection of the right to a trial within a reasonable time.

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

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

The Constitutional Court decides on the length of proceedings before the Supreme Court (the highest court of law in Croatia) in both the first and last instance.

Relevant articles of the 2005 Courts Act provide that:

Article 27

> "(1) A party in a judicial proceedings that deems that the competent court did not adjudicate within a reasonable time on his/her rights, obligations, suspicion or indictment, may directly file a request to a higher court with aim of protecting his/her right to a trial within a reasonable time.
> (2) If the request pertains to a pending proceedings before the High Commercial Court of the Republic of Croatia, the High Tort Court of the Republic of Croatia or the Administrative Court of the Republic of Croatia, the Supreme Court of the Republic of Croatia will adjudicate on the matter.
> (3) The adjudication procedure pertaining to the request stated in Paragraph 1 of the Article hereof is of urgent nature."

Article 28

> "(1) If the court referred to in Article 27 of the Law hereof finds the request of the applicant well-founded, it will establish a deadline within which the court before which the proceedings is pending has to decide on the right or the obligations, or the suspicion or the indictment of the applicant. It also has to determine the appropriate compensation to which the applicant is entitled since his/her right to a trial within a reasonable time has been infringed.
> (2) The compensation will be remunerated from the State Budget within 3 months of the day the party filed its request for compensation.
> (3) An appeal against the decision of a request for the protection of the right to a trial within a reasonable time may be filed to the Supreme Court of the Republic of Croatia within 15 days. The adjudication of the Supreme Court of the Republic of Croatia cannot be contested, however, a constitutional lawsuit can be filed."

A request may be submitted by a party in a judicial proceeding that deems that the competent court of law did not adjudicate within a reasonable time on his/her rights and obligations or suspicion or indictment. A request may be filed as long as proceedings are pending, i.e. until the decision on its completion is served on the party. The procedure is a special one and it is of urgent nature.

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

After 29 December 2005 the Constitutional Court retained its jurisdiction stipulated in Article 63 of the 2002 Constitutional Act in a manner that it decides, in the first and last instance, on the reasonable length of proceedings before the Supreme Court, where the constitutional complaint may be lodged as long as proceeding is pending, i.e. until the Supreme Court decision is served on the party.

In all other cases the Constitutional Court has become the court of last instance concerning the protection of the right to a trial within reasonable time, so the constitutional complaint may be lodged within 30 days from the day when the second instance decision of the Supreme Court is served on the party. (In this decision the Supreme Court adjudicated on the appeal of the party against the first instance judgment of a lower court delivered in accordance with Articles 27 and 28 of the 2005 Courts Act.)

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

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

Article 158.

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

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

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

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

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

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

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

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

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

The same criteria as applied by the European Court.

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

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

10. What are the available forms of redress:

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

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

11. Are these forms of redress cumulative or alternative?

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

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

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

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

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

There is no maximum amount of compensation to be awarded.

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

The highest amount paid so far to one applicant, according to the decision of the Constitutional Court, amounted to 18.400,00 kunas (approx. 2.521,00 EUR).

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

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

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

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

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

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

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

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

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

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

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

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

Article 31 of the 2002 Constitutional Act provides that:

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

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

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

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

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

Article 62 of the 2002 Constitutional Act provides that:

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

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

Accordingly, after 29 December 2005, the Constitutional Court decides as the court of the first and last instance only in cases related to the excessively long duration of proceedings before the Supreme Court in compliance with Article 63 of the 2002 Constitutional Act. In all other cases it decides only as the court of the last instance in accordance with Article 62 of the 2002 Constitutional Act.

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

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

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

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

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

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

CONSTITUTIONAL COMPLAINTS BEFORE THE CONSTITUTIONAL COURT AGAINST THE EXCESSIVE LENGHT OF JUDICIAL PROCEEDINGS
1 January 2000 - 24 November 2005

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

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

** The matter concerns constitutional complaints filed with the Constitutional Court before 29 December 2005, and the Constitutional Court is entitled to solve them in accordance with the legislation in force prior to 29 December 2005, i.e. until entering into force of the 2005 Courts Act (see *supra*, Article 158 of the 2005 Courts Act under the question no. 5.3.)

On the other hand, in compliance with the new legal remedy prescribed in Articles 27 and 28 of the 2005 Court Act, from 1 January 2006 to 30 September 2006 the Supreme Court filed the following number of requests, i.e. appeals in accordance with Articles 27 and 28 of the 2005 Courts Act:

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

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

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

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

19. What is the general assessment of this remedy?

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

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

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

Further to *Nogolica v. Croatia* case (judgement of 17 November 2005), the Court has considered that this legal remedy has to be exhausted even in those cases that were filed in Strasbourg before the adoption of the amendments in 2002.

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

In 2002, further to *Horvat v. Croatia* case (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*, Note under the question no. 5).

In *Slavicek v. Croatia* case (decision of 4 July 2002), the new remedy was considered to be effective for the purposes of Article 13.

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

In its judgement, *Debelic v. Croatia* (judgement of 26/05/2005), the Court reaffirmed the adequacy of the remedy in general, but found that, in this particular case, the Constitutional Court as the authority competent to decide on it, managed to render it ineffective.

CYPRUS

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

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

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

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

Case-Laws of National Courts

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

Case Law of the European Court of Human Rights

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

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

The Constitution of Cyprus explicitly provides for the reasonableness of judicial proceedings. According to Article 30: "...every person is entitled to a fair and public hearing within a reasonable time…". This Article is equivalent to Article 6.1 of the European Convention on Human Rights.
Furthermore Practice Directions of 1986, issued by the Supreme Court provide that no judgment shall be reserved for a period exceeding 6 months. Circulars of the Supreme Court indicate that the above period creates the proceedings before the Supreme Court, but the principle is that judgments should be handled down promptly.

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

No.

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

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

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

- order the retrial of the case by a different court
- make an order for the issue of Judgment within a time limit
- issue any other necessary order.

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress:

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage NO
  - non-material damage NO
- measures to speed up the proceedings if they are still pending YES
- possible reduction of sentence in criminal cases YES
- 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 to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

The legal system of Cyprus does not provide for pecuniary compensation for delay.

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

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

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

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

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

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

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

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

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

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

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

No.

THE CZECH REPUBLIC

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

Yes. Case-law of the Constitutional Court

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

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

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

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

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

Case-law of the European Court of Human Rights:

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

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

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

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

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

Law no. 192/2003 introduced a new Article 174a to the Law no. 6/2002 on tribunals and judges (in force since 01/07/2004) according to which a party who considers that proceedings have lasted too long may ask for a deadline for taking a procedural action. This deadline is set within 20 working days by the superior court if it finds the request motivated. The court in question is bound by this deadline and there is no possibility to appeal a decision setting/refusing such deadline.

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

The draft law modifying the Law no. 82/1998 has been submitted to the Parliament. The draft law provides for an adequate compensation (including the one for non-pecuniary damage) for the applicants suffering from undue delays during the proceedings. The draft law will be applied retroactively: if the applicant has his length of proceedings case pending before the European Court, he has the possibility of asking for compensation within one year from the entry into force of the draft law.

Law no. 182/1993 on the Constitutional Court

Section 82(3) provides that when the Constitutional Court upholds a constitutional appeal it must either set aside the impugned decision by a public authority or, where the infringement of a right guaranteed by the Constitution is the result of an interference other than a decision, forbid the authority concerned to continue to infringe the right and order it to re-establish the status quo if that is possible.

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

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

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

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

None.

19. What are the available forms of redress:

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

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

Yes. In *Hartman v. The Czech Republic*, (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.

DENMARK

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

Generally, Denmark does not experience excessive delays in judicial proceedings. However, as in all legal systems, there are of course unfortunate examples of the opposite.

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

Yes. A number of examples can be found where Danish courts have acknowledged that the length of proceedings amounted to a violation of article 6 of the ECHR.

Case-law of national courts

One example is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 1998, p. 1759. Two persons were charged with fraud. The total length of proceedings was more than six years. Having regard to the relatively limited extent of the case and the lack of complexity, the High Court held that a violation of Article 6 of the ECHR had taken place. Therefore, the penalties imposed were suspended.

Another example is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 2001, p. 510. The case concerned a compensation claim following a car accident. The applicant was acquitted under the Road Traffic Act and subsequently claimed compensation. The compensation claim as such was rejected, but having regard to the lack of complexity of the criminal case against the applicant that had nevertheless lasted almost four years, the court held that a violation of Article 6 of the ECHR had taken place, and therefore, compensation was awarded on this basis.

In its decision of 12 June 2003 (No. 550/2002), the Supreme Court of Denmark considered the fact that the case was not proceeded for two years as a violation of Article 6.1 ECHR.

Case-law of the European Court of Human Rights

In *A and Others v. Denmark* (judgment of 8 February 1996), and the case of *Kurt Nielsen v. Denmark* (judgment of 15 February 2000), the Court concluded that the "reasonable time" requirement was not satisfied and there had accordingly been a breach of Article 6.1 ECHR.

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

No. However, the European Convention can be invoked directly before the Danish courts.

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

The Court Administration monitors the length of proceedings in general for civil as well as criminal cases and for enforcement proceedings. There are no statistics available concerning the overall length of proceedings, but according to statistics for 2004, the average length of a criminal case before a city court was 69 days, whereas the average length of a civil case before a city court was 13.7 months.

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

Danish law does not contain any legal remedy that has been specifically designed or developed to provide a remedy in respect of complaints of length of judicial proceedings.

In civil as well as criminal cases, it is the court dealing with the concrete case that decides on a complaint concerning the length of proceedings. If a violation of ECHR article 6 is found, the result may for instance be compensation or reduction of the sentence. The question may be raised by any party to the case.

In criminal cases that are discontinued before the case is brought before the courts, a compensation claim can be lodged with the Regional Public Prosecutor/the Director of Public Prosecutions. The compensation claim is considered under section 1018h of the Administration of Justice Act which in practice also covers compensation on the basis of the length of proceedings.

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

Yes.

According to section 96 of the Administration of Justice Act, the public prosecutors must proceed with any case as quickly as possible, having regard to the nature of the case in question.

In criminal cases, where the case has not yet been brought before the courts, the person in question may lodge a complaint with the Regional Prosecutor. The Regional Public Prosecutors generally supervise the work of the Chief Constables and may – on the basis of a complaint or otherwise – give instructions to the Chief Constables, including instructions concerning the handling of a specific case. When receiving a complaint, the Regional Public Prosecutor must look into it.

In pending court proceedings, any party to the case may – at any point during the proceedings, ask the court dealing with the case to schedule the case for trial. The court will then make a decision on this issue, including in relation to ECHR article 6. This decision can be appealed to a higher court. There is no possibility of compensation at this point in the proceedings (but there will be at a later stage (see under Q. 5) – this remedy should rather be seen as being preventative of further delay.

This remedy has already been used in practice. Thus, for instance, the High Court of Eastern Denmark decided in a decision of 2 April 1996, as requested by the prosecution, to uphold the decision of the City Court of Copenhagen to schedule the case in question for trial even though the defence counsel asked to have it postponed.

Furthermore, on 13 January 2004, the Supreme Court upheld, as requested by the prosecution, the decision of the High Court of Eastern Denmark to schedule a case for trial with long days in court – in spite of protests from the defence – stating that the persons in question had been charged for more than 9½ years and that the defence itself had held that the length of the proceedings was violating the ECHR. Hence, the trial had to be completed as soon as possible even if it meant working longer hours than usually for all the parties involved.

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

No.

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

When assessing the reasonableness of the length of the proceedings, the authorities (the Regional Public Prosecutor/the Director of Public Prosecutions and the courts) base themselves on the criteria set out by the ECtHR.

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

There is no specific deadline.

10. What are the available forms of redress :

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

Exemption from paying legal costs that the person in question should otherwise have paid.

11. Are these forms of redress cumulative or alternative?

The forms of redress mentioned can be alternative or cumulative. It is up to the courts to decide how to provide redress for the applicant.

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

As it is the case with other compensation claims, it falls within the discretion of the courts to mete out the compensation. When meting out, of course, the courts may find guidance in the level of compensation set out by the ECHR.

There is no fixed maximum amount.

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

The Court Administration monitors the length of proceedings in general for civil as well as criminal cases and for enforcement proceedings. The measures available for pending proceedings however, work on an individual basis.

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

In case a higher court has ordered that the case in question must be scheduled for trial, the responsibility for implementing this decision lies with the court dealing with the case.

The Regional Public Prosecutors generally supervise the work of the local police districts, including in relation to length of proceedings.

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

There are no known examples of non-enforcement of such a decision. The relevant measure in this situation would be a new complaint to the higher court or to the Regional Public Prosecutor/the Director of Public Prosecutions.

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

Yes. As indicated in the reply to 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 Q. 6.

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

Yes – in the unlikely event that the first complaint does not solve the problem. There is no fixed minimum period of time which needs to have elapsed between the first decision and the second application for a new decision.

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

There are unfortunately no statistics available. Please refer to the summaries mentioned in the reply to Q. 6.

19. What is the general assessment of this remedy?

It is the general assessment that the remedies available satisfy the requirements set out in Article 13 of the ECHR.

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

There are unfortunately no statistics available.

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

In *Ohlen v. Denmark* (decision of 6 March 2003) and Pedersen and Pedersen v. Denmark (decision of 12 June 2003), the Court considered that, in the absence of the confirmed practice demonstrated by the Government, the wording of the invoked sections of the Administration of Justice Act does not allow to consider it an effective remedy for the purposes of Article 35.1 ECHR.

More recently, there were some examples where this remedy has been used. In fact, in *Ohlen v. Denmark* (judgment of 24 May 2005), the Court found that the redress afforded at domestic level for the violation of the applicant's right to trial within reasonable time (reduction of sentence) was adequate and sufficient.

ESTONIA

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

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

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

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

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

Case-Law of the National Courts

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

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

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

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

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

> "19. The right of the person to demand that his or her case be reviewed within reasonable time is guaranteed in the Article 6 (1) of the European Convention of Human Rights. To this right corresponds the duty of all institutions involved in the proceedings to take steps for speedy resolution of the case, both in pre-trial phase as well as in the courts. The reasonability of the length of the proceedings depends on the severity of the crime, the complexity and volume of the case, but also on other facts, including on how the previous stages of the proceedings have been carried out. The last aspect encompasses, among other things, the question, how many times the case has been sent for further consideration to the lower courts or to the investigative authorities.
>
> 21. In principle, it is not impossible that the reasonable length of the proceedings expires after the Supreme Court has remanded the case for further proceedings to the appellate court.
>
> 22. The criminal chamber of the Supreme Court finds it necessary to point out that if the reasonable length of the proceedings has expired, it does not mean that the person must automatically and always be acquitted. Depending on the circumstances, the appropriate result may also be a termination of proceedings or taking the length of the proceedings into account in the sentencing decision."

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

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

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

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

According to the Ministry of Justice,[1] the average length of a proceedings were (in days):

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

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

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

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

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

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.

FINLAND

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

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

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

Case-Law of the National Courts

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

Case-Law of the European Court of Human Rights

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

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

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

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

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

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

Courts of Appeal
- private law cases 8,6 months

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

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

Supreme Administrative Court
- 11 months (year 2003)

In district courts, in 2600 out of 137.509 cases, the length of private law proceedings exceeded one year. In 11% of criminal cases, the district court proceedings exceeded six months.

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

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

In 2002, the Government submitted to the Parliament a bill on an amendment to the law on legal proceedings (190/2002). The draft amendment included a provision on the right of a party to request that the case be declared urgent. This right would have covered both private and criminal law proceedings. The bill included an explicit reference to the requirements of Article 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 Article 6 and 13 of the Convention.

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

In *Eskelinen v. Finland* (decision of 3 February 2004), the Court noted that the Finish Government have failed to show how the applicant could obtain relief – either preventive or compensatory – by having recourse to the relevant provisions of the Judicial Procedure Code. On the contrary the Government admitted that a mere delay was not as such a ground for compensation under Finnish law.

FRANCE

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

Generally yes.

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

Yes.

Case-law of the national courts

Among many cases, see for example, the 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 does not exist. Nevertheless, it is implicitly included in Article L. 781-1 of the Code of Judicial Organisation, which provides:

> "The State shall be under an obligation to compensate for damage caused by a malfunctioning of the system of justice. This liability shall be incurred only in respect of gross negligence or a denial of justice."

A "denial of justice" has been interpreted by the Paris Tribunal de Grande Instance as including the right of a person to have his or her claims decided within a reasonable time (see under point 5).

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

Yes. Article L. 781-1 of the Code of Judicial Organisation provides for a legal remedy in cases where the length of administrative or judicial (civil as well as criminal) proceedings before the French courts has been excessive.

New provisions dating to 2005 modifying the procedural part of the Code of Administrative Justice determine new modalities for deciding on the applications with respect to the length of administrative proceedings. The Conseil d'Etat is competent to decide on the above-mentioned matters in the first and last resort. Applications are therefore dealt with promptly thus avoiding a new litigation with respect to the length of proceedings within the authority responsible for dealing with the complaint.

Moreover a draft decree examined by the Conseil d'Etat on 7 December 2005 completed the above provision. A preventive remedy was introduced in conformity with the recommendations of the Committee of Ministers of the Council of Europe. It was decided to confer particular responsibilities to the permanent Mission of inspection of administrative jurisdictions. Any party of allegedly lengthy proceedings should be able to address to the chief of the inspection Mission. If appropriate, the latter will draw the attention of the chief of the jurisdiction in question to the issue. At the same time he will receive administrative or judicial decisions on compensation for the damage suffered due to the excessive length of administrative proceedings. He could therefore, if considers appropriate, point out to the heads of jurisdictions the cases involving malfunctioning of the public service.

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

Yes. Regardless of the stage reached in proceedings of which the length appears excessive, Article L. 781-1 of the Code of Judicial Organisation allows litigants to obtain a finding of a breach of their right to have their cause heard within a reasonable time and compensation for the ensuing loss.

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

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

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

The remedy is only a compensatory one.

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

Yes, a decision can be challenged before a court of appeal.

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

Yes. In the *Guimmarra and Others v. France* case (decision of 12 June 2001), the Court has held that, having regard to the developments in the case-law, the remedy provided for by Article L.781-1 of the Code of Judicial Organisation was an effective remedy for the purposes of Article 35.1, but only for those applications that are lodged with the Court before 20 September 1999. See also *Mutimura v. France* (judgment of 8 June 2004), *Mifsud v. France* (decision of 11 September 2002), and *Broca Texier-Micault v. France* (judgment of 21 October 2003, with respect to administrative procedure cases).

GEORGIA

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

Yes, our country experiences excessive delays in judicial proceedings. In particular in the sphere of enforcement of court judgments.

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

Such delays have been acknowledged by the European Court of Human Rights.

In the Case of Assanidze v. Georgia

According to the merits of the case the applicant, Tengiz Assanidze, was a Georgian national born in 1944.By the time of hearing he was in custody in Batumi, the capital of the Ajarian Autonomous Republic in Georgia. He had formerly been the mayor of Batumi and a member of the Ajarian Supreme Council. He was accused of illegal financial dealings in the Batumi Tobacco Manufacturing Company, and of unlawfully possessing and handling firearms. On 28 November 1994 he was sentenced to eight years' imprisonment and orders were made for his assets to be confiscated and requiring him to reimburse the pecuniary losses sustained by the company. On 27 April 1995 the Supreme Court of Georgia, on an appeal on points of law, upheld the applicant's conviction for illegal financial dealings. The applicant was granted a pardon by the President of the country on 1 October 1999, but was not released by the local Ajarian authorities.

While the applicant was still in custody (despite having been pardoned), further charges were brought against him on 11 December 1999 in connection with a separate case of kidnapping. On 2 October 2000 the Ajarian High Court convicted the applicant and sentenced him to twelve years' imprisonment. Although he was subsequently acquitted by the Supreme Court of Georgia on 29 January 2001, he had still not been released by the Ajarian authorities. Consequently, more than three years later, he remained in custody in a cell at the Short-Term Remand Prison of the Ajarian Security Ministry.

The applicant submitted that the failure to comply with the judgment acquitting him had infringed Article 6 § 1 of the Convention.

The Court held that the fact that the judgment of 29 January 2001, which was a final and enforceable judicial decision, had not been complied with more than three years after its delivery had deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

Case of Mebagishvili and Amat-G Ltd. v. Georgia

An application is lodged with the European Court of Human Rights on 17 December 2002.

The Applicant alleges that non-enforcement of the Decision of the Panel for Civil and Entrepreneur Cases of Tbilisi Regional Court of 6 December 1999, which imposed on the Ministry of Defence of Georgia the obligation of payment of 254.188 Georgian Laris "GEL" to Amat-G Ltd. constitutes a violation of Article 6 § 1.

In accordance with case law the right to fair trial includes the right to have the binding judicial decisions enforced, otherwise the right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. (*Prodan v. Moldova, 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.

Article 6(1) of the European Convention is to guarantee that within a reasonable time and by means of a judicial decision, an end is put to the insecurity into which a person finds himself as to his civil law position or on account of a criminal charge against him. This rationale entails that the provision also applies in cases where there is no question of detention on remand.

The European Court assesses the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account.[1]

The Code of Criminal Procedure of Georgia and the Code of Civil Procedure of Georgia provide for the guarantees of a participant of the proceedings.

a) The Code of Criminal Procedure of Georgia provides for terms for detention.

According to Article 162 of the Code of Criminal Procedure of Georgia pre-trial detention of a charged and detention pending trial should not exceed 9 months in total.

b) The Code of Civil Procedure provides for procedural guarantees as well. As regards the procedural terms.

> "Procedural action shall be exercised within a term established by law. In case procedural term is not established by law, it shall be determined by a court. Determining the duration of the procedural term the court shall envisage the possibility of the completion of that procedural act for which this term has been established."[2]

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1 Kudla v. Poland para 124.

2 Article 59, Code of Civil Procedure of Georgia, this Article also provides for terms for the consideration of a case of a particular nature. (The term for complex cases may be prolonged).

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

a) In accordance with the Code of Criminal Procedure a person is entitled to appeal before a court and protect his/her rights from unlawful decision of an investigator, public prosecutor etc at any stage of proceedings.

> "…judicial control is set up over those procedural acts of the investigator and prosecutor which are associated with the restriction of the constitutional rights and freedoms of a person. In the cases and in accordance with a procedure established by this Code, a suspect, accused, attorney and other participant in a proceeding shall be entitled to appeal in court against refusal of the investigator or prosecutor to satisfy the motion, complaint or application".[3]

The Code of Criminal Procedure envisages the freedom of appeal against procedural acts and decisions, in particular:

> "A participant in a criminal proceeding as well as other person and authority may, under the statute-established procedure, appeal against an act and decision of the authority or official who conducts the process".[4]

> "A court may not waive the administration of justice. It shall, pursuant to jurisdiction, consider a criminal case, a submission, an application with regard to exercised procedural acts restricting the constitutional rights of citizens, complaints concerning illegal actions and activities on the part of a an investigator or prosecutor".[5]

At the same time the Code of Criminal Procedure provides for terms for lodging appeals at any stage of proceedings:

> "An appeal against actions or decision of an investigator, head of investigating department or prosecutor may be lodged within the whole period of pre-trial investigation".[6]

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

Participants to the proceedings have the right to require the consideration of a case in no less than two judicial instances:[7] appeal and cassation, Here the Code provides for terms of lodging appeals with the court and other judicial guarantees.

b) The other issue is the violation of procedural norms by a judge, where the law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia" is applied.

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3 Article 15, para 4, Code of Criminal Procedure.

4 Article 21, para 1, Code of Criminal Procedure.

5 Article 45 para 2, Code of Criminal Procedure.

6 Article 236, para 1, Code of Criminal Procedure.

7 Article 517, Code of Criminal Procedure.

The law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia" provides for the liability of a judge. In particular one ground for liability of a judge is "unreasonable delay of consideration of a case…".[8] Disciplinary liability maybe initiated by the President of the Supreme Court, Head of an Appellate Court, High Council of Justice of Georgia.[9] The reason of initiation of proceedings may be a claim or an application of a person, report of other judge, ruling or other act of a higher court, etc. At the end of proceedings the Disciplinary Board shall adopt a decision, which may be appealed before Disciplinary Council. The decision of the Disciplinary Council shall be final. As a result of which the judge may be justified or he/she may be imposed disciplinary liability and fine, or released from the position of a judge.

c) As regards the legislative guarantee of non-enforcement of a judgment or other decision of a court, the Criminal Code of Georgia provides for punishment for such behaviour:

> "Non-enforcement of an effective judgment or any other court decision or impeding execution thereof by any government representative, officer of the State, local government or self-governmental body or by a person exercising administrative authority in an enterprise or any other organisation, - shall be punishable by fine or by socially useful labour ranging from one hundred and eighty to two hundred and forty hours in length or by imprisonment for up to a three-year term, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years."[10]

[8] Article 2 para 2, subpara "e", law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia".

[9] Article 7, law of Georgia "On disciplinary proceedings and disciplinary liability of judges of the courts of general jurisdiction of Georgia".

[10] Article 381. Non-enforcement of Sentence or any Other Court Decision, Criminal Code of Georgia.

GERMANY

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

Yes. Judicial proceedings of all branches (civil, criminal, administrative, constitutional) have experienced excessive delays in some cases. For instance, a case has been reported in which a civil law suit took about 15 years (which the Federal Constitutional Court held to be unconstitutional in its decision of 20 July 2000, no. 1 BvR 352/00).

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

Case-law of the national courts

In its decision of 17 November 1999 (no. 1, BvR 1708/99), the Second Chamber of the First Senate of the Federal Constitutional Court of Germany considered that the duration of the proceedings before the Higher Regional Court violated the complainant's right to trial within reasonable time guaranteed by Article 2.1 of the Basic Law in conjunction with the principle of the rule of law. The competent court was obliged, therefore, to take suitable measures immediately in order to promote the progress of the proceedings and to work towards their prompt conclusion.

The Third Chamber of the Second Senate of the Federal Constitutional Court in its decision of 5 February 2003 (no. 2 BvR 29/03) declared that a delay in the proceedings that is contrary to the principle of the rule of law must affect the assessment of punishment. In exceptional cases, it may even result in a discontinuance of the proceedings or in a stay in the proceedings that can be directly derived from the principle of the rule of law guaranteed by the Basic Law.

The Federal Court (Bundesgerichtshof) has also ruled that delays in criminal court proceedings were unlawful. In the case decided the proceedings had taken more than six years, which the Federal Court, after an examination of the circumstances in the case, considered to be 2.5 years to long (judgment of 10 November 1999, no. 3 StR 361/99).

Lower courts, too, have held delays in judicial proceedings to be unlawful. For instance, in a case of family law, the Berlin Court of Appeal (Kammergericht) has considered it unlawful for a court not to take measures to hasten the work of an official expert when that expert has not given her opinion in more than 1 year (decision of 22 October 2004, no. 18 WF 156/04, published in Neue Juristische Wochenschrift - Rechtsprechungsreport 2005, 374).

Case-law of the ECHR

The European Court of Human Rights found more than once that the reasonable time requirement of Article 6 § 1 ECHR had not been met; some of the examples are the following: *Eckle v. Germany* (judgement of 15 July 1982) for civil proceedings, *Uhl v. Germany* (judgment of 10 February 2005) for criminal proceedings, or *Sürmeli v. Germany* for civil proceedings (judgment of 8 June 2006).

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

Article 2 (1) of the Basic Law in conjunction with the principle of the rule of law (Article 20 (3) of the Basic Law) guarantees an accused in proceedings dealing with an administrative offence, as well as an accused in criminal proceedings, the right to a fair trial and due process. The latter right includes the right to have the proceedings completed within a reasonable time.

The First Chamber of the First Senate of the Federal Consitutional Court has also held that Article 2 (1) in conjunction with Article 20 (3) of the Basic Law protects the parties in a civil law suit against unreasonable delays in judicial proceedings (decision of 20 July 2000, no. 1 BvR 352/00), while the First Chamber of the Second Senate of the Federal Constitutional Court has considered that protection to be offered by Article 19 (4) of the Basic Law to the participants in proceedings before the administrative finance court (Finanzgericht) (decision of 26 Mai 2000, no. 2 BvR 2189/99).

The constitutions of some federal states (Bundesländer) include special provisions concerning the length of proceedings. The constitution of the Land Brandenburg provides in its Article 51 (4) that everyone is entitles to fair and speedy proceedings before an independent and unbiased court ("Jeder hat Anspruch auf ein faires und zügiges Verfahren vor einem unabhängigen und unparteiischen Gericht.").[1]

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

According to Article 93. 4a. of the Basic Law the Federal Constitutional Court shall rule on constitutional complaints which may be filed by anybody claiming that one of their basic rights or one of their rights under paragraph (4) of Article 20 or under Articles 33, 38, 101, 103 or 104 has been violated by public authority.

At present German law does not provide for a specific remedy in respect of excessive length of proceedings. However, the jurisprudence of the civil courts has developed – although the practice differs in diverse court regions – an extraordinary remedy in cases of unreasonable delays. In general, such a remedy is granted if a decision is delayed for an unreasonably long time and if this may objectively be viewed as a denial of justice. In such a case, the appeal court will issue an order to the original court to proceed with the case. It may even indicate specific measures to be taken.

In criminal cases, the jurisprudence of the Federal Court clearly states that whenever the proceedings have been unduly delayed so as to constitute a breach of Article 6 ECHR, the court has to mention this explicitly in its judgment and to compensate by reducing the sentence. Undue delay may even lead to the proceedings being terminated, if the violation can not be compensated otherwise.

[1] Although the Basic Law supersedes the constitutions of the Länder, the latter remain valid and applicable where they do not collide with the Basic Law, even if they offer more protection. Hence, the provision of Article 51 (4) of the constitution of Brandenburg is valid and applicable in that federal state.

In addition to this, the Federal Government is contemplating the passing of a law introducing a specific remedy against excessive length of proceedings in all branches of the law. The draft has been circulated among Länder ministries and professional bodies. Responses to the draft are now coming in. In the light of these reactions the government will decide whether and how to proceed with the project.

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

In its judgment *Eckle v. Germany* (15 July 1982), the Court considered that the right of the national courts to take proper account, when determining sentence, of any over-stepping of the "reasonable time" within the meaning of Article 6.1 ECHR, constitutes a "suitable means of affording reparation" for the violation of the Convention.

In *Sürmeli v. Germany* (judgment of 8 June 2006) the Court considered that none of the remedies envisaged for civil proceedings could be considered effective within the meaning of Article 13.

GREECE

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

With the exception of the enforcement, all other proceedings (civil, criminal, administrative) experience excessive delays.

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

Case-law of the European Court of Human Rights

Among many cases where the Court declared violation of Article 6 § 1 of the Convention with respect to Greece, see for example: Antonakopoulos, Vortsela and Antonakopoulou v. Greece (judgment of 14 December 1999), Dimitrios Georgiadis v. Greece (28 March 2000), Biba v. Greece (26 September 2000), Agoudimos and Cefallonian sky shipping Co. V. Greece (28 June 2001), Adamogiannis v. Greece (14 March 2002), Smokovitis and others v. Greece (11 April 2002), Logothetis v. Greece (12 April 2001), Vasilopoulou v. Greece (21 March 2002).

Actually, a great number of cases in front of the ECHR concerns violation Article 6.1.

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

No

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

No

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

No

The Greek authorities have informed the Council of Europe Committee of Ministers that legislative measures are currently (April 2006) envisaged for the introduction of an effective remedy in Greek law, in conformity with a series of judgments against Greece delivered by the ECtHR finding violations of Article 13 (See notably *Konti-Arvaniti v. Greece*, judgment of 10 April 2003, and *Aggelopoulos v. Greece*, judgment of 09 June 2005).

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

The relevant codes on judicial proceedings provide that the decision will be held when the case is "ripe" (e.g. Article 308 of the Code of Civil Judicial Procedure).

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

Measures are normally taken to speed up procedure by the Ministry of Justice in collaboration with the Judges of the three highest Courts of Greece. There are several problems but the most important are workload and lack of judges.

Legislative, infrastructural and other measures already adopted by Greece for the acceleration of proceedings are described in the appendices in the following CM Final Resolutions: ResDH(2005)64 on Academy Trading Ltd and others and other cases (civil proceedings); ResDH(2005)66 on Tarighi Wageh Dashti and other cases (criminal proceedings); ResDH(2005)65 on Pafitis and other cases (administrative proceedings).[1]

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

In each level of judicial proceedings (Court of First instance, Court of Appeals, High Court) the head of the relevant Court is responsible for the supervision of the duration of the proceedings. The Highest Court of Greece supervises all other courts. Nevertheless, the criteria for the supervision are on an *ad hoc* basis since there do not exist any standard criteria to access the reasonableness of the duration of the proceedings.

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

Normally the judge(s) who is (are) in charge of the case gets a notice from his supervisor that he has delayed a decision. The delay of publishing a decision is considered one of the criteria for the promotion of the Judge. Recently (April 2005), one judge was expelled from the Corps of Judges because he was continuously delaying the proceedings in all the cases he was in charge of. The decision for his expulsion was taken by the High Court (Areios Pagos) and it was the first decision of this kind.

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

No

[1] Documents aaccessible at www.coe.int/t/cm.

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

No

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

In its judgment of 10 April 2003 in *Konti-Arvaniti* v. *Greece* case and later on in *Lalousi-Kotsovos v. Greece* case (judgment of 9 May 2004), the Court found that there was no remedy in domestic law for length of civil proceedings cases. This was confirmed in several other recent judgments. See for example, *Nastou v. Greece* (judgment of 29/09/2005), *Athanasiou v. Greece* (judgment of 4/08/2005), and *Vozinos v. Greece* (judgment of 4/08/2005).

HUNGARY

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

Case-law of the European Court of Human Rights

Violation of Article 6 § 1 of the Convention with respect to Hungary has been found in many cases before the Court: *Sesztakov v. Hungary* (judgment of 16/12/2003), *Szakàly v. Hungary* (judgment of 25/05/2004), *Moder v. Hungary* (judgment of 5/10/2004), *Kellner v. Hungary* (judgment of 28/09/2004), *Tamas Kovacs v. Hungary* (judgment of 28/09/2004).

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

Indirectly yes. Section 2 (1) of the Code of Civil Procedure as amended, provides that it is the court's *ex officio* duty to arrange for actions to be dealt with thoroughly and terminated within a reasonable time. This provision, which entered into force on 1 July 2003, can be invoked, if one, claiming non-respect of these duties of the court, brings an official liability action in pursuance of S. 349 of the Civil Code.

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

Length of proceedings in the cases pending before the courts on 30 June 2006 (Hungary)

		0-3 months	**3-6 months**	**6-12 months**	**1-2 years**	**2-3 years**	**over 3 years**
Local courts	Penal	12947	8782	10692	10093	3180	1936
	Commercial	2369	1443	1316	1150	347	275
	Labour	5398	3274	2676	1655	365	173
	Civil	25500	12883	10538	8188	2343	1804
	Offences	6339	2793	1479	539	69	0
	Total	**52553**	**29175**	**26701**	**21625**	**6304**	**4188**

		0-3 months	3-6 months	6-12 months	1-2 years	2-3 years	over 3 years
County courts as appeal courts	Penal	3168	1345	463	90	2	0
	Commercial	513	175	74	9	0	0
	Labour	708	294	154	21	0	0
	Civil	3118	1128	507	88	6	7
	Offences	13	0	0	0	0	0
	Total	**7520**	**2942**	**1198**	**208**	**8**	**7**
County courts as first instance	Penal	292	244	316	256	80	38
	Commercial	1024	534	694	853	352	233
	Military	121	51	54	16	1	1
	Administrative	2629	1287	1009	562	93	28
	Civil	2064	1155	1658	2116	835	345
	Total	**6130**	**3271**	**3731**	**3803**	**1361**	**645**
Appellate courts	Penal	155	89	36	8	0	0
	Commercial	215	58	17	3	0	0
	Military	30	0	2	2	0	0
	Administrative	233	105	8	0	0	0
	Civil	566	98	20	2	0	0
	Total	**1189**	**350**	**83**	**15**	**0**	**0**

Note: There are 20 county courts, and 5 appellate courts in the country.

These statistics were provided by the National Judicial Council (www.birosag.hu).

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

According to S. 114 of the Code of Civil Procedure, a party may complain of the irregularity of proceedings at any time during the proceedings. Minutes shall be taken of any oral complaint to that effect. If the court fails to take such a complaint into account, the grounds for such failure shall be given immediately or, at the latest, in the final decision.

The Hungarian Parliament has recently passed a bill on the introduction of a preventive remedy based on the Austrian model (Holzinger). Upon a complaint by a party to the case, in case of refusal by the proceeding judge to act upon it, the court of higher instance would have the power to set a deadline to the proceeding court for taking specific measures or for concluding the case (S. 114/A and 114/B, in force since 1 April 2006).

According to Article 349 of the Civil Code, the official liability of the State administration may be established only if the relevant ordinary remedies have been exhausted or have not been found adequate to redress the damage. Unless otherwise specified, this provision also covers the liability for damage caused by the courts or the prosecution authorities.

Changes might be brought about by the amendments (applicable only to cases introduced after 1 July 2003) to the effect that compensation can be claimed irrespective of any fault on the part of the proceeding judge.

In criminal cases, the granting of a more lenient sentence on account of the length of the proceedings is a general judicial practice in Hungary.

10. What are the available forms of redress :

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

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

Yes. In *Erdos v. Hungary* case (decision of 3 May 2001), the Court considered that a set of civil court proceedings, like an official liability action under Article 349 of the Hungarian Civil Code, cannot be considered as an effective remedy.

The Court's doubts as to the effective nature of an official liability action were further confirmed in the case *Timar v. Hungary* (decision 19 March 2002) where the Court considered that this remedy would probably not be effective for a complaint about a delay in the administration of justice. It stressed that the Government have not submitted any precedents illustrating the interpretation of Article 349 by the domestic courts and its practical application to length complaints. The Court finally concluded that obliging the applicant to test the scope of Article 349 in the absence of any precedent would result in an excessively rigid and formalistic approach to the exhaustion requirement.

Apart from their failure to establish the effectiveness of the remedy provided for under Article 349, in *Simko v. Hungary* case (decision of 12 March 2002) the Court noted that the Government have not referred to the availability of any domestic procedure which would have allowed the applicants to obtain other forms of redress such as an acceleration of the proceedings when they were still pending.

In criminal cases, the granting of a more lenient sentence on account of the length of the proceedings was recognized by the European Court of Human Rights as an effective remedy depriving the applicant of the victim status (*Tamás Kovács* judgment of 28 September 2004).

IRELAND

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

There have been instances of complaints and litigation regarding delays in civil and criminal judicial proceedings in Ireland. Nonetheless, Ireland has a good record in this regard. In January 2006 Mr Justice Finnegan, President of the High Court, stated that the High Court has made significant progress in this respect and although he is aware of problems 'where they exist' the situation is vastly improved from that of four years ago.[1] The appointment of additional judges and the provision of extra courtrooms has resulted in improvements.

The Courts Service is responsible for the management of the Courts and states in its Annual Report for 2004 that waiting times were reduced during that period and that they will continue to improve.[2]

There is a body of Irish jurisprudence concerning delay in relation to the making of a complaint with special consideration in relation to charges of child sexual abuse but, as this delay occurs before judicial proceedings have been instituted, it will not be considered in this questionnaire.[3]

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

The issue of delay has been considered by domestic courts and orders have been granted to prohibit criminal, or strike out, civil proceedings on the basis of delay. The Constitution provides guarantees against excessive delays and the courts will examine each case on its own facts. The Courts have not become involved in any general appraisal of average waiting times or an analysis of the extent of delay in Irish courts.

Delays have also been found to exist by the European Court of Human Rights in the cases of *Barry v Ireland,*[4] *Doran v Ireland,*[5] *O'Reilly v Ireland*[6] and *McMullen v Ireland.*[7]

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

Criminal

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1 Finnegan P, '*Staggering condition of the non-jury list' – the President of the High Court responds (*2006) 100(1) G.L.S.I., 12.

2 Available from www.courts.ie, publications section.

3 See for example JO'C v DPP 31R [2000] 478 and H v D.P.P. Supreme Court 631/07/2006.

4 Application No 18273/04, 15th December 2005.

5 Application No 50389/99, 31st July 2003.

6 Application No 54725/00, 29th October 2004.

7 Application No 42297/98, 29th October 2004.

In the criminal context Article 38.1 of the Irish Constitution has been interpreted to imply the right to an early trial. That Article provides:

> *"No person shall be tried on any criminal charge save in due course of law"*

The Supreme Court accepted in *In the matter of Paul Singer (no. 2[8]),* a prosecution for fraud*,* that:

> "*… the Constitution guarantees to every citizen that the trial of a person charged with a criminal offence will not be delayed excessively; or, to express the same proposition in positive terms, that the trial will be heard 'with reasonable expedition . . .'*."[9]

The courts have stated that they will consider delay as a whole in the particular circumstances of the case.[10] In a recent Supreme Court decision involving child sex abuse where 30 or so years had elapsed before formal complaint, the law concerning delay by the complainant in making a formal complaint it was restated as follows:

> "*The test is whether there is a real or serious risk that the applicant, by reason of the delay, would not obtain a fair trial, or that a trial would be unfair as a consequence of the delay. The test is to be applied in light of the circumstances of the case."*[11]

Civil

In the civil context, the implied constitutional principle of basic fairness of procedures under Article 40.3.1 has been held to ground the termination of a claim on the ground of delay.[12] In the case of *Ó Domhnaill v Merrick*[13] it was said that "While justice delayed may not always be justice denied, it usually means justice diminished", the judge also stated that 'inordinate and inexcusable' delay will not be overlooked unless there are countervailing circumstances. It was held that the claim in question was barred due to delay even though it had been brought within the time period stipulated by the Statute of Limitations 1957. In coming to this decision the Court was influenced by Article 6 of the ECHR, even though it had not yet been incorporated into domestic law.

(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;
(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;
(c) even where the delay has been both inordinate and

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8 (1960) 98 I.L.T.R. 112

9 *In the Matter of Paul Singer* (No. 2) (1960) 98 I.L.T.R. 112.

10 In *Blood v DPP* (2nd March 2005, Supreme Court, McGuinness J) Mc Guinness J held:

> "cases involving delay in prosecution, or the denial of the right to an expeditious trial, must be decided on an ad hoc basis, in the particular circumstances of the case. In the particular circumstances of this case, taken as a whole, it seems to me that the delays in the latter period of the prosecution of the applicant amount to a denial of his right to an expeditious trial."

11 *H v D.P.P*. 31 July 2006 Supreme Court.

12 *O'Donoghue v Legal Aid Board* 21st December 2004, High Court, Kelly J

13 [1984] IR 151 See also *Primor v Stokes Kennedy Crowley*[13] where Hamilton J stated that the courts may dismiss a claim on the grounds of inordinate and inexcusable delay, when the interests of justice require it, having regard to the implied constitutional principles of basic fairness of procedures.

inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;

(d) in considering this latter obligation the court is entitled to take into consideration and have regard to

(i) the implied constitutional principles of basic fairness of procedures,
(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,
(iii) any delay on the part of the defendant - because litigation is a two party operation - the conduct of both parties should be looked at,
(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,
(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,
(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,
(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."[14]

Prior to the European Commission on Human Rights Act 2003 coming into effect it was held that a party "*…had a right, in particular by virtue of, or more probably by analogy with the provisions of the [ECHR] to a fair trial, which encompasses the notion of a speedy trial".* [15]

Following the incorporation of the ECHR into Irish law, subject to statutory provisions or rules of law, every organ of the State is required "*to perform its functions in a manner compatible with the State's obligations under the Convention provision*". Whilst the definition of "*organ of State*" does not include a court, nonetheless all other public or State bodies are bound by the terms of the Convention and of Article 6(1) in particular. The possibility of an award of damages to a person injured as a result of a contravention of the State's obligations under the Convention is provided for.

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

The Courts Service is responsible for the management of courts. Average waiting times in each court for 2005 are as set out below. Provision is made to accord early hearing dates to urgent and emergency matters. The average times are as follows:

Supreme Court 14 months from lodgement of a certificate of readiness to hearing date (earlier hearing dates are allocated by the court for urgent cases).

[14] Primor plc –v- Stokes Kennedy Crowley [1996] 21.R. at 475.

[15] Duignan –v- Carway [2001] 4 IR 550.

Criminal

Court of Criminal Appeal	Sentence appeals 6-8 months Conviction cases 7-9 months
High Court	Bail applications – date immediately available
Central Criminal Court	6 months for cases returned to the court in November and December 2005
Special Criminal Court	4 months
Circuit Court	7 months (Average)
District Court	3 months (Average)

Family

High Court	3 months
Circuit Court	6 months (Average)
District Court	11/2 months (Average)

Civil

Commercial Court	Date immediately available
Chancery	Motions list – date immediately available Cases certified as ready for trial – 10 months Special Summons (Mortgage suits) – 3 weeks Chancery miscellaneous – 4 months (cases taking less than 2 hours will be dealt with sooner)
Non-Jury	Miscellaneous - 7 months (cases taking less than 2 hours will be dealt with sooner) Motions list – 3 weeks Actions certified as ready for trial – 22 months
Judicial Review (excluding asylum)	15 months (cases taking less than 2 hours will be dealt with sooner)
Judicial Review (asylum)	Prior to obtaining leave to judicially review decision – 5 weeks Following leave to judicially review decision – 5 months
Jury	Civil actions for damages for assault, defamation, wrongful imprisonment, or objections to warship proceedings – 9 months, warship matters get priority.
Appeals from the Circuit Court	8 weeks
Personal and Fatal Injuries	17 months (Average)
Probate Office	6-8 weeks
Circuit Court	10 months (Average)
District Court	2.5 months (Average)

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

Criminal
In the criminal context an accused can take Judicial Review proceedings seeking an order for prohibition against the prosecution on the ground of delay. This application is to be made before the High Court by an accused and must be made 'promptly'[16]. The Court has an inherent jurisdiction to prohibit a prosecution where there is unreasonable delay.

Civil
In the civil context defendants may seek an order for dismissal for want of prosecution in circumstances where there has been delay on the part of the Plaintiff. This application is made to the courts.

In *O'Donoghue v Legal Aid Board*[17] the High Court held that the applicant in family proceedings could obtain a declaration of breach of rights under Article 40.1.3 and be awarded damages for delay in the State providing her with legal aid. This case was not appealed to the Supreme Court.

Under the European Convention on Human Rights Act 2003 an applicant may apply to the High Court for damages if an organ of State has not fulfilled its obligations under the Convention. Under that legislation the courts are excluded from the definition of organ of State but delay by the DPP or other State agents or agencies might give rise to this remedy.

Under the Courts and Court Officers Act 2002 section 46, if judgment has not been delivered within a prescribed period the Courts Service will list the matter before the relevant judge and at that time the Judge must fix a date by which time judgment will be delivered.

According to a procedure initiated in 1996 any litigant who has a complaint in relation to delay must address it formally to the President of the High Court. However, the ECtHR in *O'Reilly* found that this did not constitute an adequate remedy.

The Courts themselves employ a system of case management and judges seized of a case will set deadlines by which time the parties are required to have submitted or served documents. Legislation, including the Statute of Limitations 1957, stipulates the period in which applicants must take proceedings, before they become 'statute barred'.

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

An application can be made at any stage in proceedings.

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16 *Connolly v DPP* 15th March 2003, HC, Finlay Geoghegan J.

17 21st December 2004, High Court, Kelly J.

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

Generally, costs follow the event of the trial i.e. they are awarded to the winning party. However, awards may be made to a particular party in relation to specific interlocutory proceedings.

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

Criminal
In criminal proceedings the courts have assessed the reasonableness of the duration of the proceedings with respect to the complexity of the case,[18] showing increasing tolerance with greater complexity. Relevant factors considered by the courts are the large number of witnesses to be interviewed,[19] the need to examine and consider witness statements[20] and the lack of co-operation from an institution.[21]

The Courts may also have regard to the conduct of the applicant and the relevant authorities and, as was stated in *DPP v Byrne,*[22] a violation of the right will be more readily identified if there has been an 'improper motive or gross carelessness on the part of the prosecuting authorities'. In assessing delay, the courts will include delay caused by the prosecution and by the courts.[23]

The issue of what is at stake for the applicant has been mentioned[24] as a relevant factor by the Courts. Constitutional rights in themselves are considered to be of great importance and any infringement is treated very seriously. There have been no judicial statements to the effect that a matter is of too trivial a consequence to attract Constitutional protection.

The natural coincidence of fair trial, delay and prejudice to an applicant have resulted in some confusion in Irish case law on the subject of delay. There are dicta stating that in order for breach of constitutional rights due to delay to be of relevance the applicant must show that prejudice has or will be caused by the delay. As stated in answer to question 3 above, in a recent Supreme Court judgment:

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18 In *Keely v Moriarty*[18] it was held that a delay of five years between complaint and charge in a very complex case involving allegations of conspiracy to defraud did not disclose 'acts or omissions which could reasonably be described as delay'.

19 *Barry v DPP* 17th December 2003, Keane CJ: 'This was a case in which the Gardaí had to investigate over six hundred complaints and in which they took written statements from one hundred and forty six persons. In addition, expert medical evidence had to be obtained with a view to ascertaining whether the conduct complained of was justified in medical terms.'; *Keely v Moriarty* (7 October 1997) HC.

20 *Keely v Moriarty* (7 October 1997) HC, Lynch v DPP (16 December 1997) HC.

21 *Blanchfield v Harnett* [2002] 3 IR 207.

22 [1994] 2 IR 236, 246.

23 In *DPP v Arthurs*[23] a delay of two years and three months was said to be an excessive delay in bringing summary proceedings to trial. In this case the prosecution was listed on three occasions on which it had not gone ahead. O'Neill J stated that:

> "the inference that these delays are the result of a failure on the part of the State to have provided adequate resources so that the District Court could deal with the cases before it in an expeditious manner is inescapable. The failure on the part of the State to have made adequate provision for the expeditious conduct of cases in the District Court …[was] an unwarranted invasion of the accused constitutional right to an expeditious trial."

See also *DPP v Byrne* [1994] 2 IR 236; *Robert Byrne v DPP* 22 July 2005, High Court, Peart J.

24 *DPP v Byrne* [1994] 2 IR 236 at 246, *PC v DPP* [199] 2 IR 25 at 65.

"*The test is whether there is a real or serious risk that the applicant, by reason of the delay, would not obtain a fair trial, or that a trial would be unfair as a consequence of the delay. The test is to be applied in light of the circumstances of the case.*"[25]

Civil

Although case law in the area of civil law is less developed than in the criminal sphere, broadly similar criteria are considered. The judgment of Hamilton CJ in *Primor v Stokes Kennedy Crowley*[26] describes the court's approach as follows:

"(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;
(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;
(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;
(d) in considering this latter obligation the court is entitled to take into consideration and have regard to
(i) the implied constitutional principles of basic fairness of procedures,
(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,
(iii) any delay on the part of the defendant -- because litigation is a two party operation, the conduct of both parties should be looked at,
(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,
(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,
(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,
(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."[27]

As mentioned in response to question 3 the ECHR has been incorporated into domestic law and Article 6 has been directly relied upon. As a result, it has been suggested that it is no longer necessary to establish prejudice where unacceptable delay exists in civil proceedings.[28]

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

No such deadline exists.

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25 *H v D.P.P.* 31 July 2006 Supreme Court.

26 [1996] 2 IR 459.

27 [1996] 2 IR 459 at 475. This test has been followed in *Duignan v Carway* [2001] 4 IR 550.

28 *Crowley v Roche Products (Ireland) Ltd* Master of the High Court, Decision of 20 January 2006.

10. What are the available forms of redress:

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

In criminal proceedings if Article 38.1 is held to have been breached because of delay, an order of prohibition will be granted directing that the prosecution be restrained. Similarly, in a civil action if a Defendant successfully argues that Article 40.1.3 has been violated by reason of delay the claim will be dismissed for want of prosecution. In a judgment in the High Court a Plaintiff in a civil matter complain successfully about delay and declaration of breach of rights and damages were awarded. In the case of *PP v DPP*[29] it was held that although a breach of constitutional rights in the context of criminal proceedings had not been made out, any further delay would not be tolerated and the courts should not permit it to occur.

In criminal proceedings if an accused has been in custody pending trial, the period spent in custody will be set off against a sentence imposed.

11. Are these forms of redress cumulative or alternative?

Generally, proceedings will be restrained where unacceptable delay has been shown to exist. A declaration of breach of rights has been accompanied by an award of damages in a civil case.

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

In *O'Donoghue v Legal Aid Board* damages were calculated with regard to the loss suffered by the applicant[30] and stress and upset caused.

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

No

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29 [2000] 1 IR 403.

30 By the time the proceedings for breach of Constitutional rights had concluded the maintenance application had been determined and the High Court's award for breach of Constitutional rights was calculated as the amount of maintenance the applicant would have received for the period during which she was waiting for Legal Aid.

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

In criminal prosecutions successful applications under the above-mentioned constitutional rights have resulted in orders that the proceedings be abandoned. There have not been any orders that a trial should be speeded up or completed by a certain date. If such orders were to be made any failure to comply would be brought back to court and the judge in question would be responsible for supervising the implementation of such decisions.

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

Generally if an order has been made on the grounds of delay, a prosecution or claim will be restrained. If a mandatory order provided that proceedings should be expedited it would be open to an applicant to issue proceedings if it was not complied with.

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

An order made by the High Court may be appealed to the Supreme Court. There is no fixed time-frame for an appellate court to deal with an appeal but the proceedings would be subject to the same Constitutional guarantees of reasonable expedition.

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

There is no reason why this remedy could not be used more than once in respect of the same proceedings.

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

Not applicable.

19. What is the general assessment of this remedy?

Not applicable

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

Not applicable

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

The remedy available before this development was considered by the European Court of Human Rights in the cases of *Barry v Ireland,*[31] *Doran v Ireland,*[32] *O'Reilly v Ireland*[33] and *McMullen v Ireland.*[34] In each of these decisions Ireland was found to be in breach of the convention for failure to provide an adequate remedy for delay.

31 Application no. 18273/04, 15th December 2005.

32 Application no. 50389/99, 31st July 2003.

33 Application no. 54725/00, 29th October 2004.

34 Application no. 42297/98, 29th October 2004.

ITALY

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

Yes.

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

Case-law of the European Court of Human Rights

In Di Mauro v. Italy, (judgment of 28 July 1999), the Court drew attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment (25 June 1987), it had delivered 65 judgments in which it had found violations of Article 6 § 1 in proceedings exceeding a "reasonable time" in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more than 1.400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason.

The Court found violation of Article 6 § 1 among others in *Ledonne v. Italy* (judgment of 12 May 1999) in respect of criminal proceedings, in *Abenavoli v. Italy* (judgment of 2 September 1997) in respect of administrative proceedings and in *Ceteroni v. Italy* (judgment of 15 November 1996) in respect of civil proceedings.

In *Cocchiarella v. Italy* (judgment of 29/03/2006), the Court after years of examining the reasons for the delays attributable to the parties under the Italian procedural rules, had to resolve to standardize its judgments and decisions. This allowed it to adopt more than 1.000 judgments against Italy since 1999 in civil length-of-proceedings cases. That approach had made it necessary to establish scales on equitable principles for awards in respect of non-pecuniary damage under Article 41, in order to arrive at equivalent results in similar cases.

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

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

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

See the answer to question number 2.

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

Yes.

In 2001, the so-called "Pinto Law" has introduced a specific domestic legal remedy with respect to the excessive length of proceedings allowing applicants to obtain an appropriate relief in the form of financial compensation before the Court of Appeal.

A complaint can be lodged by anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of ECHR.

A special requirement, distinct from the general procedural law, is provided for the applicants: a claim must be submitted by a lawyer holding special authority. It must be submitted within six months from the date when the decision ending the proceedings becomes final (or during the proceedings, from the moment when there was already a delay of proceedings).

The remedy proceedings are separate from the proceedings on merits.

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

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

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

Since 2004 and after a number of the European Court's judgments in which other violations were found, the Italian Court of Appeal and the Cassation Court adopted the same criteria as those applied by the European Court of Human Rights.

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

Yes. The Court of Appeal shall deliver a decision within four months after the application is lodged. However, no sanctions or any other legal consequence for missing the deadline have been provided for by the Law.

10. What are the available forms of redress :

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

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

The competent authority can not set a time-limit to conclude the proceedings complained of.

If a claim is grounded, a decision shall be communicated to State Council at the Court of Audit to enable him to start an investigation into liability, and to the authorities responsible for deciding whether to institute disciplinary proceedings against the civil servants involved.

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

There is no limit as to the amount of compensation.

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

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

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

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

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

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

Later the amount of damages awarded by the Italian courts has proven in some cases to be inadequate and thus, the remedy was considered ineffective (*Scordino and ors. (no. 1) v. Italy*, (decision of 27 March 2003).

This defect was corrected by the Italian Court of Cassation in a judgment of January 2004, as noted by the Court in *Di Sante v. Italy*, no. 56079/00, decision of 24 June 2004. The Court took the view that this new development in national law should have been widely known by 26 July 2004, which became the key date for the exhaustion of domestic remedies.

The recent judgments of the Grand Chamber (in particular the lead judgment of *Scordino v. Italy*, judgment of 29 March 2006) outlined that the proceedings under the Pinto law were not entirely sufficient and therefore did not deprive applicants of their victim status for the purpose of bringing a case to Strasbourg.

The victim status of the applicants was based principally on the manifestly unreasonable nature of the amounts awarded by the Italian authorities (including sums as low as 8% of what the ECHR would have awarded).

LIECHTENSTEIN

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

Delays in judicial proceedings were a problem in the past, in particular in the case of international judicial assistance and criminal investigations. However, this problem was resolved by increasing the staffing level at the courts and in the Office of the Public Prosecutor. Occasionally the duration of proceedings exceeds reasonable limits in civil, criminal and administrative proceedings, but this is hardly ever the case in enforcement proceedings.

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

Just recently the ECtHR dealt with such a case of excessive length of proceedings in Liechtenstein which culminated in a verdict against Liechtenstein (Case of Von Hoffen v. Liechtenstein, decision of 27.07.2006 [Application no. 5010/04]). Moreover, there have also been some decisions of this nature in Liechtenstein courts, some of which have been published.

Constitutional Court (StGH) 2003/97; Administrative Court (VBI) 2003/92.

An electric power plant endeavoured over a period of several years to obtain the necessary permit to extend a high-voltage power line; after proceedings of over two years' duration the permit was granted with certain restrictions. However, this permit was revoked by the Administrative Court after proceedings which extended over multiple stages. Subsequently, a permit was again granted but a complaint was filed with the government against this permit. Since the government did not issue any decision within 3 months, the power company lodged a "default complaint" six months later with the Administrative Court in accordance with Article 90 para 6a LVG. The Administrative Court decided that only the party who addressed the complaint to the government was entitled to file the default complaint with the Administrative Court; it held that this was not the case with regard to the power company. On the other hand, it stated that the complaint in question was to be dealt with as a supervisory complaint within the meaning of Article 23 para 1 LVG. A delay of justice was however denied since the government had appointed an expert whose report was late for various reasons. Consequently the Administrative Court decided no sanction was called for under supervisory law. The complaint which was filed against this decision with the Constitutional Court was also dismissed.

Constitutional Court (StGH) 2001/4

This case dealt with a criminal sentence for embezzlement. Already 4 years had passed from the time when the crime had been committed until the initiation of criminal proceedings. Because of appeals filed all the way to the Supreme Court, the proceedings lasted another 4 ½ years until the case was concluded by a final Supreme Court decision. The fact that several years had passed since the crime had been committed and the claimants good conducts since that time were acknowledged as being special grounds from mitigation in terms of the severity of the penalty.

The claimant brought the case before the Constitutional Court, among other grounds, for delay of justice. The Constitutional Court referred to the Strasburg practice in assessing the duration of the proceedings. It found that the duration was still reasonable according to the criteria generally applied by Strasburg to economic crimes.

Constitutional Court (StGH) 1997/30

In 1989 the claimant informed the Agency for the Promotion of Residential Construction in writing that he had let the apartment built with the help of subsidies to a third party. But he requested that the matter be left aside for the moment until everything had "sorted itself out" again. 2 ¼ years later the Agency requested either a justification or that the owner use the apartment himself. Based on the subsequent justification provided by the claimant an order was issued approximately 8 months later to the effect that the subsidies were to be repaid with interest. The government dismissed the complaint filed against this decision approx. 6 months later. The appeal filed with the Administrative Court against this decision was dismissed approx. 4 ¼ years later. In response to the complaint filed against this decision the Constitutional Court held that the first delay occurred because the claimant requested the matter to be left aside for the time being. The Constitutional Court furthermore took into account that the period of time of over 3 ½ years until the Administrative Court issued its decision was excessive in view of the straightforward legal situation and facts of the matter. The Constitutional Court left the question of the possibility of sanctions open, as no damages had been incurred – or claimed - in the case in question.

Administrative Court (VBI) 1994/44

This case concerned the repayment of residential construction subsidies due to not permitted changes in construction. Two years passed from the time at which the authority became aware of the changes in construction until the final restitution order was issued. The claimant maintained that no interest was owed for this time as he could have saved this interest if the decision had been made within a reasonable period of time. The Administrative Court held that in the case in question there was no justification for such an excessive length of proceedings, even if the Agency for the Promotion of Residential Construction wished to wait for a similar case which was pending with the Administrative Court to be decided. But the Administrative Court also denied any obligation to pay compensation for damages to the claimant since the latter on the one hand should have expected a restitution order and, what is more, on the other hand had not proven any financial disadvantage.

Decision of the Supreme Court (OGH) of 30.06.2004, 14 UR 2002.17-87, LES 2004, 432

Based on a decision of the County Court a freezing order was issued in 1987 within the framework of international legal assistance proceedings. This freezing order was cancelled in 1994 but as a result of a legal remedy asserted by the Office of the Public Prosecutor the Supreme Court issued another freezing order. Up to this decision of the Supreme Court no further investigative actions were however carried out. In the absence of a conviction or sufficiently strong grounds for suspicion the blockage of the account was lifted by the Court of Appeal in 2004 in view of the excessive length of the proceedings, a decision which was confirmed by the Supreme Court.

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

The Liechtenstein Constitution (Landesverfassung [LV][1]) does not contain any explicit provision in this respect. However, an unreasonable length of proceedings may constitute a violation of the prohibition of a refusal or delay of justice. There is nevertheless no uniform practice of the Liechtenstein Constitutional Court (Staatsgerichtshof [StGH]) in citing one particular human right; in some cases Article 31 para 1 LV (equality before the law)[2] is invoked, whereas some decisions are based on Article 43 LV (a right to an effective remedy) and in other decisions a combination of the two is applied.

On the other hand there are regulations at the legislative level, specifically in Article 23 and Article 90 para 6a of the State Law on the Administration of Justice (Landesverwaltungspflegegesetz [LVG]),[3] in Article 23 of the Court Organisation Law (Gerichtsorganisationsgesetz [GOG])[4] and in Article 45 of the Law on Enforcement Proceedings (Exekutionsordnung [EO]).[5] In this connection it may be mentioned that Article 1 para 3 of the old Law of the Constitutional Court (Staatsgerichtshofgesetz [StGHG])[6] – which was valid until 20.01.2004 – allowed a complaint to the Parliament on the grounds of refusal of justice or a delay of justice by the Constitutional Court, without even having to wait for a prescribed minimum period of inactivity to have lapsed on the part of the authority.

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

There are no statistical data available.

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

5.1 Prohibition of the Delay of Justice under Constitutional Law:
The prohibition of the delay of justice is inferred from Article 31 para 1 and/or Article 43 LV (cf. Question 3).

Article 43 LV

The right of complaint is guaranteed. Any citizen shall be entitled to lodge a complaint regarding any action or procedure on the part of a public authority which is contrary to the Constitution, the law or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned and may, if necessary, be pursued to the highest authority, except when the right of recourse may be barred by a legal restriction. If a complaint thus submitted is rejected by the superior

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1 Systematic Collection of the Laws of Liechtenstein ["LR"] 101.

2 Article 31 para 1 of the Constitution (LV) "All citizens[1] shall be equal before the law. The public offices shall be equally open to them, subject to observance of the legal regulations."

3 LR 172.020.

4 LR 173.30.

5 LR 281.0.

6 Law of 5 November 1925, Law Gazette (Landesgesetzblatt [LGBl.]) 1925/8; in the meantime replaced by the Law of 27.11.2003, LGBl. 2004/32, LR 173.10.

authority, the latter shall be bound to declare to the complaining party the reasons for its decision.

A violation of this basic right to prohibition of delay of justice may be asserted within the framework of the ordinary procedure for legal remedies. Finally, this violation of basic rights may also be specifically invoked before the Constitutional Court by means of an individual complaint to protect rights guaranteed by the Constitution (Article 15 et seq. StGHG).

5.2 Article 23 LVG (Supervisory complaint):

Article 23 of the Law on the Administration of Justice (LVG)

Supervisory Complaints

1. Supervisory complaints against the government, the head of government or other members of the government based on im proper conduct in the exercise of official acts or based on the refusal or delaying of an administrative act are to be filed by the parties concerned with the Administrative Court; if the complaint applies to other government officials, it is to be filed with the government (Article 93 of the Constitution); however, if the complaint concerns a matter of disciplinary law with respect to a member of the government, the Administrative Court or the members thereof, then the complaint is to be filed with the Disciplinary Court as an immediate complaint (Article 104 of the Constitution).

2. Recourse may also be had to a supervisory complaint if a formal complaint is not allowed, the deadline for submitting a complaint was missed or all the stages of appeal have been exhausted, unless exceptions apply (para 5).

3. All complaints – except for those which are obviously unjustified – are to be communicated to the authority or the official in question along with a request to remedy the complaint within a certain period of time and to report thereon or to state the obstacles to the contrary.

4. Complaints against officials and employees in the government chancellery and against enforcement authorities based on disregard or improper performance of official acts incumbent on them by law or entrusted on them by the government (officials) or based on improper conduct are - unless otherwise stipulated for specific individual cases – to be filed with the government orally or in writing; a complaint against the government's decision may be filed with the Administrative Court within 14 days (Article 93 of the Constitution).

5. The complaint is not tied to a deadline if it concerns a lack of action on the part of the authority or an official; however, if it concerns an administrative act of which the complainant is given notice, the complaint must be submitted within 14 days of such notice.

6. The complainant is to receive a written reply which states the grounds for the decision and is to be designated as a supervisory order or a supervisory decision; (Article 43 of the Constitution).

7. Further reaching provisions of the Constitution (Articles 43, 62) are not affected by these clauses.

A supervisory complaint in accordance with Article 23 LVG may be submitted by any party involved in proceedings and has to be filed with the Administrative Court (Verwaltungsgerichtshof [VGH]; formerly Verwaltungsbeschwerdeinstanz [VBI]) if it concerns a refusal or a delay of justice on the part of the government; if it concerns other authorities, it has to be filed with the government (para 1).

There is no deadline which applies to supervisory complaints in respect of a delay of justice or refusal of justice (para 5).

It is undisputed in court practice and doctrine of the German speaking countries that a supervisory complaint is a legal remedy which does not need to fulfil any special requirements as to form. It is not an ordinary remedy since there is no obligation to enter into the merits of the complaint. Consequently, a supervisory complaint in accordance with Article 23 LVG is not a typical supervisory complaint, since in accordance with para 6 the complainant has a right to a response to his supervisory complaint in which the grounds for the decision are given.

5.3 Article 90 para 6a LVG (Default Complaint):

Article 90 para 6a (LVG)

6a) If the appellate authority is competent to issue a decision on a ruling or a decision issued by a lower administrative authority, and this latter administrative authority has not replied within three months of receipt of the party's application, then the application may be considered to have been dismissed upon expiry of this period of time and the party may have recourse to a complaint in this sense.

In accordance with Article 90 para 1 LVG a supervisory complaint may be filed with the Administrative Court in respect of all administrative acts of the government, the head of government, commissions or authorities appointed in place of the government. Only the complainant is entitled to file a complaint, whereas the respondent is not entitled to do so (VBI-Decision 2003/92; StGH-Decision 2003/97).

In accordance with Article 90 para 6a LVG a default complaint is admissible after a three months' period of inactivity of the authority in question.

5.4 Article 23 GOG (Supervisory complaint):

Article 23 of the Court Organisation Law (GOG)

1. Supervisory complaints by parties concerned against courts, the presidents of courts and judicial officials based on improper conduct in the exercise of their office, a refusal of or a delay in administration of justice are to be lodged with the President of the Court of Appeal; if the complaint is raised against the Court of Appeal or a member of this court, it has to be filed with the Supreme Court.

2. All complaints – except for those which are obviously unjustified – must be communicated to the court or judicial official in question along with a request to remedy the complaint within a certain period of time and to report thereon or to state the obstacles to the contrary.

3. Complaints against officials in the court chancellery and enforcement officials based on disregard or improper performance of official acts incumbent on them by law or entrusted on them by the court are – unless otherwise stipulated with respect to specific individual cases – to be filed with the President of the Court of Justice orally or in writing,

against whose ruling a complaint may be lodged within ten days of receipt of said ruling with the President of the Court of Appeal whose decision is final.

Article 23 GOG governs the right of the parties involved in proceedings to file a supervisory complaint due to a delay or refusal of justice. If the supervisory complaint is made against the courts, the presidents of the courts or court officials, it has to be filed with the President of the Court of Appeal; if the complaint is made against the Court of Appeal or a member of that court, it has to be filed with the Supreme Court (para 1). If court clerks or enforcement officers are the subject of the complaint, it has to be submitted to the President of the County Court (para 3). No deadline applies to this type of supervisory complaint.

5.5 Article 45 EO (Complaints in respect of Performance of Enforcement):

Article 45 of the Law on Enforcement Proceedings (EO)

Complaints regarding the execution of enforcement

Whosoever deems they have grounds for complaint based on an occurrence during the execution of enforcement, in particular based on a procedure observed by the executor in carrying out an official action or as a result of the refusal of or a delay in conducting enforcement proceedings may request a remedy with a supervisory complaint in the sense of the Court Organisation Law.

Reference is made in Article 45 EO to the GOG as to complaints in respect of performance of enforcement including a refusal or a delay in carrying out enforcement acts.

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

As already explained in the reply to Question 5, it is permissible to make supervisory complaints at any time in accordance with the LVG. In the case of a default complaint in accordance with Article 90 para 6a LVG a three months' waiting period must first lapse, upon expiry of which there is deemed to have been a negative decision. As regards legal remedies in the ordinary stages of appeal, the delay of justice can in principle only be censured after the decision has been issued. However, the problem of sanctions then arises (see for example VBI-Decision 2002/76, p. 30: "The claim is justified. It will not have any special consequences."). In the case of constitutional complaints the problem arises that a complaint is actually only admissible once the proceedings have been formally concluded by a final decision. A reversal of such a belated decision on the only ground of a delay of justice would not make sense, although in principle this should be the sanction for all violations of a constitutional right in accordance with Article17 para 1 StGHG.

There is, however, also a constellation within the context of an excessive length of proceedings in which a decision may be or has to be reversed precisely because of the ensuing delay of justice. This constellation has arisen in concrete cases in connection with the freezing of accounts, whereby decisions ordering the extension of the freezing order were lifted upon appeal (Decision of the Supreme Court [Oberster Gerichtshof,OGH] of 03.06.2004, Liechtenstein Law Report [LES] 2004, 432; cf. also StGH-Decision 2004/25 [can be accessed in the Internet at: www.stgh.li], in which, however, a delay of justice was denied).

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

If the complaint in respect of delay of justice is successful, there are no costs for the proceedings.

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

In an older decision of the Constitutional Court (StGH 1982/31, LES 1983, 105) a particularly large court file was not held to be a justification for a delay of justice (see however the decision to the contrary of the Constitutional Court StGH 1984/11, LES 1986, 63; which was, however, subject to doctrinal criticism – and rightly so).

In later decisions[7] reference is made to the nature of the matter and the overall circumstances, basically corresponding - in the final analysis - to the criteria contained in Article 6 para 1 of the European Convention on Human Rights. In more recent decisions of the Constitutional Court explicit reference is made to the Strasburg criteria.[8]

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

There is no explicit deadline for the competent authority to rule on a complaint in respect of a delay of justice. It is obvious that such a ruling should be issued as soon as possible. Cf. however § 23 para 2 GOG and Section 10.3. below in reference thereto.

In the StGH-Decision 1982/31/V the Constitutional Court set the Administrative Court a deadline of 14 days to remedy the delay of justice, which, in view of the fact that the Constitutional Court only has powers of cassation, is not per se admissible.

10. What are the available forms of redress?

10.1 It is up to the appellate bodies to determine in their decision whether there has been a violation of the prohibition of delay of justice upon filing of a complaint; this has been a regular occurrence (cf. inter alia StGH 1997/30 in LES 2000, 124; VBI 1994/44 in LES 1995, 44; VBI 2002/76).

10.2 Financial compensation may only be awarded for an excessive length of proceedings within the limits of the Law on Public liability (Amtshaftungsgesetz [AHG])[9]. Article 3 para 5 AHG stipulates a reversed burden of proof in that the state has to prove that its officers are not at fault; otherwise the state is liable.

Due to the lack explicit rules, Article 3 para 4 AHG makes reference to the provisions with respect to liability contained in the Civil Code. Accordingly compensation for immaterial damage is only awarded in the cases explicitly stipulated by the law.

Specifically with regard to the AHG-provisions the Constitutional Court in its decision StGH 1997/30, expressed reservations against filling the gap and providing compensation in a similar manner as in the Strasburg case-law. In the VBI-Decision 1994/44 the subject of such compensation was brought up but in the end the question was not resolved. The correlation of such compensation to public liability was not dealt with. The VBI-Decision 2003/92 mentioned only public liability as – de lege lata -- the sole available financial sanction; in our view this is correct.

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7 e.g. StGH 1997/30, Deliberation 4

8 Cf. inter alia StGH 2000/4, StGH 2001/4 and StGH 2004/25 (accessible via Internet at www.stgh.li).

9 LR 170.32.

10.3 Measures to speed up pending proceedings: In accordance with § 23 para 2 GOG the supervisory body may set a specific deadline whereby the authority in question has to render account in respect of its compliance therewith. It should, however, also be possible to set a deadline in accordance with Article 23 LVG (cf. also StGH-Decision 1982/31/V and Section 9 above).

10.4 It has already been possible in the past to obtain, due to a delay of justice, a reduction of the sentence in criminal proceedings (cf. StGH-Decision 2001/4, Consideration 5.2.). In this connection the idea of rehabilitation and the lacking necessity for a deterring effect upon the offender were of special significance. Whoever has been successful in reintegrating into society after lengthy criminal proceedings, should, if possible, be given a short and, more particularly, a suspended sentence. In this year's March session of Parliament there was a first reading of a revision of the Criminal Code (adapted from Austria) – similar to a revision already introduced in Austria, according to which an unreasonable length of proceedings in criminal matters shall be deemed to constitute, a new legal ground for mitigation pursuant to § 34 of the Criminal Code.[10]

11. Are these forms of redress cumulative or alternative?

Recognition by the court of a violation can be cumulative along with setting a deadline in accordance with § 23 GOG, any reduction of the criminal sentence and also with proceedings in respect of public liability.

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

Reference is made here to the comments on pecuniary compensation contained in Section 10.2 above.

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

As explained in Section 1, delays in judicial proceedings do not present a major problem, for which reason the courts have not taken any special measures.

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

See reply to Question 5.

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

If decisions of higher courts or administrative bodies which determine a delay of justice are not complied with – apart from a default complaint in accordance with the LVG which gives the higher court or administrative body the possibility to make a substantive decision by itself – there only remains the possibility of disciplinary proceedings against the judge(s) in question.

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[10] Cf. Government report to Parliament no. 99/2005; Government comments to the Parliament no. 10/2006, S. 385.

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

Please refer to the reply to Question 5 in this connection. Insofar as a delay of justice is asserted within the framework of an ordinary legal remedy, the entire ordinary stages of appeal are also available in such case. According to the case-law there is a further ordinary legal remedy against a supervisory complaint to the Court of Appeal pursuant to § 23 GOG (cf. OGH-Decision of 30.04.1985, Deliberation no. 5 in LES 1986 p. 45 [47]). There obviously exists no ordinary remedy against decisions of the Supreme Court and the Administrative Court as final courts of appeal. In the same way as there is no specific period of time which needs to have lapsed before a decision can be issued on a complaint citing a delay of justice (Question 9), there is no such minimum period of time for dealing with a remedy in respect of such a decision.

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

During pending proceedings a supervisory complaint in accordance with § 23 GOG or Article 23 LVG may of course be filed more than once. According to the explicit stipulation in § 23 para 2 GOG the supervisory authority should however request the body concerned to render account on the resolving of the delay of justice so that repeated complaints in respect of a delay on proceedings should in principle not be necessary. There is no minimum period of time for a second complaint invoking an unreasonable length of the proceedings.

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

There is no statistical data.

19. What is the general assessment of this remedy?

As already mentioned in the reply to question 1, delays in judicial proceedings are currently not a severe problem in Liechtenstein. The existing remedies are sufficient to efficiently fight delays if the occur.

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

As explained in reply to Question 2, the European Court of Human Rights only recently dealt with a complaint with regard to a delay of justice in Liechtenstein.

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

See the reply to Question 20.

LITHUANIA

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

National statistics show that such cases are very rare (in 2004, only 1-2% of the total amount of cases).

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

The problem of excessive delays in judicial proceedings was acknowledged by the National Courts and the European Court of Human Rights.

National Case-Law

The principle of "reasonable length of the judicial proceedings" is analysed in several judgments of the Supreme Court of Lithuania in both civil and criminal proceedings (judgment of 13 May 2004 in the case of *Bolotovas* v. *the Lithuanian State*, the judgment of 1 June 2004 in the case of *Leparskienė* v. *Burčikas*, the judgment of 22 November 2004 in the case of *Šiaulys* v. *General procurator* (criminal proceedings); the judgment of 4 September 2002 in the case of *Girdžiūnas* v. *Girdžiūnienė*, the judgment of 3 June 2002 in the case of *Bieliauskas* v. *Trakų turizmo įmonė* (civil proceedings) etc).

European Court of Human Rights Case-Law

In the following four cases, the ECtHR found that Lithuania violated Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms: *Grauslys v. Lithuania* (judgment of 10 October 2000), *Šleževičius v. Lithuania* (judgment of 13 November 2001), *Meilus v. Lithuania* (judgment of 6 November 2003), and *Girdauskas v. Lithuania* (judgment of 11 December 2003).

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

There is no explicit constitutional requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 para 1 of the European Convention on Human Rights.

In its Article 30.1, the Constitution of Lithuania provides that :

> "The person whose constitutional rights or freedoms are violated shall have the right to apply to court."

The **Law on Courts** provides for the reasonableness of the judicial proceedings, i.e.:

> "Article 5. Right to a Hearing within a Reasonable Time by an Independent and Impartial Court:
> 1. Everyone shall be entitled to a fair hearing by an independent and impartial court established by law.
> 2. The court, in all its activities, must ensure that the hearing of a case be fair and public and within a reasonable time."
>
> "Article 34. Underlying Principles of Court Hearings
> 1. Court hearings shall be founded on the following principles: equality of the parties, the right to legal assistance, the right to due process, expeditious and least expensive proceedings, the right to be heard, the adversarial procedure, presumption of innocence, impartiality of the court, public hearing, the right to be tried in one's presence and prohibition of the abuse of process."

Furthermore, the **Code of Criminal Proceedings** of the Republic of Lithuania provides that "every person charged with the commission of a crime shall have the right to a fair and equal public hearing of his case by an independent and impartial court in the shortest time" (Article 44, para 5).

Article 7 ("Concentration and economy of the proceedings") of the **Code of Civil Proceedings** of the Republic of Lithuania provides that:

> "1. The court shall take all the means provided in the Code of Civil Proceedings in order to prevent the delay of proceedings and shall seek to find a solution of the case in one sitting of the court if this does not prejudice the proper solution of the case; the court shall also ensure that the judgment of the court would be enforced in the shortest time possible and in the most economic way.
> 2. Parties of the case shall be obliged to use their rights of the proceedings honestly and not to abuse these rights; they shall be obliged to attend the prompt, fair and timely examination of the case <…>."

The **Law on Administrative Proceedings** does not provide for the explicit requirement of the promptness of the legal proceedings, but there are procedural periods set for the length of judicial proceedings: Article 65 of the Law on Administrative Proceedings provides:

> <…> "2. As a rule the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/petition.
>
> 3. The hearing of the case in the administrative court must be completed and the decision must be adopted in the court of the first instance within two months from the day of issuance of the order to hear the case in the court, unless the law establishes shorter time limits for the hearing.
>
> 4. As necessary, the above-mentioned time limit for the hearing of the case may be extended for up to one month and in the cases in which the legality of regulatory administrative acts is contested – for up to three months."

In the Article 153 "Grounds for the Renewal of Proceedings" of the same law it is stated that one of the grounds to resume the proceedings is if the European Court of Human Rights rules that a decision of the court of the Republic of Lithuania is not in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.

There are also some dispositions in the **Judge's Code of Conduct** of the Republic of Lithuania. The 10th rule states that "while investigating the cases, the judge shall go into the essence of the case, he shall avoid undue haste and superficiality but he shall not delay the judicial proceedings". It should be mentioned that according to Article 83 of the Law on courts "a disciplinary action may be brought against a judge: 1) for an action demeaning the judicial office; 2) for the commission of an administrative offence; 3) for non-compliance with the

limitations on the work and political activities of judges provided by laws. An act demeaning the judicial office shall be an act incompatible with the judge's honour and in conflict with the requirements of the Judge's Code of Conduct, discrediting the office of the judge and undermining the authority of the court. Any misconduct in office - negligent performance of any specific duty of a judge or omission to act without a good cause shall also be regarded as an act demeaning the office of a judge."

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

The national administration of courts has just begun to ask the courts to provide this kind of information about the length of proceedings. It has collected some information for the year 2004, but only from the courts of first instance:

Average length of proceedings (in months)	First instance, civil proceedings	
	Amount (in cases)	%
less than 6 months	145.154	97
6-12 months	3.531	2.4
more than 12 months	961	0.6
Total:	**149.646**	**100**

Average length of proceedings (in months)	First instance, criminal proceedings	
	Amount (in cases)	%
less than 6 months	16.416	94.5
6-12 months	596	3.4
more than 12 months	352	2.1
Total:	**17.364**	**100**

Administrative proceedings are the most prompt: normally the entire administrative process (including the appeals) is completed within 6 months. One of the reasons for this is the concrete time limits, provided in the Law on Administrative Proceedings.

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

Criminal proceedings: there is no special provision concerning the remedies in respect of excessive delays, but these questions may be put in the complaint to the Supreme Court (during the cassation proceedings) concerning the "principal violations of the Code of Criminal Proceedings". According to Article 369 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 judgment.

This cassation complaint can be lodged by the procurator, the aggrieved person, the representative of the aggrieved person, the convicted person and its advocate and representative, the exculpated person and its advocate and representative.

The complaint in the cassation proceedings can be lodged within 3 months from the date of the judgment of the court.

Civil proceedings: There is no special provision concerning the remedies in respect of excessive delays, but these questions may be put in the complaint to the Supreme Court (during the cassation proceedings) concerning the "violation of the material or procedural legal norms, which is of principal concern to the equal interpretation and application of law, if this violation could have had an impact on the adoption of the unlawful judgment" (Article 346 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 judgment of the court.

Administrative Proceedings: Article 127 of the Law on Administrative Proceedings states that the decisions of Regional Administrative Courts, adopted when hearing the cases in the first instance, may be appealed against to the Supreme Administrative Court of Lithuania within fourteen days from the pronouncement of the decision.

All parties to the proceedings shall be entitled to file an appeal. The appeal shall include *inter alia* the contested issues; the laws and circumstances of the case whereon the illegality or invalidity of the decision or a part thereof is based (legal grounds for appeal); the appellant's petition (subject matter of the appeal) and the evidence confirming the circumstances presented in the appeal (Article 130).

There are also some national legal dispositions concerning the compensation of the damage, which was caused by the unlawful actions of the investigators, the procurator, the judge and the court. They are provided in the Civil Code of the Republic of Lithuania (Article 6.272) and the special Law on the Compensation of the Damage Made by Unlawful Actions of the State Authorities.

In Article 6.272 of the Civil Code it is stated that:

> "1. The State entirely compensates the damage made by unlawful conviction, arrest, application of coercive procedural measures and imposition of the administrative punishment, regardless of the fault of officers of pre-trial investigation, officers of the procurator office and of the court.
>
> 2. The State entirely compensates the damage made by unlawful actions of the judge or the court during the investigation of the civil case, if the damage was made because of the fault of the judge or other officer of the court.
>
> 3. Besides the material damage, non-material damage is to be compensated too."

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

In the pending proceedings, the remedy in respect of excessive delays in the proceedings is the question of internal administration in the courts. In 2002, the Council of the Courts of the Republic of Lithuania adopted the Regulation on administration in the courts, according to which the chairmen of the courts are monitoring the administrative activities of the judges, which includes the measures to ensure the transparent and operative process of the investigation of the cases; checking of the cases of unjustifiably long judicial proceedings; the

investigation of the complaints concerning the actions of the judges which are not related to the administration of justice etc.

Therefore it is possible, that the chairman of the court, in responding to the justified complaint concerning the actions or omission of the judge, instructs the judge to speed up the judicial proceedings or initiates the disciplinary action against the judge. Nevertheless this is a very sensitive question as it may interfere with the principle of the independent court and we do not have any information about these cases.

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

No special cost.

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

In analysing the reasonableness of the duration of the proceedings, the Supreme Court of Lithuania is using the same criteria as applied by the European Court of Human Rights in respect of Article 6 para 1 ECHR.

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

No.

10. What are the available forms of redress:

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

11. Are these forms of redress cumulative or alternative?

These forms of redress are cumulative.

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

As was mentioned in point 8 of this reply, the same criteria as those applied by the European Court of Human Rights are used. The maximum amount of compensation is not set.

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

The information is provided in point 6.

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

In the case of delay of judicial proceedings in the pending cases – Chairmen of the courts and the Judicial Court of Honour. However we do not have any statistics or concrete information about the supervising of the implementation of the decision on the reasonableness of the duration of the proceedings.

LUXEMBOURG

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

Exceeding the reasonable delay for giving a judgement can be invoked at any level of judiciary even if there are no specific remedies designed for speeding-up the proceedings.

In a number of cases the domestic courts admitted the breach of the reasonable time requirement in respect of criminal proceedings and the above circumstance was taken into account when determining the sentence by mitigation of the latter.

The person complaining of a violation of the reasonable time requirement may claim compensation based on the Law of 1st September 1988 on the Civil Liability of the State and Public Entities.

In civil cases a post of an investigating judge has been created. The functions of the latter should include: supervising the conduct of the proceedings, ensuring the timely exchange of pleadings and submission of documents. The judge is therefore entitled to set deadlines and order the necessary measures. After the investigation is over, the judge issues an order closing the investigation, which does not have to be reasoned and can not be appealed, unless it is supposed to be reviewed for significant grounds. After the order closing the investigation is issued no pleadings can be submitted and no document can be produced for hearing, failure of which would result in an ex officio decision of inadmissibility.

As regards the administrative proceedings, the legislation envisages particular deadlines for procedural actions.

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

The criteria used by the jurisdictions of Luxembourg while assessing the reasonableness of the length of proceedings are the same as those applied by the ECtHR.

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

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

This jurisprudence has been confirmed since then (see in particular the *Dattel and others v. Luxembourg*, judgment of 04/08/2005, in which the Court reiterated that the remedy provided by the Law of 1 September 1988 had not acquired a sufficient degree of legal certainty to be used or exhausted by the applicant for the purposes of Article 35 § 1 of the Convention). All these cases concern civil proceedings.

As regards criminal proceedings, the European Court recently found a violation of Article 6 § 1 in the case *Casse v. Luxembourg* (judgment of 27 April 2006) and of Article 13 since the applicant did not have an effective remedy against the length of proceedings.

MALTA

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

Article 39 of the Constitution of Malta which states that all cases have to be given a fair hearing "within a reasonable time." Moreover, since the European Convention on Human Rights has been incorporated into the Maltese legal system since 1987, this right is further guaranteed by Article 6 (1) of the said Convention.

In addition, the Registrar of the Court has the duty to list an appealed case for hearing not later than six months after the filing of the application to appeal.

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

The issue of whether judicial proceedings are excessively long or not has to be raised by the party alleging it by means of a Court case. This can also be made in the form of constitutional complaint.

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

The Court in its assessment of what constitutes "unreasonable length of time" follows the same standards and criteria as those adopted by the European Court of Human Rights.

10. What are the available forms of redress :

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

As long as they act within the parameters of the law, the Maltese courts have an absolute discretion of awarding any remedy which they deem effective after taking into account all the circumstances of the case.

11. Are these forms of redress cumulative or alternative?

They may also be cumulative.

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

When the Court orders pecuniary compensation there is no limit on the minimum or maximum amount that can be awarded.

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

In *Debono v. Malta* case (decision of 10 June 2004), the Court held that, at least regarding the length of proceedings at first instance, the applicant had the possibility of lodging a constitutional claim and thus, obtain the pecuniary or non-pecuniary redress.

MOLDOVA

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

Yes, in the Republic of Moldova there have been such cases of excessive delays of all mentioned procedures.

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

There is no answer to the above question because there is no any statistical data of the judicial proceedings, classified by legal reason.

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

The Constitution of the Republic of Moldova does not contain the requirement of reasonableness of the duration of judicial proceeding, specifying only about everyone's right "to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests" (Article 20 of the Constitution of the Republic of Moldova).

The reasonable duration of judicial proceedings, equivalent to that contained in Article 6 of the European Convention of Human Rights, is established by the Criminal Procedure Code and Civil Procedure Code.

So, Article 19 para (1) of the Criminal Procedure Code of the Republic of Moldova contains the similar provision as the European Convention of Human Rights. The named article specifies that any person has the right for the criminal prosecution and the trial to be carried out in reasonable terms by an independent, impartial and legally established court.

As for the request of the reasonable term in the civil procedure, it is provided in the Article 4 of the Civil Procedure Code – "Civil Procedure Tasks".

According to Article 63 of the Enforcement Code of the Republic of Moldova, the enforceable document shall be enforced by the bailiff within a 3 months term since the day when the enforcement procedure was initiated, or in within the term specified in the enforceable document, as well as the possibility to prolong "upon necessity" the term of enforcement by the chief of the enforcement office, at the motivated request of the bailiff. The Enforcement Code does not refer to the term of "delay".

The Administrative Contentious Law provides clear terms for proceedings. So, the administrative, non-judicial proceedings have a limit term of 30 days, in which the issuing or higher authority can judge upon the annulment or maintaining of the contested act. The terms applied for the administrative judicial proceedings are the same as for civil proceedings; the court establishes the reasonable trial date au fond if there are no other law provisions.

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

According to the statistical data on criminal cases held by the Ministry of Justice, during the year of 2005 (first 6 month of the year of 2006, respectively) there were 1.244 from the total number of 14.988 completed cases (706 of 7206 cases, respectively) that were carried out within the period of more than three months, with the verdict being brought in. At the same time, there were 486 pending cases (384 cases, respectively) for more than 6 month, no verdict being brought in, and more than 12 months – 375 dossiers (263 dossiers, respectively).

As for civil dossiers, according to the statistical data held by the Ministry of Justice, during the year of 2005 (first 6 month of the year of 2006, respectively), there were 9.807 from the total number of 51.664 completed cases (5.528 of 25.018 cases, respectively) that were carried out within the period of more than two months, with the verdict being brought in, and 2.720 dossiers (2.757 dossiers, respectively) that were carried out during more than three months no verdict being brought in.

Concerning the non-enforcement of the enforceable documents within the legal term of three months, there are 26.803 overdue dossiers at the Department of Enforcement of judicial decisions.

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

The procedural legislation of the Republic of Moldova contains provisions concerning the sanctioning of those culpable for the delay of the trial, such as compensation payment to the interested party, the quantum being express provided in some cases.

Article 10 para (3) of the Civil Procedure Code provides as procedure sanction the forfeiture of rights in the case of delay of fulfillment of the act of procedure.

Article 50 para (3) of the same Code provides the sanction of the party that submitted the challenging application against the judge in ill fate, with the aim of delaying the trial. Article 61 para (2) provides the right of the court to sanction the culpable party that submitted in ill fate ill-founded requests contesting a paper or a signature applied to a paper, a request of cancellation of a trial or of the transfer of the case, etc.

Article 119 provides the sanction of employees carrying out the official responsibilities that ignores the court order providing the redress of the prejudice caused by the delay of the trial. Article 204 para (2) of Civil Procedure Code provides the commitment of the court, at the request of the interested party, to solve the redress of the prejudice issue, caused by the delay, in the case another party's ungrounded or false evidence in order to delay the trial is ascertained.

According to the provisions of Article 20 para (4) and (5) of Criminal Procedure Code, the observance of the reasonable term during the criminal prosecution is secured by the prosecutor, and at the trial of the case by the respective court. The observance of the reasonable term during the trial of the certain cases will be verified by the hierarchically superior court in the proceeding of the trial of the respective case by ordinary and extraordinary remedy. In case when the challenging application against the judge is submitted in ill fate and abusively, Article 34 para (4) provides for the court that tries the possibility to apply a legal fine on the guilty person. Article 201 para (3) p.4) provides the application of the judicial fine for the expert, interpreter or translator in the in the case of unduly delay while performing the entrusted tasks.

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

The observance of the reasonable term during the criminal prosecution and during the trial of the certain cases can be made only through an ordinary appeal. The same rule is applied in civil matters.

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

There are no fees for the judgment of remedy in criminal proceedings and the actions provided by the Law nr.1545-XIII of 25.02.1998 (Article 85 para 1, letter 1) of Civil Procedure Code); for ordinary appeal in civil cases there is a fee established by Article 3 letters j) and k) para 1 of the Law on state fees nr.1216-XII of 03.12.1992.

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

The procedural legislation of the Republic of Moldova establishes the criteria of establishment of the reasonable term of the proceeding, but not of its reliability. On the establishment of the reasonable term of the proceedings in criminal and civil matters, the adequate authority applies Article 20 para (2) of Criminal Procedure Code and Article 192 para (1) of Civil Procedure Code, in accordance to which there are following criteria:

1. complexity of the case;
2. the conduct of the parties in the proceeding;
3. the conduct of the criminal prosecution body and the court.

The observance of the reasonable term during the proceedings is secured by the appeal court.

The observance of the reasonable term during the civil cases will be verified by the court. The observance of the reasonable term during the trial of the certain cases will be verified by hierarchically superior court in the proceeding of the trial of the respective case by certain remedy.

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

The domestic legislation does not provide a deadline for the competent authority to rule on the matter of the length of proceedings, it provides only for the reasonableness of the length of the proceeding, excepting some categories of cases, as in labor, administrative contentious and contravention matters.

10. What are the available forms of redress?

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

* There are some possibilities of obtaining moral and material compensations. As for material compensations, as it was mentioned in the answer to the question 5, Article 204 para (2) of Civil Procedure Code provides the commitment of the court, at the request of the interested party, to redress the prejudice caused by the delay, in the case another party provided ungrounded or false evidence in order to delay the trial. According to the Article 1422 of the Civil Code, the moral damage is provided in case the compliant proves that physical and psychical damages were caused by the facts that attempted to her/his personal non-patrimonial rights.

11. Are these forms of redress cumulative or alternative?

The question is irrelevant, taking into account the answer to the above question.

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

The Moldovan procedural legislation does not refer to any criteria on which compensations can be provided, the possibility of compensation for the damage caused by the excessive duration of the proceedings being provided in some cases.

The compensation of material damage is equivalent to the real damage born.

There is no established limit for the compensation of material damage.

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

There are no measures for speeding up the proceedings.

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

There are no provisions in Moldovan procedural legislation that provide any authorities for the supervision of the length of the procedure.

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

There are no such measures provided.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a minimum period if time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision?

As mentioned above, there are no provisions in Moldovan procedural legislation that provide any possibility of passing a separate decision on the duration of the proceedings. The observance of the reasonable term of the proceedings is made at the same time with the possible appeal.

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

See the answer to the question 16.

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

See the answer to the question 16.

19. What is the general assessment of this remedy?

See the answer to the question 16.

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

See the answer to the question 16. There are no statistical data on the ECHR decisions.

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

Because of the lack of such remedies in Moldovan legislation, ECHR has not given any opinion in any cases concerning the issue.

MONACO

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

The Principality of Monaco is not subject to lengthy proceedings, whether civil or criminal.

The country's small size, the geographical proximity of the various courts (virtually all located in the same court buildings), the resources continually granted to the courts in order to allow them to carry out their tasks as smoothly as possible in line with the changing needs of the Principality's development, and the constant high-quality work of judges, law officers, legal officials and the staff of the Directorate of Judicial Affairs permit day-to-day operation of the courts that is not subject to excessive delay.

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

To date there have been no Monaco court decisions (trial or appeal) dealing with procedural delays.

Since the Principality of Monaco is not subject to lengthy proceedings, its domestic courts have never specifically had to deal with applications on the issue and have therefore not yet had to deliver a ruling.

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

In the Monaco Constitution of 17 December 1962, amended by Law No. 1249 of 2 April 2002, and in Monaco legislation – on the judicature, for example – there are no explicit concerning reasonable-time requirements similar to those in Article 6 § 1 of the European Convention on Human Rights, which has been ratified by the Principality, rendered enforceable and published with all due legal consequences.

However, there are quite a few provisions in Monaco law establishing implicit requirements that preserve Monaco from undue length of proceedings.

For example, in urgent civil cases, whatever their subject matter, the president of the court of first instance may, on urgent application, order any measures not prejudging the main issue (Code of Civil Procedure, Article 414); if the parties do not appear voluntarily, they are served with a writ of summons requiring them to appear within a minimum of one day if they are domiciled or resident in the Principality of Monaco, and the president has the power, in extremely urgent cases, to summon the parties to appear within the day or within the hour, or even to issue a summons at home on Saturdays, Sundays and bank holidays (Code of Civil Procedure, Article 417).

This obviously prevents unreasonable delays from affecting proceedings.

A justice of the peace is also able to try cases every day apart from bank holidays (Code of Civil Procedure, Article 65), and he and his registrar must sign the original judgment within three days (Code of Civil Procedure, Article 69).

The Supreme Court, which handles constitutional and administrative issues and jurisdiction disputes and whose decisions are not appealable, is organised and operates according to rules laid down in the Constitution which allow it to deal with appeals to it in a matter of months.

The same is true of the Judicial Review Court, the highest ordinary court, which also operates so as to allow court decisions, whether civil or criminal, to be delivered within a very reasonable time.

Without going into detail, it should be added that this court is so organised by the Monaco Code of Civil Procedure that its decisions are delivered just a few months after cases have been referred, which naturally precludes lengthy proceedings.

Various provisions of Monegasque law, of which the above are only some examples, naturally help to tackle the risk of lengthy proceedings.

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

Figures appear every year for the Principality's work in all areas of the country's life, but there are no specific statistics on length of proceedings in Monaco. As the Principality is not subject to lengthy proceedings, there has never been any need to study the question from the statistical point of view.

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

Monaco does not have any remedies specifically dealing with excessive procedural delays since, as stated above, the problem of lengthy proceedings does not arise.

MONTENEGRO

The replies to the questionnaire in respect of Serbia were submitted prior to 3 June 2006, the date Montenegro declared its independence and therefore concern both Serbia and Montenegro.

However, according to a recent opinion of the Supreme Court of Montenegro, “the domestic legal system offers no legal remedy against violations of the right to be heard within a reasonable time, with the result that courts in the Republic of Montenegro have no jurisdiction to decide claims for compensation for non- material damage caused by violation of that right. This being so, any person who considers him/herself the victim of such a violation may apply to the European Court of Human Rights within six months of the giving of final judgment by the domestic courts. When asked to rule on claims for compensation for non-material damage caused by violation of the right to be heard within a reasonable time, the courts of the Republic of Montenegro must accordingly refuse jurisdiction, suspend all proceedings in connection with the application and declare the complaint inadmissible (Article 19, para 3 of the Code of Civil Procedure).”

NETHERLANDS

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

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

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

Case-Law of the National Courts

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

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

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

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

Case-Law of the European Court of Human Rights

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

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

That is not the case in the Netherlands. The above-mentioned domestic judgments are based directly on Article 6 of the Convention. There are instances where the law prescribes that a certain step in the proceedings has to be set within a certain period (e.g. Article 8:66 General Administrative Procedure Act: the court takes a decision within six weeks from the moment the examination of the case has been closed). However, surpassing such periods does not have

any legal effect. Article 20, paragraph 1, of the Civil Procedure Act states that the court sees to it that proceedings are not delayed unreasonably and, if necessary, takes measures to that effect. Again, no legal effect ensues from that provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. What are the available forms of redress:

- acknowledgement of the violation YES

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

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

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

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

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

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

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

- possible reduction of sentence in criminal cases YES

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

- other (specify what) NO

11. Are these forms of redress cumulative or alternative?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The issue of the reasonable-time requirement may be raised in each phase of the proceedings, but not in a separate application.

A separate tort action may be brought with respect to each phase of judicial proceedings, but in pending proceedings the civil court will leave it first to the court concerned to decide the issue.

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

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

19. What is the general assessment of this remedy?

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

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

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

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

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

NORWAY

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

In general, judicial proceedings in Norway are held without excessive delays.

I 2005 the average time from an initial step in a civil suit to a ruling rendered by the District Court was 7.0 months, in criminal cases 3.2 months.

According to guidelines from the Department of Justice, the aim is to render rulings in civil cases within 6.0 months, in criminal cases within 3.0 months.

An appeal in a civil case was in average decided by the Court of Appeal within 9.8 months, while criminal cases in average was decided within 5 months.

As for the Supreme Court, approximately 20% of the appeals are granted leave of appeal to the Supreme Court after decision by The Appeals Selection Committee. The decision by the Appeals Selection Committee was in civil cases in average rendered within 0.7 months after receiving the case, while in criminal cases the decision was rendered within 0.6 months.

In 2005, the average time from an appeal in a civil case was granted leave of appeal to the Supreme Court to a decision was rendered, was 5.8 months. In criminal cases, the average time was 2.5 months.

Cases regarding enforcement are in general handled considerably faster than ordinary civil cases.

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

As it follows from the statistics quoted under question no.1, the main numbers of cases are decided within reasonable time. In specific cases though, the national courts have found that that the delay in a judicial proceeding has been excessive. Such delays have been noted both in criminal cases and in certain civil cases – for instance tax cases.

Norway has been a party to only a few cases before the European Court of Human Rights. In the case of Beck v. Norway, application no. 26390/95, the European Court of Human Rights found that that the proceedings had exceeded a reasonable time, but that the national court had afforded adequate redress for the alleged violation. As a result, the European Court of Human Rights held that there had not been a violation of Article 6 § 1 of the Convention. The same result was found in Lie and Berntsen v. Norway, application no. 25130/94.

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

The Human Rights Act of 1999 gave The European Convention of Human Rights the legal force of national parliamentary legislation. The Convention is therefore invoked directly before the national courts, and Article 6 § 1 sets binding limits on the length of judicial proceedings.

Furthermore, the Human Rights Act states that the convention shall prevail over any other conflicting statutory provisions.

The Criminal Procedure Act sets forth certain time limits with regards to the handling of cases where the defendant is held in custody. In both criminal cases and civil cases, there are statutory guidelines as to when a decision should be handed down after the closing of oral proceedings.

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

There is no such statistical data available in English or French.

The official statistics shows that in general, there are no excessive delays in the judicial proceeding in Norway, cf. question no 1.

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

No specific legislation has been passed, proving specific remedies in case of excessive delay in the judicial proceedings.

An excessive delay may constitute a procedural error as mentioned in the Civil Procedure Code and the Criminal Procedure Code, leading the appellate court to quash a decision from the lower court, though this is unusual.

In cases where an excessive delay in the judicial proceedings has resulted in an economic loss, a lawsuit may be filed in order to compensate for such loss.

Certain forms of redress are available during the pending proceedings, cf. question no. 10.

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

Cf. questions no. 5 and 10.

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

No.

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

The criteria used are the same as the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR.

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

Not applicable.

10. What are the available forms of redress:

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

Cf. question no. 5.

11. Are these forms of redress cumulative or alternative?

In criminal cases where there have been excessive delays in the judicial proceedings, the courts shall acknowledge that such delays have taken place. In addition, the courts shall reduce the sentence. However, the courts are not obliged to acknowledge a violation of Article 6 § 1, since according to Norwegian sentencing practice, sentences will be reduced after excessive delays even where the delay did not amount to a violation of Article 6 § 1.

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

Not applicable.

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

Not applicable, cf. question no. 10.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

19. What is the general assessment of this remedy?

Not applicable.

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

Not applicable.

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

Not applicable.

POLAND

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

Yes, civil, criminal, administrative proceedings and enforcement of judgements.

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

Yes/ European Court of Human Rights and national courts. Among many cases where the ECHR declared violation of Article 6 § 1 of the Convention with respect to Poland see the following cases: - Styranowski v. Poland; Podbielski v. Poland (case no. 27916/95); Kudła v. Poland (case no. 30210/96); Iżykowska v. Poland (case no. 7530/02), Durasik v. Poland (case no. 6735/03).

Judgments of national courts finding the violation of the right to a trial within a reasonable time and granting the pecuniary compensation.

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

Yes, Article 45 sec. 1 Constitution

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

(see question 18)

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

Following the Kudla v. Poland (judgment of 26 October 2000) the Polish authorities adopted the *Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time.*

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

The complaint can be lodged by everyone who has the pending case before domestic courts.

The complaint shall be examined by the court immediately above the court conducting the impugned proceedings, this complaint shall be lodged while the proceedings are pending.

In addition, the Article 417 of the Civil Code provided for a new regime of the State liability for damage caused by public authority. Party which has not lodged a complaint about the unreasonable length of the proceedings during judicial proceedings may claim – under Article 417 of the Civil Code – compensation for the damage which resulted from the unreasonable length of the proceedings after the proceedings concerning the merits of the case have ended.

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

Yes. According to section 5 of the Act *of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time* - complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. The competence to adjudicate complaints is vested to the court superior over the court that examines the proceedings as to the merits. If the superior court finds a violation of Article 6 of the Convention, it instructs the lower court to take measures to accelerate the proceedings and/or awards the complainant compensation of up to 10,000 zl. (approximately 2.550 euros).

The party whose complaint as to the excessive length of the pending proceedings has been allowed, may in addition, in separate proceedings on the basis of Article 417 of the Civil Code, request reparation of damage resulted from the established undue delay.

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

Yes, the complainant shall pay a court fee in the amount of PLN 100zloty (approximately 25 euros). The fee is returned ex officio by the court examining the complaint, if the latter is allowed.

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

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

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

Deadline: Two-moths time limit predicted by Article 11 of the Act. It can't be extended, no legal consequences.

10. What are the available forms of redress:

- acknowledgement of the violation : YES
- pecuniary compensation: YES
  1)"just satisfaction" - maximum amount of just satisfaction to be awarded by the domestic courts could not exceed 10.000 Polish zlotys (PLN) and
  2) a party whose complaint has been allowed may seek compensation from the State Treasury for the damage it suffered as a result of the unreasonable length of the proceedings (available under separated civil claim)
  - material damage YES
  - (civil claim- additional remedy)
  - non-material damage YES
  - ("just satisfaction")
- measures to speed up the proceedings, if they are still pending YES

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

11. Are these forms of redress cumulative or alternative?

- Cumulative

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

Pecuniary compensation is available – the maximum amount of just satisfaction to be awarded by the domestic courts could not exceed 10.000 Polish zlotys, i.e. approximately 2.550 euros. It should be noted, that a party whose complaint has been allowed may seek compensation from the State Treasury (civil claim) for the damage it suffered as a result of the unreasonable length of the proceedings (additional compensatory remedy provided by national law).

Amount of just satisfaction, which could be granted at the request of the complainant, depends from individual circumstances of the case – the domestic court shall applied criteria fixed by ECHR

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

At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a specified time. Such instructions shall not concern the factual and legal assessment of the case/individual measures to be taken to speed up the proceedings depend from specific circumstances of each case.

The domestic courts, in majority, order the specific measures on the basis of nature of the cases pending and activity of the court during judicial proceedings.

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

In practice, President of the Court.

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

Administrative surveillance /disciplinary proceedings against the judge.

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

No appeal possible.

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

Yes, the minimum period of time which needs to have elapsed is 12 months.

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

From 17 September 2004, when the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act") entered into force, the Polish courts have examined:

2004 – 1.824 complaints – the domestic courts have found: violation in 290 cases / no violation 368 cases / rejected (from formal reasons) - 1166 cases.

2005 – 4.921 complaints - the domestic courts have found: violation in 1.001 cases / no violation 579 cases / rejected (from formal reasons) - 835 cases.

2006 (period January-June) – 1.879 complaints - the domestic courts have found: violation in 361 cases / no violation 579 cases / rejected (from formal reasons) - 835 cases.

19. What is the general assessment of this remedy?

The ECHR assess this remedy as effective one, but the jurisprudence of the domestic courts may cause the problem in the light of ECHR case –law.

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

Yes, before lodging the complaint to the ECHR each applicant has to exhaust this domestic remedy.

The ECHR is at present examining the effectiveness of various new remedies for Polish length-of-proceedings cases. Four leading cases have been given priority and around 700 similar cases have been adjourned.

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

Yes, Michalak v. Poland (24549/03); Charzynski v. Poland (15212/03) decision of 1 March 2005, the ECHR found that Polish law provided an effective remedy for excessive length of proceedings.

PORTUGAL

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

Yes.

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

Among many cases where the European Court declared violation of Article 6 § 1 of the Convention with respect to Portugal, see for example the following cases*: Oliveira Modesto and others v. Portugal* (judgment of 8 September 1999), *Pena v. Portugal* (judgment of 18 March 2003), and *Marques Nunes v. Portugal* (judgment of 20 May 2003).

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

Article 20 § 4 of the 1976 Constitution enshrines the right to a "judicial decision within a reasonable time".

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

Article 22 of the Constitution defines the civil liability of the State and its authorities and agents in the following terms:

> "The State and other public bodies shall be jointly and severally liable in civil law with the members of their agencies, their officials or their agents for actions or omissions in the performance of their duties, or caused by such performance, which result in violations of rights, freedoms or safeguards or in prejudice to another party."

Furthermore, Legislative Decree No. 48051 governs the State's non-contractual civil liability. Pursuant to its Article 2 § 1, "The State and other public bodies shall be liable to third parties in civil law for such breaches of their rights or of legal provisions designed to protect the interests of such parties as are caused by unlawful acts committed with negligence (*culpa*) by their agencies or officials in the performance of their duties or as a consequence thereof."

In accordance with the case-law concerning the State's non-contractual liability, the State is required to pay compensation only if an unlawful act has been committed with negligence and there is a causal link between the act and the alleged damage.
The failure to observe a time limit and the consecutive excessive length of proceedings is today deemed to be an unlawful act in the sense of Article 2 § 1 of the Legislative Decree 48051.

The modified Criminal Procedure Code (of 1 January 1988) made provision for interlocutory proceedings to expedite criminal proceedings. The preamble of the Code states, in particular, that the requirement of a speedy criminal trial is currently, thanks to the influence of the European Convention on Human Rights, a true fundamental right.

According to Article 108,

> "1. When the time-limits provided for by law for any step in the proceedings are exceeded, the public prosecutor, the accused, the private prosecutor (*assistente)* or the civil parties may make an application for an order to expedite the proceedings.
>
> 2. That application shall be considered by: (a) the Attorney-General, when the proceedings are in the hands of the Attorney-General's Department; (b) the Judicial Service Commission, when the proceedings are taking place in a court or before a judge.
>
> 3. No judge who has intervened in the proceedings in any capacity may participate in the decision."

Article 109 provides that

> " /…/ 3. The Attorney-General shall make a decision within five days.
>
> /…/ 5. The decision shall be taken without any other formalities. It may take the form of: (a) a dismissal of the application as unfounded or because the delays complained of are justified; (b) a request for further information...; (c) an order for an investigation to be carried out within fifteen days into the delays complained of...; (d) a proposal to implement or cease to implement disciplinary measures or measures to manage, organise or rationalise the methods required by the situation."

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

The Court in its assessment of what constitutes "unreasonable length of time" follows the same standards and criteria as those adopted by the European Court of Human Rights.

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

Yes. Article 498 of the Civil Code provides that the right to compensation is time-barred after the expiry of a period of three years from the date on which the victim becomes, or should have become, aware of the possibility of exercising that right.

10. What are the available forms of redress :

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

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

Yes. In *Paulino Tomàs v. Portugal* case (decision of 27 March 2003), the ECHR ruled that, in view of the evolution in evolution in national case law, it could now be said that an action in tort against the state for excessive length of civil proceedings, based on Legislative Decree 48051 of 21 November 1967, constituted an effective remedy within the meaning of Article 35 of the Convention.

In *Tomé Mota v. Portugal* (decision of 2 December 1999), the Court considered that an application on the basis of Articles 108 and 109 of the New Code of Criminal Procedure put into place a true legal remedy enabling a person to complain of the excessive length of criminal proceedings in Portugual, which is sufficiently accessible and effective, especially as its exercise does not lead to the lengthening of the proceedings in issue, given the very strict time-limits imposed on the institutions responsible for taking a decision.

ROMANIA

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

Yes (civil, criminal, enforcement).

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

European Court of Human Rights (*Tudorache 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. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

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

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

No.

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

Not applicable.

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

Not applicable.

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

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

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

No.

10. What are the available forms of redress:

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

11. Are these forms of redress cumulative or alternative?

Not applicable.

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

No.

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

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

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

number of hours, by the formula: the annual work volume, as number of cases to be solved, results from dividing the magistrates' annual number of work minutes, to the time assigned to resolving different categories of cases/tasks.

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

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

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

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

MERITS OF THE CASE

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

APPEAL

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

SECOND APPEAL

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

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

MERITS OF THE CASE

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 judgment within 0-6 months.**

First instance courts

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

Tribunals – merits

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

Tribunals – appeals

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

Tribunals – second appeals

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

Courts of appeal – merits

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

Courts of appeal – appeals

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

Courts of appeal – second appeals

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

Workload

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

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

The number of pending cases decreased:

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

RUSSIAN FEDERATION

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

Such delays have been known in respect of civil, criminal and enforcement proceedings.

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

Such delays have not been acknowledged by national courts' decisions.

However, the European Court for Human Rights found in a number of cases that there had been a violation of Article 6 § 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms in respect of the length of proceeding.

See for example the following recent cases:

In respect of civil proceedings:
Bakiyevets v. Russia (judgment of 15 June 2006), *Tusashvili v. Russia* (judgment of 15 December 2005) and *Sokolov v. Russia* (judgment of 22 September 2005),

In respect of criminal proceedings:
Nakhmanovich v. Russia (judgment of 2 March 2006), *Khudoyorov v. Russia* (judgment of 8 November 2005) and *Fedorov and Fedorova v. Russia* (judgment of 13 October 2005),

In respect of enforcement proceedings:
Zasurtsev v. Russia (judgment of 27 April 2006), *Timofeyev v. Russia* (judgment of 23 October 2003), *Burdov v. Russia* (judgment of 7 May 2002).

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

Yes, it can be said that remedies in respect of excessive delays in court proceedings exist in the Russian Federation.

Civil proceedings

Article 1070.1 of the Civil Code of the Russian Federation provides for compensation by the state of damage caused in the process of administration of justice in case when the guilt of a judge has been established by the court sentence that became final.

As it follows from the Judgment of the Constitutional Court of the Russian Federation of 25 January 2001, the damage caused in the process of administration of justice in civil proceedings can be compensated by the State also in other cases resulting from unlawful actions (or failure to act) of a court (judge), inter alia from violations of reasonable time requirement, if the guilt of the judge has been established not by the sentence, but by different court decision. In the above Judgment the Constitutional Court stated the duty of the legislator to make provisions for grounds and procedure of compensation by the state of damage caused

by unlawful actions (or failure to act) of a court (judge), as well as for provisions concerning courts jurisdiction over relevant cases. However, since by the end of 2006 the legislator has not passed the said amendments, courts of ordinary jurisdiction refuse to admit relevant applications for consideration (see for example Decision of 16 June 2003 no. 49-GOZ-43 of the Supreme Court of the Russian Federation).

Criminal proceedings

The institute of remitting the criminal case for further investigation was excluded from the Criminal Procedure Code of the Russian Federation. Article 237 of the Code, however, allows remitting of the criminal case to public prosecutor for removal of formal deficiencies in the case file that pose obstacle for its consideration by court. The possibility to appeal the decision on remitting the case to public prosecutor was upheld by the Constitutional Court of the Russian Federation in its Decision of 20 October 2005 no. 404-O on complaint by L.G.Verzhutskaya.

The Constitutional Court of the Russian Federation in its Judgment of 2 July 1998 and Judgment of 23 March 1999 No 5-P also upheld the possibility to lodge appeals to a higher court against decisions to suspend criminal proceedings (both at trial and pre-trial stages) and decisions to delay hearing that could result in delays of proceedings. Articles 108.3, 108.4, 108.11, 109.8, 124, 125, 227.3, 233, 362, 374 of the Criminal Procedure Code that set terms for passing relevant decisions at various stages can be specified as providing a remedy against delays.

A decision to extend the period of investigation may also be appealed to a court. This directly follows from Article 46 of the Constitution, and was confirmed by the Constitutional Court in its Judgment of 23 March 1999 no. 5-P. The court may revoke any unfounded or unlawful extension.

Disciplinary sanctions against judges

Articles 12.1 and 14 of the Law "On the status of judges in the Russian Federation" set forth that a judge can be subjected to disciplinary sanction in forms of a warning or termination of powers for disciplinary offences. Competent Judicial Qualifications Board shall pass the relevant decision. There is no legislative definition of the notion of "disciplinary offence"; in practice, however, it has been given rather wide interpretation, and can include, inter alia, a judge's action (or failure to act) resulting in violation of reasonable time requirement in respect to the length of proceedings or other violations of procedure.

Proceeding from the above provisions, courts of ordinary jurisdiction refuse to admit for consideration applications requesting that judges be made responsible, since "the issue of whether a judge can be made responsible for his actions, that have not been expressed in a judicial act (violation of reasonable time of judicial proceedings, other gross violation of procedure), if they have actually taken place, shall be decided by competent Judicial Qualification Board; apart from this, procedural actions of a judge shall be subject to appeal in a procedure provided for by the civil procedure legislation of the Russian Federation (Chapters 40 and 41 of the Civil Procedure Code of the Russian Federation)" - see Decisions of the Supreme Court of the Russian Federation of 29 November 2005 no. GKPI05-1484, and of 24 January 2005 no. GKPI2005-77.

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

Due to the lack of national settled case-law, such criteria can not be specified.

However, the Supreme Court of the Russian Federation issued recommendations for lower courts on the assessment of the length of judicial proceedings (Resolution of 10 October 2003 no. 5 "On the application of generally accepted principles and rules of international law and international treaties of the Russian Federation by courts of ordinary jurisdiction") that follow the jurisprudence of the European Court of Human Rights in respect of Article 6 § 1 of the Convention.

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

The legislation of the Russian Federation sets no specific procedural terms for remedies against excessive length of judicial proceedings.

In civil proceedings it is possible, however, to apply, in relevant cases, general prescription (term of limitation) of 3 years that is provided for by the Civil Code (Articles 196 and 200) for the implementation of the right to compensation. The prescription starts to expiry from the date when the aggrieved person learnt or was to learn about the possibility to exercise this right.

In respect of criminal proceedings the Criminal Code of the Russian Federation (Article 78) sets terms of limitation for criminal prosecution. Expiration of these terms implies the duty of investigation body, public prosecutor or court to pass a decision to discontinue the criminal proceedings (Article 24.1.3 of the Criminal Procedure Code of the Russian Federation).

10. What are the available forms of redress:

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

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

In *Olshannikova v. Russia* (judgment of 29 June 2006) the European Court of Human Rights, citing, among others, its own judgment in *Kormacheva v. Russia* (judgment of 14 June 2004), did not accept the Government's submission that disciplinary action against the judge responsible for excessive delays in processing the applicant's case constituted an effective remedy for the purposes of Article 13. Such action concerned the personal position of the judge, but did not have any direct and immediate consequence for the proceedings which had given rise to the complaint (§§ 43-44).

In *Menesheva v. Russia* (judgment of 9 March 2006) the Court ruled that, considering the particular circumstances of the case (physical injuries sustained by the applicant as a result of ill-treatment by police) a remedy, to be effective, required, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. However, the Court did not find that any effective criminal investigation into the applicant's allegations against police officers had been carried out, which effectively denied her any redress in civil action (§§ 72-73).

SAN MARINO

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

Yes, two cases concerning civil proceedings.

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

Yes, there have been two judgments of the European Court of Human Rights, one finding a breach by San Marino, dated 17 June 2003 (Tierce v. San Marino judgment of 17 June 2003), and one of 21 March 2006 whereby the case was struck out of the case-list following a friendly settlement.

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

Article 2 of Constitutional law 26 February 2002 No. 36 modified Article 1 of the Declaration of the rights of the citizens and of the fundamental principles of the San Marino legal order, by introducing the following paragraphs:

3. The legal order of San Marino recognises, guarantees and secures the rights and freedoms set forth in the Convention for the protection of human rights and fundamental freedoms.

4. International agreements on the protection of human rights and freedoms, duly ratified and made enforceable, prevail over conflicting internal provisions.

Article 6 of the same law 26 February 2002 No. 36 has equally confirmed the content of Article 15 § 3 of the Declaration of rights, by phrasing it as follows:

> "The law ensures that legal proceedings be carried out in a swift, cost-effective, public and independent manner."

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

As stated under question 1, an inquiry at the Tribunale Commissariale revealed that two actions for denial of justice have been brought against the State: one was abandoned, whereas the other one is currently pending.

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

There is no specific domestic remedy against the excessive length of proceedings in San Marino.

It must be said however that the case-law has considered that all the non merely programmatic provisions of the European Convention on Human Rights are directly applicable as part of the San Marino law (nowadays they even prevail over the other provisions), following the Convention's ratification by decreto reggenziale 9 March 1989 No. 22 (Giud. app. pen. Gualtieri, ord. 16 April 1991, Varinelli, pp no. 53/91; Giud. app. pen. Nobili 31 October 1996, Stefanelli, pp. no. 38/1992; Giud. app. pen. Gualtieri 25 June 2001, Molari, pp. no. 1114/97).

As Article 6 § 1 ECHR may be considered as a self-executing provision, it may be considered that an ordinary action for damages may be brought before the civil judge on the ground of breach of the reasonable time requirement.

It must be added that Article 2 of Law 27 June 2003 no. 89 has modified Article 200 of the code of criminal procedure by introducing amongst the grounds for revision of judgments and penal decrees of condemnation (decreti penali di condanna) the following:

> "d) if the European Court of Human Rights has found that a judgment has been rendered in breach of the European Convention on Human Rights or its Protocols and the serious adverse consequences of such judgment can only be removed through its revision".

The above provision seems applicable also in case of a breach of the reasonable time requirement, even though it might be difficult to prove that the "serious adverse consequences" may only be removed through a revision.

SERBIA

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

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

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

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

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

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

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

No reliable statistics exist at this time.

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

There are two types of remedies available.

First, on the basis of the combined provisions of the Law on Contracts and Torts, and the special provisions of the Law on the Courts and the Law on Judges, any party to an unreasonably long judicial proceeding can sue the State in a civil action for material and moral damages caused by the improper actions of a state organ, in this case a court. This remedy has never been used, as until the ratification of the ECHR, and the enactment of the

Constitutional Charter and the Charter on Human and Minority Rights and the new procedural legislation no specific right to a trial within a reasonable time existed in the law of Serbia and Montenegro. Several suits have been lodged against the State in Serbian courts, but as yet no final decisions have been rendered. The effectiveness of this remedy depends on the future jurisprudence of the Supreme Court of Serbia, which would need to resolve several issues on the interpretation of the general provisions on the compensation of damages. Also, the fact that an ordinary civil judicial procedure is used to determine whether the duration of another judicial procedure was reasonable, and the fact that this procedure could also take several years to complete, is a major factor in assessing the effectiveness of this remedy. The European Court of Human Rights has not yet had an opportunity to decide on this issue, in the light of Article 35 of the ECHR.

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

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

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

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

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

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

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

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

There is no specific deadline.

10. What are the available forms of redress :

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

11. Are these forms of redress cumulative or alternative?

Cumulative.

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

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

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

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

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

The same authority which has delivered the decision.

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

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

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

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

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

In respect to a civil suit against the State for the compensation of damages, it would generally be possible to use this remedy only once. However, complaints can be made either to the Oversight Board or to the president of any specific court for an indefinite number of times, without any minimum period of time which needs to elapse.

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

No reliable statistical data is available.

19. What is the general assessment of this remedy?

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

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

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

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

No.

SLOVAKIA

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

Yes. The information before the European Court indicates that the excessive length of proceedings is a widespread problem in the national legal system, and several hundreds of applications against Slovakia in which the applicants allege a violation of the "reasonable time" requirement have been filed with the Court. This information has been confirmed by the workload of the Constitutional court in which one third out of all cases submitted to the Court deals with undue delays in proceeding before ordinary courts.

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

Yes. Case-law of the Constitutional Court

In one of the first its decision of 10 July 2002 in a case registered as no. I. ÚS 15/02 the Constitutional Court found a violation of the plaintiffs' rights under Article 48 § 2 of the Constitution.

In view of this finding, the Constitutional Court ordered the general court concerned to proceed with the case without further delays. The Constitutional Court granted in full the plaintiffs' claim for SKK 20.000 each in compensation for non-pecuniary damage, and pointed out that the general court in question was obliged to pay those sums within two months after the Constitutional Court's decision had become final. The decision expressly stated that, when deciding on the above claim, the Constitutional Court had also considered the relevant case-law of the European Court of Human Rights.

Recently the Court in a case registered as no. I.US 80/06 has decided on 650.000 SKK as a compensation for undue delays in criminal proceedings before the Regional court in Bratislava. An aggrieved person in that proceedings was a mother of the victim

The Constitutional Court has delivered hundreds other decisions to the same effect. The level of compensation for non-pecuniary damage is in average from 20.000 to 900.000 SKK depending on the nature of the case concerned.

Case-law of the European Court of Human Rights:

Amongst others, in *Beňačkova v. Slovak Republic* (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.

A person can lodge a complaint against undue delays in judicial proceedings to the President of an ordinary court including the Supreme court according to Articles 62 to 70 of the Law no. 757/2004 Collection of Laws on courts. The result of an investigation in such a case can lead to the conclusion on undue delay in a particular proceedings and subsequently to the instigation of a disciplinary proceedings against a judge under Article 116 of the Law no. 385/2000 Collection of Laws on judges and lay judges.

Further, Section 250t of the Code of Civil Procedure, a person or legal entity may lodge a complaint before the court against inactivity of a public administration authority. When the complaint is considered justified, the court has the power to impose a time-limit within which the public administrative authority is obliged to take a decision.

Judicial proceedings

Article 127 of the Constitution (as amended in 2001) provides:

> "1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of a failure to act, the Constitutional Court may order [the authority] which violated the rights or freedoms in question to take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order the authority concerned to abstain from violating fundamental rights and freedoms ... or, where appropriate, order those who violated the rights or freedoms set out in paragraph 1 to restore the situation existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated...."

The implementation of the above constitutional provisions is set out in more detail in sections 49 to 56 of Law no. 38/1993 on the Constitutional Court, as amended (the relevant amendments entered into force on 20 March 2002).

Pursuant to section 50(3) of the Law on the Constitutional Court, a person claiming adequate financial compensation must specify the amount and explain the reasons for such a claim.

Section 56(3) provides that, when a violation of fundamental rights or freedoms is found, the Constitutional Court may order the authority liable for the violation to proceed in accordance with the relevant rules. It may also return the case to the authority concerned for further proceedings, prohibit the continuation of the violation or, as the case may be, order the restoration of the situation existing prior to the violation.

Under section 56(4), the Constitutional Court may grant adequate financial compensation for non-pecuniary damage to a person whose rights or freedoms were violated.

Section 56(5) provides that the authority which violated a person's rights is in such a case obliged to pay the compensation within two months after the Constitutional Court's decision has become final.

Law no. 514/2003 on State liability for damage caused in the exercise of public authority (in force since 1 July 2004) in its Article 9 provides that the State is liable for damage caused by an incorrect act, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. A person who has suffered loss on account of such an irregularity is entitled to compensation of real and moral damages.

In accordance with Article 15.2 of this Law, the right to a compensation of damages has first to be requested through a demand for friendly settlement before the "competent authority" (Ministry of Justice). If the competent authority has not replied to a request for a friendly settlement, in its entirety or in part, within 6 months from the receipt of the request, the person who has suffered loos can introduce a legal suit.

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

Yes (see under Q. 5). In addition to that it should be noted that under settled case law of the Constitutional court this remedy is, in fact, available only in pending proceedings before the courts.

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

When assessing the reasonableness of the length of the proceedings, the authorities base themselves on the criteria set out by the ECHR and also the criteria setting out by the Constitutional court, predominantly in proceeding under Section 250t of the Code of Civil Procedure.

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

In the case of a complaint for the excessive length of administrative proceedings, the concerned public administrative authority is due to act within three months, a time-limit that can be prolonged under certain exceptional circumstances.

The authority competent to decide on State liability for damage caused in the exercise of public authority must decide within six (6) months from the receipt of the demand.

The Civil procedural code determines several time limits for passing a decision or a final judgment but usually, according to the settled case law of the Constitutional court, those time limits are considered only as an ideal wish of the legislator about the lengths of proceedings.

There are various legal consequences. Firstly, it is a possibility to initiate a disciplinary procedure against a responsible person. Secondly, the state must under legal conditions set out in law make good for damages caused by overstepping a deadline in a particular case. Finally, it is a penalty imposed to a official authority that has failed to comply with the judgment of the court handed down according to Section 250t of the Code of Civil Procedure

10. What are the available forms of redress:

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

11. Are these forms of redress cumulative or alternative?

Cumulative.

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

When deciding on the claim for pecuniary compensation, the Constitutional Court generally also considers the relevant case-law of the ECHR. It is needed to underline that it concerns only non-material damage suffered by undue delays. There is, according to biding law, no a maximum amount of compensation to be awarded.

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

Yes. In *Andrášik and others v. Slovak Republic*, (decision of 22 October 2002), the Court held that the complaint under Article 127 of the Constitution is an effective remedy in the sense that it is capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delays and of providing adequate redress for any violation that has already occurred.

SLOVENIA

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

Yes.

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

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

In *Lukenda v. Slovenia* (no. 23032/02, judgment of 6 October 2005) the Court noted that there were approximately 500 length-of-proceedings cases before the Court against Slovenia.

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

The right to a trial without undue delay is guaranteed by Article 23 § 1 of the Constitution.

The right to a trail without undue delay is also envisaged by Article 2 of the "Act on the Protection of the Rights to a Trial without Undue Delay" of 12 May 2006 (to be applied from 1 January 2007).

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

The government of Slovenia with the aid of the Supreme Court produced a document in 2002 in which it conceded that there were delays in judicial proceedings. The European Commission reached similar conclusions in its last report on the readiness of Slovenia to accede to the European Union published in November 2003. Furthermore, the Slovenian Human Rights Ombudsman observed in his report for the year 2004 that the most serious problem facing the Slovenian legal system was the length of court proceedings.

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

The remedy in case of violation of the right to a trial within a reasonable time is provided by the administrative action. A person alleging the violation of this right can lodge a complaint with the Administrative Court against lengthy proceedings in pending cases. Under Article 62 of the Administrative Dispute Act, the injured party may request, besides the abolishment of the infringement of his or her constitutional right, also the compensation for damage inflicted.

If unsuccessful, the party can start proceedings before the Supreme Court under the 1997 Administrative Dispute Act and eventually lodge a constitutional appeal with the Constitutional Court under Section 51 § 1 of the Constitutional Court Act. The condition that the appellants have to institute an administrative action before lodging a constitutional appeal under this section was confirmed by the Constitutional Court's decision of 7 November 1996.

Article 3 of the "Act on the Protection of the Rights to a Trial without Undue Delay" provides for the following remedies to protect the right to a trial without undue delay:

1. *Supervisory appeal* - appeal with a motion to expedite the hearing of the case, which is filed with the court hearing the case.
The president of the court shall request the judge, to whom the case has been assigned for resolving, to submit a report indicating reasons for the duration of proceedings, as well as the opinion on the deadline in which the case may be resolved.
If the judge notifies the president that all relevant procedural acts shall be performed or a decision issued within the deadline not exceeding four months following the receipt of the supervisory appeal, the president of the court shall inform the party thereof.
If the president has not informed the party and he establishes that the court is unduly delaying the decision-making, he shall order that appropriate procedural acts be performed and set the deadline for their performance (from 15 days up to 6 months). He may also order that the case be resolved as a priority, particularly when the matter is urgent.
If the president of the court establishes that the court does not unduly delay the decision-making on the case, he shall reject the supervisory appeal.
If the supervisory appeal is filed with the Ministry responsible for justice, the Minister shall refer it to the president of the court of competent jurisdiction to hear it and shall require to be informed on the findings and the decision.

2. *Motion for a deadline* – If the president of the court rejects the supervisory appeal or fails to answer the party within two months or fails to send the party the notification that all relevant measures will be taken by the judge dealing with the case, or if the appropriate procedural acts were not performed within the deadlines set in the notification or ruling of the president of the court, the party may file a motion for a deadline. The motion for a deadline is filed with the court hearing the case, the president of which has to refer it together with the case file to the president of the superior court.

If the president of the court establishes that the court does not unduly delay the decision-making on the case, he shall reject the motion for a deadline.

If the president of the court establishes that the court unduly delays the decision-making of the case, he shall order that the appropriate procedural acts be performed by the judge and set the deadline for their performance (from 15 days up to 4 months). He may also order that the case be resolved as a priority.

3. *Claim for just satisfaction* – if the supervisory appeal was granted or if the motion for a deadline was filed, the party may claim just satisfaction which may be provided by:

- Payment of monetary compensation, which shall be payable for non-pecuniary damage in the amount of 300 up to 5 000 euros;
- A written statement of the State Attorney's Office that the party's right to a trial without undue delay was violated;
- The publication of a judgment that the party's right to a trail without undue delay was violated;

Action for pecuniary damage caused by a violation of the right to a trail without undue delay may be brought in accordance with the Obligations Code.

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

Supervisory appeal and motion for deadline are available in respect of pending proceedings. The claim for just satisfaction is available for terminated proceedings.

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

There is no particular fee. Regular court fees should be paid, if the dispute concerning damages goes to court.

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

The criteria used by the authority are following: the complexity of a case, the conduct of parties, the statutory deadlines for fixing preliminary hearings or drawing court decisions, the nature and type of a case and its importance for a party.

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

The president of the court shall decide on the supervisory appeal within two months.

In case of no reply within the prescribed time-limit a party may lodge a motion for a deadline and seek damages.

10. What are the available forms of redress:

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

11. Are these forms of redress cumulative or alternative?

Cumulative.

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

The maximum amount for non-pecuniary damage is 5.000 euros.

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

If the president of the court establishes that the undue delay in decision-making of the case is due to excessive workload or extended absence of the judges, he may order that the case be reassigned. He may also propose that the additional judge be assigned to the court or order other measures under the statute regulating the judicial service to be implemented.

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

Regular enforcement proceedings are applicable.

17. Is it possible to use this remedy more than once in respect of the same proceedings? Is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision?

The party may not file a new supervisory appeal or a motion for a deadlines concerning the same case before the expiry of deadlines set in the notification or ruling of the president of the court except for the cases where detention is proposed or ordered or where interim measure is proposed.

If a ruling rejecting or dismissing the appeal was issued, the party may file a new supervisory appeal only after sic months have elapsed from the receipt of the decision, except for the cases where detention is proposed or ordered or where interim measure is proposed.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

In *Belinger v. Slovenia* (decision of 2 October 2001), the Court considered that neither the administrative action nor the constitutional complaint constitute an effective remedy in respect of unreasonably lengthy proceedings in the sense of Article 13 of the Convention.

In *Lukenda v. Slovenia* (no. 23032/02, judgment of 6 October 2005) the Court surveyed the remedies (an administrative action, a claim in tort, a request for supervision or a constitutional appeal) available at that time under Slovenian law and found that there were no remedies that could be regarded as effective either when considered individually or in aggregate.

An administrative action was found ineffective by the Court in the Lukenda judgment. However, in the Sirc v. Slovenia case (decision of 16 May 2002), while dealing with the length of proceedings before administrative organs, the Court found that in the event of lack of reply from the administrative authority, the applicant could and should seek a decision directly from the Administrative Court. This remedy was therefore found effective for proceedings before administrative authorities.

SPAIN

1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?

According to the General Council of the Judiciary's 2006 report, the average length of a Spanish Court proceeding is five months. There are, however, substantial differences between levels: cases in front of superior courts take longer on average. Then, there exist differences between jurisdictions (social issues courts are the fastest; and administrative courts have a considerably longer average (20 months) in comparison to other specialised jurisdictions, and most delays are to be found there. The length of criminal proceedings is difficult to evaluate since the previous diligences add time that is not related to the court case. Additionally, there are large differences between geographical areas. Territories with a large "judicial mobility" (such as the Canary Islands), tourism areas (in which the number of judicial officers is calculated only on the basis of the permanent population) and big cities (with large concentration of growing immigration population) have the longest delays. The data are available at the web page: http://www.poderjudicial.es section on dates and statistics.

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.

The Constitutional Court has referred to this in cases 81/1989, 145/1988. More recently, the Supreme Court in its ruling STC 153/2005, 6 June. The Supreme Court (second Chamber of Criminal Justice) recognised the excessive length of proceedings as a motive for the effective reduction of the penalty. Similarly, the Third Chamber of the *Contencioso-Administrativo* (Supreme Court) recognised the patrimonial responsibility of the State because of abnormal functioning of the judicial administration (meaning delays).

The ECHR has declared a breach of article 6 of the Convention in Ruiz-Mateos vs. Spain (23-6-1993) and Soto Sánchez vs. Spain (25-11-2003). The former case dealt with proceedings before the Constitutional Court, and the latter concerned a criminal procedure before the Supreme Court. In the second, Spain is condemned because of the delays in the *recurso de amparo*.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The right to a fair trial within reasonable time is guaranteed by Article 24 § 2 of the Constitution.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

There are two relevant remedies in the Spanish legal order for excessive length of Court proceedings: an *amparo* appeal (while proceedings are still pending, on the basis of Articles 24 and 53 § 2 of the Constitution) and a claim for compensation (for the terminated proceedings, under sections 292 et seq. of the Judicature Act).

Article 121 of the Constitution provides that: "Losses incurred as a result of judicial errors or a malfunctioning of the administration of justice shall be compensated by the State, in

According to Section 292 of the Judicature Act:

> "1. Anyone who incurs a loss as a result of a judicial error or a malfunctioning of the judicial system shall be compensated by the State, other than in cases of *force majeure*, in accordance with the provisions of this Part.
>
> 2. The alleged loss must in any event actually have occurred and be quantifiable in monetary terms and must directly affect either an individual or a group of individuals."

Section 293(2)

> "In the event of a judicial error or a malfunctioning of the judicial system, the complainant shall submit his claim for compensation to the Ministry of Justice.
>
> The claim shall be examined in accordance with the provisions governing the State's financial liability. An appeal shall lie to the administrative courts against the decision of the Ministry of Justice. The right to compensation shall lapse one year after it could first have been exercised."

The Constitutional Court Act provides in Section 44(1)(c)

> "1. An *amparo* appeal in respect of a violation of rights and guarantees capable of constitutional protection … does not lie unless … the violation in question has been formally alleged in the proceedings in question as soon as possible after it has occurred…"

If the Constitutional Court finds that there has been a violation of the right to a hearing within a reasonable time, it may decide that the hearing should proceed immediately, either by ordering that judicial inactivity be brought to an end or by setting aside the decision that was unjustifiably drawing out the proceedings.

6. Is this remedy also available in respect of pending proceedings? How?

The *recurso de amparo* applies in the case of open proceedings. If a case is terminated, then, the plaintiff can ask for compensation. The action for damages is only available for terminated proceedings.
Furthermore, the *recurso de amparo* is only available when all the appeals before ordinary Courts have been filed and judged. The only exception is when an undue delay is denounced. Then, the delay must be denounced; if the situation is not redressed, then the plaintiff can apply for constitutional ***amparo*** (SSTC 31/1997, 24 February, fj 2, and 303/2000, 11 December, ffjj 4 and 5)

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The Constitutional Court has incorporated into its case law the criteria specified by the European Court of Human Rights (see cases 5/1985, 195/1997, 87/2000 and 103/2000, among others) following the constitutional mandate (see Article 10.2 Spanish Constitution). The first sentence was the Supreme Court STC Perán Torres, 24/1981. Rulings 223/1988, 24 November, and 195/1997, 11 November are particularly significant..

Even though the Spanish Supreme Court desires to follow the criteria of the ECHR, its case law is influenced by a domestic criterio: the ***normal length of similar processes***. And this happens despite that the criterion was explicitly rejected by the ECHR in the ruling Unión Alimentaria Sanders, 7 July 1989. Some posterior rulings have rejected this criterion (for instance, STC Franrich (195/1997, 11 November). But the criterio of the average standard length appears as *ratio decidendi* (e.g.. SSTC Celaya Nocito, 180/1996, 12 November, and Rodríguez Armas, 119/2000, 5 May).

9. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?

Although the Spanish procedural codes establish deadlines for proceedings, these are understood in practice as mere orientations for the Court. Spanish laws on the judicial procedure establish times for every different issue (for instance, 10 days for a certain activity, etc.). Administrative laws, on contrast, provide for a general length for the whole proceedings.

10. What are the available forms of redress:

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage YES
  - non-material damage YES
- measures to speed up the proceedings, if they are still pending YES
  (at least formally: see rulings granting ***amparo***: e. g.. SSTC 181/1996, 12 November and 195/1997, 11 November)]
- possible reduction of sentence in criminal cases YES
  (see case law of the Chamber of Criminal Justice of the Supreme Court; rulings 2 January 2003, recurso de casación no. 1341-2001, or 30 June 2006, fj 11).

11. Are these forms of redress cumulative or alternative?

Cumulative.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

Yes. The effectiveness of the two relevant remedies has been affirmed by the ECHR in several cases. See for example, the case of *Gonzalez Marin v. Spain* (decision of 5 October 1999) and *Fernandez-Molina Gonzalez and Others v. Spain* (decision of 8 October 2002).

SWEDEN

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

In addition to rules of a general character which provide that matters shall be decided as expeditiously as possible without compromising the principle of the rule of law, there exist in Swedish legislation specific rules pursuant to which certain types of cases shall be decided with particular promptness or within a specified time. Examples of the latter include rules governing the conduct of criminal investigations and prosecutions against persons below 18 years of age.

In certain cases there are also rules providing that in the event that a public authority fails to make a decision within a prescribed time-limit it shall be deemed to have made a decision to the applicant's favour. In a number of instances it is further prescribed that where the authority in questions fails to reach a decision within the specified time it shall inform the applicant of the reasons for its inaction (for example, under section 13 of the 1993 Competition Act, or under various provisions of 1991 Securities Operations Act and the 1992 Financing Operations Act).

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

In judicial proceedings, a party who is of the opinion that the processing of the case has been unnecessarily delayed by a decision of a district court may file an interlocutory appeal against the decision (chapter 49 section 7 of the Code of Judicial Procedure). If the Court of Appeal finds that the appeal is meritorious it may quash the disputed decision.

In criminal proceedings, an unreasonable length may cause the sentence imposed to be more lenient. Thus, chapter 29 section 5 and chapter 30 section 4 of the Penal Code provide that courts in criminal cases shall, both in their choice of sanction and in their determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence.

Furthermore, pursuant to chapter 3 section 2 of the 1972 Tort Liability Act the State shall be held liable to pay compensation for personal injury, loss of or damage to property and financial loss where such loss, injury or damage has been caused by a wrongful act or omission done in the course of, or in connection with, the exercise of public authority in carrying out functions for the performance of which the State is responsible. Based on this provision, the Supreme Court has found the State to be liable to pay compensation in a case where delays in proceedings concerning a loan before a county housing board caused the loan to be issued at a higher level of interest (see NJA 1998 p. 893).

The Swedish Supreme Court has recently tried a case concerning a claim for damages brought by an individual against the Swedish State. The plaintiff argued that since the criminal charges against him had not been determined within a reasonable time his right under Article 6 ECHR had been violated. The Supreme Court held that the right of the plaintiff under Article 6 ECHR had been violated. With reference to the case law of the European Court under Article 6 ECHR, especially Kudla v. Poland, the Supreme Court further held that the plaintiff under Swedish law was entitled to compensation both for pecuniary and non-pecuniary damage. It must be concluded that Swedish law provides a remedy in the form of compensation for pecuniary and

non-pecuniary damage in cases where an individual's right to proceedings within a reasonable time under Article 6 of the Convention has been violated.

In addition, a public official who intentionally or through carelessness disregards the duties of his office, e.g. by omitting to render a decision in a matter that is pending before him, may be held criminally or administratively responsible and subjected to criminal or disciplinary sanctions (chapter 20 section 1 of the Penal Code and section 14 of the Public Employment Act).

Lastly, the Parliamentary Ombudsmen and the Chancellor of Justice exercise control *inter alia* over the conduct of proceedings before public authorities, including the courts. Where appropriate the Ombudsmen and the Chancellor of Justice may criticise an authority's delay in deciding a matter before it. However, they have no power to directly order a public authority to conclude proceedings within a certain time-period.

6. Is this remedy also available in respect of pending proceedings? How?

Yes. See question 5.

10. What are the available forms of redress :

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage YES
  - non-material damage NO
- measures to speed up the proceedings, if they are still pending NO
- possible reduction of sentence in criminal cases YES
- other (specify what)

11. Are these forms of redress cumulative or alternative?

Cumulative.

13. If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts? Is the taking of these measures co-ordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?

The Court Presidents and senior judges responsible for Divisions and Sections within a court are responsible for ensuring that cases are determined within a reasonable time. The manner in which they exercise this control function is regularly reviewed by the Parliamentary Ombudsmen. However, as previously noted (see 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.

SWITZERLAND

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

In two recent cases – *M.B. v. Switzerland* (judgment of 30 November 2000) and *G.B. v. Switzerland* (judgment of 30 November 2000) - the Court found that the "reasonable time" requirement had been violated.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The right to be judged within a reasonable time is enshrined in Article 29 § 1 of the new Swiss Constitution.

All authorities at Federal and Canton level are required to respect and contribute to the effective application of this fundamental right, in particular under Article 35 of the Constitution, whereby: "(1) The fundamental rights shall be realized in the entire legal system. (2) Whoever exercises a function of the state must respect the fundamental rights and contribute to their realization (3) The authorities shall ensure that the fundamental rights are also respected in relations among private parties whenever the analogy is applicable."

Various Cantons' Constitutions also contain explicit guarantees concerning the length of judicial proceedings.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

At canton level most codes of criminal procedure explicitly provide for the competent authorities to conduct proceedings within a reasonable time. The violation of this principle may give rise to: "due consideration in the fixing of the sentence; release of the defendant, when the time-limit for legal action has run out; exemption from punishment if the defendant is found guilty; termination of the proceedings (as an *ultima ratio* in extreme cases). The judge must explicitly mention the violation of the "reasonable time" principle in his judgment and state what account was taken of it."[1]

In cases concerning pecuniary rights violation of the "reasonable time" principle entails the liability of the public authorities, who may be required to pay compensation for damages sustained as a result of the length of the proceedings.[2]

According to the Federal Law on the Liability of the Confederation, Members of its Authorities and Officials (14 March 1958), the Confederation is responsible for the damage caused by an official in the course of the exercise of his/her functions.

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[1] Federal Court Judgment of 7 June 1991, JdT 1993 IV 189 (= ATF 117 IV 124 (129), preamble paragraph 3d). Cf. also Federal Court Judgment of 17 February 1998, ATF 124 I 139 (141), preamble paragraphs 2b and c.

[2] Cf. Jörg Paul Müller and Judgment cited in: Grundrechte in der Schweiz, Im Rahmen der Bundesverfassung von 1999, der UNO-Pakte und der EMRK, 3rd Edition, Bern, 1999, p. 509.

7. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The criteria applied by the European Court of Human Rights.

10. What are the available forms of redress :

- acknowledgement of the violation YES
- pecuniary compensation
  - material damage YES
- measures to speed up the proceedings, if they are still pending NO
- possible reduction of sentence in criminal cases YES

The obligations linked to effective application of the "reasonable time" principle have led the Federal Court to define not only the content and scope of the principle but also the consequences of its violation: "In ratifying the European Convention on Human Rights Switzerland undertook to avoid unduly lengthy proceedings and, in the event of failure in this duty, to compensate the injured party as far as possible for any damages sustained."[3] The Federal Court accordingly made provision for various courses of action which are open to the authorities in the event of violation of the "reasonable time" principle in a particular case (see Q. 5).

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

Yes. In *Boxer Asbestos SA 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.

[3] Federal Court Judgment of 7 June 1991, ATF 117 IV 124 (128), preamble paragraph 3b.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?

The Republic of Macedonia experiences excessive delays in judicial proceedings, especially in civil and enforcement cases.

The analysis of the performance of the judicial system in the Republic of Macedonia demonstrates that the delivery of court summons or documents has been one of the main reasons for delays in the proceedings. The legal provisions governing this matter (that were amended by new laws adopted in 2005, mentioned below) were leaving large space for abuse on the part of the involved parties by avoiding to receive court summons or documents, or by indicating incorrect or concealing the accurate address. The principle of personal delivery that has been accepted in the procedural legislation (both criminal and civil) as a condition associated with individual freedoms and rights, does not correspond consistently with the other regulation (for residence registration) that would allow greater civil obedience and functioning of a so-called "mail box" system.

Furthermore, laws allowed for an abuse of the institute of exemption (in practice, besides the request for exemption of the sitting judge, and after a negative ruling upon such a request, an exemption could also be requested for the Court's President and even for the Court itself, and even more on several occasions during the same proceedings upon a single case).

Frequent delays of trial hearings also occur as a result of the failure of the involved parties, attorneys, witnesses or court experts to appear before the court, despite having been orderly summoned. Such occurrence has been typical in particular for cases involving larger number of parties, i.e. defendants and attorneys.

The previously existing legal provisions which allowed new facts and evidence to be presented in proceedings upon appeals, directly contributed to the delays in proceedings (if a party is not satisfied with the Court's ruling, by presenting new facts and evidence in the appeal, it exercises a possibility that the decision may be revoked by a higher court and the case be remanded to the court of first instance for re-trial and reassessment).

The system of alternative dispute resolution is currently under development. The use of arbitration in practice has been very limited.

Additional reasons for delays in procedure are the non-existence of adequate registers and records, as well as the low level of technical equipment available to the courts in their handling of cases. Namely, there is still lack of an integrated and authorized access to good-quality information, as well as of generation and storage mechanism for all documents from the initiation up to the permanent filing of a case (inappropriate document management).

At the same time, the flow, organization and analysis of data are a slow process.

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Such delays have been acknowledged only by the European Court of Human Rights, since there is no a legal remedy in national law providing for protection of excessive delays in judicial proceedings. In 2005 European Court of Human Rights delivered the following judgments against the Republic of Macedonia where the ECHR found a violation of Article 6 § 1 (excessive delays in judicial proceedings) of the European Convention of Human Rights: *Atanasovic v Republic of Macedonia Application No. 13886/02 of 22.12.2005 ECHR and Dumanovski v Republic of Macedonia Application No. 13898/02 of 8.12.2005 ECHR.*

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

The Constitution of the Republic of Macedonia does not contain an explicit requirement of reasonable of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights. However, Article 50 § 1 of the Constitution of the Republic of Macedonia provides that: "Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the ordinary courts, as well as before the Constitutional Court of the Republic of Macedonia, ***in a procedure based upon the principles of priority and urgency".***

Legal provisions containing an explicit requirement of reasonable in terms of Article 6 § 1 of the European Convention of Human Rights are to be found in the Law on the Courts as well as in procedural laws.

The ***Law on the Courts*** ("Official Gazette of the Republic of Macedonia" no. 36/95) in Article 7 stipulates that: "Everyone is entitled to lawful, impartial and fair hearing in reasonable time".

The ***Law on Civil Procedure*** ("Official Gazette of the Republic of Macedonia" no. 79/2005 in Article 10 § 1 says: "The Court is obliged to conduct the proceedings ***without delay, in reasonable time***, with as little costs as possible, and to prevent any misuse of rights of the parties in the proceedings."

According to Article 4 § 1 of the ***Law on Criminal Procedure*** ("Official Gazette of the Republic of Macedonia" no. 15/97, 44/2002, 74/2004 and 15/2005 – cleared text): "A person charged with criminal offence is entitled to a fair and public hearing ***within reasonable time*** before a competent, independent and impartial court established by law."

According to Article 6 of the ***Law on Enforcement*** ("Official Gazette of the Republic of Macedonia" no. 35/2005): "In conducting the enforcement, the enforcement agent is obliged ***to act promptly***, according to the order in which he has received the cases at work, unless the nature of the claim or some other special circumstances require otherwise."

According to Article 8 of the ***Law on General Administrative Procedure*** ("Official Gazette of the Republic of Macedonia No. 38/2005): "In administrative decision making, administrative bodies are obliged to ensure the ***efficient exercise of rights and interests of the parties*** in the administrative procedure."

According to Article 17 of the same Law: "The administrative proceedings is conducted ***economically and urgently without delay, in a cost-effective and time-consuming way,*** in such a manner that will allow everything that is necessary to be obtained for a rightful determination of facts and for making a lawful and correct decision."

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The average duration of cases for civil and criminal decisions is presented in the chart below:

Average duration of cases		**2001**	**2002**	**2003**	**2004 (first 6 months)**
Civil Cases	Basic courts (first instance)	10 m .& 10 days	10 m. & 1 day	8 m. & 26 days	9 m. & 16 days
	Appealed civil cases (second instance proceedings)	30 days	1 m. & 11 days	1 m. & 9 days	1 m. &24 days
	Supreme Court	1 y. & 6 m. & 22 days	1 y. & 6 m. & 26 days	11 m. & 10 days	7 m. & 15 days
Criminal Cases	Basic courts (first instance)	9 m .& 13 days	9 m. & 24 day	8 m. & 27 days	9 m. & 7 days
	Appealed civil cases (second instance proceedings)	1 m. & 1 days	28 days	26 days	26 days
	Supreme Court	1 m. & 12 days	2 months	1 m. & 29 days	2 m. & 6 days
Source: State Statistical Office					

Regarding the enforcement of judgments, the average time period between the delivery and the execution of judgments in civil and criminal cases is presented in the chart below:

	2001	**2002**	**2003**	**2004 (first 6 months)**
Civil cases	11 months & 11 days	6 months & 18 days	6 months & 23 days	7 months & 12 days
Criminal cases	2 years & 9 months & 16 days	3 years & 1 months & 5 days	2 years & 3 months & 21 days	1 year & 11 months & 29 days
Source: State Statistical Office				

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

In the Republic of Macedonia a special judicial remedy in respect of excessive delays in the proceedings does not exist. There is however, an administrative remedy within the competences of the Ministry of Justice in the area of judicial administration. According to Article 77 of the Law on the Courts, the Ministry of Justice is competent to review the complaints of the citizens concerning the work of the courts especially those related to delays in the court proceedings. The complaint is lodged in writing, by the party in the proceeding. Upon the complaint the Ministry of Justice in written correspondence with the court obtains information regarding the case (especially about the reasons for the delay and to whom is the delay attributable) and informs the complainant about its findings again in writing. This remedy in practice has shown very little effectiveness since the Ministry of Justice cannot order the court to undertake certain measures for speeding-up the procedure in a particular case. If the Ministry of Justice finds that the delay in the procedure is a result of unprofessional and unethical conduct of the judge sitting in the case, the Ministry can inform the Judicial Council of the Republic of Macedonia and propose dismissal of the judge.

The Judicial Council is also competent to review the complaints of citizens regarding the conduct of judges.

6. Is this remedy also available in respect of pending proceedings? How?

The remedy described under question No. 5 is available in respect of pending proceedings and is almost always used by citizens regarding cases pending before the courts.

7. Is there a cost (ex. fixed fee) for the use of this remedy?

No.

TURKEY

1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?

Yes.

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

As regards administrative courts: the European Court found the excessive length of compensation proceedings in the following cases *Ormancı and others v. Turkey* (judgment of 21/12/2004), *Güven Hatun and others v. Turkey* (judgment of 08/02/2005), *Güven Meryem and others v. Turkey* (judgment of 22/02/2005), *Özel Mehmet and others v. Turkey* (judgment of 26/04/2005), Özkan Nuri *v. Turkey* (judgment of 09/11/2004), *Yalman and others v. Turkey* (judgment of 03/06/2004).

As regards civil courts: *Yorgiyadis v. Turkey* (judgment of 19/10/2004), *Günter v. Turkey* (judgment of 22/02/2005), *Molin İnşaat v. Turkey* (judgment of 11/01/2005), *Sekin Mahmut and others v. Turkey* (judgment of 22/01/04), *M.Ö v. Turkey* (judgment of 19/05/2005)

As regards labour courts: *Ertürk Hüseyin v. Turkey* (judgment of 22/09/2005)

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

Article 19 of the Constitution only provides that “Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution.”

4. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

According to the statistics provided by the Ministry of Justice, the average length of civil proceedings in Turkey is 177 days before first-instance courts and 86 days before the Civil Chambers of the Court of Cassation.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

Article 14 of the Administrative Code provides that the examination of the petitions should be concluded at the latest within fifteen days of receiving the petition.

A new Code of Administrative Procedure is being drafted with a view to decreasing the workload of administrative courts. It also lays down procedures for resolving disputes before the trial stage and for friendly settlements and envisages a number of amendments with the aim of reducing the length of proceedings before administrative courts.

Preparations are under way for the adoption of a draft law on the establishment of the Council of Scrutiny of Public Works, which will provide that all disputes between the administration and citizens will first be examined by an Ombudsman before being brought before the administrative authorities or the administrative courts.

The Law on the Council of State (Law no: 2575) was amended by Law no. 5183 of 02/06/2004 whereby a new Chamber (the 13th Chamber) was established and the functions and jurisdictions of the other Chambers were revised with the aim of reducing the length of proceedings before the Council of State.

The competence and jurisdiction of Civil and Criminal Courts of First Instance were reorganised and Regional Courts were established with the coming into force of Law no. 5235 of 26/09/2004.

A number of new courts have recently been established in Turkey, namely 823 Civil Peace Courts, 960 Civil Courts of First Instance, 704 Cadastral Courts, 174 Enforcement Courts, 98 Labour Courts, 149 Family Courts, 54 Commercial Courts, 20 Consumer Rights Courts, 4 Intellectual Property Rights Courts, 19 Juvenile Courts and 1 Maritime Court.

A new Law amending the Code of Civil Procedure is being drafted in order to prevent lengthy proceedings before civil courts.

6. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?

Non.

UKRAINE

1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?

Yes. The information before the European Court indicates that the excessive length of proceedings is a problem in the national legal system with respect to civil and criminal proceedings and with respect to the execution of the judgments.

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

Yes.

Case-law of the European Court of Human Rights.

In its decision (judgments) *Merit v. Ukraine* (judgment of 30 March 2004) in respect of criminal proceedings, *Svetlana Naumenko v. Ukraine* (judgment of 30 March 2004) in respect of civil proceedings and *Zhovner v. Ukraine* (judgment of 29 June 2004) in respect of enforcement proceedings the European Court found the violation of Article 6 § 1.

3. Does an explicit requirement of reasonableness of the length of the proceedings equivalent to that contained in Article 6 § 1 of the European Convention on Human Rights exist in the Constitution or legislation?

There is no such a requirement. However, a specific time-limit do exist with respect to the length of the pre-trial investigation.

Article 120 Code of Criminal Procedure of 28 December 1960 (as amended on 21 June 2001) states the following:

> "The pre-trial investigation in criminal cases shall last no longer than two months. This term shall commence from the moment the criminal proceedings were initiated up to the point of their being sent to the prosecutor with:
>
> In especially complicated cases the term of the pre-trial investigation, established by part 1 of this Article, can be extended on the basis of the reasoned resolution of the investigator up to six months, to be approved by the prosecutor of the Autonomous Republic of the Crimea, prosecutors of regions, the prosecutor of Kyiv, the military prosecutor of the military district (command), fleet and the prosecutors of equal rank or their deputies.
>
> Further continuation of the term of the pre-trial investigation shall only be approved by the Prosecutor General of Ukraine or by his deputies.
>
> Where the case was remitted for an additional investigation, or if the terminated case was re-opened, the term of additional investigation shall be established by the prosecutor who supervises the investigation, and shall not be more than one month from the moment of the re-initiation of the proceedings in the case. Further continuation of this term shall be enacted on a general basis".

On 30 January 2003 the Constitutional Court of Ukraine interpreted article 120 of Code of Criminal Procedure of 28 December 1960 (as amended on 21 June 2001) and held that the maximum deadline for investigating criminal cases cannot be fixed. It decided that the time allowed for investigation should be reasonable, and referred to Article 6 of the Convention.

In accordance with Article 236 of the Code of Criminal Procedure, it is possible to introduce a complain in respect of the prosecutor's actions before the court:

> "Complaints in respect of the prosecutor's actions during the conduct of the pre-trial investigation or other individual investigative actions in the case shall be submitted to the superior prosecutor, who shall consider them in accordance with the procedure and within the terms prescribed by Articles 234 and 235 of this Code.
>
> A complaint about the prosecutor's actions can be lodged with the court.
>
> Complaints about the prosecutor's actions shall be considered by the first-instance court in the course of the preliminary consideration of the case or in the course of its consideration on the merits, unless otherwise provided for by this Code."

By a decision of 30 January 2003 of the Constitutional Court of Ukraine, the domestic courts were given power to consider these complaints while the pre-trial investigation was still pending. On that date, the Constitutional Court held that the basis, the grounds and the procedure for initiating criminal proceedings against a person, but not the merits of the criminal accusations as such, were subject to appeal.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

There is no specific remedy in respect of excessive delays of proceedings. There exist however, some means of accelerating the lengthy procedures and obtaining reparation.

Generally speaking, pursuing to Article 8 §§ 2 and 3, the Constitution of Ukraine is directly applicable. Article 55 § 1 guarantees to everyone "the right to challenge before a court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers".

Regarding civil proceedings, Article 248(1) of the Code of Civil Procedure provides the following:

> "a citizen has a right of access to a court if he or she considers that his or her rights have been violated by actions or omissions of a State authority, a legal entity or officials acting in an official capacity. Among entities whose actions or omissions may be challenged before the competent court listed in the first paragraph of this provision are the bodies of State executive power and their officials".

Following the Constitutional Court decision of 23 May 2001, which declared Article 248.3 § 4 of the Code of Civil Procedure to be partly unconstitutional, the citizens also have the right to complain directly to a court about the acts of investigating officers and to seek redress in respect of those acts.

As to the criminal proceedings, since the amendment of 21 June 2001 (with effect as from 29 June 2001), Article 234 of the Code of Criminal Procedure provides the possibility to complain to the courts about the resolutions of an investigating officer/prosecutor which violated the parties' rights, in the course of the administrative hearing or in the course of the consideration of the case on the merits.

In accordance with Articles 6 and 31 of the Law on Status of Judges, a disciplinary proceeding can be instituted against the judge who has not performed his or her duties in compliance with the Constitution and legislation concerning observation of time-limits while administrating justice. A judge can also be held responsible for deliberate violation of the legislation in force or omission that caused substantive consequences.

The draft law on Pre-trial and Trial Proceedings and Enforcement of judgments within reasonable time is in process of examination by the Parliament. It will set forth a new remedy allowing to request from a higher court to order particular procedural actions within a certain time-limit and/or award compensation for delays totaling up to fifteen minimum wages. The draft also specifies that such a decision should be dispatched to the competent authority in order to decide on disciplinary punishment of the persons responsible for the delay.

6. Is this remedy also available in respect of pending proceedings? How?

Yes, in criminal proceedings (Article 234 of the Code of Criminal Procedure). See under Q. 5.

10. What are the available forms of redress :

- acknowledgement of the violation YES

Disciplinary responsibility of a judge.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?

There is no possibility of appeal.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR? If so, please provide reference to the relevant case-law.

Yes. In its decision *Merit v. Ukraine* (judgment of 30 march 2004), the European Court found that neither of the remedies existing in the Ukrainian domestic system – complaint to the relevant court against the resolution of the prosecutor either in the course of civil proceedings (Article 248.3 CCP) or in the course of criminal proceedings (Article 234 CCRP) can be considered an effective remedy in terms of Article 35.1 of the ECHR.

Regarding the lodging of complaints with the superior prosecutor, which in accordance with the observations of the Government had to be considered effective remedies, the Court held that they cannot be considered “effective” and “accessible” since the status of the prosecutor in the domestic law and his participation in the criminal proceedings against the applicant do not offer adequate safeguards for an independent and impartial review of the applicant’s complaints.

In so far as the remedy under Article 234 of the CCRP is concerned, the Court noted that this remedy suggests that complaints against the length of the investigation of the case can be made after the investigation has finished, but leaves no possibility of appeal in the course of the investigation. Furthermore, the law does not specifically state whether Article 234 of the CCRP is a remedy for the length of proceedings in a criminal case and what kind of redress can be provided to an applicant in the event of a finding that the length of the investigation breached the requirement of “reasonableness”.

THE UNITED KINGDOM

Introductory note

The United Kingdom contains three legal systems. (a) English law applies in England and Wales. (b) Scots law applies in Scotland, which has a distinct legal system and since 1999 its own Parliament. (c) The law in Northern Ireland is based on the common law (English law) but with separate courts, legislation, and legal profession. Final appellate jurisdiction in civil law, and in criminal law except for Scotland, is exercised by the 12 Law Lords, sitting in the House of Lords. This response omits Northern Ireland entirely; in civil matters it concentrates on English law; regarding criminal procedure, it mentions both English law and Scots law.

1. Does your country experience excessive delays in judicial proceedings? Which proceedings (civil, criminal, administrative, enforcement)?

Although cases of excessive delay occur in the United Kingdom, compared with many European countries, the country has a reasonably good record in this respect.

When excessive delays in judicial proceedings occur in the United Kingdom, whether in civil, criminal or administrative matters, these tend to be exceptions to the regular working of justice.

Apart from Article 6 § 1 ECHR, many aspects of domestic law address problems of delay. An extensive review of English civil procedure was conducted in the mid-1990s by Lord Woolf (the present Lord Chief Justice) who commented that (a) delay is the enemy of justice, (b) delay is an additional source of distress to parties who have already suffered damage, and (c) delay is of more benefit to lawyers than to the parties. Lord Woolf's reports [1] 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."[2]

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1 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).

2 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.

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.[3] 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.

A full study of delay in justice would include the law and practice on limitation (prescription) periods.[4] 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)[5] 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).[6] 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.[7] 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.[8]

2. Have such delays been acknowledged by court decisions? Which courts (national/European Court of Human Rights)? Please provide some examples in English or French or reference to ECHR case-law.

The occurrence of undue delays has been recognised by national courts and by the ECHR.

National Case-Law

In 1998, the Court of Appeal was severely critical of a High Court judge whose judgment in a civil case was not delivered until 20 months after the end of the trial; the delay had been so great as to make the judgment unreliable on issues of fact; a fresh trial was ordered and the judge retired from the High Court earlier than he would otherwise have done.[9]

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3 See Lord Justice Auld's Review of the Criminal Courts of England Wales, September 2001.

4 See e g *Stubbings v The United Kingdom* (1996) 23 EHRR 213.

5 See CPR, Part 54.

6 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.

7 See *Attorney-General's Reference (No 1 of 1990)* [1992] QB 630.

8 *R v Brentford Magistrates, ex p Wong* [1981] QB 445.

9 *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.[10]

The ECHR Case-Law

The UK has been found guilty of breaching the "reasonable time" requirement in the following cases: *H v UK* (Judgment of 8 July 1987), D*arnell v UK* (Judgment of 26 October 1993), *Robins v UK* (Judgment of 1997), H*owarth v UK* (Judgment of 21 September 2001), *Somjee v UK* (Judgment of 15 October 2002), *Mitchell v UK* (Judgment of 17 December 2002), O*basa v UK* (Judgment of 16 January 2003), *Price and Lowe v UK* (Judgment of 29 July 2003), *Foley v UK* (Judgment 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.

[10] *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. Is any statistical data available about the extent of this problem in your country? If so, please provide it in English or French.

The most significant details concern waiting time in the High Court (Queen's Bench Division). In 2004, the average time between the issue of a civil claim and setting down for trial was 43 weeks, the average time between the issue of a claim and the start of the trial (or date of disposal) was 54 weeks, making a total average time between the issue of a claim and the start of the trial (or the date of disposal) 97 weeks at first instance.

In the county courts, the total average time in 2004 was 53 weeks, compared with total average time in 1990 of 81 weeks and in 2001 of 73 weeks.

5. Does a remedy in respect of excessive delays in the proceedings exist in your country? If so, please describe it (who can lodge the complaint, before which authority, according to what - ordinary/special – procedure, within what deadline etc.). Please provide the texts of the relevant legal bases in English or French.

Under the HRA, all courts and tribunals must where possible give effect to Article 6(1) ECHR and take account of the jurisprudence of the ECtHR. If a court or tribunal fails to give effect to the ECHR when it could have done so, this will be a ground of appeal to a higher court or tribunal. There is therefore no need for a dedicated remedy for excessive delays in court proceedings, since in law the Convention rights of individuals are fully protected by the existing procedures for appeal and review.

In the exercise of their inherent jurisdiction, the criminal courts may stay a prosecution where there has been an unreasonable lapse of time; and the civil courts may reject a claim where the claimant has failed to observe steps required by the Civil Procedure Rules.

Regarding criminal proceedings, since the HRA entered into force, the criminal appeal courts have been much concerned with the criteria that should be applied by the criminal courts in exercising their jurisdiction to stay a prosecution for delay. The leading case on the subject is an appeal against the Attorney General's Reference No. 2 of 2001 [2003] UKHL 68 [2004] 2 AC 72, in which the House of Lord considered for English law, that criminal proceedings could be stayed because of a breach of Article 6(1) only if a fair hearing was no longer possible or if for any compelling reason it would be unfair to try the accused person. An appropriate remedy might involve a reduction in the penalty imposed if he were convicted, or the payment of compensation if he were acquitted.

The majority of the judges reached this view after analysing the Strasbourg jurisprudence, and concluded that the position they favoured was compatible with that jurisprudence. The two dissenting judges (both had been judges in Scotland) held that the right under Article 6(1) to trial within a reasonable time "is a separate and independent guarantee which does not require the victim to show that a fair hearing is no longer possible."[11] 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.[12]

6. Is this remedy also available in respect of pending proceedings? How?

The question of a prospective breach of Article 6(1) can be raised by recourse to the ordinary procedures of the civil and criminal courts. Any procedural decisions made by the courts must, as stated already, seek to act in compliance with the litigant's rights under Article 6(1).

7. Is there a cost (ex. fixed fee) for the use of this remedy?

Not applicable.

8. What criteria are used by the competent authority in assessing the reasonableness of the duration of the proceedings? Are they the same as, or linked to, the criteria applied by the European Court of Human Rights in respect of Article 6 § 1 ECHR?

The courts apply the criteria applied by the Strasbourg Court in respect of Article 6(1) ECHR whenever possible.

9. Is there a deadline for the competent authority to rule on the matter of the length? Can it be extended? What is the legal consequence of a possible failure by the authority to respect the deadline?

Not applicable

10. What are the available forms of redress:

- acknowledgement of the violation YES
- compensation is possible and if appropriate may be awarded in accordance with the Strasbourg criteria on 'just satisfaction', but in practice it will rarely be available measures to speed up the proceedings, if they are still pending

- possible reduction of sentence in criminal cases YES
- other (specify what)

In a case involving the unduly prolonged detention of an individual (e g pending deportation, when deportation is no longer possible), the court could on *habeas corpus* proceedings order his release. In the situation of undue detention of an accused person, undue delay may mean that he must be set free and cannot be tried on the charges for which he had been detained. (See Appendix)

11. Are these forms of redress cumulative or alternative?

In practice the courts prefer to give redress like speeding up a future trial or in a criminal case reducing a sentence, and are reluctant to hold that compensation is payable.

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11 Ibid, para 108] (Lord Hope).

12 *R v Lord Advocate* [2002]UKPC D3, [2003] 2 WLR 317.

12. If pecuniary compensation is available, according to what criteria? are these criteria the same as, or linked to, those applied by the European Court of Human Rights? Is there a maximum amount of compensation to be awarded?

In the relatively rare cases in which compensation is available, it will be linked to the ECtHR criteria, as stated already. There is no prescribed maximum.

13. If measures can be taken to speed up the proceedings in question, is there a link between these measures and the general case-management of the relevant courts? Is the taking of these measures co-ordinated at a central or higher level? On the basis of what criteria and what factual information concerning the court in question (workload, number of judges, nature of cases pending, specific problems etc.) does the competent authority order such measures?

Yes, the primary means for speeding up the proceedings in civil cases is by means of case-management, applied by the relevant court. I am not aware of any formal measures co-ordinating cases that raise questions of excessive delay, but all courts have a presiding judge who will oversee the performance in this respect of the courts for whom he or she is responsible.

14. What authority is responsible for supervising the implementation of the decision on the reasonableness of the duration of the proceedings?

The courts and tribunals concerned with the proceedings in question.

15. What measures can be taken in the case of non-enforcement of such a decision? Please indicate these measures in respect of each form of redress and provide examples.

Since there is no dedicated procedure, this question does not arise. Presumably the remedy for an individual is to seek recourse to an appellate court; in some cases (lower courts and tribunals), the remedy takes the form of an application to the High Court for judicial review.

16. Is an appeal possible against a decision on the reasonableness of the duration of the proceedings? Is there a fixed time-frame for the competent authority to deal with this appeal? What would be the legal consequence of non-compliance with this time-limit?

Not applicable – the question of an appeal or review depends on the general procedures of the court or tribunal concerned..

17. Is it possible to use this remedy more than once in respect of the same proceedings? Is there a minimum period of time which needs to have elapsed between the first decision on the reasonableness of the length of the proceedings and the second application for such a decision?

Not applicable.

18. Is there any statistical data available on the use of this remedy? If so, please provide it in English/French

Not applicable.

19. What is the general assessment of this remedy?

Not applicable

20. Has this remedy had an impact on the number of cases possibly pending before the European Court of Human Rights? Please provide any available statistics in this connection.

Not applicable.

21. Has this remedy been assessed by the European Court of Human Rights in respect of Articles 13 or 35 ECHR ? If so, please provide reference to the relevant case-law.

Not applicable.

APPENDIX

Statutory rules in England and Scotland barring criminal prosecutions on grounds of delay

The law in Scotland

1.1 There has for 300 years been legislation in Scotland providing for situations in which criminal prosecutions are barred on grounds of delay, particularly when the accused (A) has been held in custody pending trial. The legislation has been amended from time to time. The present law may be summarised in this way.

1.2 Where A is in custody on a warrant to commit him for trial, he may not be detained for more than 110 days before being brought to trial (the *110 day rule*). Unless the period has been extended by the court, failure to start the trial within 110 days results in the immediate liberation of A, who is thereafter 'free from all question or process' for the offence for which he had been held in custody. An extension in time may be granted only for unavoidable delay (such as the illness of A or an essential witness) or 'for any other sufficient reason' not attributable to the fault of the prosecutor. Scottish judges are very reluctant to grant extensions here and under the two following rules.

1.3 A subsidiary rule is the *80 day rule*. Where A is in custody on a warrant to commit him for trial, the indictment must be served within 80 days, and if this does not occur, A must be liberated from custody immediately. However, A may still be tried for the offence in question. The court has power to extend the period of 80 days 'for any sufficient cause', but if a fault by the prosecutor has caused the indictment not to be served within 80 days, an extension cannot be granted.

1.4 There is a *one-year rule,* by which if A is not in custody but has had to appear in court to answer a criminal charge, the trial on indictment must be commenced within twelve months of that appearance. If this does not occur, A may not thereafter be tried on indictment, but in some circumstances he may be prosecuted for summary offences (involving a less serious mode of trial) arising from the same events. The court may extend the period of one year in limited circumstances. The rule does not apply if A fails to appear for trial during the year.

2 On an application by the prosecutor for an extension of time under these rules, the Scottish judges consider (a) whether sufficient reason has been shown for the extension and, if so, (b) whether the extension will prejudice A, and also factors such as the gravity of the offence and the public interest. The complexity of a case is not a good reason for delay, and administrative difficulties arising from heavy pressure of business on the courts will not necessarily be sufficient to justify an extension of time. But a limited extension of time may be granted where delay has been inadvertent or caused by minor administrative errors that have caused no injustice.. Extensions of time may be sought both prospectively and retrospectively. The Scottish courts frequently deal with questions arising from these rules. The existence and enforcement of the rules may explain why no Scottish criminal cases claiming delay in breach of Article 6(1) ECHR have gone to Strasbourg. In the leading decision on the effect on English law of the Human Rights Act 1998 and the Strasbourg jurisprudence, the majority of seven Law Lords applied the Strasbourg jurisprudence to English law; the minority of two judges (both being Scottish judges) dissented, applying the more rigorous standards of Scots law.[13]

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13 *Attorney-General's Reference (No 2 of 2001)* [2003] UKHL 68; [2004] 2 AC 72.

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.[14] In the case of the most serious offences ('indictable offences'), the custody time limit from first appearance in court after arrest to the proceedings when D is committed for trial is 70 days; and the time limit from committal proceedings to the commencement of the trial in the Crown Court is 112 days. Modified rules apply in the case of less serious offences ('offences triable either way'). Where a custody time limit has expired, D has an absolute right to be released on bail; the court may not require financial sureties to be given as a condition of bail; and once released on bail, D may not be arrested merely on the ground that the police believe that he is unlikely to surrender to bail. However, D's right to bail continues only until the commencement of trial in the Crown Court and the court may withhold bail from him during the actual trial.

4. Where an overall time limit has expired, the court must in general stop the proceedings against D, subject to limited exceptions. The time limits on custody pending trial may be extended by permission of the court, but only if two conditions are met:

(1) the extension is needed because of
    (a) the illness of D, a vital witness, or a judge
    (b) because separate trials have been ordered where several persons have been accused of a crime or
    (c) 'some other good and sufficient cause'; and
(2) the prosecutor has acted with all due diligence and expedition.

In case-law relating to these provisions, it has been held that condition (2) is satisfied if the prosecution can show that the acts of the prosecutor have not contributed to the delay.[15] 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. [16]

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[14] Prosecution of Offences Act 1985, s 22; and Prosecution of Offences (Custody Time Limits) Regulations 1987 (S.I. 1987/229).

[15] *R v Leeds Crown Court ex p Bagoutie,* Times Law Report, 31 May 1999.

[16] *R (Gibson) v Crown Court at Winchester* [2004] EWHC 361, [2004] 1 WLR 1623.