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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT STUDY

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

On the basis of comments by

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I. *Introduction*

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

2. Following a request by the Romanian authorities during the Conference on "The European Convention on Human Rights: from integrating standards to shaping solutions" (Bucharest, 8-9 July 2004), the Venice Commission decided to carry out a comparative study on existing national remedies with respect to allegations of excessive length of proceedings, with a view to proposing possible improvements in their availability and effectiveness.

3. The Secretariat subsequently prepared a questionnaire on the kind, nature and characteristics of national remedies which currently exist in Council of Europe member States (CDL(2004)124). Replies to this questionnaire in respect of 39 European countries (CDL(2005)92?) were provided by Venice Commission members, and were also obtained through the valuable assistance of the Registry of the European Court of Human Rights, as well as of the Department of Execution of judgments of the European Court of Human Rights and of the Secretariat of the Committee of Experts for the improvement of procedures of the protection of human rights (DH-PR), Directorate General II of the Council of Europe.

4. The Venice Commission also worked in close co-operation with the European Commission for the Efficiency of Justice (CEPEJ), a body established on 18 September 2002 with Resolution Res(2002)12 of the Committee of Ministers of the Council of Europe[2], with the aims "(a) to improve the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice."[3]

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

2 www.coe.int/cepej.

3 The tasks of CEPEJ are: to analyse the results of the judicial systems; to identify the difficulties they meet; to define concrete ways to improve, on the one hand, the evaluation of their results, and, on the other hand, the functioning of these systems; to provide assistance to member States, at their request; to propose to the competent instances of the Council of Europe the fields where it would be desirable to elaborate a new legal instrument.

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

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

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

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

7. Article 6 § 1 of the European Convention on Human Rights provides that:

> *"[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

8. In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility.[4] Excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law.[5]

9. The Convention requires proceedings to be conducted "within a *reasonable* time". The notion of reasonableness must reflect the necessary balance between *expeditious* proceedings and *fair* proceedings.[6] A careful balance needs to be struck between procedural safeguards, which necessarily entail the existence of lengths that cannot be reduced, and a concern for prompt justice.[7]

10. Celerity of proceedings responds to the need for legal certainty, for both citizens and the State, and to the need to allow the peaceful coexistence of individuals (*rechtsfrieden*). Long-lasting disputes disturb such peaceful coexistence: judicial proceedings may not be pursued *ad*

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4 ECtHR, Katte Klitsche de la Grange v. Italy judgment of 27 October 1994, § 61.

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

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

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

infinitum, not even when this prolongation may eventually lead to substantive justice. Decisions must at some foreseeable point become final.

11. The duration of judicial proceedings certainly affects the interests of at least one of the parties to such proceedings: indeed, overstepping the reasonable time requirement of Article 6 of the Convention may result in (procedural) breaches of other important Convention provisions, such as Article 3 (in the case of unreasonably slow investigations into allegations of ill-treatment, for example[8]), Article 5 (in the case of lack of a speedy decision by a court on a *habeas corpus* action[9], or Article 8 (in the case of undue delays in custody proceedings which may result in the de facto determination of the issue submitted to the court before it has held its hearing[10]).

12. *Justice delayed is justice denied.* The undue postponement of judicial decisions may result in a denial of justice for the parties to the proceedings. In more general terms and in the longer run, it risks to affect the confidence which the general public places in the capacity of the State to dispense justice, to decide disputes, and, very importantly, to punish as well as to prevent and deter future crimes. This may cause or even incite the recourse by individuals to alternative, irregular means of dispute settlement or dispensation of punishment. The deleterious effects on the rule of law of such a situation are evident.

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

14. Celerity, however, must not be sought to the detriment of the good administration of justice[11]. Due consideration must always be given in the first place to the need to ensure the fairness of the proceedings: the other guarantees set out in Article 6 of the Convention, notably the right of access to a court, the equality of arms, the adversarial principle, and the right to dispose of adequate time and facilities for the preparation of one's defence, must not be undermined or affected by a rushed conduct of the procedure.

15. The quality of the legal reasoning and the extent to which judgments are motivated and made transparent to the parties and to the public, are also extremely important and need to be given due consideration. As CEPEJ pointed out, "meticulously drafting a decision, weighing up the reasons for it, and making it clear and comprehensible are all operations that take time", which may prompt a decision to "lighten the requirements for providing reasons for a decision". However, "a decision with clearly stated reasons allows the parties to accept it more easily. Good decisions at first instance have the effect of reducing appeals".[12]

16. The requirement of celerity must not impinge on the need to preserve the independence of the judiciary in organising its own procedures either.

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8 ECtHR, Labita v. Italy judgment of 6 April 2000, §§ 133, 136.

9 ECtHR

10 ECtHR, W. v. United Kingdom judgment of 8 July 1987, § 65.

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

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

17. In conclusion, each case must be processed within an *optimum* time-frame. The CEPEJ places great importance on the *foreseeability* of such time-frame. It notes in fact that "one of the most awkward problems for court users is that they are unable to predict when proceedings will end. (…) Users need foreseeable proceedings (from the outset) as much as an optimum time. However, it must be noted that a foreseeable time-limit is not as such an acceptable time-limit".[13]

18. The assessment of the reasonableness of the duration of any set of proceedings must never be mechanical, necessarily depends on the specific circumstances of the case and must reflect the concern of ensuring the right balance amongst all the different guarantees set out by Article 6 of the Convention.[14]

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

19. The requirement that proceedings must be conducted within a reasonable time applies to the determination of both criminal charges and civil rights and obligations.[15] Article 6 applies to criminal and civil, but also certain disciplinary[16] and administrative proceedings.[17]

20. As regards the period to be taken into consideration, in civil cases it normally starts when the case is brought before the competent judicial authority, or even before, if a preliminary claim before an administrative authority is necessary,[18] in criminal cases, it starts when the person is "accused", that is when he or she is informed of criminal proceedings having been instituted against him or her[19] or suffers important repercussions on account of such proceedings.[20]

21. The final point is normally the date when the judgment becomes final (is either filed with the court's registry or notified or when the deadline for appealing it expires etc., depending on the applicable domestic rules).[21]

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13 CEPEJ (2004)19rev2.

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

15 Numerous issues have arisen before the Court as regards what the applicability of Article 6 to certain "civil" cases, as well as to certain disciplinary proceedings. They are far too complex to be addressed in this study, for which they are of no direct relevance.

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

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

18 ECtHR, Jorg Nina Jorg and others v. Portugal judgment of 19 February 2004, § 30.

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

20 ECtHR, Foti and others v. Italy judgment of 10 December 1982, Series A no 56, p. 18, § 52; Lavents v. Latvia judgment of 28 November 20002, § 85.

21 ECtHR, Barattelli v. Italy judgment of 4 July 2002, § 15; Mattoccia v. Italy judgment of 25 July 2000, § 75.

22. In the assessment of the reasonableness of the length of a set proceedings, regard must be had to the circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the dispute[22].

23. Special diligence is required on the part of the competent authorities in cases when the parties to the proceedings are affected by illnesses,[23] or for labour disputes, or child-care cases. It is also generally required in criminal cases, in particular when the accused is detained on remand.[24]

24. Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision[25]. Accordingly, the Court does not accept backlogs or administrative difficulties as justification for procedural delays.[26] However, exceptional political or social situations in the country concerned may be taken into consideration.[27]

25. The obligation to organise the judicial system in a manner that complies with the requirements of Article 6 § 1 of the Convention also applies to a Constitutional Court. However, "when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice"[28].

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

26. *Ubi jus ibi remedium.* When there is a right, there should be a remedy. Pursuant to Article 13 of the Convention:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated should have an effective remedy before a national authority notwithstanding that the violation has been committed by a person acting in an official capacity".*

27. The effectiveness of human rights largely depends on the effectiveness of the remedies which are provided to redress their violation. The right to a remedy in respect of an arguable

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

23 ECtHR, H. v. UK, Series A no. 120-B, § 83; Olsson no. 2 v. Sweden, Series A no. 250, § 103; Hokkanen v. Finland, Series A no. 299-A, § 72; Ruotolo v. Italy Series A no. 230-D, § 17.

24 ECtHR, *Debboub v. France* judgment of 9 November 1999, § 46.

25 ECtHR, Bottazzi v. Italy judgment of 28 July 1999, § 22.

26 ECtHR, Kolb and others v. Austria judgment of 17 April 2003, § 54.

27 ECtHR, Milasi, judgment of 25 June 1987, §§ 17-20; ECtHR Maltzan and Others, decision of 2 March 2005 (GC).

28 ECtHR, *Gast and Popp v. Germany* judgment, cit. § 75.

claim of a violation of a fundamental right or freedom is expressly guaranteed by almost all international human rights instruments.[29]

28. The *international* guarantee of a remedy implies that a State has the primary duty to protect human rights and freedoms first within its own legal system. Article 1 of the Convention requires the Contracting States to "secure" the rights and freedoms under the Convention. The European Court exerts its supervisory role subject to the principle of subsidiarity,[30] i.e. only after domestic remedies have been exhausted or when domestic remedies fail consistently or are systematically unavailable. The right to an effective remedy established in Article 13 of the Convention stems directly from this principle.

29. Although the principle of the rule of law, which is contained in the Preamble and in Article 3 of the Statute of the Council of Europe, of which it constitutes one of the three pillars (together with democracy and respect for human rights), would justify the right of an effective remedy as an autonomous one, Article 13 does not contain a general guarantee of legal protection; it exclusively refers to those cases in which the alleged violation concerns one of the rights and freedoms guaranteed by the Convention. It cannot be invoked independently but only in conjunction with one or more articles of the Convention or of one of its Protocols. Naturally, the scope of the obligation under Article 13 will vary depending on the nature of the applicant's complaint under the Convention.[31]

30. Notwithstanding the literal wording of Article 13, the existence of an actual breach of another ("substantive") provision of the Convention is not a prerequisite for its application.[32] According to the case-law of the Court, Article 13 requires that, when a claim of a violation under the Convention is an "*arguable*" one, a remedy allowing both to have such claim decided and subsequently to obtain appropriate relief, must be available.[33] The arguability test requires that a claim "only needs to raise a Convention issue which merits further examination."[34]

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[29] See for example, in addition to Article 13, Article 8 of the Universal Declaration on Human Rights and Freedoms, Article 2.3 of the International Covenant on Civil and Political Rights, Article 6 of the Convention on the Elimination of Racial Discrimination, or Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

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

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

[32] See *Klass and Others v. Federal Republic of Germany*, judgment of 6/09/1978, Series A no. 28, p. 29, § 64.

[33] See among others, *Klass and Others*, *cit*., § 64; *Kaya v. Turkey*, judgment of 19/02/1998, Reports 1998-I, pp. 329-30, § 106. However, Article 13 cannot be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be (*Boyle and Rice v. UK*, judgment of 27/04/1988, Series A no. 131, § 52; *Powell and Rayner v. UK*, judgment of 21/02/1990, Series A no. 172, §§ 31-33).

[34] See European Commission of Human Rights before the Court in Boyle and Rice v. United Kingdom, § 53. Non-arguable is not the same as manifestly ill-founded in the sense of Article 35(3) of the Convention. However, although originally the Court seemed to leave open the possibility that a complaint that is declared manifestly ill-founded may still be deemed to have been arguable (Boyle and rice v. UK, § 53), it conceded that "it is difficult to conceive how a claim that is "manifestly ill-founded" can nevertheless be "arguable" and vice versa" (ibidem, § 54). And in Powell and Rayner the Court held in so many words that the "dual [i.e. domestic and European] system of enforcement is at risk of being undermined if Article 13 (…) is interpreted as requiring national law to make available an 'effective remedy' for a grievance classified under Article 27(2) [the present Article 35(3)] (…) as being so weak as not to warrant examination on its merits at international level" (ECtHR, Powell and Rayner v UK, § 33). It is now standing case-law that if a complaint under a substantive right is declared manifestly ill-founded, the arguability of that same complaint under Article 13 is denied on the basis of the same reasoning (e.g. ECtHR, Igor

31. The "national authority" competent for providing the remedy must not necessarily be a *judicial* authority.[35] On the other hand, the powers and procedural guarantees of an authority will be relevant when determining whether a particular remedy is effective.[36] Any such remedy must be effective in practice as well as in law.[37]

32. The effectiveness of a national remedy within the meaning of Article 13 does not depend on the certainty of a *favourable* outcome.[38] Effectiveness is to be assessed in respect of the possibility of redressing the alleged violation of the right guaranteed by the Convention, possibly by cumulating available remedies. Indeed, even when none of the remedies available to an individual would satisfy the requirements of Article 13 taken alone, the *aggregate of remedies* provided for under domestic law may be considered as "effective" in terms of this article.[39] In other terms, there is no particular form of remedy required, the Contracting States being afforded a margin of discretion in conforming to their obligations under this provision.[40]

33. To be considered effective and thus conform to Article 13, a domestic remedy must allow the competent national authority both to deal with the substance of the relevant Convention complaint and to grant "appropriate relief".[41] This can entail, for example, ending an action, its modification or non-application, its annulment or obtaining reparation of damages resulting from the violation. The principle of effectiveness also implies that the exercise of domestic remedies must not be unjustifiably hindered by acts or omissions of the authorities of the State concerned.[42]

Vrabec v. Slovakia judgment of 5 October 2004). At the admissibility stage, if a complaint about access to court or the reasonable time requirement under Article 6(1) is declared admissible, the Court will adopt the same position with respect to any claim under Article 13 without a separate examination (ECtHR, Jonasson v. Sweden judgment of 30 March 2004). At the phase of the merits, the Court will usually find concurrent breaches of the reasonable time requirement under Article 6(1) and the requirement of an effective remedy under Article 13 (ECtHR, Rachevi v. Bulgaria judgment of 23 September 2004, §§ 60-68 and §§ 96-104). In some cases, however, the Court finds reason to thoroughly examine the existence of an effective remedy after it has found a breach of the reasonable time requirement[34]. And, indeed, in certain cases the Court treated the complaint concerning Article 6(1) as being absorbed into the examination of the more general obligation under Article 13 (ECtHR, Kaya v. Turkey judgment of 19 February 1998, § 105).

35 See for example, *Golder v. UK*, judgment of 21 February 1975, Series A no. 18, § 33, *Laender v. Sweden*, judgment of 26 March 1987.

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

37 See among others, *Ilhan v. Turkey* judgment of 27 June 2000, Reports 2000-VII, §§ 61-62.

38 See for example, *Vilvarajah v. UK*, judgment of 30 October 1991, Series A no. 215, § 122.

39 See among many others, *Silver and Others v. UK*, judgment of 25 March 1983, Series A no. 61, § 113 and *Chahal v. UK*, judgment of 15 November 1996, Reports 1996-V, pp. 1869-70, §145.

40 See *Chahal v. UK, cit.*

41 See for example, *Smith and Grady v. UK* judgment of 27 September 1999, Reports 1999-VI, § 135; *Aksoy v. Turkey*, judgment of 18 December 1996, Reports 1996-VI, § 95.

42 ECtHR, *Altun v. Turkey* judgment of 1 June 2004, § 70

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

34. Until fairly recently, the Convention organs considered that, the requirements of Article 6.1 being stricter than those of Article 13, in case a violation of Article 6.1 has been found, it was unnecessary to determine whether there had also been a breach of Article 13, the requirements of the latter being entirely "absorbed" by those of the former.[43] This was the case when the claim concerned the absence, within the national legal system, of a body competent to examine the claim, that the length of proceedings was excessive,[44] or of any means to shorten or terminate the excessive length of procedure.[45]

35 Such reasoning was not without critics even within the Court itself. Judges Matscher and Pinheiro Farinha, in their separate opinion in *Malone v. UK*, while recognizing the "obscure" nature of Article 13, contested the adequacy of the arguments put forward by the Court to justify a non examination of the allegation of a breach of this Article.[46] They, however, noted that the "absorption argument" may be correct in so far as the procedural guarantees of Article 6 of the Convention are concerned. In fact, the national laws generally do provide for specific procedural remedies which are "stronger" than that of Article 13 in respect of procedural guarantees of Article 6, whereas to a wide extent this is not the case regarding the excessive length of proceedings. It is with respect to this specific part that Article 13 has its "*raison d'être*".

36. The change in reasoning with regard to the right to effective remedy in respect of the excessive length of proceedings came in 2000, with *Kudla v. Poland*.[47]

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43 See *Airey v. Ireland*, judgment of 9 October 1979, Series A no 32, § 35. Another obstacle to the applicability of Article 13 to the issue of the excessive length of proceedings, put forward by the former European Commission on Human Rights, was its non application in cases where the alleged violation took place in the context of *judicial* proceedings (Report on *Bartolomeo Pizzetti v. Italy*, of 10 December 1991, Series A 257-C).

44 See for example, *Giuseppe Tripodi v. Italy*, judgment of 25/01/2000, § 15.

45 See for example, *Bouilli v. France*, judgment of 7/12/1999, § 27.

46 "… We recognise that Article 13 (art. 13) constitutes one of the most obscure clauses in the Convention and that its application raises extremely difficult and complicated problems of interpretation. This is probably the reason why, for approximately two decades, the Convention institutions avoided analysing this provision, for the most part advancing barely convincing reasons. It is only in the last few years that the Court, aware of its function of interpreting and ensuring the application of all the Articles of the Convention whenever called on to do so by the parties or the Commission, has also embarked upon the interpretation of Article 13). We refer in particular to the judgments in the cases of Klass and Others (Series A no. 28, paras. 61 et seq.), Sporrong and Lönnroth (Series A no. 52, para. 88), Silver and Others (Series A no. 61, paras. 109 et seq.) and, most recently, Campbell and Fell (Series A no. 80, paras. 124 et seq.), where the Court has laid the foundation for a coherent interpretation of this provision. Having regard to this welcome development, we cannot, to our regret, concur with the opinion of the majority of the Court who felt able to forego examining the allegation of a breach of Article 13. In so doing, the majority, without offering the slightest justification, has departed from the line taken inter alia in the Silver and Others judgment, which was concerned with legal issues very similar to those forming the object of the present case. Indeed, applying the approach followed in the Silver and Others judgment the Court ought, in the present case, and to the same extent, to have arrived at a finding of a violation of Article 13*"*, *Malone v. UK*, judgment of 2/08/1984, Series A no. 82.

47 ECtHR, Kudla v. Poland judgment of 26/10/2000, Reports 2000-XI. The Court's change of position must have also been inspired by concerns of judicial economy, as a "radical effort" to find an antidote to its ever-increasing backlog. See J-F Flauss, Le droit à un recours effectif au secours de la règle du délai raisonnable: un revirement de jurisprudence historique, in : Revue trimestrielle des Droits de l'Homme, 2002, pp. 179-201. See also L. Burgorgue-Larsen, De l'art de changer de cap, in : Libertés, justice, tolérance : mélanges en hommage au Doyen Gérard Cohen-Jonathan (Vol 1), Bruxelles, Bruylant, 2004, pp. 343-347 ; J. Andriansimbazovina, délai raisonnable du procès, recours effectif ou déni de justice ?, in : Revue française de droit administratif, 2003(I), pp. 85-98.

37. In this judgment, the Court considered "in the light of the continuing accumulation of applications before it concerning the alleged violation of the right to a hearing within reasonable time" that "the time has come to review its case-law" according to which, in case of a violation of that right (Article 6.1), there would be no separate examination of an alleged breach of the right to an effective remedy (Article 13). In support of this review the Court noted the "important danger that exists for the rule of law within national legal orders when excessive delays in the administration of justice occur in respect of which litigants have no domestic remedy", that it had already pointed out in its previous case-law related to this matter.[48]

38. According to the Court, the requirements of Article 13 should be considered as "reinforcing" those of Article 6(1), rather than being absorbed by the obligation to prohibit inordinate delays in legal proceedings under Article 6(1).[49]

39. The Court also underlined the subsidiary character of the machinery of complaint to the Court, recalling that by virtue of Article 1 of the Convention, "the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities."[50] This subsidiary character of the Strasbourg system of complaint is articulated precisely in Articles 13 and 35 § 1 of the Convention. Article 13 establishes an additional guarantee.[51] According to the *travaux préparatoires*, Article 13 aims at according a means whereby individuals may obtain relief at national level for violations of their Convention rights before having recourse – if they are of the opinion that no (satisfactory) relief has been given – to the Strasbourg Court.[52]

III. The requirements of the Committee of Ministers of the Council of Europe in respect of implementation of length-of-proceedings cases[53]

40. In pursuance of Article 46 § 2 of the Convention, the task of supervising the execution of the judgments issued by the Court lies with the Committee of Ministers. It has a general duty to scrutinize all measures taken by the State concerned to abide by the final judgement of the Court.

41. Like the obligation of the States under Article 46(1) to abide by the judgments of the Court in any case to which they are parties, the power of supervision of the Committee of Ministers under Article 46(2) extends to measures pertaining to the individual case,[54] general measures[55]

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48 *Ibidem*, § 148. See also *Bottazzi v. Italy*, judgment of 28/07/1999, ECHR 1999-V, § 22.

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

50 *Ibidem*, § 152.

51 ECtHR 28 July 1998, *Selmouni v. France*, § 74; ECHR 26 October 2000, *Kudla v. Poland*, § 152.

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

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

54 Such as measures necessary to ensure that the applicant is put, insofar as possible, in the same situation as he or she enjoyed prior to the violation of the Convention. These may entail, for instance, the need to put an end, if possible retroactively, to an unlawful situation.

55 Such as legislative amendments, in order to prevent further violations of a similar nature. See Interim Resolutions DH (99) 436 and DH (99) 437 concerning excessive length of proceedings before the administrative courts and civil courts, respectively, in Italy, where the Committee of Ministers decided to resume its examination "*of the question as to whether the announced measures will effectively prevent new violations of the Convention*".

and the award of just satisfaction. The Committee of Ministers issues a final resolution when it deems to have discharged its functions under Article 46.2.

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

43. The Committee of Ministers insists on the fast-tracking of proceedings in particular in those cases in which the Strasbourg Court imposes a "special diligence" (see para. .. above) or when the breach concerns the failure to enforce a domestic court's decision or the continuing breach of a substantive Convention provision (the right of property, for example).[56]

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

45. When a State refuses to execute a judgment of the Court, the Committee of Ministers may decide to open a procedure of monitoring in respect of that State's commitments. It did so in 2000, when it set up a special annual monitoring procedure concerning the reform of justice aimed at solving the problem of the excessive length of proceedings in Italy.[57] In its Interim Resolution, the Committee of Ministers underlined the importance of taking "general measures preventing new violations of the Convention similar to those already found".[58]

46. In the late Nineties, the Committee of Ministers undertook a series of activities aimed at improving the compliance with commitments accepted by member States, in particular through better functioning of the judicial system.[59] In 2000, the Ministers' Deputies thus decided to start monitoring the effectiveness of national judicial remedies with respect to the length of proceedings (judicial control of deprivation of liberty and trial within reasonable time), and to the execution of judicial decisions.[60] In particular, in 2002 the Committee of Ministers set up the

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

[57] Interim Resolution DH (2000) 135 on Excessive length of judicial proceedings in Italy. General measures. Adopted by the Committee of Ministers on 25 October 2000.

[58] *Ibidem*, §§ 2-3.

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

[60] *Ibidem*. In 2001, the Committee of Ministers instructed the Steering Committee for Human Rights (CDDH) to "examine ways and means of assisting member States with a view to a better implementation of the Convention in their domestic law and practice, including the provision on effective remedies".[60] The CDDH, in turn, entrusted the work of following up this decision to its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR). See the Report of the 51st meeting of the CDDH (27 February – 2 March 2001), document CDDH (2001) 15, § 11. In September 2002, the Secretariat of the CDDH prepared a memorandum containing a comparative overview of national practice with respect to effective remedies and mechanisms for reparation in cases of violation of the Convention by national authorities. This document shows that in various member States, legislative activities or discussions on this matter were in progress (See document "Implementation of the European Convention on Human Rights– Effective remedies at national level", DH-PR (2002) 001rev, 10 September 2002).

European Commission for the Efficiency of Justice (CEPEJ) with the aim to address the major problems of the judicial systems of member States and define ways to improve their efficiency and functioning.[61] In 2004, the CEPEJ set out a Framework Programme entitled "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe",[62] which recommended lines of action aimed at realising this objective. The Task Force on timeframes of proceedings was charged with the task of translating these lines of action into concrete measures enabling them to improve procedure timeframes in the member States.[63]

47. The ever-increasing number of applications to the European Court of Human Rights in connection with unreasonably long proceedings cast doubts as to the effectiveness of the existing national remedies. In May 2004, the Committee adopted its Recommendation on the improvement of domestic remedies (hereinafter: "the Recommendation").[64] The Recommendation recalled that, in addition to the obligation of ascertaining the existence of effective national remedies in the light of the case-law of the Court, member States have the general obligation to *solve the problems underlying violations found* (emphasis added). The member states are thus called to, in particular:

- "review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court; and

- pay particular attention /…/ to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings".

48. Further to this Recommendation, the Steering Committee for Human Rights (CDDH)[65] decided to resume the study started in 2001, on means of assisting member States in implementation of the Convention in domestic law and practice, in the aim of producing a report on the existing national practices in the field of effective remedies.[66] The preparation of the report is in progress.[67]

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61 See para. 4 above.

62 See CEPEJ (2004) 19 Rev.

63 See «Terms of reference of the Working Group on evaluation of judicial systems (CEPEJ-GT-EVAL)", adopted by the CEPEJ-GT-2004.

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

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

66 See document: «Improvement of domestic remedies. Follow-up to the implementation of the Recommendation Rec (2004)6 – Information received by the Secretariat», DH-PR (2004) 012, 6 October 2004.

67 The information transmitted by the Secretariat of the DH-PR has been used to fill in questionnaires with respect to the following countries : Austria, the Czech Republic, Malta, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

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

A. In general

49. The right to a hearing within a reasonable time is today enshrined in the constitutions[68] and/or legislation[69] of almost all Council of Europe member States. It may also be provided for through direct application of the ECHR in domestic legal systems.[70]

50. While in a number of countries there is no general requirement with respect to the reasonableness of the length of judicial proceedings, provision is made for a maximum time-limit for examining and deciding a case.[71]

51. Generally speaking, in the majority of the Council of Europe member States there is a remedy allowing an individual to complain about the excessive length of proceedings.[72] The remedy may be constituted by a *general action*[73] (for example: an action for breach of a constitutional/conventional right, a civil action for tort against the State) or a *specific remedy* related to the breach of the reasonable time requirement[74] (request to accelerate the proceedings in question, action against a State for damage caused by non-compliance with the obligation to

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

69 Hungary, Italy, Lithuania, Netherlands, Romania, Serbia and Montenegro, San Marino, Sweden, the Former Yugoslav Republic of Macedonia, United Kingdom.

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

71 For example in Armenia (the Code of Civil Procedure provides for a fixed timeline for examining and making decision on cases), Azerbaijan (a fixed timeline for examination of cases is established), Georgia (the Code of Criminal Procedure provides for terms of detention, the Code of Civil Procedure provides that the 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), Norway, Ukraine (the Code of Criminal Procedure provides for terms of pre-trial investigation).

72 Save for Armenia, Azerbaijan, Greece, Romania.

73 Albania, France, Hungary, Luxembourg, Malta.

74 Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia (only in case of delays in administrative proceedings), Finland, Georgia (a disciplinary action may be initiated in case of an unreasonable delay of examination of a case), Italy, Lithuania, Norway, the Former Yugoslav Republic of Macedonia.

give a decision without a reasonable delay, action aimed at mitigation of sentence in criminal proceedings). In a number of countries both types of remedies may be applicable.[75]

52. Such a remedy (general or specific) may be envisaged in the legislation,[76] or in the Constitution when it takes the form of a constitutional complaint before the Constitutional Court.[77]

53. A number of countries have recently introduced a specific remedy to deal with unreasonable length of proceedings, after having faced with the limits of the ordinary legal remedies and being urged by the findings of the European Court of Human Rights.[78] Some of the countries are currently preparing legislation aimed at introducing of a specific remedy or improvement of the existing one.[79]

54. The precise scope of application and the specific procedural modalities of the different remedies in question vary greatly from one country to the other. They will therefore not be dealt with in detail in this study. The analysis will be limited to a general overview of the domestic remedies currently existing in the Council of Europe member States with respect to allegations of unreasonable delay in administrative, civil and criminal proceedings,[80] on the basis of the information available,[81] with a view to identifying the main kinds of remedies available and their main features.

55. The remedies available for allegations of excessive length of proceedings may be divided into different categories.

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75 Austria, Andorra, Belgium, Bosnia and Herzegovina, the Czech Republic, Denmark, Germany, the Netherlands, Poland, Portugal, Russian Federation, Serbia and Montenegro (the specific remedy is a measure of internal control and has an administrative character), Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom.

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

77 Albania, Bosnia and Herzegovina, Croatia, the Czech Republic, Cyprus, Germany, Malta, Slovakia, Slovenia and Spain.

78 Croatia, the Czech republic, France (by means of case law), Italy (by means of legislation), Poland, Portugal and Slovakia.

79 For example the Czech Republic (The draft law modifying the Law No. 82/1998 has been submitted to the Parliament. The draft law provides an adequate compensation for the applicants suffering from undue delays during the proceedings. The draft law will be applied retroactively: if the applicant has his length of proceedings case pending before the European Court, he has the possibility of asking for compensation within one year from the entry into force of the draft law), Hungary (see document CM/Del/OJ/DH (2005) 922, Vol. I, p. 18), Greece (ibidem.), Ukraine. According to the information provided by Mr Francesco Crisafulli, Government Co-Agent of Italy during the Workshop on the improvement of domestic remedies with particular emphasis on cases of unreasonable length of proceedings, held at the initiative of the Polish Chairmanship of the Council of Europe on 28 April 2005, Italy is also working on the improvement of the existing remedies.

80 Enforcement proceedings will not be treated.

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

- *Preventive* or *acceleratory* remedies are designed to expedite the proceedings in order to prevent them from becoming excessively lengthy, while *compensatory* remedies provide the individual with redress for delays that have already occurred.

- Certain remedies are *available for both pending and terminated proceedings*, and others are *only available for pending proceedings*. Indeed, when the proceedings are over, acceleratory remedies are clearly of no use, and the remedy may only consist in compensation for the damage resulting from the allegedly excessive duration of proceedings[82] or in a disciplinary action against the dilatory authority.[83] However, general measures to prevent violation of the reasonable-time requirement in the future may also provide a form of just satisfaction to the applicant.

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

56. These categories, however, are not clear-cut. It is difficult to say, for example, whether a disciplinary action against the dilatory judge is only a preventive remedy or if it is also compensatory (as the applicant may see it).[84] Further, these categories often overlap with each other.

57. It should be noted, that in most countries, different forms of redress coexist and may be applied cumulatively.[85]

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

B. State of Art

1. Remedies available for administrative/civil proceedings

59. In most of the Council of Europe member States, preventive remedies are available for administrative and civil proceedings.

60. A request for acceleration may be lodged:

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82 Such remedy is available in practice of most countries examined save for *Croatia*, where the compensation for damage resulting from excessive duration of proceedings can only be claimed for pending proceedings.

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

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

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

- With a superior authority/court either directly[86] or through the court dealing with the proceedings. In the latter case the court concerned will transmit it to the competent court/authority,[87]
- with the dilatory court.[88]

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

- fixing of an appropriate time-limit for the relevant authority to
a) take a particular procedural step (holding a hearing, obtaining an expert's report, issuing another necessary order or taking an act which the concerned authority has failed to take)[89]
b) decide on the merits of the case or terminate the proceedings,[90] or

- transferring jurisdiction to a different court or a superior authority.[91]

62. In most countries, remedies aimed at compensation co-exist with acceleratory ones.[92] In a few countries, however, compensation for damage remains - thus far - the *only* possible remedy an applicant can claim in respect of delay of proceedings.[93]

63. Compensation can be ordered either by the same authority which decides on the reasonableness of the length of the proceedings[94] or in separate proceedings.[95] It should be noted that in a number of States, compensation is awarded only for non-material damage, in particular in cases where the proceedings are still pending.[96]

64. The ground for granting reparation may be:

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86 Bulgaria, Estonia, Switzerland.

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

88 Denmark, Lithuania, Netherlands. Norway, Spain, Serbia and Montenegro.

89 Austria, Cyprus, the Czech Republic, Denmark, Estonia (administrative proceedings), Lithuania, Malta, Poland, Slovakia and Switzerland.

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

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

92 Cyprus, the Czech Republic, Finland, Lithuania, Poland, Portugal (acceleratory measures are used only in criminal proceedings) , Serbia and Montenegro, Slovakia, Slovenia, Spain.

93 France, Hungary (in theory), Italy and the Netherlands (both in civil and administrative procedures, save for administrative proceedings where a punitive sanction is at issue; there the sanction may be lowered by way of compensation).

94 Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Italy, Malta, Netherlands (in administrative proceedings concerning a punitive sanction); Poland, Slovakia, Slovenia

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

96 In Croatia, Poland and Slovakia, pecuniary damages resulting from suffering due to excessively lengthy proceedings can also be awarded. When proceedings are terminated and it can be established that the applicant has been delayed in the enjoyment of certain rights, pecuniary damages may be also given in France, Italy.

- a fault of a judge or another officer of the court,[97]
- the heavy workload of the tribunals,[98]
- 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,[99]
- an unlawful act or omission committed in the course of proceedings,[100]
- a malfunctioning of justice or denial of justice,[101] and
- a violation of the right to a hearing within a reasonable time.[102]

65. Several high and supreme jurisdictions of member states have expressly declared that a violation of the reasonable time requirement as guaranteed by Article 6 § 1 of the Convention is to be treated as a "fault", an "unlawful act", a "malfunctioning of administration of justice", a "denial of justice", or an "irregularity in the conduct of proceedings" that engages the responsibility of the State and obliges it to repair the ensuing damage.[103]

66. As to the amount of pecuniary compensation to which a victim of the excessive length of proceedings may be entitled, its determination generally remains within the discretion of the jurisdiction concerned. Taking into account the fact that when assessing the reasonableness of the duration of proceedings in a case before them, the competent authorities of the member States generally refer to criteria applied by the Court with respect to Article 6 §1 of the Convention, it might be assumed that this will also be the case when they are called to determine the amount of compensation. Yet, such assumption is not certain.[104] In fact, only a few rapporteurs specifically declared that in determining the amount of compensation, a competent authority refers to/relies on criteria used by the Court.[105]

67. In certain administrative proceedings, in the event that a public authority fails to take a decision within a prescribed time-limit, it shall be deemed to have made a decision to the applicant's favour.[106]

68. Finally, the possibility for a party in judicial proceedings to bring a disciplinary action against a dilatory authority is mentioned by a number of States as a remedy in respect of excessive delays in the proceedings.[107]

2. Remedies available for criminal proceedings

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97 Lithuania, Netherlands.

98 Belgium.

99 The Czech Republic and Slovakia.

100 Netherlands, Poland, Portugal, Sweden.

101 France, Spain.

102 Croatia, Italy, Lithuania, Russian Federation, Switzerland.

103 Belgium, Czech Republic, France, Portugal, Poland.

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

105 Denmark, Lithuania and Slovakia.

106 Belgium, Italy, Sweden.

107 Bulgaria, Georgia, Hungary, Island, Italy, Latvia, Lithuania, Russian Federation, Sweden, Serbia and Montenegro, Slovenia and Ukraine.

69. In most cases, the above-mentioned remedies described for civil and administrative proceedings are not exclusive of these jurisdictions, but may also be applicable in criminal proceedings[108]. Therefore, general constitutional or legal actions aiming at the accelerating of proceedings, the reparation of damages or disciplinary action against the judge may also derive from an alleged breach of the reasonable length of proceedings in a criminal case.[109]

70. A characteristic of criminal proceedings is that, in general, the trial phase is preceded by an investigative phase. Depending on the different systems, the investigation might be entrusted to a court or body[110] other than the one which must decide on the merits of the case. In this sense, some countries provide for specific preventive remedies which aim at speeding up investigative or pre-trial proceedings by allowing for complaints or requests for acceleration to be lodged with the superior prosecuting or judicial authority.[111]

71. Measures taken in response to the above mentioned requests range from a dismissal of the application if the delays are justifiable, an investigation into the causes of the alleged delays or a request for follow-up reports, to the fixing of a time-limit to conclude the investigative phase, hierarchical instructions between Prosecutors including on how to handle the case, or the adoption of disciplinary measures. Specific preventive remedies related to the trial phase appear to be less common.[112]

72. As to compensatory remedies, in criminal proceedings there is a specific form of redress by means of which the excessive delays incurred during the proceedings are taken into account, *ex officio* or at the request of a party, in the assessment of the appropriate punishment. In some countries this remedy has been incorporated into legislation[113] whereas in others it appears to have been set out or developed through case-law.[114]

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108 Unless it results otherwise from the specific scope or nature of the concrete remedy, for example the effect of positive silence is exclusive to administrative proceedings.

109 Therefore the fact that specific information regarding criminal proceedings was only provided for 13 countries -Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Germany, Netherlands, Portugal, Sweden, Switzerland and the United Kingdom - does not imply that generic remedies are not applicable in such cases.

110 For example investigative judges, prosecution services, police.

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

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

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

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

73. A remedy of this kind is always of a compensatory character, for its effects necessarily derive from the acknowledgement that a delay has already occurred, even if in some countries such effects can be anticipated by discontinuing proceedings on the grounds of delays before the case is brought to the court that decides on its merits.[115]

74. In the majority of cases, however, the Court will consider the issue of the length of proceedings together with the decision on the merits. If a violation of the reasonable time requirement is found to have occurred, the court may decide to give redress, (namely) by means of:

- a reduction or mitigation of the sentence[116]
- a mere declaration of guilt[117]
- an acquittal[118]
- a decision to stay a prosecution or discontinue proceedings[119]

75. Finally, this remedy of individual redress may also be applied in administrative proceedings, where a punitive sanction is at stake so that the recognition of an excessive duration of proceedings may result in its mitigation.[120]

V. The Strasbourg Court's assessment of existing national remedies

76. Since the requirement of Article 13 constitutes an obligation of result, the Contracting States have some discretion as to t*he manner in which they provide the relief* required.[121] The Court, respecting the margin of appreciation given to the Contracting States, has refrained from indicating a specific form or type of an "effective remedy" with respect to an alleged violation of

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

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

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

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

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

120 For example Austria, the Netherlands

121 See for example, *Kaya v. Turkey*, judgment of 19/02/1998, ECHR 1998-I, §106, *Chalal v. the UK, cit.*, §145.

the right to a hearing within a reasonable time. It has nevertheless assessed the remedies available in the Contracting States in the light of the generally established "effectiveness" criteria.[122]

77. It should be noted that although States often refer to particular types of domestic remedies as being available for allegations of the excessive length of proceedings, according to the Court's assessments a significant number of these remedies can not be considered as effective in practice.[123]

A. Acceleratory remedies

Austria

78. As mentioned previously, the Austrian legal system provides for several options as regards acceleratory remedies. In this respect the Court held that the transfer of jurisdiction to the superior authority in case of the delay of the competent authority to make a decision (as provided for in Section 73 of the General Administrative Procedure Act) constitutes an effective remedy to be used for the alleged breach of a reasonable time requirement with respect to administrative proceedings,[124] although not in every case.[125]

79. In Holzinger v. Austria the Court found that a request for the superior court to impose an appropriate time-limit for the competent court to take particular procedural steps (under Section

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

[123] Thus in Bulgaria: *Djangozov v. Bulgaria, cit.*, *Dimitrov v. Bulgaria*, 23 September 2004 and *Rachevi v. Bulgaria, cit.* (concerning civil proceedings) and *Osmanov and Yuseinov v. Bulgaria*, judgment of 23/09/2004 and *Mitev v. Bulgaria*, judgment of 22/12/2004 (concerning criminal proceedings); the Czech Republic: *Dostal v. Czech Republic*, judgment of 25/05/2004, *Bartl v. the Czech Republic*, judgment of 22/06/2004, and *Konečny v. the Czech Republic*, judgment of 26/10/2004 (concerning civil proceedings), *Hartman v. the Czech Republic*, *cit*., and *Hradecky v. the Czech Republic*, judgment of 5/10/2004; Finland: *Kangasluoma v. Finland, cit.*, *Eskelinen v. Finland, cit.* (concerning criminal proceedings), Greece: *Lalousi-Kotsovos v. Greece*, judgment of 19/05/2004, *Nastos v. Greece*, *Theodoropoulos and Others v. Greece*, judgment of 2/12/2004 (concerning administrative proceedings), and also *Konti-Arvaniti v. Greece*, judgment of 10/04/2003; Hungary (Erdos v. Hungary, decision of 3/05/2001, Timar v. Hungary, decision of 19/03/2002 and Simko v. Hungary, decision of 3/12/2002), Ireland: *Doran v. Ireland, cit.*, *O'Reilly and Others v. Ireland*, judgment of 29/06/2004 (concerning judicial review proceedings); the Netherlands: *Göcer v. the Netherlands*, judgment of 3/10/2002; Russian Federation: *Kormacheva v. Russian Federation, cit.*, *Plaksin v. Russian Federation, cit.*, *Yemanakova v. Russian Federation*, judgment of 23/09/2003 (concerning civil proceedings), and *Klyakhin v. Russian Federation*, judgment 30/11/2004 (concerning criminal proceedings), Slovenia:*BLukenda v. Slovenia*, no. 23032/02, 6 October 2005, B*elinger v. Slovenia*, decision of 2/10/2001) and Ukraine: *Merit v. Ukraine*, judgment of 30/10/2004 (concerning criminal proceedings).

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

[125] *Kern v. Austria*, judgement of 24/02/2005.

91 of the Austrian Courts Act) can, in principle, constitute an effective and sufficient remedy which has to be used in respect of complaints about the length of court proceedings.[126]

Portugal

80. A similar attitude is contained in the Court's judgment in Tomé Mota v. Portugal with respect to criminal proceedings. The Court held that an interlocutory application by which the Judicial Service Commission or the Attorney-General is requested to fix a time-limit for taking a procedural measure which the competent court or public prosecutor have failed to take as envisaged in Articles 108 and 109 of the Portuguese Code of Criminal Procedure constitutes an effective remedy to be exhausted by an applicant.

Poland

81. The Court considered a number of cases concerning the effectiveness of the Polish Law of 17 June 2004 ("the 2004 Act", according to which if the superior court finds a violation of Article 6 of the Convention, it instructs the lower court to take measures to accelerate the proceedings and/or awards the complainant compensation), which Poland introduced as a remedy for excessive length of proceedings cases in response to judgments of the ECHR. In the leading decisions of *Michalak v. Poland*, (dec.), no. 24549/03, 1 March 2005 and *Charzynski v. Poland*, (dec.) no. 15212/03, 1 March 2005, the Court held that applicants were required to exhaust this remedy before bringing their case to Strasbourg. This applied even to applications registered with the Court before the entry into force of the 2004 Act given that it explicitly allowed complaints to be lodged by those who had already brought a case to Strasbourg, provided that the Court had not already adopted a decision on the admissibility of the case (*Charzynski* §§ 20, 36 et seq.). The Court further stated that the 2004 Act was capable of preventing alleged violations of the right to a hearing within a reasonable time and of providing adequate redress for any violation that had already occurred (§ 39).

B. Remedies allowing for taking into account the excessive delays in the assessment of punishment

Denmark

82. In Ohlen v. Denmark,[127] the Court found that the redress afforded at domestic level (reduction of sentence) for the violation of the applicant's right to trial within reasonable time was adequate and sufficient.

Germany

83. The mechanism established in German case-law, whereby redress is given by taking the breach of the reasonable time requirement into account when determining the sentence, was considered as being "capable of proving suitable". However, the Court also noted that the national jurisdiction must clearly acknowledge that a specific measure of redress that has

[126] *Holzinger v. Austria*, no. 23459/94, 30.01.01, §§ 24-25. 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.

[127] Ohlen v. Denmark, judgement of 24/05/2005.

been taken, is directly linked with the over-stepping of the "reasonable time" in the meaning of Article 6 § 1 of the Convention.[128]

Norway

84. The Court held that "the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner".[129] Thus, the delay element being a direct factor for making decision on mitigation of sentence, the Court considered the remedy as being effective.

C. Remedies aimed at pecuniary compensation

Portugal

85. In its decision in the case of Paulino Tomás v. Portugal,[130] the Court ruled that an action in tort against the state for excessive length of civil proceedings, based on Legislative Decree 48051 of 21 November 1967, could be said to constitute an effective remedy within the meaning of Article 35 of the Convention only after the publication of the judgment Pires Nino in which the administrative court held that the excessive length of proceedings could constitute grounds for the State responsibility.

France

86. The Court found, in Giummarra and others v. France, that national case law indicated the existence of an adequate remedy in respect of completed civil proceedings. Thus Article L.781-1 of the Code of Judicial Organisation as interpreted in the case-law was considered an effective remedy for the purposes of Article 34.1, but only for those applications that were lodged with the Court before 20 September 1999.[131]

Italy

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

88. More recently, the amount of damages awarded by the Italian courts has proven in some cases to be inadequate and thus, the remedy has been considered ineffective (Scordino and ors. (no. 1) v. Italy, (decision of 27 March 2003). This defect has been corrected by the Italian Court of Cassation in a judgment of January 2004, as noted by the Court in Di Sante c. Italie,

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128 *Eckle v. Germany*, judgment of 15/07/1982, § 94.

129 Beck v. Norway, judgment of 26/09/2001.

130 *Tomás v. Portugal*, no. 58698/00, decision of 27 March 2003,

131 *Giummarra v. France*, judgment12/06/2000; Broca *Texier-Micault v. France* judgment of 21 October 2003 (with respect to administrative proceedings).

no. 56079/00, decision of 24 June 2004. The Court has taken the view that this new development in national law should have been widely known by 26 July 2004, which becomes the key date for the exhaustion of domestic remedies in future applications.

89. Firstly, the Grand Chamber has delivered nine judgments against Italy concerning the effectiveness of the Pinto Law which had been introduced in Italy to provide a remedy for length of proceedings in cases where the ECHR was likely to find a violation of Article 6 § 1 of the Convention.132 The judgments (in particular the lead judgment of Scordino) outline the principles which the Court will apply in assessing the effectiveness of domestic remedies. In assessing whether a remedy was appropriate and sufficient, relevant factors included the time taken to receive compensation once an award had been made; the amount awarded by the domestic court as compensation as compared to what the ECHR would have awarded; whether the remedy allowed for original proceedings to be expedited or was simply compensatory; and the nature of the procedural costs to the applicant in bringing the domestic proceedings. These factors when taken as whole meant 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.

90. 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). In addition in all these cases, save for *Scordino,* the Court found it unacceptable that the applicants had waited more than six months to receive the compensation awarded by the national courts.

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

91. In assessing the effectiveness of various domestic remedies in respect of the excessive length of proceedings, the Strasbourg Court has elaborated a number of criteria and principles. In particular, the Court has recently given certain explicit indications as to the characteristics which an effective domestic remedy in length-of-proceedings cases should have. It did so "in so far as the parties appear to link the issue of victim status to the more general question of effectiveness of the remedy and seek guidelines on affording the most effective domestic remedies possible". [133]

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

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132 ECtHR, *Scordino v. Italy,* [GC], cit.; *Giuseppina and Orestina Procaccini v. Italy* [GC] judgment of 29 March 2006; *Ernestina Zullo v. Italy* [GC] judgment of 29 March 2006; *Cocchiarella v.* Italy judgment of 19 March 2006; *Musci v. Italy* [GC] judgment of 29 March 2006; *Apicella v. Italy* [GC], judgment of 29 March 2006; *Giuseppe Mostacciuolo v. Italy (no. 1)* [GC] judgment of 29 March 2006; *Giuseppe Mostacciuolo v. Italy (no. 2)* [GC], judgment of 29 March 2006; *Riccardi Pizzati v. Italy* [GC] judgment of 29 March 2006.

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

whether such reparation would be possible, wholly or in part, under the applicable national legislation."[134]

93. The following are the principles which can be derived to-date from the case-law of the Strasbourg Court.

A. As regards the kind of remedy

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

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

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

97. While stating expressly that such acceleratory remedy would be "the most effective solution", the Court has refrained from indicating that the provision of such a remedy is *required* by Article 13 of the Convention. This reluctance is, no doubt, motivated by the need to afford the Contracting States a certain discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision.[138]

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

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134 CDL-AD(2002)34, §§ 64-71.

135 See para. 9 above.

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

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

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

139 ECtHR, *Kudla v. Poland*, cit. § 158; *Mifsud v. France*, decision of 11/09/2002, Reports 2002-VIII, § 17, *Djangozov v. Bulgaria, cit*., § 47, *Paulino Tomas v. Portugal*, Decision of 22/05/2003, Reports 2003-VIII, p. 9.

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

100. Where "the proceedings have clearly already been excessively long", mere prevention may not be adequate.[141] In this case, other compensatory remedies may be appropriate.

101. Indeed, the Court indicates that a combination of two types of remedy, one designed to expedite the proceedings and the other to afford compensation, may appear as the best solution.[142]

102. A compensatory remedy may take the form of financial reparation of the damage (pecuniary and non-pecuniary: see para. Below) suffered.

103. Other kinds of "compensatory" remedy may constitute an appropriate redress for the violation of the reasonable time requirement and an "effective remedy" in the sense of Article 13. This is true, for example, for a discontinuance of the prosecution,[143] a mitigation of sentence,[144] exemption from paying legal costs,[145] an acquittal,[146] the suspension of the sentence, the low-fixing of a fine and the non-deprivation of civil and political rights[147] (possibly more than one form of redress being applied at the same time). These measures must be taken in an express and measurable manner.[148]

104. The quashing of a ruling on a procedural issue (including the non respect of the relevant time-limit) following complaints by the applicant does not amount to an appropriate redress to the extent that it is irrelevant for and incapable of, expediting the proceedings or providing the applicant with redress for the delays occurred.[149]

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

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

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

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

144 ECtHR, *Eckle v. Germany*, cit., § 66-67. See also, *Van Laak v. Netherlands*, decision of 31/03/1993, D.R., 74 p. 156; *Hozee v. Netherlands*, judgment of 22/05/1998, § 54; *Beck v. Norway*, judgment of 26 September 2001, ECHR 404, § 27; *Ohlen v. Denmark* judgment of 24 February 2005, § 27.

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

146 Eur. Commission on Human Rights, *Byrn v. Denmark, report* of 16/02/1993, § 21.

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

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

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

105. The favourable outcome of the proceedings as such cannot be considered to constitute adequate redress for their length.[150]

106. A disciplinary action against the dilatory judge may amount to an effective remedy against the length of the proceedings in terms of Article 13 of the Convention only if it has a "direct and immediate consequence for the proceedings which have given rise to the complaint". This entails that the disciplinary action must present certain specific features. There must be an obligation for the supervisory organ to take up the matter with the dilatory judge, if a complaint is lodged. The applicant must be a party to the proceedings. The effect of any decision taken must not merely concern the personal position of the responsible judge.[151]

107. Whatever form of redress, it must be coupled with the acknowledgement of the occurred violation. Indeed, the national jurisdiction must clearly acknowledge that a specific measure has been taken with the aim of repairing the over-stepping of the "reasonable time" in the meaning of Article 6 § 1 of the Convention.[152]

108. Such acknowledgement is an indispensable, though not a sufficient,[153] component of any effective remedy set up under Articles 6 and 13 of the Convention.[154]

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

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

B. As regards the legal basis for the remedy

110. Article 13 does not require the provision of a *specific* remedy in respect of the excessive length of proceedings,[155] a general constitutional or legal action, such as an action to establish non-contractual liability on the part of the State, may be sufficient. Such action, however, must be effective both in law and in practice (see below, paras. ..) .

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

151 ECtHR, *Kormacheva v. Russia* judgment of 29 January 2004, § 62.

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

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

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

155 ECtHR, *A.M. Paulino Tomas v. Portugal*, decision of 22 May 2003; *Broca and Texier-Micault v. France* judgment of 21 October 2003, § 18.

111. In the absence of a specific legal basis, the availability of a remedy and its scope of application must be clearly set out and confirmed or complemented by the practice of the competent organs and/or through appropriate case-law.[156]

112. Whatever measure may be ordered by a competent authority, a domestic remedy in respect of unreasonable delays will conform to the requirements of the Convention only when it has acquired a sufficient legal certainty, in theory and in practice, to enable an applicant to use it at the date on which an application is lodged with the Court.[157]

113. If the remedy is set up through legislation, it will acquire "a sufficient level of certainty" on the date of entry into force, independently of the existence of any case-law confirming its applicability, provided that the wording of the legal text in question is clear and indicates that it is specifically designed to address the issue of the excessive length of proceedings before the domestic authorities.[158] Mere doubts as to the effective functioning of a newly created statutory remedy does not dispense the applicant from having recourse to it.[159]

114. If the effectiveness of a general remedy in respect of claims of unreasonable duration of proceedings is acquired or proved after its entry into force through a specific case-law, a certain time after the judgment concerned may be necessary before the sufficient level of certainty is acquired. Such length of time may vary.[160]

115. In respect of a remedy consisting in providing financial compensation for the excessive length of proceedings, the basis for the State's liability to pay damages and how such damages would be calculated or the level of damages which could be expected must be clear.[161]

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

157 See, among many others, the *Giummarra and Others v. France* judgment (*cit.*), where the Court has held that having regard to the developments in the case-law, the possibility to request reparation of damages resulting from breach of the reasonable time requirement was an effective remedy for the purposes of Article 34§1, *only for those applications that are lodged with the Court before 20 September 1999* (emphasis added)*)*. The reference to the date on which the application was lodged is subject to exceptions which may be justified by the particular circumstances of each case (see *Baumann v. France*, judgment of 22/05/2001, Reports 2001-V, §47) or when a specific remedy was clearly designed to address, *inter alia*, the problem of the unreasonable delay of proceedings, as was the case in Croatia, Italy and Slovakia (see, for example, *Giacometti and Others v. Italy*, decision of 8/11/2001, Reports 2001/XII; *Nogolica v. Croatia*, decision of 5/09/2002 and *Andrasik v. Slovakia*, cit.).

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

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

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

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

C. As regards the characteristics of the remedial procedure

116. A remedy in respect of the excessive length of judicial proceedings must be effective, sufficient and accessible.[162]

117. A national "complaint about delays" must not be merely theoretical: there must exist sufficient case-law proving that the application can actually result in the acceleration of a procedure or in adequate redress.[163]

118. In the absence of specific case-law, a remedy may be considered "effective" when the wording of the legislation in question clearly indicates that it is specifically designed to address the issue of the excessive length of proceedings before the domestic authorities.[164]

119. The possibility to apply to a higher authority for speeding-up proceedings (imposing an appropriate time-limit for the taking of necessary procedural steps or putting forward a hearing) will not be considered effective in the absence of a specific procedure, when the result of such application depends on the *discretion* of the authority concerned and where the applicant is not given the right to compel the State to exercise its supervisory powers.[165]

120. The efficiency and sufficiency requirements entail in particular that the duration of the remedial procedure needs to be reasonably short, and indeed would require "special attention" on the part of the competent authorities in order to avoid infringements of Article 6 in this respect (this provision would apply to the remedial procedure).[166] An unreasonable duration of the remedial procedure may amount to a disproportionate hurdle to the effective exercise by an applicant of his or her right to individual application within the meaning of Article 34 of the Convention and exempt an individual from the obligation to exhaust it.[167]

121. The duration of the phase of enforcement of decisions on the reasonable time requirement is crucial : the payment of the awarded compensation must be made within six months from the date when the relevant domestic decision becomes enforceable.[168] Indeed, in order to be

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

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

164 ECtHR, *Slavicek v. Croatia*, *cit.*, p.3. For the argument *a contrario*, see *Ohlen v. Denmark*, decision of 6/03/2003, where the Court considered that «*the wording of the invoked sections of the Act does not provide lucidity as to speculation on the effectiveness of such an action in a case like the present one*», p. 8.

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

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

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

168 ECtHR, *Scordino v. Italy*, cit., § 198. The Court underlined that under the Pinto law such decisions are immediately enforceable. In a series of Italian cases, the Court found the duration of the phase of enforcement of the decisions finding a breach of the reasonable time requirement to be unacceptable and considered was found by the Strasbourg Court to be unacceptable; this factor, coupled with the excessive legal fees and the insufficient level of

effective, a compensatory remedy must be accompanied by adequate budgetary provision so that effect can be given to decisions of the courts of appeal awarding compensation within six months of their being deposited with the registry (or from the date when they become enforceable).[169]

122. With regard to the concern to have a remedy affording compensation that complies with the reasonable-time requirement, it may well be that the procedural rules are not exactly the same as for ordinary applications for damages. It is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure will best meet the compulsory criterion of "effectiveness", provided that the procedure conforms to the principles of fairness guaranteed by Article 6 of the Convention.[170]

123. Special rules concerning legal costs (particularly fixed expenses such as the fees of registration of judicial decisions) in the remedial procedure (lower than in ordinary proceedings) would be appropriate in order to avoid that excessive costs may constitute an unreasonable restriction on the right to lodge such claims.[171]

124. Reparation refers to both pecuniary and non-pecuniary damage. The existence and quantum of the pecuniary damage are to be determined by the domestic courts. As for the non-pecuniary damage, there is a strong but rebuttable assumption that it will be occasioned by excessively lengthy proceedings It may however be minimal or even non existent: domestic courts have to provide sufficient reasons to prove such a case.[172]

125. The sufficiency of the action may depend on the level of compensation. The determination of non-pecuniary damage for excessive length of proceedings "must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Strasbourg Court. Some divergence is permissible, within reason".[173]

126. A compensation granted that is lower than the amount usually awarded for comparable delays by the Court itself may nevertheless be considered "adequate" in the light of the specific circumstances of the case, the standard of living in the State concerned, the promptness of the finding and award by the national court as well as the promptness of the payment within the

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compensation, led the Court to consider that the redress afforded in domestic law was insufficient and the applicants had not lost their victim status (ECtHR, *Cocchiarella v. Italy* judgment, cit., §§ 99-100 (seven months plus more than three years to obtain enforcement); *Riccardi Pizzati v. Italy* judgment, cit., §§ 98-99 (fourteen months plus 22 months to obtain enforcement); *Musci v. Italy* judgment, cit, §§ 100-101 (eight months plus 23 to obtain enforcement); *Giuseppe Mustacciuolo v. Italy* (no. 1) judgment, cit., §§ 98-99 (eight months plus fifteen to obtain enforcement); *Procaccini v. Italy* judgment, cit., §§ 97-98 (eight months plus more than three years to obtain compensation); *Zullo Ernestina v. Italy* judgment, cit., §§ 101-102 (seven months plus 23 Months to obtain enforcement) *Apicella v. Italy* judgment, cit., §§ 97-98 (seven months plus eleven to obtain enforcement); *Giuseppe Mustacciuolo v. Italy* (no. 2) judgment, cit., §§ 97-98 (nine months plus fourteen months to obtain enforcement).

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

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

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

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

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

national legal system.[174] A lower level of compensation awarded by a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, is acceptable, provided that it is not unreasonable and that the relevant decisions are consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly.[175]

127. The remedy must be available both for proceedings that have already ended and for those that are still pending.[176]

VII. The Venice Commission's assessment of the effectiveness of domestic remedies in respect of excessive length of proceedings

128. The Venice Commission would underline in the first place that, while it is conscious that the Strasbourg Court does not demand this, it considers that the existence of a specific remedy contained in a piece of legislation would help Council of Europe member States address the issue of providing an effective remedy to the excessive length of proceedings in the most effective and comprehensive manner.

A. As concerns the kind of remedy

129. The Venice Commission has previously expressed its view that, in general, in case of breach of one of the fundamental rights, concrete reparation is preferable to the award of pecuniary compensation.[177]

130. In the case of excessive length of proceedings, reparation is certainly necessary, essential even, if the proceedings have ended or if they are still pending but a breach of the reasonable time requirement has occurred, *in relation to that breach*. However, the right to proceedings within a reasonable time is, by its very nature, a *continuous* one, as much as its violation is; it develops with the development of the proceedings themselves: undue delays can occur at all times until the proceedings are over: new breaches of Article 6 of the Convention are always possible as long as the proceedings are pending.

131. Preventing and putting an end to undue delays is therefore of the utmost importance, and continues to be essential even after the past proceedings have clearly already been excessively long.

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

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

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

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

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

133. CEPEJ is of the same view, when stating that "the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process and provide only one element *a posteriori* in the event of violation proven instead of trying to find a solution for the fundamental problem of excessive delays.[178]

134. The Committee of Ministers shows a clear preference for acceleratory remedies.[179]

135. The Court itself, while leaving the choice between compensatory and acceleratory remedies, expresses its preference for the latter and indeed seems to encourage States to adopt them, by granting certain "privileges", for example by according that lower damages may be awarded by those States which have introduced "a number of remedies, one of which is designed to expedite proceedings and one to afford compensation" (see para. 126 above).

136. The Venice Commission wishes in addition to underline as follows. Acceleratory remedies in the form of a request to take the so far delayed procedural step are to be seen as *preventive*, not compensatory. They do not amount to a *restitutio in integrum* : when an undue delay has taken place, the possibility of putting an end to such delay does not represent a reparation in kind. The individual's entitlement to not suffering from such excessive delay derives from Article 6 § 1 as such, not from the finding of a breach of that provision. If an undue delay has taken place, as long as the proceedings are still pending a *restitutio in integrum* will be possible in the following forms:

- If the proceedings are pending : if they are criminal, by way of mitigation of sentence or similar (see para. 74); if they are civil, administrative or criminal, by way of *fast-tracking the case*. This means that the threshold of reasonableness in the remainder of the proceedings will be reduced, the case will be dealt with more quickly than an ordinary one: in this manner, the undue delay will be caught up (of course not arithmetically) and the global length of the proceedings will be "reasonable" within the meaning of Article 6 § 1.

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

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

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

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

179 See M. Lobov, CDL(2006)035, p. 7.

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

140. In conclusion, the Venice Commission considers that, in order to comply fully with the requirements of Article 13 of the Convention in relation to the reasonable time requirement in Article 6 §1 of the Convention, Council of Europe member States should provide compensatory remedies for any breach of the reasonable time requirement which may have occurred together with acceleratory remedies designed to prevent any (further) undue delays from taking place at any moment until the proceedings are terminated.

B. As concerns the features of the proceedings

141. It is essential for any remedy in respect of excessive length of proceedings to be conducted in the swiftest possible manner.

142. Compensatory procedures should follow simplified rules, possibly not be subject to three levels of jurisdiction, and should be governed by strict time-limits.

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

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

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

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

As concerns the specific remedies

1. Civil and administrative proceedings

a. In general

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

148. The available compensatory remedies are: awarding compensation for the damages that occur as a result of lengthy proceedings (this remedy can either be the only one, or it can be coupled with the abovementioned remedies that allow the speeding up of the proceedings in question), and the possibility of fast-tracking the case (see para. 135 above).

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

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

b. Compensatory remedies

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

152. The Venice Commission, in the light of the case-law of the Strasbourg Court, considers that it would be appropriate to award damages on the objective ground of the "unreasonable" length of the procedure, without referring to personal fault or malfunctioning and without taking into consideration practical circumstances such as a heavy workload, changes in personnel etcetera. It is of evidence that in appreciating the excessive character of the length the three criteria established by the ECtHR are to be taking into consideration, namely the complexity of the case, the behaviour of the applicant and the conduct of the authorities, including the court. A

subsequent regress action could be introduced, if the fault of an authority is under question. But for the scope of the remedy, it should be based on objective responsibility of the State.

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

154. As regards disciplinary proceedings, only to a certain extent may they be considered a real "remedy" as regards undue delays. This measure could become closer to a preventive remedy if the disciplinary action may be initiated pending proceedings and lead to the "removal" of the dilatory judge. As the Court has pointed out, this measure may only be regarded as effective if it has a direct impact on the proceedings at issue (§ 106 above). Otherwise, it has a long-term, preventive, general educational effect.

155. It would however, on the other hand, raise the issue of judicial independence as well as the possibility that it could be abused by parties in the proceedings as well as by the judicial hierarchy..

156. In any case, when speaking in general of this compensatory remedy it seems we are referring only to judges, whereas the cause of delay may reside in any other professional that participate in criminal (or other) proceedings. It should be made sure that responsibility can reach all of them (ie. prosecutors, police, clerks, experts, etc).

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

c. Preventive remedies

158. Preventive remedies should be available at least in those case in which the Strasbourg Court imposes a special diligence on the part of the authorities (see para. 23 above)

159. The Commission wishes to draw attention to the Checklist of indicators for the analysis of lengths of proceedings in the justice system, prepared by CEPEJ.[180]

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

[180]http://www.coe.int/t/e/legal_affairs/legal_cooperation/operation_of_justice/efficiency_of_justice/documents/12%202005%20REV%20CEPEJ%20check%20indicators%20list%20E%20.pdf.

While monitoring the duration of proceedings, the judicial system needs to have established mechanisms for prompt identification of excessive duration (delays) and should instantly alarm responsible persons and offices with a view to remedying the situation and preventing further dysfunctions.

Clear responsibility for prevention and suppression of delays

7. Can responsibility for the identification and avoidance of undue delays be clearly determined ?

a. Is there a person or office that is in charge of monitoring the regular course of particular proceedings and locating delays with a view to reducing them, irrespective of the stage of the proceedings (first instance, appeal)?

b. Does a responsible person or office have a duty to report to the court, authority or office undue delays? Can the responsible person take steps to resolve current delays or prevent future ones and speed up the proceedings ? Are appropriate measures available against the responsible person if steps are not undertaken or results achieved?

c. Is there an office being responsible for appropriate length of judicial proceedings at the national level? Has it authority to take action where delays have been observed? (…)

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

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

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

164. In addition, the possibility to seek the intervention of such monitoring authority should be given to parties to proceedings through their lawyer. The consequence of the failure by a party, through no fault of its own, to have recourse to it should entail the forfeiture of the right to reparation for the undue delay which may have occurred as a consequence of such failure.

2. Criminal proceedings

a. In general

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

166. The Commission recalls that procedural delays acquire special relevance in criminal proceedings, because these proceedings affect basic individual rights (together with the right to a fair trial, other requirements linked to the right to defence and to personal freedom can be violated). Compensatory remedies, capable of operating only *a posteriori*, do not appear fully satisfactory, and preventive remedies should be developed.

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

b. Compensatory remedies specific to criminal proceedings

168. As regards the possibility to adopt the decision of discontinuing the case before it is brought before the court that is called to decide on the merits, this solution has the obvious advantage of anticipating the effects without the need of going through the trial and waiting for a decision on the merits of the case, so it is more "economical". In fact, a general suggestion for compensatory remedies could be the possibility that they be granted in proceedings less complicated than ordinary proceedings, independent from the cause in which delays occurs and to the decision on the merits.

169. However, due to the seriousness (substantive character) of the effects and the public and other interests which are at stake in criminal proceedings, it can also be argued that such a decision should be taken cautiously, after a proper hearing and by means of a motivated decision on the merits.

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

171. In itself, the principle of taking into account the delays in the assessment of the punishment (see para. 72 above) must receive a positive assessment as an appropriate form of redress in criminal proceedings, in particular as regards the mitigation of the sentence and a mere declaration of guilt.

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

173. Taking into consideration that the purposes of criminal law and the ultimate aim of the punishment are retribution and justice from the point of view of society, (re-)education and atonement on the part of the perpetrator, and satisfaction for the victim(s), the perspectives of a meaningful fulfilment of each of these purposes and aims after a considerable lapse of time have to be weighted against the public interest of a fair and speedy trial and the interest of the person concerned not to be subjected to a long period of uncertainty about the outcome of the prosecution instituted against him alone and not a mere application of the private justice principle "eye for an eye", these remedies appear accurate as the social scope of the punishment

can no longer be achieved and the society is no longer interested in punishing a crime committed a long time ago. Only the retributive scope of the punishment can be reached by continuing the criminal procedure.

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

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

c. General compensatory remedies also applicable to criminal proceedings

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

177. In some countries, reparation of damages appears to be only possible in case of discontinuance or acquittal, and it seems that courts are usually reluctant to provide it cumulatively even when it is formally possible (see UK). This could be unfair for it is also possible that a defendant who would have been acquitted in any case, in addition suffers from delayed proceedings to have his case solved. The procedural situation of a defendant in criminal proceedings pending a decision on his case is especially "sensitive" and might have for example repercussions in social/professional life. In case of undue delays it seems important that compensatory remedies include pecuniary redress of these possible consequences. Another general suggestion is to simplify the procedure to lodge and decide upon these claims as they derive from the previous acknowledgement of undue delay.

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

d. Preventive remedies

179. Very few countries appear to have remedies that allow to speed up proceedings before an unreasonable delay actually occurs. In countries which have acceleratory systems that are

applicable to both civil and criminal proceedings it would have to be clarified whether the investigative phase is covered. In other words, accelerating criminal proceedings must imply the possibility of accelerating not only the hearing or trial itself but also the investigative or pre-trial phase. Undue delays may happen in both. The proceedings must allow to obtain a remedy from the authority (ie. judge or prosecutor) that is actually dealing with the proceedings, as criminal proceedings sometimes go through different stages and different authorities.

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

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

182. Finally almost no information has been provided on remedies to accelerate proceedings as regards the trial phase. These could include the possibility to ask for the conclusion of the investigative phase and/or the setting of a date for the hearing, and powers to speed up this scheduling in specific cases (dangers of undue delay considering the time it took to close investigations, defendant held in custody, etc). Once again the question of expediting proceedings depends on all the participants in the proceedings and therefore, to the appropriate extent, remedies should be applicable to all. For example in the phase of the hearing additional research could be made into: if the judge can take coercive or preventive measures such as setting time-limits for experts to provide their input, if fines or disciplinary sanctions are applicable if lawyers, experts or witnesses do not appear before the court when so requested; if the possibility of suspending the hearing is a general rule or an exception, if it is possible to celebrate it partially with those who attended the summons instead of suspending the trial, etc.

TABLE 1[1]

THE COUNCIL OF EUROPE'S MEMBER STATES	AN ACCELERATORY REMEDY	A DISCIPLINARY ACTION AGAINST THE DILATORY AUTHORITY	A COMPENSATORY REMEDY[2]	TYPES OF DAMAGES AWARDED
ALBANIA				
ANDORRA	√			
ARMENIA				
AUSTRIA	√		√	**Material and non-material damage**
AZERBAIJAN				
BELGIUM	√		√	**Material and non-material damage**
BOSNIA & HERZEGOVINA	√	√	√	**Non-material damage**
BULGARIA	√	√		
CROATIA	√		√	**Material and non-material damage**
CYPRUS	√		√	**Material damage**
CZECH REPUBLIC	√		√	**Material damage**
DENMARK	√		√	**Material and non-material damage**
ESTONIA	√		√	
FINLAND		√	√	
FRANCE			√	**Material and non-material damage**
GEORGIA		√		

[1] The remedies given in the present table can either be used for one particular type of proceedings (for example only for administrative proceedings in Estonia) or for all of them.

[2] Including compensation in kind (for example mitigation of sentence) or pecuniary compensation.

GERMANY			√	
GREECE				
HUNGARY			√	
ICELAND				
IRELAND				
ITALY		√	√	**Material and non-material damage**
LATVIA				
LITHUANIA	√	√	√	**Material and non-material damage**
LUXEMBOURG			√	
MALTA			√	**Material and non-material damage**
MONACO				
NETHERLANDS			√	**Material and non-material damage**
NORWAY			√	
POLAND	√		√	**Material and non-material damage**
PORTUGAL	√		√	**Material and non-material damage**
ROMANIA				
RUSSIAN FEDERATION		√	√	**Material and non-material damage**
SAN MARINO				
SERBIA AND MONTENEGRO	√		√	**Material and non-material damage**
SLOVAKIA	√		√	**Material and non-material damage**
SLOVENIA	√		√	**Material and non-**

				material damage
SPAIN	√		√	**Material and non-material damage**
SWEDEN		√	√	**Material damage**
SWITZERLAND			√	**Material damage**
"THE FORMER YUSGOSLAV REPUBLIC OF MACEDONIA		√		
TURKEY				
UKRAINE		√		
UNITED KINGDOM			√	**Material and non-material damage**

TABLE 2

THE COUNCIL OF EUROPE'S MEMBER STATES	A SPECIFIC REMEDY[1]	A GENERIC REMEDY[2]
ALBANIA		An application to the Constitutional Court complaining of a breach of the right to a fair trial.
ANDORRA	A party can address to the Superior Council of Justice in case of the delay in proceedings and request taking of necessary measures. The Superior Council of Justice can ask the judges and magistrates to speed up the proceedings in question.	A constitutional complaint (amparo) before the Constitutional Tribunal.
ARMENIA		
AUSTRIA	**Section 91 of the Courts Act** If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step. Subject to any contrary provision in the administrative regulations, the authorities must give a decision on applications by parties ... and appeals without unnecessary delay, and at the latest six months after the application or appeal has been lodged. **Section 73 of the General Administrative Procedure Act** 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 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	The parties concerned are free to address the Constitutional Court after the domestic remedies have been exhausted. The Constitutional Court must then examine whether the authority has complied with its duty arising from Article 6 § 1 of the Convention.

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

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

	reasonable in the light of the specific circumstances of the case. A complaint against the excessive length of proceedings can be lodged by a party in the proceedings.	
AZERBAIJAN		
BELGIUM	Une sanction est prévue par **l'article 21ter du Titre préliminaire du Code de procédure pénale** lorsque le juge du fond constate un dépassement du délai raisonnable. La sanction du dépassement du délai raisonnable prend la forme d'une simple déclaration de culpabilité ou du prononcé d'une peine inférieure à la peine minimale prévue par la loi; Si l'affaire est à l'instruction **l'article 136 du Code d'instruction criminelle** prévoit que lorsque l'instruction n'est pas clôturée après une année, l'inculpé ou la partie civile peut saisir la chambre des mises en accusation (c'est-à-dire la juridiction d'instruction d'appel, qui a un très large pouvoir de contrôle de l'instruction) par simple requête; la chambre des mises en accusation peut alors demander des rapports sur l'état d'avancement des affaires et prendre connaissance des dossiers; elle peut enjoindre au juge d'instruction d'accélérer la procédure, voire lui fixer un délai de clôture de son instruction; elle peut aussi déléguer un de ses membres pour poursuivre l'instruction en lieu et place du juge d'instruction. l'article 136bis du Code d'instruction criminelle, dans le même souci de contenir les instructions dans des délais raisonnables, fait obligation au procureur du Roi de faire rapport au procureur général de toutes les affaires dont l'instruction n'est pas clôturée dans l'année du premier réquisitoire (c'est-à-dire de la saisine du juge d'instruction). S'il l'estime nécessaire pour le bon déroulement de l'instruction, et donc pour l'accélération de la procédure, par exemple, procureur général peut saisir la chambre des mises en accusation qui, après avoir éventuellement entendu le rapport du juge d'instruction, a alors les mêmes pouvoirs que dans le cadre de l'article 136 évoqué ci-dessus. Pour ce qui concerne encore une affaire faisant l'objet d'une instruction, il faut relever que la chambre du conseil - juridiction d'instruction de première instance– lorsqu'elle est appelée à décider du sort d'une instruction clôturée par le	La violation du délai raisonnable engage la responsabilité de l'Etat ; cette responsabilité est déduite de la méconnaissance de l'article 6 de la Convention européenne des droits de l'homme et du droit subjectif que ce texte consacre au profit du justiciable; cette méconnaissance constitue, dans l'ordre interne, une faute au sens de **l'article 1382 du Code civil** obligeant l'Etat à réparer le préjudice qui en est résulté.

	juge d'instruction, peut, dès ce stade, constater le dépassement du délai raisonnable et ordonner le non-lieu ou déclarer les poursuites irrecevables. La chambre des mises en accusation peut mettre fin aux poursuites à tout moment pour le même motif, fût-elle saisie d'un problème de procédure en cours d'instruction.	
BOSNIA AND HERZEGOVINA	A complaint on the basis of Article 6 § 1 of the Convention can be lodged before the Constitutional Court. 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.	
BULGARIA	**Article 217a of the Code of Civil Procedure**, introduced in 1999, provides that: "1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgement or the transmitting of an appeal against a judgment is unduly delayed. 2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time 3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed. 4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action." There also exists the possibility to expedite the criminal proceedings through a complaint to various levels of the prosecution authorities.	

CROATIA	**Section 63 of the 2002 Constitutional Act on the Constitutional Court.** The latter provides that : "(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations or a criminal charge against him ... (2) If the constitutional complaint ... under paragraph 1 of this Section is accepted, the Constitutional Court shall determine a time-limit within which a competent court shall decide the case on the merits... (3) In a decision under paragraph 2 of this Article, the Constitutional Court shall fix appropriate compensation for the applicant in respect of the violation found concerning his constitutional rights ... The compensation shall be paid from the State budget within a term of three months from the date when the party lodged a request for its payment".	
CYPRUS	**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. If a judgement has been reserved for more than 6 months then an interested party can apply to the Supreme Court seeking a remedy. The Supreme Court in examining such an application can: - order the retrial of the case by a different court - make an order for the issue of Judgement within a time limit - issue any other necessary order.	
THE CZECH REPUBLIC	**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. **Law No. 192/2003 introduced a new Article 174a to the Law No. 6/2002 on tribunals and**	**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.

	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. **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**.**	
DENMARK	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. 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. 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.	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.
ESTONIA	Delays by the administrative authorities **in administrative proceedings** may be appealed to the courts, whereas the court is able to order specific performance and, if damage has been caused due to the delay, damages to the person.	
FINLAND	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. The mitigation of sentence is possible.	
FRANCE		**Article L. 781-1 of the Code of Judicial Organisation**: "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".
GEORGIA	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…".	
GERMANY	Reduction or mitigation of sentence is possible.	**Article 93 The Federal Constitutional Court, jurisdiction:** The Federal Constitutional Court shall rule: 4a. on constitutional complaints which may be filed by anybody claiming that one of their basic rights or one of their rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been violated by public authority;
GREECE		
HUNGARY		According to **Article 349 of the Civil Code,** the official liability of the State administration may be established only if the relevant ordinary remedies have been exhausted or have not been found adequate to redress the damage. Unless otherwise specified, this provision also covers the liability for damage caused by the courts or the prosecution authorities. Furthermore, according to **S. 114 of the Code of Civil Procedure**, a party may complain of the irregularity of proceedings at any time during the proceedings. Minutes shall be taken of any oral complaint to that effect. If the court fails to take such a complaint into account, the grounds for such failure shall be given immediately or, at the latest, in the final decision.
ICELAND		
IRELAND		

ITALY	In 2001, **the so-called "Pinto Law"** introduced a specific domestic legal remedy with respect to the excessive length of proceedings allowing applicants to obtain a relief in the form of financial compensation before the Court of Appeal. A complaint can be lodged by anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of ECHR. 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.	
LATVIA		
LITHUANIA	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.	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.**
LUXEMBOURG		A State liability action under **the Law on State responsibility.**
MALTA		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.
MONACO		
NETHERLANDS	**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.	There is the general remedy of a **civil action against the State for tort.**

NORWAY	**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.	
POLAND	**Act of 17 June 2004 on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings** 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. 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 complaint compensation.	**Article 417 of the Civil Code** provides for a liability of the State for damage caused by public authority.
PORTUGAL	**the Criminal Procedure Code (of 1 January 1988)** **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** " /…/ 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.	**Article 22 of the Constitution** : "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."
ROMANIA		

RUSSIAN FEDERATION	**Articles 12.1 and 14 of the Law "On the status of judges in the Russian Federation" and Article 15 of the Law "On the judicial system in the Russian Federation"** set forth that a judge can be removed from office for disciplinary offences by a decision of the Supreme Judicial Qualifications Board and qualifications boards of regional courts. Under Article 22 of the Law "On the organs of the judicial community" the qualifications boards can receive information on a disciplinary offence committed by a judge from presidents of courts and organs of the judicial community, state bodies, public officials and citizens. The disciplinary offence means, in particular, a judge's activity or inactivity resulting in excessive length of criminal proceedings and violation of human rights and undermining the authority of the judicial power or disgrace honour and dignity of a judge.	**Article 1070 § 1 of the Civil Code** provides for liability of the State for damages caused by its agents acting in their official capacity.
SAN MARINO		An ordinary action for damages may be brought before the civil judge on the ground of breach of the reasonable time requirement
SERBIA AND MONTENEGRO	A 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, and can institute disciplinary proceedings against a judge who has not performed his or her duties in a conscientious and competent manner, and can recommend the judge to be dismissed from office. Any party can file a complaint to the Oversight Board, or to the president of the court which is deciding on the particular case. The Board does not have the power to award damages. The complaint to the Oversight Board is specifically designed to be used for speeding up pending cases.	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.
SLOVAKIA	**According to the 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. **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	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. **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

	real and moral damages.	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"...
SLOVENIA	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.	The party can lodge a constitutional appeal with the Constitutional Court under **Section 51 § 1 of the Constitutional Court Act.**
SPAIN	**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…"	**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. **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. **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."
SWEDEN	In criminal proceedings, an unreasonable length may cause the sentence imposed to be more lenient. Thus, **chapter 29 section 5 and chapter 30 section 4 of the Penal Code** provide that courts in criminal cases shall, both in its choice of sanction and in its determination of the appropriate punishment, take into account whether an unnaturally long time has elapsed since the commission of the offence.	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.. 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**).
SWITZERLAND	At canton level most codes of c**riminal 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).	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.
"THE FORMER YUSGOSLAV REPUBLIC OF	There is 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	

MACEDONIA"	Ministry of Justice is competent to review the complaints of the citizens concerning the work of the courts especially those related to delays in the court proceedings. The complaint is lodged in writing, by the party in the proceeding. Upon the complaint the Ministry of Justice in written correspondence with the court obtains information regarding the case (especially about the reasons for the delay and to whom is the delay attributable) and informs the complainant about its findings again in writing. The Ministry of Justice cannot order the court to undertake certain measures for speeding-up the procedure in a particular case. If the Ministry of Justice finds that the delay in the procedure is a result of unprofessional and unethical conduct of the judge sitting in the case, the Ministry can inform the Judicial Council of the Republic of Macedonia and propose dismissal of the judge.	
TURKEY		
UKRAINE	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.	**Article 55 § 1 of the Constitution of Ukraine guarantees to everyone** "the right to challenge before a court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers". "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".
UNITED KINGDOM	In the exercise of their inherent jurisdiction, the criminal courts may stay a prosecution where there has been an unreasonable lapse of time.	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.