



# **EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)**

## **Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights (31 July 2012)**

2<sup>nd</sup> Edition

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Updated in 2012-03-26 by Mr Nicolas Régis

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French edition:

*Analyses des délais judiciaires dans les Etats membres du Conseil de l'Europe à partir de la jurisprudence de la Cour européenne des Droits de l'Homme*

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# Summary of the report

## I. Terms of reference

The purpose of the report was to establish whether the case law of the ECHR could be used to draw some general conclusions with regard to the length of proceedings in Europe. The issues that had to be analysed were:

1. What conclusions with respect to the length of proceedings for particular types of cases (minimum/maximum timeframes) could be drawn from the cases in which ECHR found violations of the right to a trial within a reasonable time, or found that there was no violation;
2. What categories of cases were established in the case-law of the ECHR; and
3. What are the forms of delays established in the ECHR case law and their causes?

The basis is the report of Ms Calvez 2006 which was updated in 2011 by Mr. Régis.

## II. Structure of the report

The report is structured in two parts. In the first part, it **establishes criteria for assessing the reasonableness of the length** of proceedings and establishes **rules for calculation of the length of proceedings** in Court's case law. In the second part, the report **presents stages of proceedings where delays occurred**, identifies **causes of delay for various types of proceedings** and presents an overview of **domestic remedies to reduce the length of proceedings**. In the appendices to the report is the **statistical data on the ECHR's assessment of reasonable length of cases by country (App. I)**; **an analysis of the priority cases** that were identified by the Court (**App. II**); and a **table of complex cases**, involving findings of violation and non-violation (**Appendix III**) and **normal (non-complex) cases (Appendix IV)**.

## III. Main findings of the report

1. The Court has established the following **criteria for assessing whether the duration of proceedings was reasonable**:

- *Complexity of the case* (complex cases need longer time to be completed, but complexity as such is not always sufficient to justify the length of proceedings);
- *The applicant's conduct* (this is the only criterion that led the Court to conclude that Art. 6. was not violated even if the length of proceedings was manifestly excessive)
- *The conduct of the competent authorities* (if the authorities have taken prompt and appropriate remedial action to manage the temporary unpredictable overload of the courts, the longer processing time of some cases may be justified)
- *What is at stake for the applicant* (some cases require particular speed; mainly "**priority cases**":
  - o labour disputes involving dismissals, recovery of wages and the restraint of trade;
  - o compensation for victims of accidents;
  - o cases in which applicant is serving prison sentence;
  - o police violence cases;
  - o cases where applicant's health is critical;
  - o cases of applicants of advanced age;
  - o cases related to family life and relations of children and parents;
  - o cases with applicants of limited physical state and capacity.

In addition to individual criteria, the Court also makes *an overall assessment of the circumstances of the case*. It may establish that 'reasonable time' is exceeded, if in such a global assessment, the Court finds that total time is excessive, or if it finds long periods of inactivity by competent authorities.

2. In its case law, the Court has defined methods to calculate length of proceedings. The **starting point of the calculation** is different in civil, criminal and administrative cases. In civil cases it is normally the date on which the case was referred to the court; in criminal cases, the starting day may also be the date on which the suspect was arrested or charged, or that on which the preliminary investigation began. In administrative cases, it is the date on which the applicant first refers the matter to the administrative authorities. The **end of the period** assessed by the court is in criminal cases the date on which the final judgment is given on the substantive charge or the decision by the prosecution or the court to terminate proceedings. In civil cases, the deadline corresponds to the date on which the decision becomes final; however, the Court also takes account of the length of the enforcement procedure, which is considered as an integral part of proceedings.

3. The **causes of delay** are sorted into those common to all types of proceedings and those specific to certain type of proceedings:

Type of proceedings	Stage of proceedings	Origins of delay
<b>All proceedings</b>	<i>Before proceedings start</i>	Territorial distribution of court jurisdiction; transfer of judges; insufficient number of judges; systematic use of multi-member tribunals (benches); backlog of cases; complete inactivity by judicial authorities; systematic shortcomings in procedural rules;
	<i>From initiation to the closure of hearings</i>	Failure to summon parties or witnesses; unlawful summons; late entry into force of legislation; disputes about the jurisdiction between administrative and judicial authorities; late transmission of the case file to the appeal court; delays imputable to barristers, solicitors, local and other authorities; judicial inertia in conduct of the case; involvement of expert witnesses; frequent adjournment of hearings; excessive intervals between hearings; excessive delay before the hearing.
	<i>After hearings</i>	Excessive lapse of time between making of the judgment and its notification to the court registry or parties;
<b>Civil proceedings</b>		Failure to use the courts' discretionary power; absence or inadequacy of rules of civil procedure;
<b>Criminal proceedings</b>		Structural problems relating to organisation of prosecution service; decisions to join or not to join criminal cases; failure of witnesses to attend hearings; dependence of civil proceedings on the outcome of criminal proceedings;
<b>Administrative proceedings</b>		Delays attributable to non-judicial authorities.

4. The report also contains an overview of existing **national remedies** established to react to unreasonable length of proceedings. Even if it mainly deals with appeals which are lodged by member States in the wake of adverse findings by the European Court and are deemed effective, it also examines whether the ECHR has considered specific appeals effective or ineffective.

5. In the report, many judgments given by the ECHR are examined in order to establish **standards and rules on the length of proceedings**. In particular whether there could be some indication of the maximum/minimum length of particular types of cases that were regarded as reasonable or unreasonable by the court. Although the expert has established that the Court was reluctant to establish clear-cut rules, arguing that every case must be considered separately, the analysis and

comparison of the large number of cases may provide a **useful indication** of the approach of the Court. The following was established:

- The total duration of up to **two years per level of court in normal (non-complex) cases was generally regarded as reasonable**. When proceedings have lasted **more than two years**, the Court examines the case closely to determine **whether the national authorities have shown due diligence** in the process;
- In **priority cases**, the court may depart from the general approach, and **find violation even if the case lasted less than two years**;
- In **complex cases**, the Court may allow **longer time**, but pays special attention to **periods of inactivity** which are clearly excessive. The longer time allowed is however rarely more than five years and almost never more than eight years of total duration;
- The only cases in which the Court **did not find violation in spite of manifestly excessive duration of proceedings** were the cases in which **the applicant's behaviour had contributed to the delay**.

6. The following is a brief **overview of the types of cases analysed with respect to the length of proceedings**:

These observations remain relevant for the period 2006-2011

*Violation of the reasonable time (Art. 6) - summary*

<i>Type of case</i>	<i>Issues</i>	<i>Length</i>	<i>Decision</i>
Criminal cases	Diverse	More than 5 y.	<i>Violation</i>
Civil cases	Priority cases	More than 2 y. (min: 1y10m)	<i>Violation</i>
Civil cases	Complex cases	More than 8 y.	<i>Violation</i>
Administrative	Priority	More than 2 y.	<i>Violation</i>
Administrative	Regular, complex	More than 5 y.	<i>Violation</i>

*Non-violation of the reasonable time (Art. 6) - examples*

<i>Type of case</i>	<i>Issues</i>	<i>Length</i>	<i>Decision</i>
Criminal cases	Normal cases	3y6m (total in 3 instances); 4y3m (total in 3 levels. + investigation)	<i>No violation</i>
Criminal cases	Complex	8y5m (investigation and 3 levels)	<i>No violation</i>
Civil cases	Simple cases	1y10m in first instance; 1y8m on appeal; 1y9m Court of Cassation	<i>No violation</i>
Civil cases	Priority cases (labour)	1y7m in first instance (labour); 1y9m on appeal; 1y9m Court of Cassation	<i>No violation</i>

The values from the above table only relate to the analysed cases and cannot be taken as a fixed rule. Future cases which will be considered in the light of their particular circumstances, according to the established criteria of the Court. Still, they may be useful for the purposes of general assessment and analysis.

## Foreword

This study aims to have a concrete knowledge of the cases addressed by the European Court of Human Rights to judge the conformity of timeframes of judicial proceedings with the requirement of Article 6 para. 1 of the European Convention of Human Rights.

It has been designed so that policy makers and judicial practitioners in the member states of the Council of Europe can use this specific information to orient the reform of the normative frameworks and the administrative and judicial practices towards optimum and foreseeable timeframes of judicial proceedings, in line with the CEPEJ Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframes<sup>1</sup>".<sup>1</sup>

The first edition of this report was written by Françoise Calvez (judge, France) on behalf of the Task Force of the CEPEJ on timeframes of judicial proceedings. It covers the period 1985 to 8 October 2005. The second edition has been entrusted to Mr. Nicolas Regis (magistrate, France) for the Working Group of the CEPEJ SATURN<sup>2</sup>. It takes into account the case law of the European Court of Human Rights until 31 July 2011.

The Report was adopted by the CEPEJ at its xx plenary meeting (December 2012).

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<sup>1</sup> See document CEPEJ(2004)19.

<sup>2</sup> SATURN (Study and Analysis of judicial Time Use Research Network)

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Article 6.1 of the European Convention on Human Rights of 4 November 1950 reads:

*"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

This key provision of the Convention has led to several cases before the Court regarding the concept of a fair hearing or trial. In terms of volume, the majority of cases have concerned the right to have cases heard within a reasonable time. This applies to criminal as well as civil cases, since Article 6.1 also refers to "*any criminal charge*".

Court judgments finding violations of Article 5 § 3 or of Article 6 § 1 may appear to be based on the same grounds, but there are certain differences: firstly, Article 5 § 3 is concerned with the arrest and situation of persons remanded in custody<sup>3</sup> and secondly it calls for special diligence, as the Court made clear in its *Stögmüller* judgment of 10 November 1969: "*there is no confusion between the stipulation in Article 5 (3) (art. 5-3) and that contained in Article 6 (1) (art. 6-1). The latter provision applies to all parties to court proceedings and its aim is to protect them against excessive procedural delays; in criminal matters, especially, it is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate. Article 5 (3) (art. 5-3), for its part, refers only to persons charged and detained. It implies that there must be special diligence in the conduct of the prosecution of the cases concerning such persons. Already in this respect the reasonable time mentioned in this provision may be distinguished from that provided for in Article 6 (art. 6)."*

However, although this emphasis on the need for diligence in the conduct of cases may seem to be a recent phenomenon, it has a far longer legal history.

For example, as far back as the early fourteenth century, a simplified procedure was introduced into canon law so that certain categories of cases could be dealt with more rapidly (see CH. Van Rhee, *in The Law's Delay*, p. ).

Nor has common law been spared, witness the works of Dickens, particularly the *Pickwick Papers* where the author is highly critical of the length of certain proceedings in England<sup>4</sup>. Much more recently, the Civil Justice Council, chaired by Lord Woolf, has published its report "*Access to Justice*" (July 1996), which makes various proposals for expediting civil proceedings in the United Kingdom.

The old adages in French (*justice rétive, justice fautive*) and English ("*justice delayed justice denied*") neatly summarise the reasons why the European Court is so insistent on the need to avoid delays.

In international law, the 1948 Universal Declaration of Human Rights embodies the notion of a fair trial or hearing but makes no explicit reference to a "reasonable time". Article 10 reads: "*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*"

However the reference to equality is not unconnected to the notion of "reasonable time", given that excessive delays are a major source of inequality, for example between those who can afford, psychologically as well as financially, to await the outcome of a case and may even seek to delay it, and those for whom any deferral of a hearing has unbearable financial or human consequences. In such cases, the lapse of time may itself become the source of further injustice.

Article 6§1 of the European Convention therefore introduced the notion of time into twentieth century court proceedings and a new concern for the prompt administration of justice. The European Court

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<sup>3</sup> However, the European Court applies Article 6§1 to the investigation stage of criminal proceedings

<sup>4</sup> C.H. Van Rhee, "The laws delay: an introduction", in: "The law's delay: essays in undue delay in civil litigation", Intersentia, 2004



and Commission have since translated this concept into case-law through an impressive collection of decisions and judgments, whose number grew exponentially in the 1990s.

The idea reappeared in Article 14 § 3 of the International Covenant on Civil and Political Rights of 19 December 1966, which grants anyone facing a criminal charge the right "*to be tried without undue delay*". This ground may be relied on by any individual since the entry into force of the optional protocol of 17 August 1994, which authorises the Human Rights Committee to examine individual communications.

The issue has also arisen in Community law. The Court of Justice of the European Communities includes the Human Rights Convention in its body of law, as it explicitly stated in its *Kremzow v Republic of Austria* judgment, case C- 299/95: "*It should first be noted that, as the Court has consistently held (see, in particular, Opinion 2/94 [1996] ECR I-1759, paragraph 33), fundamental rights form an integral part of the general principles of Community law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. Convention has special significance in that respect. As the Court has also held, it follows that measures are not acceptable in the Community which are incompatible with observance of the human rights thus recognized and guaranteed (see, in particular, Case C-260/89 ERT [1991] ECR I-2925, paragraph 41)*".

In the *Baustahlgewebe v. Commission* judgment of 17 December 1998, the Court of Justice considered the application of Article 6§1 of the European Convention to proceedings in the Court of First Instance and scrupulously applied all the criteria relating to "reasonable time" identified by the European Court of Human Rights.

The principle also appears in Community legislation. Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters introduces a servicing system based on the notion of a reasonable period.

Lastly, Article 47 (2) of the European Union Charter of Fundamental Rights, which has been ascribed legal force equivalent to EU treaties under the Lisbon Treaty<sup>5</sup>, provides that the length of proceedings must correspond to a "reasonable time". Article 52 (3) further stipulates that "in so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention (...)".

The right to have one's case heard within a reasonable time is therefore now embodied in international and European law and is gradually being incorporated into contracting parties' domestic law.

The term does not appear in the French Code of Civil Procedure but is expressly stipulated in the Presumption of Innocence Act of 15 June 2000, which incorporates it into the first article of the Code of Criminal Procedure and in various subsequent provisions. Furthermore, it has since 2006 occupied a symbolic place in Article L. 111-3 of the Judicial Code.

It also appears in Italian law<sup>6</sup>, where the right to a fair trial has been given constitutional force, and in the 1978 Spanish constitution, Article 24.2 of which grants the right to a trial or hearing within a reasonable time and which also makes this a fundamental right via the "*recurso di amparo*". Similarly, since 1 January 2002, Article 127 of the Slovakian constitution has granted individuals and legal persons the right to challenge violations of fundamental rights, on the basis of which the Constitutional Court has handed down judgments concerning the length of proceedings.

Most national legal systems now lay down deadlines for completing certain legal and judicial procedures.

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<sup>5</sup> Entry into force: 1 December 2009.

<sup>6</sup> Article 111 of the Italian Constitution

Admittedly, the right to a fair trial or hearing and to have the case heard within a reasonable time does not fall into the category of rights from which states can never seek exemption, even in exceptional circumstances.

Article 15 of the European Convention authorises states to derogate from their convention obligations "*in time of war or other public emergency threatening the life of the nation*", though this does not apply to articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 7 (no punishment without law).

Other than in the case of these so-called intangible rights<sup>7</sup>, contracting parties do have a right of derogation.

Parties may also, in theory, waive their rights, so long as such waivers meet the conditions laid down by the European Court. Whether they are explicit or tacit, waivers must be certain and freely given, and the party concerned must be informed of the nature and extent of the rights that he or she has chosen to waive. In the *Deweer* case, concerning the right to be heard by a court, one aspect of the right to a fair hearing, the Court held that "*in an area concerning the public order (ordre public) of the member States of the Council of Europe, any measure or decision alleged to be in breach of Article 6 (art. 6) calls for particularly careful review*" (*Deweer v. Belgium* judgment of 27 February 1980).

As certain commentators have noted, although it is possible to waive certain elements of the right to a fair hearing others aspects are such an integral part of this notion that in their absence it would no longer apply<sup>8</sup>.

In a number of resolutions, the Council of Europe's Committee of Ministers has stated that "excessive delays in the administration of justice constitute an important danger, in particular for respect for the rule of law".

There is always a risk that justice will be denied when proceedings drag on. As time passes, certain legitimate interests may be adversely affected, evidence disappears and new evidence has to be adduced, procedural manoeuvres are allowed or even encouraged, witnesses disperse and lose credibility and further costs are incurred, which parties of good faith may sometimes be unable to bear.

However, time is also essential for proper inquiries to be conducted, all the questions of law elucidated and relations between the parties settled and for the court to arrive at a reasoned conclusion. Reasonable time is thus a sensitive issue.

As we shall see, the Court has adopted a pragmatic approach to the question. Generally speaking, it tries to establish whether time has been used wisely in all the stages of the relevant procedure and identifies periods of inactivity, which it criticises if they do not appear justified.

Before going on to the substance of this report reference should be made to the CEPEJ's terms of reference. The report is required to assess the issue of length of proceedings in the Council of Europe's member states on the basis of the case law of the European Court of Human Rights, with particular reference to the most recent cases. It is stated: "*there are two main issues that would have to be studied. One regards the length of proceedings that was regarded reasonable or unreasonable (in general and for particular types of cases), and the other regards the analysis of the main causes for the delays (in cases where the length was found to be unreasonable)*".

The author has examined a large number of judgments and decisions of the Court, and decisions of the former Commission.

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<sup>7</sup> F. Sudre, "la dimension internationale and européenne des libertés and droits fondamentaux", in: *Libertés and droits fondamentaux*, edited by R. Cabrillac, M-A Frison-Roche and T. Revet, Dalloz, 2004, p. 33 to 51.

<sup>8</sup> J-C Soyer and Mr de Salvia article 6, in "*Convention européenne des droits de l'homme commentaire article par article*" edited by L-E Pettiti, Economica p. 244

The main source has been the Court's HUDOC site, which was consulted by entering Article 6 § 1 and the words "*délai raisonnable*" ("reasonable time").

A table is appended<sup>9</sup> setting out the number of cases thus identified on which judgments were handed down between 1985 and 2011 (31 July 2011), including friendly settlements. The number is only indicative, given the possible margin of error in the use of the search engine. Nevertheless, it does appear to be statistically reasonably accurate. This table also give the number of inhabitants per country and the dates of ratification and of recognition of the right of individual petition for each contracting state.

In connection with States which have been the subject of over 100 adverse findings, the judgments over the period 2000-2005 have been systematically read: this concerned France, Greece, Italy, Poland, Portugal and Turkey. We have also examined the most significant prior decisions relating to countries indicated to us by the CEPEJ secretariat, and other officials of the Court Registry and the Committee of Ministers. This report was updated on 15 December 2011, to include the most important judgments handed down between 1 January 2006 and 31 July 2011, in accordance with the following criteria: the importance attached to the judgment by the Court (levels 1, 2 and 3; Grand Chamber judgments; pilot judgments), the importance attached to the judgment by doctrine, and the originality of the case in point.

It soon became clear that recent judgments throw little light on the causes of delays because the Court now offers a very succinct statement of its reasoning. Because of the large volume of length of proceedings cases, the Court merely refers to the criteria laid down in its established case-law, other than for pedagogical reasons in the case of new member states or when the particular circumstances of the case call for more detailed explanations. It was therefore necessary to refer to much earlier judgments of the former and new Court and decisions of the Commission in order to identify the criteria determined and applied by the Court. The 2006-2011 period did, however, see the development of pilot judgments<sup>10</sup>, which provide an opportunity to recall the Court's methods and supply useful clarifications. The European Court has, for instance, consolidated its case-law on effective remedies since its major judgment in the case of *Kudła v. Poland*, decision of 26 October 2000 (see Part 1 A below).

It should be emphasised from the outset that the statistics must be interpreted with considerable caution, as they cannot by themselves reflect the reality in each country. There are states for which the Court has found relatively few cases of excessive length of proceedings, but it cannot necessarily be concluded that their courts are particularly diligent.

In some cases problems may arise at an earlier stage and concern access to the courts. Citizens may make only limited use of the courts because of the costs incurred, or because alternative remedies are encouraged or are more effective. Equally, in some countries there may be little awareness of the right to apply to the European Court of Human Rights whereas others will have legal practices specialising in this type of application, leading to a very significant number of cases and a proportionally higher number of adverse judgments.

Moreover, very rapid proceedings do not always translate into good justice. Certain expedited procedures where speed takes priority over the rights of the defence may be detrimental to the quality of justice. The European Court has always held that the principle of good administration of justice goes well beyond the notion of reasonable time<sup>11</sup> and may justify resort to lengthier but fairer proceedings.

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<sup>9</sup> Appendix 1

<sup>10</sup> Eg in the case of *Burdov v. Russia (No. 2)*, decision of 4 May 2009.

<sup>11</sup> In the *Intiba v. Turkey* judgment of 24 May 2005, § 54, the Court stated that although Article 6 of the Convention required proceedings to be conducted with due speed, it also embodied the more general principle of good administration of justice (judgment in French only). See also *Boddaer v. Belgium* judgment of 12 October 1992.

The terms of reference also require the expert to establish whether, on the basis of a considerable volume of cases, the Court has laid down rules on maximum lengths of proceedings that could be considered reasonable for particular categories of cases or, on the other hand, on minimum lengths of proceedings from which the Court might conclude that there had been a violation of the right to a fair hearing in a reasonable time.

Here a few comments should be made on the methodology used in the report.

As much as thirty years ago, and following an internal debate on the subject, the Court refused to give states any legal rulings whatever on what might be considered a standard length of proceedings. It has remained faithful to its practical approach and its commitment to weighing up all its established criteria according to the circumstances of each case, and has never laid down precise rules on, for example, how much time a court should give to a divorce case to avoid the threat of sanction from Strasbourg. The position has not changed since the 1998 reform.

At the most, it appears that two years per level of court is the limit beyond which suspicions may arise and the Court will give particular attention to the circumstances of the case. When it finds that a significant period of time appears to have elapsed it generally uses a form of wording such as that the Court has noted that the court of appeal only handed down its judgment more than seven years and three months after the applicants brought their case before it, and that such a lapse of time would at first sight seem unreasonable for a single tier of court and therefore calls for close examination under Article 6§1 of the Convention<sup>12</sup>. Or alternatively, "*that more than seven years have already elapsed since the laying of charges without any determination of them having yet been made in a judgment convicting or acquitting the accused, certainly indicates an exceptionally long period which in most cases should be considered as exceeding the reasonable time laid down in Article 6§1*"<sup>13</sup>.

In order to provide the Committee with relevant material, the authors have prepared a number of tables of types of cases showing certain common features that make it possible to compare the length of proceedings and the Court's verdict.

They include:

- **a table of "priority" cases**, in terms of what is at stake for the applicant. From the standpoint of a president of a court these could be categorised as "priority" cases. In terms of managing the flow of cases, these particular examples should be dealt with more expeditiously than others in which the time factor is less important for the outcome. (Appendix 2)

- **two tables of complex cases, involving findings of violations and non-violation respectively** (Appendix 3). These are cases recognised as difficult by the Court and for which it can accept more lengthy proceedings so long as they are not open to criticism on other grounds, such as the conduct of the applicant or of the authorities.

The final report has been supplemented, with a table of non-complex cases allowing comparison of durations of proceedings of a routine nature (Appendix 4)

These two sets of tables, involving on the one hand a requirement by the Court for greater expedition and on the other an acknowledgement that the difficulty of the case justifies a certain amount of delay, offer a range of cases showing how length of proceedings can vary.

The report is in two parts:

- the first considers the criteria established by the European Court of Human Rights for determining whether a reasonable time has elapsed;

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<sup>12</sup> *Marien v. Belgium* judgment of 3 November 2005 (French only)

<sup>13</sup> *Neumeister v. Austria* judgment, 1968

- the second is concerned with the reasons for delays, as they emerge from Court judgments, Commission decisions and Committee of Ministers resolutions, and offers an initial overview of lengths of proceedings in tabular form.

It is supplemented by appendices detailed above.

## FIRST PART

# The Court's criteria for determining "reasonable time", within the meaning of Article 6.1 of the European Convention on Human Rights

### Introductory note: The exhaustion of domestic remedies

#### A. Existence of an effective remedy

The Convention is intended to complement national arrangements for protecting human rights. As the Court stated in the *Handyside* judgment of 7 December 1976: "*the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights*". Because of its subsidiary character, Article 35 of the Convention makes it obligatory to exhaust domestic remedies.

Violation of the right to be heard within a reasonable time must therefore have been adduced by the applicant before the domestic court before the application to the European Court if the latter is to be admissible. The Court applies this rule flexibly, requiring applicants to have utilised all the remedies that can be reasonably expected of them in domestic law, but not forcing them to lodge appeals which lack any prospect of success.

The Court verifies the existence, in member States' internal law, of an "effective remedy", which it defines as follows: [...] *within the meaning of Article 35§1 of the Convention, it is incumbent on the State to prove the existence of an available and appropriate remedy which is effective both theoretically and in practice and likely to remedy the alleged violation*. Such remedy must, it adds, *exist in theory and in practice to a sufficient degree of certainty* (see *inter alia Ziabreva v. Russia*, decision of 18 December 2008, §§ 15 and 16).

Where there is no effective remedy to redress or sanction judicial delays, the Court considers that the applicant can adduce before it a breach of the right to be heard within a reasonable time, notwithstanding proceedings still pending before a domestic court, notably at the appeal or cassation levels<sup>14</sup>.

In its *Daddi v. Italy* decision of 16 June 2009, the European Court recalled that the exhaustion of domestic remedies rule is geared to enabling Contracting States to prevent or redress violations ascribed to them before the latter are submitted to it, in pursuance of the subsidiarity principle<sup>15</sup>. In so doing, the Court draws on Article 13 of the Convention, which stipulates that "Everyone whose rights and freedoms as set forth in (the) Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

In order to ensure more effective compliance with the "reasonable time" requirement, the European Court reversed its case-law by ruling, in its judgment *Kudla v. Poland* of 26 October 2000, that Article 13 of the Convention provided a guarantee distinct from those set out in Article 6, which may, if necessary, be the subject of a separate adverse finding in order to ensure that the States introduce an effective operative remedy before a national authority in order to guarantee the right to a hearing within a reasonable time.

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<sup>14</sup> Judgments *Zanghi v. Italy*, 19 February 1991; *X v. France*, 31 March 1992; *A.V v. France*, 2 April 1994.

<sup>15</sup> *Akdivar and others V. Turkey*, 16 September 1996, § 65, Compendium of Judgments and Decisions 1996 IV, p. 1210, and *Aksoy v. Turkey*, 18 December 1996, § 51 Compendium of Judgments and Decisions 1996 VI, p. 2275.

Article 6 § 1 had previously been considered as a *lex specialis* vis-à-vis Article 13, and the Court had refrained from examining complaints of violations of Article 13 where it had already found a violation of Article 6 § 1.

However, "the growing frequency with which violations in this regard are being found has recently led the Court to draw attention to "the important danger" that exists for the rule of law within national legal orders when "excessive delays in the administration of justice" occur in respect of which litigants have no domestic remedy". (§ 148)

Recalling the purpose of Article 35 § 1 (which has close affinities with Article 13, according to the Court), namely to afford contracting states the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Referring to the preparatory work on the European Convention on Human Rights, it went on: "The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court"<sup>16</sup>.

The Court, under this important judgment, aims to sanction States on this dual basis, and in so doing invites all Contracting States to establish domestic procedures allowing litigants to complain, by means of a remedy which is both legally and practically effective, and may or may not be judicial, of excessive length of proceedings.

Furthermore, in the *Mifsud v. France* decision of 11 September 2002, the Court ruled that such an effective remedy can take the form not only of a remedy enabling proceedings to be accelerated but also of a compensatory remedy, adding that "the fact that this purely compensatory remedy cannot be used to expedite proceedings which are under way is not decisive. The Court reiterates in that connection that it has held that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are 'effective', within the meaning of Article 13 of the Convention, if they 'prevent' the alleged violation or its continuation, or provide adequate redress for any violation that [has] already occurred".

Article 13 therefore offers one option, namely that remedies are "effective" if they can force the court concerned to reach an earlier decision or award the party adequate compensation for delays already incurred (*Kudla* judgment, § 159). According to the Court, given the close links between articles 13 and 35 § 1 (see also (*Kudla* judgment, § 152), the same criteria of effectiveness necessarily apply to domestic remedies within the meaning of the latter.

Above all, however, in the aforementioned *Mifsud v. France* judgment, and subsequently in the *Nouhad v. France* judgment of 9 July 2002, the Court holds that compensatory remedies are sufficient to establish inadmissibility for non-exhaustion of domestic remedies<sup>17</sup>.

The Court therefore now gives states two alternatives in domestic law, either to offer applicants compensation for detriment caused by excessive delays or to make it possible, at the applicant's request, to expedite the proceedings. We shall see in the second part of this report that there is a wide range of "effective remedies". However, the Court regularly recalls that "the most effective solution" is a remedy intended to accelerate procedures, "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 ..." (eg Grand Chamber judgment *Scordino v. Italy* (No. 1) of 29 March 2006, §§ 183 and 184).

However, as stated above, only available and appropriate appeals are required<sup>18</sup>. This further implies that such remedies are also subject to the effectiveness and reasonable time requirements and are therefore monitored by the European Court.

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<sup>16</sup> *Kudla* judgment § 152

<sup>17</sup> V. S. Guinchard, "Procès équitable", *Répertoire Procédure Civile*, Dalloz, March 2011, p. 94, No. 347.

<sup>18</sup> R. Bindels, "L'influence du droit d'être jugé dans un délai raisonnable prévu par l'article 6 § 1 de la Convention européenne des droits de l'homme sur l'administration de la justice civile belge", in *Annales de Droit de Louvain*, Vol. 62, 2002, nos. 3 and 4, pp. 349 to 428.

## B. Verifying remedy effectiveness

According to the Court, it is incumbent on the State authorities to prove, in each case submitted to it, the effectiveness of the remedy in question: by producing new case-law the State can accordingly change the European Court's position. This also means, however, that the existence of an effective domestic remedy cannot be taken for granted and may be rechecked by the Strasbourg Court.

To take the Portuguese example, when it ruled that the *Paulino Tomas v. Portugal* case of 27 March 2003 was inadmissible, the Court considered, for the first time, that the legislative-decree of 21 November 1967 on the state's extra-contractual liability was an effective means of challenging the length of proceedings. Hitherto, the Commission had consistently rejected arguments based on this decree (see *Gama da Costa v. Portugal* decision of 5 March 1990), because there was no case-law to show that such actions were likely to succeed. However, following the supreme administrative court's change of practice on the 15 October 1998 in its *Pires Neno* judgment, the Committee found that, as of October 1999, this remedy had acquired sufficient legal certainty for its use for the purposes of Article 35(1) of the Convention to be possible and necessary.

In another Portuguese case, in the criminal domain, the Court held that applying for an order to expedite the proceedings under Articles 108 and 109 of the Code of Criminal Procedure was a precondition of any application to it and a remedy that had to be exhausted (*Moreira Barbosa* admissibility decision of 29 April 2004)<sup>19</sup>. It found that in this case the applicant had exercised this right unsuccessfully and that he was not obliged to bring a second action on extra-contractual liability under the 1967 legislative-decree, whose purpose was practically the same. It therefore dismissed the government's argument that domestic remedies had not been exhausted<sup>20</sup>.

The situation in Italy is a good illustration of the ongoing nature of European Court supervision. In Italy, the "Pinto" Law of 24 March 2001 established a compensatory remedy for damages resulting from excessive length of judicial proceedings. In its *Brusco v. Italy* decision of 6 September, the Court declared inadmissible an application which had been submitted before the entry into force of the said Law, but after having informed the applicant of the existence of this Law and inviting him to return to the domestic courts (for a recent example of inadmissibility in the light of the Pinto Law, see *Daddi v. Italy*, decision of 16 June 2009).

Prior to 2004 the Court had very frequently found against Italy for violation of the right to be heard within a reasonable time. A distinct improvement has, however, been noted since 2004. Nevertheless, there have been some fresh violations (see Appendix, the "zigzag" changes in findings against Italy between 2006 and 2011). In several Grand Chamber judgments in 2006, including the *Scordino* judgment (No. 1) of 29 March 2006<sup>21</sup>, the Court has found that hundreds of cases of compensation granted by Italian domestic courts under the "Pinto Law" are once again pending before the courts, and invites Italy to take all necessary steps to ensure that the compensatory remedies introduced under the Pinto Law are indeed "effective". Implementation of this remedy is deemed insufficient mainly because of the amount of damages granted and the excessive length of proceedings to which it in turn gives rise<sup>22</sup>. The European Court points out in its major judgments that an "effective" remedy is one which makes it possible either to expedite proceedings or to provide the litigant with appropriate compensation. In the latter case the remedy itself must correspond to the

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<sup>19</sup> see also the *Tomé Mota v. Portugal* decision, no. 32082/96

<sup>20</sup> See also *I.S v. Slovakia* of 4 April 2000, §31

<sup>21</sup> See also, in connection with the right to be heard within a reasonable time, *Cocchiarella v. Italy*; *Giuseppe Mostacciuolo v. Italy* (No. 1); *Musci v. Italy*; *Giuseppina and Orestina Procaccini v. Italy*; *Riccardi Pizzati v. Italy*; *Ernestina Zullo v. Italy*; *Apicella v. Italy*.

<sup>22</sup> The Italian Court of Cassation did, however, effect a case-law reversal in four cassation judgments issued on 27 November 2003 (Nos. 1338, 1339, 1340 and 1341), in which it asserted that "the case-law of the Strasbourg Court must be taken into account by Italian courts in applying Law No. 89/2001 (...). Even though the determination of the non-patrimonial damages as effected by the Appeal Court in pursuance of Article 2 of Law No. 89/2001 is by nature based on equity, it must take place in an environment defined by law, because reference must be made to the amounts granted in similar cases by the Strasbourg Court, from which it may vary but only as far as is reasonable".



reasonable time requirement, and the Court is stricter in appraising the effectiveness of this remedy, for instance holding that the time-limit for enforcing a decision taken under a compensatory remedy “should in general not exceed six months from the time the compensation decision becomes enforceable” (§ 198). Moreover, while a domestic court is best placed to establish the existence of damage and set the requisite amount of compensation, excessive length of proceedings is deemed to cause non-material damage, compensation for which depends on the characteristics and effectiveness of the domestic remedy, but the amount of which should not be unreasonable vis-à-vis the sums established by the Court (the Court notes in this connection that the compensation granted only amounts to some 10% of the totals which it generally grants, § 214)<sup>23</sup>.

So the compensatory remedies themselves must also constitute effective, appropriate and accessible remedies. In the European Court’s view, such effectiveness also requires a sufficient level of compensation. The Court carefully monitors these qualities (see eg the *Vidas v. Croatia* judgment of 3 July 2008). According to European case-law, the adequacy of the remedy can be affected by excessive time taken to consider it or by compensation of an amount far lower than the sums granted by the Court in similar cases. The European Court accordingly verifies the effectiveness of compensation on the basis of the following criteria: the amount of compensation granted, the length of the compensation procedure and the speed of payment of the compensation (see eg *Cocchiarella v. Italy*, decision of 29 March 2006, §§ 86-98).

This mode of verification was used in the recent case of *Sartory v. France*, decision of 24 September 2009. The substance of the case concerned a procedure to cancel the transfer of a civil servant which had lasted six years, a period deemed excessive. The Court verified the duration and the outcome of the compensation procedure: it had been initiated in 2002, transmitted to the State Council in 2066 and completed in 2007 with a € 3 000 compensation offer.

The Court ruled that this amount granted by the State Council was inadequate in view of the excessive length of the substantive proceedings and of the compensation procedure initiated under Article R 311-1 of the Code of Administrative Justice, and found a violation of Article 6§1. This enabled the applicant to claim to be a victim within the meaning of Article 34 of the Convention, because the reparation had been inappropriate and insufficient, notwithstanding the recognition of the violation of reasonable length of the administrative proceedings<sup>24</sup>.

The amount of compensation is therefore an essential factor in ensuring recognition of the appropriateness and effectiveness of the remedy. This amount also depends, however, on the characteristics and efficiency of the overall domestic remedy. A State which has introduced various remedies, including one geared to expediting proceedings and a compensatory remedy, and which, in conformity with the country’s legal tradition and the standard of living in the said country, issues decisions that are speedy, reasoned and executed very quickly, grants amounts which are not unreasonable, even if they are lower than those awarded by the Court<sup>25</sup>. The national courts can thus refer to the amounts granted at domestic level for other types of damages and rely on their innermost convictions, even if this results in granting sums lower than those awarded by the European Court in similar cases (see eg *Apicella v. Italy*, decision of 29 March 2006, §§ 78, 94 and 95).

The case-law of the Court also tends to objectivise the State’s responsibility for excessive length of proceedings in its judicial system (see Grand Chamber judgment *Burdov v. Russia* (No. 2), decision of 15 January 2009, § 111), by positing, as we have said, a rebuttable presumption of non-material damage and requiring the court dealing with compensation to provide specific reasons for any decision to the contrary (see aforementioned judgment *Apicella v. Italy*, § 93, and *Cocchiarella v. Italy*, § 94).

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<sup>23</sup> Re. the situation in Italy, see the recent Committee of Ministers resolution CM/ResDH(2009)42 of 19 March 2009.

<sup>24</sup> Obs. N. Fricero, *Procedures* No. 11, November 2009, Comm. 363.

<sup>25</sup> Cf. Guide to Good Practices, *op. cit.*, No. 107, pp. 24 and 25.

It should also be stressed that compensation does not always have to be financial. The second part of this report will go into the different possible forms of preliminary review procedures established by States following adverse findings from the European Court, as well as the evolution of such procedures.

In its recent case-law, moreover, the European Court has clearly describe, sometimes in great detail, the type of measure which it considers appropriate for compensating violations of the right to be heard within a reasonable time. In the case of *Yakışan v. Turkey*, decision of 6 March 2007, on the length of criminal proceedings (almost 13 years, and still pending when the judgment was adopted) and the length of detention on remand (11 years 7 months, still continuing when the judgment was adopted), the Court found a violation of Article 5§3 and 6§1, and inserted a special clause in pursuance of Article 41, to the effect that it considered that an appropriate means of resolving the violation found would be to terminate the proceedings as quickly as possible, taking account of the requirements of proper administration of justice, or to release the applicant during the proceedings, as provided for by Article 5 § 3.

In the case of *De Clerck v. Belgium*, decision of 25 September 2007, however, the Court restricted this approach. In this case the applicants had asked the Court to order the immediate discontinuation of the public action brought against them on the grounds that the requirement of reasonable length of criminal investigatory proceedings had been exceeded, on the basis Article 46 of the Convention. The Court rejected the application, pointing out that it could not order independent judicial authorities to halt a criminal prosecution that had been lawfully initiated.

## I. ESTABLISHED CRITERIA FOR ASSESSING TIME ELAPSED

**Definition of reasonable time and presentation of the methods used by the European Court:** the Court generally uses the following wording: "*the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case-law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities*".

Since the *Neumeister* judgment of 27 June 1968, these three criteria have been applied consistently by the Court to both criminal and civil cases. The *König* judgment of 28 June 1978 added a further criterion, namely what is at stake for the applicant.

Drawing on these criteria, the Court conducts an overall appraisal in accordance with its practical approach (see section E below). General appraisals find, *inter alia*, that timescales which would not be unreasonable when taken separately, become unreasonable in combination. Practical appraisals involve examining "the specific circumstances of the case" in order to assess whether the length of proceedings are reasonable or unreasonable (judgment *König v. FRG*, 28 June 1978).

### A – THE COMPLEXITY OF THE CASE

Case complexity may justify protracted proceedings. Such complexity can concern either the legal rules applicable to the litigation or the facts of the case.

Where **legal rules** are concerned, the complexity may have a variety of origins: a change of legislation, State transition to the market economy, interaction between administrative and judicial procedures (eg the dismissal of a worker with a disability in Austria and France), the expectation of a criminal judgment to break a deadlock in civil proceedings<sup>26</sup>, the combination or linking up of several cases, the need to reconcile individual interests with those of the community, the presence of several defendants in court, etc.

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<sup>26</sup> Judgment *Djangozov v. Bulgaria*, 8 July 2004.

The complexity of the **facts of the case** may arise from the need to interview a large number of witnesses, problems with locating witnesses (judgment *Mitev v. Bulgaria* of 22 December 2004) and the protracted process of reconstituting the facts and gathering evidence (judgment *Akcakale v. Turkey* of 25 May 2004), or conversely, the total absence of witnesses in a criminal case (Commission, *Jean-Claude Boddaert v. Belgium*, 17 April 1991).

Other complicating factors are the use of specialist expertise or the need to translate documents or call on an interpreter (in the *Sari v. Turkey and Denmark* judgment of 8 November 2001, which concerned a case of homicide committed in Denmark by the applicant, a Turkish national, the Court drew attention to the factual delays arising from the need to translate the proceedings into two languages).

Certain cases are complex for both factual and legal reasons, such as the need to know, more than twenty years on, whether the applicant was in a state of bankruptcy on 14 September 1971 and, if not, what his assets were in that year<sup>27</sup>.

The Court also seems to treat certain cases as complex by their very nature. Examples include land consolidation, compulsory purchase, fraud cases and international financial offences.

In the *Wiesinger v. Austria* case of 30 October 1991, for example, which concerned a land consolidation scheme, the Court recognised "*as did all the participants in the Strasbourg proceedings, that land consolidation is by its nature a complex process, affecting the interests of both individuals and the community as a whole*" (the issue had already been raised in the *Erkner and Hofauer* case).

In the *Wejrup v. Denmark* decision of 7 March 2002 concerning a fraud case, the Court referred to the complexity of the case, which concerned the activities of the finance director of a holding company of a group of over fifty companies throughout the world and required an examination of these companies' accounts over a five year period. It noted that "*the scale and complexity of a criminal case concerning fraud, which often is compounded further by the involvement of several suspects, may justify an extensive length of the proceedings*".

In the *C.P. and others v. France* (18 October 2000) and *Hozee v. Netherlands* (22 May 1998) judgments, the Court found that Article 6§1 had not been violated. Yet in the former case, the proceedings had lasted seven years, nine months and 26 days.

In the aforementioned *Hozee* case, the Court examined proceedings in detail in order to analyse the complexity of untangling a network of interlinked companies and an accounting system which had been deliberately made as difficult as possible in order to prevent the authorities from detecting fraudulent practices in the tax and social security fields.

It examined this procedural stage in detail and drew attention to the complexity of the task of unravelling a network of interlocking companies and accounts which had been created in such a way as to make it as difficult as possible for the authorities to detect fraudulent tax and social-security practices.

It also noted that the authorities had to take evidence from a substantial number of witnesses and collect and examine a very significant volume of materials, and that the undoubted scale and complexity of the investigation were further compounded by the involvement of other suspects in the fraud. It concluded that there had not been any period of inertia and that the length of the investigation had not been unreasonable.

In a case concerning the constitutionality of a tax on electricity, the Court noted that the case was a complex one because the Constitutional Court had to solicit the observations of a number of authorities (*Klein v. Germany* judgment of 27 July 2000).

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<sup>27</sup> *Sablon v. Belgium* judgment of 10 April 2001 (French only).

However, the complexity of a case is not always sufficient to justify the length of proceedings. Other criteria come into play and the Court makes an overall assessment in the light of all the various criteria concerned.

## **B – THE APPLICANT'S CONDUCT**

This criterion presents a particularity: it is the only criteria which can involve a report of a non violation, while at the same time the time there is obviously an excessive lengthy procedure and so in addition, no notable inactivity is ascribable with the national jurisdictions. If it is the essential cause of the delay, there will be no violation of the Article 6 § 1. The Court accordingly considers the question of the attributability of excessive length of proceedings.

In *Oberling v. France*, decision of 11 April 2006, for instance, it noted that *even though the applicant might be accused of a lack of diligence in producing his pleadings at first instance, such conduct can in no way explain the length of proceedings at appeal level, viz over six years and two months for two sets of administrative proceedings.*

In a decision of admissibility, on the civil matter<sup>28</sup> the Commission recalled *“that what is required as a part of a civil procedure is a ‘normal diligence’ and that only ascribable slowness in the State can lead to the conclusion of a “reasonable delay”.* In the species, it showed the non violation of Article 6.1, estimating that the non diligent behaviour of the applicant was largely responsible for the, “fi rst of all unreasonable” duration, that is to say more than 10 years for a procedure of divorce.

The Court has held, in a criminal case, that *“... Article 6 (art. 6) did not require the applicants actively to co-operate with the judicial authorities” (Eckle v. Federal republic of Germany judgment of 15 July 1982 § 82)<sup>29</sup>.* Like the Commission, the Court considers *“that the person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings. He is under no duty to take action which is not apt for that purpose” (Union Alimentaria Sanders SA judgment of 7 July 1989).* Nevertheless, *“the applicants' behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account in determining whether or not the reasonable time referred to in Article 6 para. 1 ... has been exceeded” (Wiesinger v. Austria judgment of 30 October 1991, § 57)<sup>30</sup>.*

In criminal cases, the Court always deducts any time when the applicant was evading justice. In the aforementioned *Sari v. Turkey and Denmark* case, the Court stated that the period of two years, four months and six days between 23 February 1990, the date he absconded, and 29 June 1992, the date of his arrest in Istanbul, was solely the responsibility of the applicant, who thereby effectively evaded justice of his own free will (judgment in French only). The Court emphasised that the obligation to appear in court was an essential element of the judicial process, other than in cases of *force majeure* or where there was a legitimate excuse, and that it was out of the question for the applicant to benefit from his decision to abscond from justice.

The Court has also taken account of the fact that an applicant delayed proceedings by failing to give the authorities his address (*Mitev v. Bulgaria* judgment of 22 December 2004)

However, it excludes any delays that could be considered to result from *force majeure*. For example, an applicant's repeated admissions to hospital in the course of proceedings owing to his poor health could not be deemed his responsibility (*Lavents v. Latvia* judgment of 28 February 2003).

In its judgment *Jetzen v. Luxembourg* of 4 March 2008, the European Court pointed out that Article 6 did not require the persons in question to co-operate actively with the judicial authorities. Nor could they be blamed for having made full use of the facilities provided by domestic law. Nevertheless, their conduct is an objective fact which cannot be ascribed to the State and which must be taken into

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<sup>28</sup> Final decision of admissibility, *Hervouet C. France*, of July 2 1997.

<sup>29</sup> *Corigliano v. Italy*, 10 December 1982, §42

<sup>30</sup> Cited in *Versini v. France*, 10 July 2001

account in considering whether the proceedings exceeded a reasonable length of time or not. Another example of an objective obstacle is where a defendant repeatedly misses hearings because of his or her state of health (judgment *Rashid v. Bulgaria* (No. 2) of 5 June 2008).

Applicants are only held responsible for the delay in the case of manifest ill-will on their part. For instance, in criminal law proceedings, the Court has ruled that the applicant, who had lodged two appeals, had not held up proceedings because the delays in the latter were attributable to the authorities, the first investigating judge having remained inactive for 18 months (judgment *Malet v. France* of 11 February 2010).

In an exceptionally long Italian civil case (lasting 15 years), the Court agreed with the Commission that the two applicants had never acted to expedite the examination of their case but, on the contrary, had submitted a whole series of requests for adjournments (at least 17 adjourned hearings), and ruled that they were responsible for the delays in proceedings, concluding that Article 6§1 had not been breached<sup>31</sup>.

The Court therefore draws a clear distinction here. The applicant's failure to relaunch proceedings or to transfer them to another court is a matter for him or her to decide, in accordance with the regulations on civil proceedings and at the initiative of the parties, and the courts cannot influence such decisions.

The situation is different in the case of applicant apathy in the course of the proceedings. Courts must ensure that they run smoothly, for example, by acting attentively when asked to agree to a request for adjournment, hear witnesses or monitor the deadlines established for the preparation of an expert's report<sup>32</sup>.

However, applications cannot be criticised for using all the remedies open to them. In the *Guerreiro v. Portugal* judgment of 31 January 2002, the Court argued that "*applicants cannot be blamed for making full use of the remedies available to them under domestic law*" (*Erkner and Hofauer v. Austria* judgment of 23 April 1987, § 68). In this case, although some of the applicant's appeals had been dismissed, the one lodged on 13 March 1990 had been partially successful.

The Court also observes that an applicant's attitude cannot be criticised if he has merely adduced a right provided for in law, even if the exercise of this right (specifically a request for an expert opinion) is the main reason for the delay in proceedings (judgment *Sopp v. Germany* of 8 October 2009, § 35; also *Bendayan Azcantot and Benalal Bendayan v. Spain*, 9 June 2009, § 73).

The Court examines closely delays that might be caused by applicants' conduct. In the *Proszak v. Poland* judgment of 16 December 1997, the Court identified a series of groundless challenges, failures to attend hearings, only partly justified on medical grounds, poor co-ordination between the applicant and her counsel and her refusal to attend a third psychiatric examination as being critical for the delays in the proceedings and found that Article 6§1 had not been violated.

In another Polish case, the main cause of the procedural delays was the conduct of the applicant and his co-accused in the criminal proceedings, as a result of which the Court concluded that the six years and one month that the aggravated fraud proceedings had lasted was not unreasonable. The Court criticised the applicant's repeated failure to attend hearings on unjustified medical grounds and his failures to attend medical examination ordered by the court to establish whether he could participate in the proceedings<sup>33</sup>.

In a case, where the proceedings lasted seven years and two months in two tiers of court, no violation was found; the Court explained its analysis as follows: "*the applicant failed to show the diligence required of a party to proceedings governed by the rule that control of the course of civil proceedings*

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<sup>31</sup> Judgment *Ciricosta and Viola v. Italy*, 4 December 1995.

<sup>32</sup> *Patrianakos v. Greece* judgment of 15 July 2004. On the emergence of a true duty of preparation of a case for trial in the case law of the European Court. See below

<sup>33</sup> *Klamecki v. Poland* judgment of 28 March 2002

rests with the parties, since he submitted several imprecise or unfounded procedural requests. As for the national courts, they cannot be held responsible for the fairly lengthy delays, making it possible to regard the overall length of the proceedings as excessive." (§ 209 - unofficial translation)<sup>34</sup>

## C – THE CONDUCT OF THE COMPETENT AUTHORITIES

According to the Court, the conduct of the competent authorities can, of itself, result in a violation of the reasonable time requirement.

### 1. National authorities' arguments accepted by the Court

The European Court accepts that certain circumstances leading to an exceptional overload of the courts may absolve the state of responsibility.

For example, in the *Foti and others v. Italy* judgment of 10 December 1982, before reviewing separately each set of proceedings in issue, the Court noted "*the extent of the troubles that occurred in Reggio Calabria from 1970 until 1973 [which] ... had two important implications for the present case. Firstly, they engendered an unusual political and social climate, and one in which the courts could legitimately fear, in the event of precipitate convictions or severe sentences, a recrudescence of tension and even a recurrence of the disorders. Secondly, the troubles were not without effects on the workings of criminal justice. Such effects were felt mostly in the Reggio Regional Court, but the courts in Potenza, to which cases had been transferred, were also confronted with an exceptional backlog of business.*" It concluded that "*these circumstances must be borne in mind and, in particular, normal lapses of time stemming from the transfer of the cases are not to be regarded as unjustified.*"

In the *Buchholz* case<sup>35</sup>, the Court took account of the national authorities' efforts to deal with the significant increase in the workload of the labour courts of appeal resulting from the economic recession and the backlog of cases that resulted, particularly in the Hamburg court. The number of judicial posts was increased in 1974, when the number of cases started to rise. It also noted that the Hamburg court managed to deal with more cases in 1976 and 1977 than in 1974 and 1975, while the average length of proceedings fell, and that a sixth chamber was established in 1976, to which more than half the cases pending before another chamber were reallocated. Finally, to expedite the business coming before the labour courts, the Government put forward a proposal for legislative reform which was adopted by the parliamentary assemblies in 1979.

Despite the fact that what was at stake was important for the applicant and that the employment case in question lasted four years, nine months and sixteen days before three levels of courts, the Court concluded after a detailed examination of all the procedural stages and measures that in view of the circumstances of the case, in particular the defence strategy, which helped to delay the proceedings, there had been no violation of Article 6§1.

This reasoning was confirmed in the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, in which the Court stated that "*a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind*".

Among the reasons recognised by the Court as excusing national authorities from responsibility for excessively lengthy proceedings are a number of specific factors such as ones connected with requests for international judicial assistance in criminal cases. In the *Neumeister v. Austria* judgment of 27 June 1968, it stated that "*it is, for example, not possible to hold the Austrian judicial authorities responsible for the difficulties they encountered abroad in obtaining the execution of their numerous letters rogatory*".

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<sup>34</sup> *Dosta v. Czech Republic* judgment of 25 May 2004

<sup>35</sup> *Buchholz v. Germany* judgment of 6 May 1981

Neither are the authorities held responsible for the effects of lawyers' strikes, unless they fail to specify precisely their impact<sup>36</sup>. States must also do whatever they can to reduce any resultant delay (*Papageorgiou v. Greece* judgment of 22 October 1997).

## 2. National authorities' arguments rejected by the Court

When states claim that a court is facing an exceptional backlog of cases, the Court generally states that "*Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that they can meet the requirements of that provision*", particularly with regard to the reasonable time condition. The requirement still applies, even if the delays are caused by the structure of the national judicial system<sup>37</sup>.

State budgetary constraints cannot release the State from its obligations (judgment *Burdov v. Russia* (No. 2) of 15 January 2009, §§ 65-69).

Contracting states can choose what steps to take to adjust their judicial systems to meet the reasonable time requirement, but when the authorities fail to take adequate measures states have to accept responsibility, because it is established case-law that the chronic overload of cases before one court does not provide a valid justification for the length of the proceedings (see, among others, the *Dumont v. Belgium* judgments of 28 April 2005 – French only).

Moreover, "*it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations*".

This principle has been applied to proceedings before supreme courts, as in the *Vergos v. Greece* case of 24 June 2004, where proceedings before the Supreme Administrative Court had lasted four years and eleven months, and the *Paummel v. Germany* case of 1 July 1997, where proceedings before the federal Constitutional Court alone had lasted five years and nearly three months.

It also applies where several levels of courts are concerned. In such cases, states are responsible under Article 6§1 for any periods of inactivity, whether they are the consequence of courts' chronically excessive workload or a manifest shortage of judicial personnel.

The time taken to investigate cases is often the reason for excessively long criminal proceedings. In a uncomplicated case that had led to two sets of criminal proceedings lasting respectively four years and four years and three months the Court found a violation of Article 6§1<sup>38</sup>. The authorities maintained that it had been difficult to locate witnesses but the Court did not accept this argument, particularly as the judgments of the criminal court had been handed down *in absentia*. In particular, it found that three years to investigate the complaint, to which the applicant had been joined as a civil party, was excessive in view of the financial implications for him.

In a criminal case in which the applicant had been prosecuted for aggravated slander after criticising the conduct of two judges, the Court found that there had been a violation of Article 6 § 1. Regarding the overall length of the case, which lasted six years, it commented that "*this would, at first sight, appear to be a considerable lapse of time for a case of this kind*". Having examined each stage of the proceedings the Court ruled that the investigation stage, in which there had been two unexplained periods of inactivity of fourteen and thirteen months, had been excessively long for a non-complex case<sup>39</sup>.

In civil-law matters, since its judgment *Köning v. FRG* (28 June 1978), in which it noted that the judge could also have caused delays in implementing investigative measures and forwarding the case-file for trial, the European Court has established a separate obligation for the judge to manage the case-

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<sup>36</sup> *Savvidou v. Greece* judgment of 1 August 2000

<sup>37</sup> *Hadjidjanis v. Greece* judgment of 28 April 2005, French only.

<sup>38</sup> *Dachar v. France* judgment of 10 October 2000

<sup>39</sup> *Corigliano v. Italy* judgment of 10 December 1982.

file in such a way as to ensure reasonable length of trial proceedings. It forcefully reiterated this in two judgments, *Poelmans v. Belgium* and *Leonardi v. Belgium* of 3 February 2009, stipulating that *even where civil proceedings are governed by the principle of party disposition, which consists in giving the parties powers of initiative and impulsion, it is incumbent on the State to organise its judicial system in such a way that the requirement of a trial within a reasonable time is respected*<sup>40</sup>. The judge is therefore required to *ensure compliance with the requirements of Article 6 in terms of reasonable time, particularly by exercising the powers conferred by law, in order to remedy any dilatory manoeuvring by any party to proceedings*, as the Court specifies in a case in which the Government adduced the defendants' conduct as the main cause of delays in an action to establish paternity (*Costa Ribeiro v. Portugal*, judgment of 30 April 2003).

It is clear from the Court's case-law regarding France and Germany that even if the case in question is of an accusatory nature and very dependent on the parties' taking the initiative (as is the case in these two countries), the courts must still use all their powers of enforcement to ensure that proceedings are conducted at the pace warranted by the nature of the case and the circumstances of the parties, set deadlines for them that meet the requirements of Article 6 § 1 and if necessary penalise any failure to abide by these decisions.

The Court does not accept the argument that applicants have not been adversely affected by delays. For example, in the *Jorge Nina Jorge and others v. Portugal* judgment of 19 February 2004 (French only), the Government claimed that the extension of the judicial stage of the proceedings had not caused detriment to the applicants as they had already received the compensation in question. The Court found that a violation of the Convention was possible even if there had been no detriment, which had in any case by no means been established.

We should, however, note here that Protocol No. 14 adds a new admissibility criterion to those set out in Article 35 of the Convention. The Court can now declare inadmissible not only an application which is "manifestly ill-founded or an abuse of the right of application", but also, since 1 June 2010, an application in respect of which it considers that "the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic court". The Court has recently specified that "significant disadvantage" within the meaning of Article 35 para. 3 b) of the Convention must be appraised in the light of the impact of the alleged violation on the applicant's situation (in the case in point, in appeal proceedings before the Constitutional Court, the failure of the latter to communicate to the applicant observations transmitted by the Supreme Court and the regional court), not on the basis of the sum of money at stake before the domestic courts (judgment *Holub v. Czech Republic*, 14 December 2010).

The former Commission also ruled that making provision in domestic law for extensions of the time limits set for the state prosecutor to present his conclusions did not absolve the state from its responsibilities and it could still find the resulting delays excessive (Commission, *Macedo v. Portugal* of 6 November 1989, French only).

In the *Desrues v. France* judgment of 21 July 2005 (French only), the Government maintained that publication of a decree on 10 January 1992 setting out the rules and criteria for classifying and assessing psychiatric disorders arising from military action had led to an influx of requests for associated military invalidity pensions, resulting in delays in dealing with such cases. The European Court simply replied that delays in the domestic courts resulting from an influx of applications following a change in the regulations were not acceptable as a defence.

Similarly, a reform of Turkey's judicial system transferring jurisdiction for certain cases from military to civil courts might have contributed to delays<sup>41</sup> but with reference to the principles cited earlier in the *Zimmermann and Steiner* case the Court stated that "Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its

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<sup>40</sup> Obs. N Fricero, *JCP G* No. 16, 15 April 2009, II, 10070.

<sup>41</sup> Eight years and eleven months, in two tiers of courts, since recognition of the right of individual application.



requirements, including the obligation to hear cases within a reasonable time" (*Sahiner v. Turkey* judgment of 25 September 2001).

A procedural adjournment may be necessary, particularly when a section of the supreme court has to make a ruling, but such rulings must lead to a final settlement, with no further relinquishment of jurisdiction (*Hadjidjanis v. Greece* judgment of 28 April 2005).

Occasionally, in addition to a backlog in certain courts, delays may be caused by a higher court's wish to hear certain similar cases together. The European Court considers such an approach potentially acceptable in the interests of the proper administration of justice but it must not lead to excessive length of proceedings.

The *Hentrich v. France* judgment of 22 September 1994 offers an illustration. In this case, "*the length of the proceedings in the Court of Cassation was attributable primarily to that court's wish to hear together four cases that raised similar issues - an approach which is understandable but which, under Article 6 (art. 6) of the Convention, cannot justify substantial delay*". The case had lasted four years on appeal, owing to a backlog in the court, and two years in the Court of Cassation. Altogether, the proceedings had lasted seven years and three months in three tiers of courts, a period the European Court deemed to be unreasonable in view of what was at stake for the applicant, who had been deprived of her assets because the tax authorities had exercised their right of pre-emption<sup>42</sup>.

As has been shown, the Court takes account of the implications of cases for applicants. What types of proceedings does the Court consider to be sufficiently important for that purpose?

#### **D. WHAT IS AT STAKE FOR THE APPLICANT.**

It is possible to identify from Court judgments situations that it considers to require greater expedition, but no real hierarchy emerges from which the requisite degree of diligence can be deduced. What is at stake therefore has to be determined according to the facts of the case.

"Priority" cases include:

- **Labour/employment disputes**, involving dismissals, recovery of wages or the exercise of the applicant's occupation, where the Court considers that the court concerned must show particular diligence.

In a case over a contract between an independent architect and a local authority, the applicant's main client, the Court considered that special diligence was required of the courts dealing with the case, regard being had to the fact that the amount the applicant claimed was of vital significance to him and was connected with his professional activity (*Doustaly v. France* judgment of 23 April 1998).

In the *Lechelle v. France* judgment of 8 June 2004 (French only), the Court confirmed that "*cases concerning employment disputes covered matters of critical importance for individuals' work situation and had to be settled with particular expedition*".

With reference to the *Obermeier v. Austria* (28 June 1990), *Buchholz v. Germany* (6 May 1981) and *X v. France* (31 March 1992) judgments, the Court said that "*the case had been concerned with the applicant's dismissal proceedings and that the issues at stake called for exceptional diligence from the domestic courts*" (see also the recent case of *Mianowicz v. Germany* (No.2), decision of 11 June 2009, and *Petko Ivanov v. Bulgaria*, decision of 26 March 2009).

The Court has recently reiterated its position "*concerning employment cases, to the effect that exceptional diligence is required*<sup>43</sup>".

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<sup>42</sup> The right of tax pre-emption has since been abolished.

<sup>43</sup> Judgment *Hüseyin Ertürk v. Turkey* of 22 September 2005, §32 (French only).

In the aforementioned judgment *Sartory v. France* of 24 September 2009, the Court observed that the issue at stake was important in substantive terms (cancellation of a transfer), and that a period of over six years to try a case of this kind was excessive<sup>44</sup>.

- **Cases on compensation for accident victims:** when the accidental death of a family member deprives the applicants of their principal means of financial support, the latter have a major personal interest in securing a rapid court decision on the award of compensation<sup>45</sup>.

In a case where the applicant had sought compensation for a car accident, the Court noted that "*after a car accident the applicant became partly disabled, and what was at stake for him was a considerable amount mainly intended to compensate his disablement and loss of working capacity. Under these circumstances the Court finds that special expedition was called for*"<sup>46</sup>.

The requirement of exceptional diligence in cases concerning compensation for a person suffering accidental injuries was also mentioned in the judgment *Stefanova v. Bulgaria* of 11 January 2007.

- The Court also considers that **the length of an applicant's prison term** requires a certain diligence.

In the *Soto Sanchez v. Spain* judgment of 25 November 2003 (French only), the Court said that "*the case was of particular significance to the applicant because the sentence of four years and two months' imprisonment initially handed down by the Audiencia Nacional had been increased to nine years by the Supreme Court and he had been serving this sentence when he appealed to the Constitutional Court*". The Court found that the length of proceedings – five years, five months and 18 days in the Constitutional Court alone – was unreasonable

The Court has stated that in criminal cases, the right to be heard within a reasonable time "*is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate*" (*Stögmüller v. Austria* judgment of 10 November 1969). In the case of *Şinegu and others v. Turkey*, decision of 13 October 2009, the Court observed that the applicants had been remanded in custody throughout the proceedings; such a situation requires the courts dealing with the case to show exceptional diligence in order to administer justice as quickly as possible.

In the *Caloc v. France* judgment of 20 July 2000, the Court held that "*special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers*".

- **Cases of police violence.**

In a Bulgarian case concerning unlawful police violence and state liability for damages arising from such conduct, the Court stated that "*as regards the importance of what was at stake for the applicant, the Court observes that his action concerned payment for grave injuries sustained as a result of police violence. In such cases special diligence is required of the judicial authorities*" (*Krastanov v. Bulgaria* judgment of 30 September 2004).

In cases where delays could deprive the decision of any value, the Court requires the authorities to display not just a certain diligence but exceptional expedition.

- The same applies to **applicants' state of health, let alone their life.**

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<sup>44</sup> Obs. N. Fricero, *Procedures* No. 11, November 2009, comm. 363.

<sup>45</sup> *Mehmet Ozel and other v. Turkey* judgment of 26 April 2005, § 38 (French only), see also the following judgments: *Hatun Güven and others v. Turkey* of 8 February 2005, *Meryem Güven and others v. Turkey* of 22 February 2005, and the judgments on *Obermeier v. Austria* of 28 June 1990, §72, and *Karakaya v. France* of 26 August 1994, §30.

<sup>46</sup> *Kurt Nielsen v. Denmark* judgment of 15 February 2000

This applied to cases before the French administrative courts concerning state liability for and the award of damages to haemophiliacs contaminated by the HIV virus during blood transfusions.

For example, exceptional diligence was called for in the particularly tragic *X v. France* case of 31 March 1992, in which the applicant, a haemophiliac who had undergone blood transfusions, died of AIDS while his case was before the European Court. Like the Commission, the Court took the view that "*what was at stake in the contested proceedings was of crucial importance for the applicant, having regard to the incurable disease from which he was suffering and his reduced life expectancy.*"<sup>47</sup>

In a similar case, the Court stated that "*what was at stake in the proceedings in issue was of crucial importance to the applicant, who has been HIV-positive from birth. .... In short, exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with*" (*Henra v. France* judgment of 29 April 1998)<sup>48</sup>.

What is at stake must be critical if the Court is to find a violation. It has drawn a distinction between applicants who are HIV infected, who are entitled to exceptional diligence, and those who are dependents or parents of AIDS victims, to whom a lesser degree of diligence applies. In a single case with several applicants (*A and others v. Denmark* of 8 February 1996, in which the applicants' conduct contributed significantly to the length of proceedings) the former group were found to be victims of a breach of Article 6 § 1 but not the latter.

In the case of *Gheorghe v. Romania*, decision of 15 June 2007, the Court recalled that *special diligence is required of the authorities where the applicant is suffering from a serious and incurable disease and his condition is rapidly deteriorating* (§54) [...]. *Given the serious decline in the applicant's health during the proceedings, and since the authorities were required to show a high level of diligence, the Court concludes that the length of the proceedings in question is excessive* (§60). In this case the main cause of the delay was a dispute as to jurisdiction between two courts which had committed errors of appraisal of their respective competences.

In the case of *Sopp v. Germany* of 8 October 2009, the Court observed that particular attention should be paid to recognising the occupational origin of a disease in view of the importance of the proceedings to the applicant, since the aim was to provide him with additional means of support by means of a special reversionary annuity<sup>49</sup>.

- **The advanced age of applicants** may also require the rapid conduct of the proceedings. For instance, in connection with the granting of a war pension requested by an eighty-year-old litigant (*Pantaleon v. Greece*, decision of 10 May 2007).

- **In child custody or parental authority** cases, the Court is sensitive to the need to **maintain family links and ensure that parent-child relationships** are not damaged by the passage of time. It generally emphasises the need for custody cases to be dealt with speedily (as in the *Hokkanen v. Finland* judgment of 23 September 1994, in which the Court found that the 18 months of proceedings were not in breach of Article 6§1).

- Finally the same principle applies to **issues relating to individuals' physical state and capacity**. Orders to pay alimony for the support and upbringing of children must also be rapidly enforced, even where enforcement proceedings are pending for a foreign judgment (judgment *Dinu v. Romania and France*, 4 November 2008). In the latter case an applicant secured a decision against both France and Romania on the grounds that the enforcement proceedings had taken nine years because of delays not only in the two judicial systems but also in the ministries concerned.

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<sup>47</sup> For critical positions of the French state: S. Guinchard, "Fair trial" Civil Procedure Directory, op. cit, p.90, No. 330

<sup>48</sup> But see also the judgements *X v. France* of 31-03-1992, *Vallée v. France* of 26-04-1994, *Karaya v. France* of 26-08-1994, *Paillet v. France* of 22-04-1998, *F.E v. France* of 30-10-1998, *Kritt v. France* of 19 March 2002, *Beaumer v. France* of 8 June 2004

<sup>49</sup> Obs. P. Coursier, *JCP*, No. 16, 20 April 2010, 1164.

A detailed list of cases in which the Court has been more demanding about the length of proceedings appears at the end of this report<sup>50</sup>.

## E. OVERALL ASSESSMENT OF THE CIRCUMSTANCES OF THE CASE

Lastly, as we have said, the Court conducts a comprehensive analysis of proceedings and adds up all the periods covered by the various stages in proceedings. This does not, however, prevent it from appraising the excessive length of a separate phase of the proceedings or evaluating such a period in terms of each stage, in the light of the circumstances of the case. For example, in its judgment *Martial Lemoine v. France* of 29 April 2003 concerning a joint ownership dispute which had lasted 7 years 8 months at four different judicial levels, the proceedings lasted one year 10 months at first instance, one year 8 months at appeal level, one year 9 months before the Court of Cassation and just over 2 years before the appeal court to which the case had been referred back. The Court concluded as follows: *in the Court's view, even if an overall duration of over seven years eight months is a fairly long time, the periods attributable to the authorities cannot be considered unreasonable in view of all the circumstances of the case and in the light of the Court's case-law* (§33). Similarly, in the aforementioned judgment *Sopp v. Germany* of 8 October 2009, it was the unjustified two year 2 months' waiting period before the German Federal Constitutional Court, out of the total 18½ years, which made possible the finding of a violation of the right to a hearing within a reasonable time.

In two judgments, *Société Canal Plus and others* and *Compagnie des gaz de pétrole Primagaz v. France* of 21 December 2010, the European Court analysed, from the angle of the reasonable length requirement, an appeal lodged against a judicial decision to authorise a visit and seizures by Competition Authority officials, and linked up this requirement to that of the effectiveness of the said appeal. The Court considered that in order to be effective an appeal must not depend on the existence and outcome of an appeal on the merits against the Competition Authority's decision, and must be examined within a reasonable time. The Court therefore conducts a very specific appraisal of a given stage in the proceedings, but evaluates its duration on the basis of its importance within a wider procedure (embracing the substantive challenge to the decision taken by the authority in question), which can include several separate sets of proceedings<sup>51</sup>.

The appraisal therefore takes in the whole proceedings, and requires consideration (cf. II Part 1 below on starting points and terms of the period to be verified) of the various levels of judicial examination and the pre- or post-judgment administrative phases. In labour disputes, for example, all administrative and judicial proceedings must be taken into account, as well as the time-limit for an Industrial Tribunal decision (judgment *Seguin v. France*, 16 April 2002).

Nevertheless, the following periods are disregarded in computing the overall time: procedures for authorising fixed-date proceedings (judgment *R. v. France*, 3 December 2002), strictly preventive or precautionary proceedings (judgment *Maillard Bous v. Portugal*, 28 June 2001) and procedures for examining an application for a retrial (judgment *Jussy v. France*, 8 April 2003).

In many cases, however an excessive overall length of proceedings does constitute sufficient grounds of violation. This applies particularly when a case has been dealt with by a single tier of courts (especially when a supreme court rules in first and final instance)<sup>52</sup>. This offers sufficient grounds for a finding of excessive length of proceedings, if otherwise warranted.

This is clearly illustrated by the *Obermeier v. Austria* judgment of 28 June 1990, in which the Court stated: "*The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case, the parties' conduct, and so on. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment so that the Court does not consider it necessary to consider these questions in detail.*" After considering the

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<sup>50</sup> Appendix 2

<sup>51</sup> Obs. G. Decocq, *Contrats Concurrence Consommation*, No. 2, February 2011, comm. No. 40.

<sup>52</sup> The many such cases include the *Assymomitis v. Greece* judgment of 14 October 2004

circumstances of the case, particularly in terms of what was at stake and its complexity, the Court concluded that *"the fact remains, however, that a period of nine years without reaching a final decision exceeds a reasonable time. There has therefore been a violation of Article 6 § 1 (art. 6-1) on this point too."*

In a compulsory purchase case that led to three sets of proceedings, two of which were pending and which involved, respectively, two and three tiers of jurisdiction, the Court found that the delays in proceedings lasting more than seventeen years were largely attributable to the conduct of the authorities and of the courts concerned (*Nastou v. Greece* judgment of 16 January 2003, French only).

In the *Comingersoll SA v. Portugal* judgment of 6 April 2000, the Court thought that the circumstances of the case had to be assessed as a whole, and that *"a period of seventeen years and five months for a final decision that has yet to be delivered in proceedings issued on the basis of an authority to execute – which by their very nature need to be dealt with expeditiously – cannot be said to have been reasonable"*.

In connection with a number of legal disputes between an applicant and the social security authorities, the Court applied its normal criteria to the circumstances of the case and concluded that a total duration of more than fourteen years for this type of case was sufficient by itself to make it incompatible with the reasonable time requirement in Article 6§1 of the Convention (*J-M F. v. France* judgment of 1 June 2004, French only).

## **II. CALCULATING THE LENGTH OF PROCEEDINGS AND THE FACTORS INFLUENCING THE CALCULATION**

### **A – THE STARTING POINT**

The starting point of proceedings is sometimes disputed by the parties and may be difficult to determine in the circumstances. For example, in the *Darnell v. United Kingdom* judgment of 26 October 2003, in which the circumstances called for an overall assessment, the Court did not consider it necessary to rule on the disputed starting date and stated that even if it were to adopt the Government's position *"the lapse of time of nearly nine years until the Employment Appeal Tribunal gave its reserved judgment ... cannot, in the circumstances of the present case, be regarded as "reasonable"."*

When negotiations take place between the parties on the level of compensation payable before the case comes before the courts, the Court takes no account of their duration. It considers that they are not covered by Article 6§1 since none of the negotiators can impose a settlement on the others and the discussions may be terminated at any time (*Lithgow and others v. United Kingdom* judgment of 8 July 1986).

Furthermore, where the respondent State has ratified the Convention after the date of commencement of the proceedings at issue, the relevant period starts at the date of entry into force of the Convention in respect of this State, although regard must be had to the state of proceedings at the date of entry into force of the Convention (eg judgment *Kaić and others v. Croatia* of 17 July 2008, §1 4).

The starting point of proceedings **in criminal matters** is very specific. Close examination of Article 6 § 1 shows that the notion of a criminal charge may include stages of the procedure that do not necessarily and automatically come within the scope of the criminal prosecution.

According to the Court's case-law, the starting date is not automatically that on which an individual was brought before the courts. It may be prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened.

In the first length of proceedings case referred to the Court, the Commission initially took as the starting point the date on which the applicant was first questioned by the investigating judge (21 January 1960) and not, for example, that of the indictment (17 March 1964). The Court adopted a

middle path by taking as the starting point 23 February 1961: the date on which the investigating judge decided to open an investigation of the applicant.

According to the Court, "charge", for the purposes of Article 6§1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that "may encompass other measures implying such an allegation that also have a substantial effect on the suspect's situation"<sup>53</sup>.

If the reasonable time requirement begins when a person is "charged", that is when he is substantially affected by the situation. The relevant date was not the one on which fiscal penalties were imposed on the applicant's companies – and not on himself so there was no reason for him to suppose he was under investigation in his personal capacity – but the one on which he was questioned for first time as a suspect, and thus became substantially affected.

In its *Hozee v. Netherlands* judgment of 22 May 1998, the Court noted that "even if a fiscal penalty or tax surcharge may in certain circumstances be considered a criminal charge within the meaning of Article 6 § 1 of the Convention (see the *Bendenoun v. France* judgment of 24 February 1994, Series A no. 284, p. 20, § 47), the penalty in the instant case was imposed by the tax authorities at the end of 1981 on the applicant's companies and not on him personally. There was nothing to suggest that the applicant at that stage was himself suspected of fraud, the offence with which he was eventually charged. Moreover, the imposition of a fiscal penalty under section 21 of the General Act on State Taxes does not give rise to criminal proceedings in the absence of elements which would justify the intervention of the FIOD [the tax authorities] (paragraphs 23, 32, 33 and 41 above)".

In the *Lopez Sole y Martin de Vargas v. Spain* judgment of 28 October 2003, the Court accepted the 8 June 1985 specifying "The same day, the instruction judge ordered a searching in the applicant's permanent address, who was carried out the following day and had important effects on the situation of the applicant"(§ 25).

In the case of *McFarlane v. Ireland* of 10 September 2010, the Court recalled that in criminal matters the "reasonable time" referred to in Article 6 §1 begins as soon as a person is "charged with an offence". "Charging with an offence", for the purposes of Article 6§1, might be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected". The Court considered that the applicant had "been substantially affected" on his arrest on 5 January 1998, since he accepts that that was when he was first notified by the police of the charges against him.

When national legislation authorises victims to bring a separate civil action for damages, for example following a traffic accident, the criminal proceedings may then simply result in the criminal conviction of the perpetrator of the accident, with no possibility of compensation for the victim.

In such cases, the Court considers that bringing a civil action amounts to a waiver of the applicant's civil rights in the criminal proceedings, even if the civil action has been brought because of delays in the criminal case. The criminal proceedings are then no longer concerned with the determination of the applicant's civil rights and obligations or of any criminal charge against him and an application that is solely related to the length of the criminal proceedings becomes incompatible *ratione materiae* with the Convention (final decision on admissibility, *Garimpo v. Portugal* of 10 June 2004 – French only).

In a case concerning economic and financial crime, the Court took as the starting point the date on which the authorities seized the cheque the applicant wished to cash (*Nuvoli v. Italy* judgment of 16 August 2002).

In a case of forgery and fraud, the starting point was taken to be that on which searches were carried out at the first applicant's head office and the second applicant's home, and not the earlier one when

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<sup>53</sup> See the *Eckle v Federal Republic of Germany* judgment of 15 July 1982 and the *Reinhardt and Slimane-Kaïd v. France* judgment of 31 March 1998.

the crown prosecutor formally announced that the second applicant was suspected of forgery and fraud (*Stratégies et Communications and Dumoulin v. Belgium* judgment of 15 July 2002 – French only).

In a fraud case, the Court did not accept the authorities' contention that the starting date should be that of the applicants' first appearance before the investigating judge. Instead it opted for the earlier date when the police had first questioned the applicants and one of them had made a confession. "This was when the applicants had realised that inquiries were being carried out into their activities and the second applicant had even admitted the allegations. It was therefore a measure that had substantially affected those concerned" (*Martins and Garcia Alves v. Portugal* judgment of 16 November 2000 – French only).

Article 71 of the Portuguese Code of Criminal Procedure authorises the victims of criminal offences and, in certain circumstances, their immediate families, to actively intervene as "assistantes" in criminal proceedings, that is as assistants to the public prosecutor.

In the *Moreira de Azevedo v. Portugal* judgment of 23 October 1990 (French only), the Court found that the applicants' civil rights and obligations only came into play when they intervened as "assistantes", that is on 1 February 1993. At that point, they demonstrated that they were interested in securing not only the criminal conviction of the accused but also pecuniary compensation for damage suffered. This was therefore the date on which the period to be taken into consideration started. The Government's contention that at this point the applicants had not yet requested the speeding-up of the procedure, in order to exhaust domestic remedies in accordance with Article 35§1 of the Convention, changed nothing. The applicants had probably made this request when they considered that the length of the proceedings had exceeded the "reasonable limit".

**In civil matters**, the starting point usually coincides with the date on which the case is submitted to the competent court, varying in accordance with the type of proceedings. However, the Court's case-law would seem to suggest that other starting points can be used, depending on specific circumstances or procedures.

In a case in which the applicants' company was first placed in judicial administration and then declared insolvent, the Court calculated the length of proceedings from the date on which the wages of the applicants, who had not been paid for several months, were recognised by the Portuguese court as claims on the company, rather than that of the declaration of claims as part of the subsequent insolvency proceedings, as the authorities proposed (*Oliviera Modesto and others v. Portugal* judgment of 8 June 2000 – French only).

The Court takes a pragmatic approach to the date on which a decision is reached or handed down. For example, if judgment is delivered on day x but the text is only lodged with the registry on day x+20, the Court recognises the latter date as the date of judgment (see, among others, the *Ridi v. Italy* judgment of 11 May 1990, and *Ceteroni v. Italy* judgment of 21 October 1996)

In cases of compensation for a victim of police violence, the starting point of proceedings is the date on which the violence was committed, coinciding with the launch of the criminal investigations, rather than the date of the appeal against State refusal to pay the applicant the damages he has requested, despite the need for prior criminal investigations in order to establish responsibility and the rule that "criminal matters take precedence over civil matters" (*Iribarren Pinillos v. Spain*, decision of 8 January 2009, *loc. cit.*, § 65).

In connection with cases of succession, or more generally in the presence of the heir of a deceased party, the Court holds that where applicants appear in proceedings as heirs, they may complain of the whole duration of past proceedings, even though they are taking part in the domestic proceedings solely in their own name, and the period to be taken into account starts at that date (judgment *De Hohenzollern (de Roumanie) v. Romania* of 27 May 2010).

The specific features of administrative cases are also taken into account in determining the starting point for the reasonable-time requirement. The Court also considers that the starting point is the date

of submission of the mandatory administrative appeal, for instance that of the Minister (case of *Marschner v. France*, decision of 28 September 2004)<sup>54</sup>, not the subsequent appeal to the administrative court against the decision to reject the administrative authority in question. This is also the case where the applicant has been unable to appeal to the competent court before requesting examination, under preliminary proceedings (*Vorverfahren*) before the administrative authority, of the legality and appropriateness of the administrative actions complained of, as in the case of *König v. Germany*, decision of 28 June 1978<sup>55</sup>. In the case of *Donnedieu v. France*, decision of 7 February 2006, the European Court took account of the date of the application to the *Commission d'accès aux documents administratifs*, prior to referral to the administrative court, to set aside the decision by a University Hospital refusing to communicate administrative and medical documents regarding the applicant's committal.

Since its *Golder v. United Kingdom* judgment of 21 February 1975, the Court has held that this could apply to any administrative authority, such as a district social council (*Olsson v. Sweden* judgment of 27 November 1992).

More broadly, the European Court also takes account of any mandatory prior application to a judicial authority. This applies to compulsory proceedings before a national commission to consider whether or not the employer has committed an inexcusable fault, before referring the case to the competent court (judgment *Santoni v. France* of 29 July 2003); it also applies to cases of occupational accidents or consideration of whether a given disease is occupational (cf. aforementioned judgment *Sopp v. Germany* of 8 October 2009, where there were no prior administrative proceedings but where the Higher Social Court considered the occupational origin of the disease).

Generally speaking, the starting point occurs when a case is referred to a court of first instance, but it may also be the time of referral to a supreme court, since the latter frequently hear cases in first and final instance.

Other specific starting points may include particular procedural measures such as orders to pay in France and Italy, requests for interlocutory measures, objections to an enforcement measure or the defendant's personal appearance in oral proceedings.

Another feature common to all countries is that there is a clearly established case-law concerning the Court's temporal jurisdiction and how this affects its assessment of the length of proceedings. When determining the starting date of proceedings, the Court may not include any period prior to the state's recognition of the right of individual petition - which may be quite distinct from the date of accession to the Convention - even if in practice the relevant proceedings started before that date. In such cases, the Court makes it clear that in assessing the reasonableness of the time that elapsed after the official starting date, account must be taken of the state of proceedings when the defending state accepted the right of individual petition.

For example, in the *Kanoun* judgment of 3 October 2000 (French only), where the relevant proceedings had started in 1975, the Court was only able to take account of the period since 2 October 1981, the date of French recognition of the right of individual petition. However, citing the *Foti v. Italy* judgment of 10 December 1982, it stressed the need to take account of the state of proceedings on that date.

This is established case-law. In the *Proszak v. Poland* judgment of 16 December 1997, the starting point was 1 May 1993, when Poland's recognition of the right of individual petition for the purposes of Article 25 of the Convention took effect, even though the original application to the Polish court had been on 25 October 1990.

In its *Marciano Gama Da Costa v. Portugal* decision of 5 March 1990 (French only), the Commission "first noted that it itself had no temporal jurisdiction to consider the length of proceedings prior to 9 November 1978, when the defending government ratified the Convention and recognised the right of

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<sup>54</sup> See also judgment *Jorge Nina Jorge and others v. Portugal* of 19 February 2004.

<sup>55</sup> See also *Farnage S.A. v. France* of 13 July 2006, § 39, and *Hellborg v. Sweden* of 28 February 2006, § 59.



*individual petition. Nevertheless, in accordance with its established case-law on the subject, it had to take account of the state of the proceedings on that date”.*

In the *Zana v. Turkey* judgment of 25 November 1997, although the proceedings in question seemed relatively brief (one year and six months), the Court found a breach of Article 6§1 and took account of the fact that by the date of deposit of Turkey’s declaration the proceedings had already lasted two years and five months<sup>56</sup>.

The Court did not accept a government’s argument that even facts subsequent to recognition of its compulsory jurisdiction were excluded from its scope where they were merely extensions of an already existing situation, which it had no authority to consider<sup>57</sup>.

A table is appended<sup>58</sup> showing the date of accession to the Convention of each contracting state, and the date of recognition of the right of individual petition if this is different. Since Protocol No 11 came into force on 1 November 1998, it has not been possible to accede to the Convention without recognising the right of individual petition.

This is of particular relevance when determining how far back one can go in examining the case-law relating to particular states, particularly those that have most recently ratified the Convention.

Finally, certain periods are not taken into account when calculating the length of proceedings for consideration by the Court. This applies to issues referred by one of the courts concerned to the Court of Justice of the European Communities for a preliminary ruling (*Koua Poirrez v. France* judgment of 30 September 2003 and *Pafitis and others v. Greece* judgment of 26 February 1998).

## **B – THE END OF THE PERIOD CONCERNED**

In criminal cases, the period ends when final judgment is handed down on the substantive charges. This generally takes the form of an acquittal or conviction with no further right of appeal, but may also be a prosecution decision to terminate proceedings or a decision by the court that the case is time-barred<sup>59</sup>.

However, in the *Stoianova and Nedelcu v. Romania* judgment of 4 August 2005 (French only), the Court ruled that the applicant’s discharge could not count as a final domestic decision because the Romanian Code of Criminal Procedure authorised the prosecution service to quash the discharge order and reopen criminal inquiries without any specified time limit.

In civil matters, the final, irrevocable decision marks, in principle, the end of the period to be taken into account. More specifically, the Court mentions a decision which “disposes of the dispute” (judgments *Guincho v. Portugal* of 10 July 1984 and *Erkner and Hofauer v. Austria* of 23 April 1987). This concept is broader than the reference to *res judicata* since it also embraces the enforcement phase, as we shall see below.

In proceedings combining the jurisdictions of judicial and administrative courts, such as expropriation proceedings, the Court considers the proceedings in their entirety and holds, as did the Commission in the case of *Guillemin v. France*, decision of 21 February 1997, that “*the period whose reasonableness falls to be reviewed takes in the entirety of the proceedings, right up to the decision which disposes of the dispute (“contestation”). In the instant case, resolving the dispute, which could have been amicably settled, entailed bringing two sets of proceedings: the first in the administrative courts, which alone have jurisdiction to assess whether the public interest of an expropriation is lawful, and the second, conducted in both the administrative and the ordinary courts simultaneously, to secure compensation for the applicant for the illegal expropriation of her property by the public authorities.*

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<sup>56</sup> In this case, the Court also took account of what was at stake for the applicant.

<sup>57</sup> *Yagci and Sargin v. Turkey* judgment of 8 June 1995.

<sup>58</sup> Appendix 1

<sup>59</sup> *Mori v. Italy* judgment of 19 February 1991

*The latter proceedings are still pending. The length of time to be considered accordingly exceeds fourteen years already (19 November 1982 - 22 January 1997)".*

The Court's mode of appraisal allows it to take exclusive account of the excessive length of proceedings at first instance, even if the latter are still pending. This often applies in cases of vicarious liability action, in which the starting point is the decision establishing damages disposing of the dispute, rather than the decision on the principle of liability<sup>60</sup>. In such cases excessive length of proceedings is often due to the time taken to submit the expert report<sup>61</sup>.

In the *Silva Pontes* case<sup>62</sup>, the Court stated clearly that "*if the national law of a State makes provision for proceedings consisting of two stages - one when the court rules on the existence of an obligation to pay and another when it fixes the amount owed - it is reasonable to consider that, for the purposes of Article 6 para. 1 (art. 6-1), a civil right is not "determined" until the amount has been decided. The determination of a right entails deciding not only on the existence of that right, but also on its scope or the manner in which it may be exercised (see, among other authorities, the Pudas v. Sweden judgment of 27 October 1987, Series A no. 125-A, p. 14, para. 31), which would evidently include the calculation of the amount due.*" However the Court may decide that the first stage of the proceedings has itself exceeded the reasonable time.

The European Court does not, however, take account of preliminary proceedings before the CJEU (formerly CJEC), because "to do so would adversely affect the system instituted by Article 177 of EEC Treaty (now Article 267 of the TFEU) and work against the aim pursued in substance in that Article" (judgment *Pafitis and others v. Greece* of 26 February 1998, § 95).

The Court also sanctions unreasonable length of appeal proceedings. Adverse finding have been largely based on excessively long cassation proceedings before both the *Conseil d'Etat (Ouendeno v. France*, 16 April 2002) and the Court of Cassation (*Brochu v. France*, 12 June 2001)<sup>63</sup>

In the case of references to constitutional courts, the Court has to decide whether they have influenced the outcome of the proceedings in question. If this is the case, their deliberations are included in the length of proceedings.

For example, in the *Deumeland v. Germany* judgment of 29 May 1986, the Court ruled in connection with the German Constitutional Court that "*although it had no jurisdiction to rule on the merits, its decision was capable of affecting the outcome of the claim*", and found a violation of Article 6§1.

In France, the entry into force of the so-called "Priority Constitutional Question" (QPC) on 1 March 2010, introducing a *posteriori* review by the Constitutional Council of the constitutionality of laws, should also affect the appraisal of the requirement of reasonable length of proceedings, particularly since this mechanism, which can only be implemented in the framework of a dispute, requires the trial court to defer any decision until the QPC procedure has been completed. Nevertheless, these new provisions set very strict time-limits on the examination of these questions: the courts concerned must rule "without delay", and the supreme courts of both the administrative and judicial systems, as well as the Constitutional Court, must issue a decision within three months, giving a total maximum time of 6 months.

The Court considers that time elapsed that is attributable to administrative authorities is also attributable to the state, even if these authorities are distinct from the central authorities. This applies, for example, to local authorities, as in the *Kurt Nielsen v. Denmark* judgment of 15 February 2000, in

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<sup>60</sup> Judgment *Guincho v. Portugal* of 10 July 1984.

<sup>61</sup> Eg proceedings lasting over 17 years 10 months in which no judgment on the merits was ever issued (*Roselli v. Italy*, 15 February 2000), or a case which is still pending at the court of first instance eight years 8 months after the commencement of proceedings (*Marques Gomes Galo v. Portugal*, 23 November 1999).

<sup>62</sup> *Silva Pontes v. Portugal* judgment of 23 March 1984

<sup>63</sup> N. Fricero, *Garanties de nature procédurale : équité, publicité, célérité et laïcité*, in *Droit et pratique de la procédure civile*, Dalloz action, 2009-2010, No. 212.136, p. 562.

which the Court stated that "*the Contracting Parties are, however, also responsible for delays attributable to public-law organs, like municipal authorities, which - although they are not organs of the State - perform official duties assigned to them by law*". Also of relevance is the *H. v. United Kingdom* judgment concerning the dilatory conduct of a local county council committee responsible for the supervision and care of under-age children.

The Court also includes the time taken for any enforcement proceedings in calculating the overall period. Enforcement of a decision from any court must be considered an integral part of the "trial" within the meaning of Article 6: the right to a hearing within a reasonable time would be illusory if a State's domestic legal system enabled a final, binding judicial decision to remain ineffective to the detriment of any party (see judgment *Hornsby v. Greece* of 19 March 1997, §§ 40 ff).

Over the last few years, the non-enforcement or delayed enforcement of domestic courts' decisions has become the second most frequently identified problem in the Court's judgments. The Committee of Ministers has prioritised this issue in the framework of the supervision of the enforcement of the Court's judgments<sup>64</sup>.

In the recent case of *Ziabreva v. Russia*, decision of 18 March 2009, the Court sanctioned the excessive length of enforcement proceedings on the basis of infringements both of the right to a fair hearing (Article 6 § 1) and of the right to respect for property secured by Article 1 of Protocol 1, which illustrates the importance of the enforcement phase for the effective implementation of the right guaranteed.

The length of enforcement proceedings must also be appraised in accordance with the same criteria as the length of the main proceedings (*Bendayan Azcantot and Benalai Bendayan v. Spain*, decision of 9 June 2009, § 71; this case concerned the enforcement of a judgment required an individual to pay civil damages arising from a criminal offence and expenses and costs incurred under criminal proceedings).

In the *Pinto de Oliveira v. Portugal* judgment of 8 March 2001 (French only), it found that the proceedings to be taken into consideration started on 11 May 1993, when the matter was referred to the Mangualde court, and were still under way at the time of judgment, because the uncompleted execution proceedings that had subsequently been initiated had to be taken into account in deciding whether the length of proceedings was reasonable.

In an Italian case, the Court refused to express a view on whether under Italian law enforcement proceedings were autonomous, adding that "*it is with reference to the Convention and not on the basis of national law that the Court must decide whether, and if so when, the right asserted by ... [the applicants] actually became effective*".<sup>65</sup> In this dispute, the Court considered that the enforcement proceedings must be regarded as the second stage of the initial proceedings, which had not been completed as the judge responsible for enforcement proceedings had not yet ruled.

The authorities' failure to implement a final decision within a reasonable time may also result in a violation of Article 6§1.

This is particularly the case when the obligation to implement a decision devolves on an administrative authority, as in a number of recent judgments: *Metaxas v. Greece* of 27 May 2004, *Timofeyev v. Russia* of 23 October 2003, *Prodan v. Moldova* of 18 May 2004 and *Romashov v. Ukraine* of 27 July 2004. In the *Metaxas* case (judgment in French only), the Court found that in violation of Article 6§1 the national authorities had failed to comply within a reasonable time with a judgment of the Audit Court, which had been handed down on 13 April 2000 but only implemented on 19 September 2001, thus depriving it of all useful effect.

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<sup>64</sup> Guide to Good Practice accompanying Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings, p. 5, note 13.

<sup>65</sup> *Zappia v. Italy* judgment of 26 September 1996

The Court holds the State responsible for the enforcement agents whom it empowers, on a monopoly basis, to conduct enforcement measures: it is for the State to take all the necessary steps to enable bailiffs to carry out the task they have been assigned, particularly by ensuring the effective participation of other authorities that may assist enforcement where the circumstances so require (judgment *Pini and others v. Romania* of 22 June 2004, § 183).

Similarly, in the *SARL IZA and Makrakhidze v. Georgia* judgment of 27 September 2005, the Court stated that "by failing for over four years to ensure the execution of the binding judgment of 14 May 2001, the Georgian authorities have deprived the provisions of Article 6 § 1 of the Convention of all useful effect".

Similarly, the procedure for enforcing a foreign judgment is subject to the same requirements, and must be completed within a reasonable time, which is not the case when it takes over fifteen years because of court negligence (judgment *Hohenzollern v. Romania* of 27 May 2010)<sup>66</sup>.

Like the Commission previously, the Court takes account of extraordinary appeals. In its admissibility decision of 14 January 1998 in the *Z.C. v. Poland* case (French only), the Commission noted that the Supreme Court had twice accepted extraordinary appeals from the applicant and quashed decisions of the courts of first instance for manifest errors of law. Power to authorise such appeals was vested in the State Prosecutor and the Minister of Justice. The Supreme Court, which considered such appeals, had the power to invalidate, quash or confirm lower courts' decisions. Its examination was therefore decisive for the applicant's civil rights and obligations, within the meaning of Article 6§1 of the Convention, so all the appeals, including extraordinary ones, had to be taken into account when calculating the length of the proceedings.

The Court's oversight may extend to subsidiary proceedings. In the *Robins v. United Kingdom* judgment of 23 September 1997, which concerned an application for costs under the domestic Legal Aid Act, the Court found that "*the costs proceedings, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as part of a 'determination of ... civil rights and obligations'*". It referred to a number of previous judgments, including *Silva Pontes v. Portugal* of 23 March 1994, *Di Pede v. Italy* and *Zappia v. Italy* of 26 September 1996 and *Hornsby v. Greece* of 19 March 1997.

Sometimes, a trial has not even been completed. In the *Grauslys v. Lithuania* judgment of 10 October 2000, the commercial director of a private company was suspected of fraud and the prosecution authorities launched proceedings. The case lasted five years without judgment ever being handed down at first instance.

The greater the impact of any delay on the outcome of proceedings, the more severely the Court judges the case. An example is when the application of a time limit prevents an applicant from obtaining a decision on the merits of the case. In the *Textile Traders Limited v. Portugal* judgment of 27 February 2003 (French only), the Court found it particularly striking that the prosecution authorities had had to rule on applications for the setting aside of several procedural measures because they had not been notified to the applicant company. The criminal proceedings were finally terminated because the time limit had been exceeded, thus preventing the company from obtaining a decision on the application it had made in the proceedings.

Finally, even greater diligence is required when the proceedings seek to establish the state's liability for violation of the reasonable time requirement. The *Vaney v. France* judgment of 30 November 2004 (French only) concerns an action to establish whether the state was responsible for, and if so should be penalised for, the excessive length of previous judicial proceedings. It concluded that the proceedings lasting two years and seven months before the court of appeal and two years and nearly four months before the Court of Cassation had exceeded the reasonable time requirement.

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<sup>66</sup> Obs. N. Fricero, *Procédures*, No. 7, July 2010, comm. 271.

## **SECOND PART REASONS FOR DELAYS AND THEIR REMEDIES: FINDING REASONABLE PERIOD**

**The second part of the report is concerned:**

**1. The reasons for delays** as they emerge, explicitly or implicitly, from Court judgments, Court and Commission admissibility decisions and material supplied by the Execution of Court Judgments Department.

The Department notes that Court judgments are becoming less and less explicit about the reasons for delays and that it is necessary to seek clarification on the relevant impediments and difficulties from the national authorities concerned. Committee of Ministers resolutions are interesting in this regard because they provide valuable information on the reforms carried out, which make it possible to identify, retrospectively, the one-off and more structural problems they are designed to remedy. These resolutions are incorporated into the Committee of Ministers' annual reports, the first of which covers 2007<sup>67</sup>.

There are three main causes of delay:

- ones external to the legal and judicial systems properly speaking, which relate to a political or economic context;
- ones that are common to all types of proceedings;
- ones that apply to a particular category of proceedings, depending on whether they are civil, criminal or administrative.

**2. The main reforms** introduced in domestic systems following adverse Court judgments and domestic remedies for seeking redress for detriment suffered as a result of excessively lengthy proceedings or for expediting proceedings.

**3. The times considered to be reasonable** the excessive and "pathological" delays having been abundantly described, it is appropriate to examine, to finish, and after having pointed out the main trends of the Court, some cases of delay considered to be reasonable. Other cases are in a more detailed manner described in the tables appearing as annexes 3 and 4 of the report.

### **I. REASONS FOR DELAYS**

#### **A. External reasons for delays**

##### **• Origin of delays: major political events**

The taking into account of the political events by the Court differs according to whether the cases are received by the ordinary courts or in front of the constitutional court of the State in question: this distinction was formalized in the judgement *Süssmann v. Germany* and the posterior cases.

Surrounding the reunification of Germany in 1990. the country was, for several years, the subject of violation judgments as a result of the backlog of cases in the Constitutional Court, overwhelmed with major issues connected to reunification

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<sup>67</sup> For an analysis of the method of supervision of the enforcement of judgments by the Committee of Ministers and the various decisions taken by this Council of Europe body, see E. Lambert Abdelgawad, *The Execution of Judgments of the European Court of Human Rights*, annual report, in *Revue trimestrielle des droits de l'homme*, 2006, pp. 669 ff, and 2007, pp. 647 ff.

Many of these were concerned with compensation for the victims of expropriation between 1945 and 1949 in the Soviet occupied zone of Germany following the agrarian reform or after 1949 in the former GDR.

The Court recently examined one of these cases (*Von Maltzan and others, Von Zitzewitz and others, Man Ferrostaal and Alfred Töpfer Stiftung v. Germany*, decision of 2 March 2005) from the length of proceedings standpoint, and found the application inadmissible. It referred to its *Süssmann* case-law of a few years earlier, which recognised the special role of constitutional courts in democratic states.

In the *Süssmann v. Germany* judgment of 16 September 1996<sup>68</sup>, the Court stated (§§55-57): "*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.*"

In this case, which concerned a dispute over the level of a supplementary retirement pension that affected many civil servants, the Court had to strike a balance between the reasonable time requirement and the more general principle of the proper administration of justice, which in this case justified the grouping together of twenty-four cases and the Constitutional Court's giving priority to a series of other urgent cases linked to German reunification and affecting the employment contracts of 300 000 civil servants from the former GDR. It concluded that there had been no violation of the Convention, in a case brought before the Constitutional Court as a result of individual appeals rather than a reference from another court.

Another important case concerned the constitutionality of legal provisions introduced when the former East German social and retirement insurance system was integrated into that of the Federal Republic, and in particular how supplementary retirement pensions should be treated. In several inadmissibility decisions<sup>69</sup>, the Court found that the time taken to conduct proceedings before the Constitutional Court was not excessive, given their complexity and in line with its *Süssmann* case-law.

The case *Trikovic v. Slovenia*<sup>70</sup> refers to the situation new States born of dismantlement of the former Yugoslavia: the applicant, Slovenian of origin Serb supported that its request concerning its military pension before the constitutional Court had been judged too slowly (of a duration of 2 years and 7 months). However the Court does not retain the violation of the reasonable duration of procedure before the constitutional Court of Slovenia: stressing that the file of the applicant was the first of a long series of disputes of an extreme complexity, formed by the military personnel of ex-Yugoslavia, it recognizes that this situation implied for the Court an examination in detail of the case.

Contrary, when the delays are the fact of ordinary courts, and in spite of a context of a general and disturbed policy, the Court shows itself more demanding towards the State concerned recalling him its conventional engagement in accordance with the Article 6§1.

With its return to democracy in 1978, Spain experienced considerable judicial problems. In the *Union Alimentaria Sanders SA* judgment of 7 July 1989, the Court expressed its awareness that "*Spain had to overcome serious difficulties during the restoration of democracy. It duly appreciates the efforts made by the Spanish authorities to improve public access to the courts and to overhaul the country's judicial system. It reiterates, however, that in ratifying the Convention, Spain undertook to organise its judicial system in such a way as to ensure that it satisfied the requirements of Article 6 para. 1 [of the Convention]*".

### **Case-law examples**

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<sup>68</sup> See also the inadmissibility decisions, *Scwengel v. Germany* of 2 March 2000 and *Kuna v. Germany* of 10 April 2001

<sup>69</sup> *Kuna v. Germany* decision of 10 April 2001, *Schwengel v. Germany* decision of 2 March 2000

<sup>70</sup> Judgment of 12 June 2001.

The *Süssman* case-law was confirmed by the Court in the *Gast and Popp v. Germany* judgment of 25 February 2000, which stated that "*while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice.*"

It reaffirmed the point in connection with the Portuguese Constitutional Court in the *Rosa Marques and others v. Portugal* judgment of 25 July 2002 (French only), in which it accepted the government's contention that the reasonable time requirement could not be interpreted in the same way for an ordinary and a constitutional court, given the latter's role as guardian of the constitution and the priority it had to give to certain cases that were socially and politically more important. Nevertheless, it found a violation of Article 6§1, since the case had concerned expropriation proceedings of no particular complexity that had lasted eight years and two months in four separate levels of courts.

Concerning trial and appeal courts of Portugal, this country had faced the same difficulties a few years earlier, as the Court acknowledged in similar terms: "*It (the Court) cannot overlook that the restoration of democracy as from April 1974 led Portugal to carry out an overhaul of its judicial system in troubled circumstances which were without equivalent in most of the other European countries and which were rendered more difficult by the process of decolonisation as well as by the economic crisis ....*"<sup>71</sup>. Nevertheless, the Court found in this case that Portugal was in breach of its Convention obligation to ensure that cases were heard within a reasonable time.

## Major reforms

Spain undertook significant reforms of its national judicial system under the organic laws of 10 January 1980 establishing a judicial services commission and 1 July 1985 on the judicial system. In Barcelona four new courts of first instance started operating in September 1981 and new judicial districts were established.

### • Origin of delays: the transition from a planned to a market economy

The political and economic upheavals in certain contracting states led to major changes in the organisation of their court systems.

The Court's case-law concerning states that have signed the Convention since the fall of the Berlin wall reveals a link between problems of length of proceedings and the changes in the political and economic systems of eastern Europe. The transition from planned to market economy has led to changes in citizens' relationship to the law and proceedings and judges' training, reforms in the law of procedure and a reallocation of responsibilities between courts, which in turn have resulted in delays.

New constitutional principles of an independent judicial system and the separation of powers have gradually been established. These changes have led to delays in proceedings, as has the Court's own case-law, which has forced several of these countries to reform their civil and criminal procedure.

## Case-law examples

The Czech Republic introduced judicial reforms in the years after 2000. In the *Zouhar v. Czech Republic* judgment of 11 October 2005 (French only), the Court acknowledged that the regional court had had to refer the matter on a number of occasions to other national authorities for the purposes of the proceedings before it and that the national judicial system had been reorganised while the case was under way.

In the *Podbielski* judgment of 30 October 1998, the Court acknowledged this problem with regard to Poland, in connection with an applicant still awaiting a final decision. It noted that "*the delay in the delivery of a final decision on the applicant's action has been caused to a large extent by the legislative changes resulting from the requirements of the transition from a state-controlled to a free-market system and by the complexity of the procedures which surrounded the litigation and which*

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<sup>71</sup> *Guincho v. Portugal* judgment of 10 July 1984

prevented an expeditious decision on the applicant's claim. The Court recalls in this respect that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time ..... Therefore the delay in the proceedings must be mainly attributed to the national authorities" (§38).

## **B. Delays common to all types of proceedings**

### **1. Delays originating the procedure**

#### **• Origin of delays: geographical problems**

The uneven distribution of courts within countries emerges frequently as a problem from the Court's judgments, which refer to excessive caseloads resulting from a geographical organisation that has failed to respond to demographic and economic changes.

#### **Case-law examples**

The problems caused by the excessive workloads of certain courts are described in some detail in the *Union Alimentaria Sanders SA v. Spain* judgment of 7 July 1989: lower courts overflowing (each of the Barcelona courts of first instance had to deal with an average of 1 800 cases), a 62% increase between 1981 and 1984 in the volume of cases dealt with by the Barcelona court of appeal and so on. The same story occurs in many of the contracting states at different points of their legal history. In the Spanish case, despite the measures taken by the state the Court found that five years and two months of proceedings before two levels of courts was excessive.

#### **National reforms**

Following various findings of length of proceedings violations, the Italian authorities informed the Committee of Ministers that certain reforms had been introduced. "*Act No. 30 of 1 February 1989 (which entered into force the same year), concerning the courts of first instance (preture), redefines the territorial jurisdiction of these courts which is henceforth not limited to the department. This enactment has made it possible to abolish some 273 courts of first instance which had low workloads and to redistribute the magistrates and the auxiliary personnel among the courts with heavy workloads.*"<sup>72</sup>

In Hungary, the Supreme Court's workload has declined significantly following a reform of the judicial system in 2002. This transferred that court's appeal functions to five appeal courts established in 2003 and 2004.<sup>73</sup>

#### **• Origin of delays: transfers and insufficient numbers of judges, and non-replacement of transferred or unavailable judges**

Delay is caused by the resignation of the judge hearing the case, delayed or non-replacement and the problem of recruiting judges.

This issue is linked to how judges are recruited and managed.

The problem has occurred in many contracting states at different periods and is often combined with other difficulties affecting the functioning of courts, such as inadequate support staff. The Court regularly points out that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time.

If the measures taken are not sufficient to improve the situation, it holds the national authorities responsible.

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<sup>72</sup> Resolution ResDH (95) 82 concerning the *Zanghi v. Italy* case

<sup>73</sup> *Timar and others v. Hungary*, Annotated Agenda of the 922nd meeting of the Committee of Ministers, April 2005, CM/Del/OJ/(2005) 922, vol I



Shortage of judges sometimes impedes the application of procedural measures that would otherwise help to avoid delays. In the *Guincho* case, it emerged that under Articles 159 and 167 of the Portuguese Code of Civil Procedure applicable at the time the judge could submit a request for service of a writ, after which the registry had two days to submit it to the relevant court and the latter then had to order the writ to be dispatched for service within five days (§11). In this case, however, the judge who issued the request for the writ in early December was transferred and was replaced by a colleague who reissued the request on 18 January and various subsequent occasions, but did not obtain it until 18 June, that is six months on.

### **Case-law examples**

One of many such cases concerned civil proceedings challenging an encumbrance<sup>74</sup>, in which the judge in charge was transferred and the case remained dormant until he was replaced nearly seventeen months later.

In the case of *Nankov v. "the former Yugoslav Republic of Macedonia"* of 2 June 2008, one of the causes of the delay in a set of criminal proceedings which had been continuing for ten years was frequent changes of judges.

In its judgment *Pokhalchuk v. Ukraine* of 7 October 2010 the Court noted that several delays were caused by adjournments for reasons of an unavailable judge and an incomplete court, which resulted in over 10 years of proceedings concerning a non-complex case of delimitation of property.

More recent examples include a number of Belgian cases, in particular the *Willekens v. Belgium* judgment of 24 April 2003 and the *Dumont v. Belgium* judgment of 28 April 2005. In the latter (French only), the Court found that the sole cause of the delays before the courts of first instance of the Brussels appeal court was shortage of judicial personnel, which in turn resulted from recruitment difficulties linked to the legal requirement for judges to be bilingual in French and Dutch<sup>75</sup>.

In its judgment *Wauters and Schollaert v. Belgium* of 13 May 2008, the Court found that the excessive length of proceedings had been due to the shortage of police officers on the investigation.

### **National reforms implemented:**

In 2002 the Belgian authorities amended the provisions on language use in the judicial field in order to relax bilingual requirements and secure resources for trying French-speaking cases, which account for most of the cases submitted to Brussels courts. A new Law amending the Judicial Code was adopted on 26 April 2007 to tackle the judicial backlog. The judicial budget increased in 2008, providing more operational resources (eg continuing the computerisation of the judicial administration and developing and securing the functioning of the courts) and enabling additional staff to be recruited, prioritising sentence enforcement<sup>76</sup>.

One of the main causes of excessive length of proceedings in Luxembourg, leading to several adverse findings against this country, also resulted from work overload and understaffing in terms of police officers and investigating judges. Action was taken in 2003 to reorganise the Police Service and recruit more officers. Furthermore, judges and prosecutors were recruited in 2001, 2003 and 2005, and a new Law on criminal justice was adopted in 2006, introducing a number of procedural reforms to cut back on the workload of investigating judges<sup>77</sup>.

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<sup>74</sup> *Diana v. Italy* judgment of 27 February 1992: violation for proceedings lasting 11 years and 11 months before two levels of courts in a relatively complex case

<sup>75</sup> 2007 Annual Report of the Committee of Ministers, pp.83 and 84

<sup>76</sup> 2008 Annual Report of the Committee of Ministers, pp. 122 and 123.

<sup>77</sup> 2007 Annual Report of the Committee of Ministers, pp. 94 and 95.

In Slovenia, similarly, a major judicial reform has been launched, leading to an increase in judicial staffing following the finding against this State in the judgment *Lukenda* of 6 January 2006, which highlighted systemic problems arising particularly from a lack of resources<sup>78</sup>.

One cause closely bound up with judicial staff shortages and non-replacement is the backlog of cases in courts.

- **Origin of delays: backlogs of cases**

Backlogs of cases in courts are caused by the increase in litigation with no concomitant increase in resources, which is one of the main factors in excessive length of proceedings.

Backlogs raise no problems if they only occur occasionally. On the other hand, if they persist, the Strasbourg Court holds that implementation by the State of inadequate measures to deal with backlogs incurs the national authorities' responsibility. In the aforementioned *Guincho* case, for instance, the Court considered that in view of the foreseeable increase in litigation, the measures taken by the State to remedy court backlogs had been too little too late.

**Reform suggested by the European Court:**

This issue is linked to the problem of processing the growing stock of cases in the event of excessive court workloads and the fact that priority must go to old or pending cases.

The Court set out guidelines in the aforementioned Spanish case of *Union Alimentaria Sanders SA*: "In such circumstances (a temporary backlog of court business) it is legitimate as a temporary expedient to decide on a particular order in which cases will be dealt with, based on their urgency and importance. The urgency of a case, however, increases with time; consequently, if the critical situation persists, such expedients are shown to be insufficient and the State must take other, more effective action to comply with the requirements of Article 6 para. 1".

**National reforms:**

Further to the finding against Germany because of the excessive length of joint criminal proceedings (1996-2006) in respect of the applicants, who had been sentenced to life imprisonment, especially owing to substantial delays before the Federal Constitutional Court (over 6 years one month due to the exceptionally large workload facing the Federal Constitutional Court at the time), the German State introduced a new registry, recruited additional judicial staff and simplified proceedings, with a three-judge section in charge of decision-making (*Kaemena and Thöneböhn v. Germany*, decision of 22 April 2009).

Generally speaking, the obligation on member States to organise their judicial systems in such a way that they can respect the right to a hearing within a reasonable time has encouraged some States to undertake large-scale reform.

This applies to Slovakia (further to the judgment *Jakub v. Slovakia* of 28 May 2006, among others), which has conducted a series of reforms, including a "big reform of the Code of Civil Procedure" on 15 October 2010, with a number of innovations such as simplification of the arrangements for serving documents, harmonisation of the procedure for challenging judges, extension of the courts' capacity to determine a case without a hearing, simplification of inheritance procedures, introduction of a simplified procedure for the settlement of minor litigation, broadening of the scope of the legal rules governing court orders, introduction of a possibility for courts to appoint joint counsel for several parties to a single set of proceedings, limitation of the possibility for courts of appeal and cassation to challenge or quash rulings delivered by a lower court, and to refer them back for review<sup>79</sup>.

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<sup>78</sup> Ibid., pp 100 and 101.

<sup>79</sup> 2010 Annual Report of the Committee of Ministers, p. 137.

In the Czech Republic, similarly, a number of procedural changes were brought to the Code of Civil Procedure in 2000, 2005, 2008 and 2009, intended to diminish the workload of judges, to simplify procedures and to prevent delays, notably: the replacement procedure for partial judges; the possibility to appeal in almost all cases; the duty of judges to instruct the parties on their procedural rights and obligations, and to encourage friendly settlements; the new rules established to ensure special diligence in family cases, the speedy decision-making in proceedings concerning children and the possibility of mediation and peaceful settlement of disputes between parents; a new system for serving court documents, relying on the "presumption of service" and the "preparatory hearing" intended to make the proceedings more concentrated, so that the court can decide the case in a single hearing<sup>80</sup>.

France adopted its 5-year Orientation and Programming Law for Justice on 9/09/02, geared to improving the effectiveness of justice in particular by reducing the length of civil and criminal cases. First of all, court staff has been greatly increased: 950 magistrates and 3 500 State employees and agents of the judicial services were planned for 2007. Financial resources were also augmented by more than 11% for 2004 and 2005<sup>81</sup>.

Criminal Court backlogs and the concern to protect the right to a hearing within a reasonable time also prompted France to introduce so-called "fast-track" procedures in the criminal-law field. The Law of 9 March 2004 expanded the scope of selected types of proceedings based on the defendant's consent, such as a criminal-law settlement, and a new procedure was introduced, namely immediate trials upon prior recognition of guilt. More recently, Law No. 2011-1862 of 13 December 2011 on apportionment of proceedings, adopted on the basis of proposals set out in the Guinchard report<sup>82</sup>, considerably expanded the scope of this procedure, as well as other "fast-track" procedures such as the processing of simple and minor cases via an *ordonnance pénale*.

#### • Origin of delays: time actually spent by judges on extra-judicial activities

Certain Italian and other cases suggest that judges' participation in statutory extra-judicial activities, such as chairing crime prevention committees, election monitoring and so on, considerably reduces the time they can spend at hearings and handing down judgments. Statistics on judicial staffing levels may therefore be misleading regarding the effective time spent to judge.

#### Case-law example

There were many other reasons for delays in the *Capuano* case, but the Court also noted that "*the hearing was postponed to 24 January 1978, but did not take place until 31 January, because of a further adjournment due to municipal elections*".

#### National reforms:

In Slovakia, the 2003 legislation on court officials that came into force on 1 January 2004 introduced the post of principal court registrar to enable administrative staff to perform various tasks that do not require the involvement of judges.

#### • The systematic use of benches of judges at first instance

The use of benches of judges, the collegial principle, in conjunction with inefficient management of judicial manpower, may be a source of delays. If a member of a bench is absent or unavailable or has been transferred, hearings may be postponed. The case-law of the Court gives pictures of this kind of delay in civil courts as well as in criminal courts. Moreover, although benches are considered to be a guarantee of impartiality and a high standard of justice, using them even for minor cases and disputes over small sums calls for a significant number of judges.

#### Case law examples in civil matters:

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<sup>80</sup> 2009 Annual Report of the Committee of Ministers, p. 121.

<sup>81</sup> 2007 Annual Report of the Committee of Ministers, p. 83.

<sup>82</sup> S. Guinchard, *L'ambition raisonnée d'une justice apaisée*, submitted to the Minister for Justice in July 2008.

The *Bento da Mota v. Portugal* judgment of 28 June 2001 is an example. In a minor civil liability case, two hearings were deferred because of the absence of a judge of the lower court. There were further delays for other reasons and more than 3 years were lost after an expert report had been submitted.

The collegial principle had been judged to be a cause of delays in Italy.

#### **National reforms:**

In Italy, there were reforms in 1995, introducing justices of the peace, and 1999, establishing single judge courts. The jurisdiction of single judge courts of first instance was also considerably increased. The French Decree No. 98-1231 of 28 December 1998 extended the use of a single judge to civil cases. In 2002, moreover, *juges de proximité* ("local courts") were introduced to deal with small claims<sup>83</sup>.

#### **Case law examples in criminal matters:**

This applies to criminal courts in certain contracting states where a professional chair of the bench sits alongside two non-professional judges.

#### **National reforms:**

The single judge in criminal matters has been established in several contracting states for small claims. Already established in France for petty offences in district courts, he is, by law 95-125 of 8 February 1995 introduced in criminal courts for some offences like those of the highway code.

#### **• Origin of delays: inaction by the judicial authorities**

Judicial inertia, especially the failure to take any procedural action over a certain period, is invariably deemed unacceptable by the Court unless it is properly explained by the national authorities<sup>84</sup>. In a Portuguese case (French only), the Court was unable to accept a period of total inactivity lasting four years and eleven months between the conciliation attempt and the preparatory decision<sup>85</sup>.

#### **Case-law examples**

The *Piron v. France* case<sup>86</sup>, revealed numerous periods of inactivity in an agricultural land consolidation case in which the allocation of parcels was challenged by the applicants. These occurred in the *Département* land reorganisation and consolidation committee, which handed down its decision six and a half years after the administrative court judgment, and in the administrative courts themselves, particularly the *Conseil d'Etat*, which gave judgment four years after the case was referred to it.

In a Greek criminal case<sup>87</sup> lasting nearly eight years that went to appeal, the Court noted several periods of inactivity attributable to the national authorities. "*The Court notes that there were several periods of inactivity in the appeal proceedings before the Salonika Criminal Court of Appeal. After the applicant had filed an appeal on 18 February 1988 the case lay dormant for over one year and seven months until it was listed for the first hearing on 6 October 1989. Furthermore, after 6 October 1989, the case was relisted on four occasions: 19 April 1991, 8 February 1993, 5 December 1994 and 12 February 1996.*"

In the *Lavents v. Latvia* judgment (French only), the Court criticised the period of ten years and 28 days that elapsed between the standing down of one set of judges and the case's resumption before a new bench.

In the *Santilli* judgment of 19 February 1991, the Court found that proceedings lasting nearly six years and nine months violated Article 6§1 and criticised the lower court, which "*allowed periods to elapse that were too long and was totally inactive for nearly two years (23 June 1982 - 20 June 1984).*"

<sup>83</sup> Orientation and Programming Law for Justice, 9 September 2002.

<sup>84</sup> Eg such inactivity may be explained by a request for international judicial assistance.

<sup>85</sup> *Rego Chaves Fernandes v. Portugal* judgment of 21 March 2002; See also *Condé v. Portugal* judgment of 23 March 2000

<sup>86</sup> *Piron v. France* judgment of 14 November 2000 (French only)

<sup>87</sup> *Portington v. Greece* judgment of 23 September 1998

In the case of *Leandro da Silva v. Luxembourg*, decision of 11 February 2010, the Court found that even though the judge had adjusted the schedule of hearings several times, the proceedings had lasted four years at the first judicial level, which cannot be deemed compatible with the "reasonable time" requirement set out in Article 6 § 1.

The case *Delic v Croatia*<sup>88</sup> reveals dysfunctions of this type on the occasion of several civil disputes initiated by the applicant against various defendants. The Court underlines periods of inertia in each authority: 2 years and 10 months for one, 2.5 years for the other, more than 1 year for a third, 1 year and 6 months for the fourth.

In the case of *Atanasović v. "the former Yugoslav Republic of Macedonia"*, a first-level court remained inactive for no apparent reason, allowing the proceedings to drag on for several years.

### **National reforms:**

"The former Yugoslav Republic of Macedonia" adopted a new Law on civil proceedings in September 2005. This text was mainly geared to increasing the effectiveness of civil procedure and reducing its duration. A new Law on enforcement was also passed in 2005. In addition, an automatic case information and management system was set up in all domestic courts in February 2009. All pending cases have been recorded in it since 15/09/2009, and as from 01/01/2010 the registration, monitoring and management of cases will be carried out solely by means of this system<sup>89</sup>.

#### **• Origin of delays: court inactivity and the rules of evidence**

Inactivity, whether absolute or relative (for example, when audiences are spaced too far apart), often has consequences for the need to provide evidence. Parties may need to constantly update factual or financial information necessary to progress their case.

#### **Case-law example**

The *Kubiznakova v. Czech Republic* judgment of 21 June 2005 (French only) is a particularly good example. The case concerned the exercise of parental authority prior to a divorce, and the slow pace of the proceedings meant that the parties were repeatedly forced to update the information on their incomes, which in turn led to challenges from the other party.

#### **Origin of the delay: systemic deficiencies in the rules of procedure**

The Court sometimes identified causes of delay intrinsically related to the national legislation and implying major reforms. This situation is characteristic of certain States of the East like Poland, Slovenia, Croatia, Ukraine, Hungary, Bulgaria where the procedural rules allowed the ceaseless re-examination of the same cases: in the judgement *Wierciszewska v. Poland*, of 25 November 2003, the European Court underlines this dysfunction in these terms: "*The delay was caused mainly by the re-examination of the case. Although the Court is not in a position to analyse the juridical quality of the case law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system*"<sup>90</sup>.

#### **Case-law example**

In its judgment *Floarea Pop v. Romania* of 6 April 2010 the Court found that one of the main causes of the delays in a case of administrative liability which had lasted 7 years 10 months was the lack of a legislative provision to prevent a court from repeatedly adjourning proceedings.

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<sup>88</sup> Judgment of 27 June 2002

<sup>89</sup> 2010 Annual Report of the Committee of Ministers, p. 135.

<sup>90</sup> Also following judgments : *Pavlyulynets c. Ukraine* judgment of 6 September 2005, *Carstea & Grecu c. Romania*, 15 June 2006, *Ferlic c. Slovenia*, 6 April 2006, (§ 46)

Judgement *Horvat v. Croatia* of 26 July 2001; or *Preloznik and other v. Slovak Republic*.

#### **National reforms:**

The measurements taken by the States concerned to cure it appear in a public document: "List of Measurements of general character adopted in order to prevent new violations of the European Convention of the Human rights. Measurements communicated to the Committee of Ministers during his control of the execution of the judgements and the decisions under the terms of Convention (Application of old Articles 32 and 54 and Article 46)" updated at May 2006<sup>91</sup>.

Thus, in Croatia, the reform of the rules of civil procedure in 2003, related in particular to this problem.

#### **• Origin of delays: Difficulties arising from the existence of administrative and judicial courts**

Two sets of courts exist in a number of countries - Greece, France, Belgium and Austria for example – and are an integral part of their judicial cultures. This may sometimes lead to delays. If proceedings are under way simultaneously in both systems applicants may be unsure about which courts have jurisdiction or there may be a stay of proceedings.

#### **Case-law example**

The *Nouhaud v. France* judgment (French only) offers a clear illustration of the problems caused by this sort of arrangement, in connection with a compulsory admission to psychiatric hospital, which comes within the scope of both the administrative court (lawfulness of the prefectoral order) and the regional judicial court (appropriateness of the detention order). This overlapping jurisdiction led to a stay of proceedings in the judicial court pending a decision of the administrative court, where proceedings lasted three and a half years in the *Conseil d'Etat* alone, a time that the Court considered to be excessive.

In the *Obermeir* case<sup>92</sup>, the interaction between administrative and judicial proceedings relating to the dismissal of disabled persons was the main cause of delays.

## **2. Delays occurring at the beginning and during the procedure**

#### **• Origin of the delay: the granting or the late refusal of a request for legal aid**

In order to ensure the respect of the rights of defence, the request for legal aid which allows the designation of a lawyer and sometimes conditions the continuation of the authority by the applicant concerned, often delays the fixing of the first court session.

#### **Case-law example**

In the case *Mangulade Pinto v. France* of April 9, 2002, the CEDH criticized the length of the proceeding of a seven months period between on 17 April 1997, date of the request for legal aid formed by the applicant in order to prepare the appeal in cassation, and on 26 November 1997, date on which the office of legal aid refused its application.

#### **• Origin of delays: failure to summon parties, witnesses or defendants or unlawful summons**

This is usually a problem connected with court registries when they have the monopoly of summons, but also to maladjusted rules of procedures.

#### **Case-law example**

In its judgment *Roubies v. Greece* of 30 April 2009 concerning probate matters, the Court noted that the domestic court had taken twenty-six months to secure statements from four witnesses, which, in combination with other factors, had resulted in an excessive length of proceedings of 14 years. In

<sup>91</sup> Available on ECHR website: <http://www.ehcr.coe.int/ehcr>

<sup>92</sup> *Obermeir v. Austria* judgment of 28 June 1990

another case, namely *Mincheva v. Bulgaria*, decision of 2 September 2010, the Court found that the Bulgarian authorities had been unable validly to summon a party to appear in a family litigation case.

In the judgment *Djangozov v. Bulgaria* of 8 October 2004, the Court noted, in the judicial authorities' defence, that, in addition to the unexplained periods of inertia, two hearings had been adjourned because the defendants had not been properly summoned in a libel case where the criminal aspects took precedence over the civil issues (§39).

The Court subscribes to the argument of the applicant according to whom the court failed in its obligation to ensure the appearance of the witnesses in the *Volf* case<sup>93</sup>, which led to repeated adjournments of the court sessions;

#### **National reforms:**

In 2007 Bulgaria adopted a new Code of Civil Procedure with the main aim of speeding up court proceedings. In particular, it sets out to concentrate the investigative steps at first instance and to restrict petitions at appeal and on points of law<sup>94</sup>.

In Croatia, the 2003 reform of civil proceedings has modified the rules relating to such summonses to avoid delays. ( Articles 66-79 of the Act of 14 July 2003)<sup>95</sup>

In Sweden, in order to improve the delivery of the convocations to the court sessions, the national authorities called upon the private companies, whose services are remunerated only if the convocations are delivered successfully<sup>96</sup>.

#### **• Origin of the delay: the time of designation of an instructing judge**

This type of delay is more serious when a case proceeds in front of several successive authorities and when designations are, with each stage, the occasion of an additional delay.

#### **Case-law examples:**

The judgement *Martial Lemoine v. France* of 29 April 2003 relates to a dispute of the joint ownership which, for four tiers of courts, lasted 7 years and 8 months; being the activity of the courts, the European judges appoint only one period for which they raise an unjustified and exclusively ascribable delay in their eyes with the internal authorities: the eight month deadline during which the Supreme court of appeal was too long in appointing an legal adviser.

#### **• Origin of delays: late entry into force of essential implementing legislation**

The Court has criticised such delays, which can seriously disadvantage parties to proceedings. An obligation for administrative authorities to issue the necessary implementing regulations for the enforcement of laws within a "reasonable time" could be proposed.

#### **Case-law examples:**

In the *Vallée v. France* judgment of 26 April 1994, where exceptional diligence was required in view of the state of health of the applicants, who were HIV infected, one and a half years elapsed between publication of the Act of 31 December 1991 providing for compensation for victims of contaminated blood transfusions and that of the implementing decree of 12 July 1993<sup>97</sup>.

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<sup>93</sup> *Volf v. Czech Republic* judgment of 6 September 2005.

<sup>94</sup> 2010 Annual Report of the Committee of Ministers, p. 131.

<sup>95</sup> Resolution ResDH(2005)60 concerning the judgments of the European Court of Human Rights in the case of Horvat and 9 other cases against Croatia

<sup>96</sup> The report of the Task Force "Time management of justice systems: a Northern Europe study" (CEPEJ(2006)14).

<sup>97</sup> In France an executive authority which fails to introduce implementing regulations may be fined by the administrative courts until it takes the necessary steps, but such coercive fines are imposed only in cases where the introduction of regulations has already been delayed ( *Conseil d'Etat* judgment of 28 July 2000, *Association France. Nature Environnement*)

In the case of *Počuča v. Croatia*, decision of 29 September 2006 (*inter alia*) the violation found had been largely due to a legal gap, created in 1998 by a decision of the Constitutional Court declaring the unconstitutionality of certain legislative provisions concerning pension rights, which resulted in the submission of more than 427 800 applications to the local Pension Fund's regional offices. The legislation required to fill that legal gap was adopted in 2004 and 2005<sup>98</sup>.

- **Origin of delays: late transmission of the case file by the lower court to the court of appeal, or delay in serving evidence**

This problem reflects malfunctioning both in the organisation of court registries and in the transmission of files.

**Case-law examples:**

The *Martins Moreira v. Portugal* judgment offers a civil law illustration: "after the applicant had lodged an appeal on 13 October 1982, the registry of the Evora court waited until 23 June 1983 to transmit the file to the registry of the appeal court. In the intervening period, it merely verified that various pleadings were included in the file and drew up a statement of the costs and expenses relating to the first instance proceedings".

Such delays can also affect criminal proceedings and appeals on points of law, as shown by the *Bunkate v. Netherlands* judgment of 26 May 1993, in which the Court criticised the fifteen and a half months that elapsed between the applicant's appeal on points of law and the arrival of his case file in the Supreme Court (§22).

**National reforms:**

In the case of *Borankova v. Czech Republic*, decision of 21 May 2003, one of the causes of the delay was the dilatory transmission of certain documents. In July 2009 a new law came into force introducing electronic forwarding of documents via data mailboxes. This law is the latest in a series of reforms of civil procedure, with a new system for serving court documents, relying on the "presumption of service" and the "preparatory hearing" intended to make the proceedings more concentrated, so that the court can decide the case in a single hearing<sup>99</sup>.

- **Origin of delays: disputes as to jurisdiction**

In the judgment *Mihalkov v. Bulgaria* of 10 April 2008, the Court noted that the principal delays occurred during the initial procedural phase regarding the question of court jurisdiction. The Court concluded that a period of three years to settle a question of jurisdiction was clearly excessive in terms of a preliminary procedural question.

- **Origin of the delay: the behaviour of the other actors of the lawsuit:**

- **lawyers:** it can be a question of a strike of the lawyers causing a delay in fixing the schedule for court sessions, as in the *Calvelli* case and *Ciglio v. Italy* of January 17, 2002<sup>100</sup>: the State must limit the effects on the functioning of the courts. The Court thus rejects a government's contention that much of the delay was due to a lawyers' strike, observing that it is incumbent on Contracting States to organise their judicial systems in such a way that their courts can ensure everyone's right to obtain a final decision (judgment *Tsilira v. Greece* of 22 May 2008).

The defect of diligence of a lawyer in his role of representation of one of the parties causes also delay, as in the case *Intiba v. Turkey* of 24 May 2005 when the Court observes that the applicant and his lawyers largely contributed to the prolongation of the procedure. (nearly 1 year of delay is ascribable to them). Sometimes, the applicant by challenging several lawyers successively, takes part in the delay: judgement *Klamecki v. Poland* of 28 March 2002.

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<sup>98</sup> 2008 Annual Report of the Committee of Ministers, p. 124.

<sup>99</sup> 2009 Annual Report of the Committee of Ministers, p. 121.

<sup>100</sup> See also, *Papageorgiou v. Greece* judgment of 22 October 1997 (7 months strike).



- **Notaries**<sup>101</sup>: In this case, the Paris interdepartmental chamber of the notaries appointed a new notary on October 3, 1996, that is to say nearly 5 years after the judgement of 17 December 1991. "As for the absence of diligence of this notary, it was in particular underlined by the revivals of the receiver" underlines the CEDH (§ 41 and 42).

- **non official public bodies**: The municipalities (the Council of a County in the judgement *H v. the United Kingdom* of July 8, 1987), or other public organisations as the municipal social services (social office of Helsinki)<sup>102</sup> engage the responsibility for the State if they do not act with necessary diligence when they are asked for an opinion or intervene within the framework of legal procedures. But it returns to the courts concerned to respect the appropriate delays.

**Case-law examples**: The behaviour of the social security is in question in the case *Robins v. the United Kingdom* of 23 September 1987: "the Court recalls moreover that, when they ask opinions of other authorities, the courts remain responsible for the respect of the deadlines".

The case of *Ekholm v. Finland*, decision of 24 October 2007, concerned proceedings before the administrative courts regarding an almost 16-year-old dispute between neighbours over private disturbances which had led to the refusal, for almost ten years, of the competent authorities (the southern Åland Municipal Health Board) to implement the final judicial decisions issued in response to the applicants' complaints.

#### **National reforms:**

In France, Law No. 2004-439 of 26 May 2004 reforming divorce procedure established a number of provisions geared to expediting notarial operations to settle rights in property arising out of the matrimonial relationship, providing for the appointment of a ministerial agent to deal with this issue from the outset of proceedings, under provisional measures, requiring the parties, on pain of inadmissibility of their divorce petition, to propose settlements of their property interests, and, lastly, enabling them to confirm their agreement at all stages in proceedings.

#### **• Origin of delays: reform of the legislation during the proceedings**

Reform of civil or criminal procedure when cases are already under way can lead to jurisdiction being transferred from one court to another, with time then being needed to transmit files and procedural documentation and appoint new judges, who must then familiarise themselves with the relevant cases before arranging hearings.

**Case-law examples**: The *Krastanov v. Bulgaria* judgment of 30 September 2004 offers a good illustration. As the Supreme Court of Cassation no longer had jurisdiction following the reform of the civil procedure code, the Supreme Court forwarded the appeals to a newly created court of appeal. On 28 October 1997 the case was referred to the Supreme Court, the new civil procedure code came into force on 1 April 1998 and appeals were then referred to the new appeals courts, proceedings resumed in the new appeals court on 9 July 1998 and hearings took place between October 1998 and April 1999, culminating in an appeal court judgment on 5 May 1999, that is one year and seven months after the original referral to the Supreme Court. In the case of *Dimov v. Bulgaria*, decision of 8 March 2007, the Court declared that it could accept that some of the delays affecting the proceedings in question had been due to the reform of the Bulgarian judicial system, but that one of the main causes of the delay had preceded the introduction of the reform on 1 April 1998.

In an Italian case<sup>103</sup>, the procedure governing labour court disputes was introduced while the case was under way. This gave jurisdiction to the magistrate's court at first instance and the district court on appeal, but did not apply to current cases. However, the new legislation resulted in an almost four-year suspension of the proceedings before the first investigating judge.

#### **• Origin of delays: provisions in rules of civil or criminal procedure that can be used to impede or delay proceedings, with no safeguards**

<sup>101</sup> *Dumas v. France* judgment of 23 September 2003.

<sup>102</sup> *Nuutinen v. Finland* judgment of 27 June 2000: §§114 & 118.

<sup>103</sup> *Vocaturò v. Italy* judgment of 24 May 1991

It has been possible for parties to use certain provisions of civil or criminal procedure to delay proceedings, as in the case of the former Italian system in which proceedings were automatically suspended when a party challenged a civil court's jurisdiction and which allowed parties in criminal cases to present fresh evidence throughout the proceedings, with no system of time limits.

#### **National reforms:**

In France, following a report in 2004 to the Minister of Justice,<sup>80</sup> a decree No 2055-1078 of 28 December 2005 relating to the civil procedure,<sup>81</sup> certain procedures of execution and the procedure of renaming envisages in Article 23, a "fixed timetable" is issued by the judge, in agreement with lawyers of the parties, and in these terms: "The timetable comprises the foreseeable number and the date of the exchanges of conclusions, the closing date, that of the debates and, notwithstanding the first and second subparagraphs of Article 450, that of the pronounced decision. (...) The time allowed in the timetable cannot be extended that in the event of serious and duly justified cause". Furthermore, equivalent measures have been taken to regulate trial preparations by the judge in oral proceedings (applicable in many courts: district courts, industrial tribunals, commercial courts, etc), under Decree No. 2010-1165 of 1 October 2010 governing the conditions of recourse to written procedures, also allowing for "procedural schedules".

As underlines it Mrs Professor Fricero, "the determination of a timetable becomes the guard of the reasonable time of the lawsuit, in close cooperation with the litigants"<sup>104</sup>.

#### **• Origin of delays: problems relating to expert witnesses**

The delays related to the intervention of one or more experts in the procedure are very common in the civil, criminal and administrative proceedings and correspond to various situations:

#### **• Origin of delays: Delays in appointing experts owing to judicial inertia**

Although in Denmark parties may propose the appointment of experts, under the Administration of Justice Act courts are not obliged to agree to them. In the aforementioned *A. and others v. Denmark* judgment, the Court criticised the Danish court for allowing the parties to negotiate for almost two years on who should be appointed as experts and what questions to ask, without ever intervening ( § 80).

#### **• Origin of delays: experts who fail to comply with their mandate**

Such situations create difficulties and delays and lead to requests for second opinions. The Court has constantly to emphasise that although experts have full autonomy in drawing up their reports, they are still subject to the supervision of the court, which must ensure that expert appraisals are properly conducted.

#### **Case-law example**

In the *Versini v. France* judgment of 10 July 2001 (French only), the Court found that the expert had exceeded his terms of reference, which were simply to assess the damage suffered. This had led to the applicant's requesting second opinions, thus prolonging the proceedings.

#### **• Origin of delays: the time granted by the court to the expert may not be extended to an exaggerated degree**

In the *Pena v. Portugal* judgment of 18 December 2003 (French only), the Court pointed out that the expert's appraisal formed part of the judicial proceedings under the supervision of the court, which retained responsibility for the expeditious conduct of the case. This related to a case in which a state scientific laboratory had been required to submit its report within 60 days, that is on 19 November 1996, but had not done so until 15 May 2000, after the civil court had granted numerous extensions<sup>105</sup>.

<sup>104</sup> "Procédure civile chronique", Nathalie Fricero, Pierre Julien, in *Dalloz*, No. 8 p. 546.

<sup>105</sup> See also: *Molin Insaat v. Turkey* judgment of 11 January 2005

In a Greek case, the court of appeal ordered an expert report on 15 February 1994, but only appointed the expert on 16 September 1994. After a hearing on 21 March 1995, it decided to re-examine the case and recall the expert for further explanations, but the hearing only took place on 8 April 1997. Judgment was handed down on 28 July 1997, but not published until 22 May 1998.

The *Capuano* case, concerning an easement, is another good example of problems arising from expert reports. On 14 March 1978 the court gave its appointed expert sixty days to submit his report but after numerous delays this only appeared on 5 July 1979, to be followed immediately by a request from one of the parties for a private expert report.

- **Origin of delays: Failure to penalise experts for lack of diligence**

Once again the European Court criticises the inertia of the courts, stressing that “an expert works in the context of judicial proceedings supervised by a judge, who remains responsible for the preparation and the speedy conduct of the trial”<sup>106</sup>.

#### **Case-law example**

An extract from the *Zappia v. Italy* judgment of 29 August 1996 (23 years of proceedings in a simple and still pending case of contractual liability and execution of judgment) illustrates the sequence of adjournments that can occur in length of proceedings cases: “On 27 March 1985, after an adjournment ordered by the court of its own motion, the judge appointed an expert, who was sworn in on 25 September 1985. The hearings listed for 26 February and 25 June 1986 had to be adjourned, as the expert had not filed his report within the sixty days he had been given. The hearing set down for 26 November 1986 could not take place because the judge had been transferred.”

In another case, the Court had this to say about a court's lack of initiative: “The Court observes that the two reminders to the expert issued by the judge preparing the case for trial - the first of which, moreover, came more than five months after expiry of the one-month limit given on 4 July 1980 .... did not have the desired effect and that the expert should therefore have been replaced.” *Di Pede v. Italy* judgment of 26 September 1996 (civil procedure).

The Court stigmatizes the behaviour with the court in a case where the applicant successfully requested new opinions of an expert: it underlines “the domestic court did not have to grant additional expert opinion every time the applicant had requested it; the court itself has the authority to decide how to conduct the proceedings, and in particular, which evidence to take” (§ 30<sup>107</sup>). The Court estimates that the delay taken during the period between 20 November 2001 and 7 May 2003 concerns the shared responsibility for the applicant and the court.

In a building-law case which had lasted 15 years, the Court noted that one of the reasons for this excessive length of proceedings was that an expert report ordered by the first-level court for submission within three months from the date of commissioning had taken three-and-a-half years to complete for no good reason (judgment *Raway and Wera v. Belgium* of 27 November 2007). Similarly, in the case of a settlement of bodily injury which had lasted 16 years seven months, the Court acknowledged that the case had required several expert opinions which took some time to prepare, but nevertheless condemned the total delay caused (judgment *Sürmeli v. Germany* of 8 June 2006).

- **Origin of delays: difficulties in obtaining medical reports (criminal procedure)**

These are cases in which forensic medical establishments that are normally responsible for carrying out medical examinations in legal proceedings are unable to supply an expert within the time laid down (*Martins Moreira v. Portugal* judgment of 26 October 1988).

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<sup>106</sup> Judgment *Zappia v. Italy* of 26 September 1996, § 25.

<sup>107</sup> Arrêt *Sundov c. Croatie*, du 13 avril 2006.

### **National reforms:**

Reforms were brought to the forensic medicine institutes to make of them auxiliaries adapted to an effective administration of justice. Following the Order in Council No. 169/83 of 30 April 1983 and ministerial decree No 316/87 of 16 April 1987, they were equipped with essential human and material resources. Moreover, pursuant to the Order in Council No. 387-C/87 of 29 December 1987, the reforms were carried out on the level of the organization of the institutes in order to make them ready to answer quickly the requests which are presented to them<sup>108</sup>.

- **Origin of delays: Numerous adjournments of hearings, either of the court's own motion or at the parties' request, and excessive intervals between hearings.**

Such delays reflect civil courts' failure to control the proceedings.

### **Case-law examples:**

In the *Baraona* judgment<sup>109</sup>, the Court said although domestic legislation allowed state counsel to seek an extension of time the state might still be held responsible for any resultant delays.

In the *Vaz Da Silva Girao v. Portugal* judgment of 21 March 2002 (§12) (French only), the Court noted that although Article 264 of the Portuguese Code of Civil Procedure made parties responsible for taking the initiative with regard to the progress of proceedings, Article 266 required courts to take all appropriate steps to remove obstacles to the rapid conduct of cases. It also drew attention to Article 68 of the Road Traffic Code, which required the applicant's case to be heard under the summary procedure, which in turn involved a reduction in certain time limits.

In a dispute between the applicant and a health insurance office, the Court criticised the court of appeal for not hearing the case sooner: "*in the Rouen Court of Appeal, the case was adjourned to a second hearing that was held nearly eleven months after the first .... although, whatever the reason for this adjournment, none of the evidence in the case file justified such a delay*"<sup>110</sup>.

In the case of *Günseli and Yayik v. Turkey*, decision of 21 February 2008, the Court found that one of the main causes of the excessive length of proceedings was the unnecessary and unexplained postponement of several criminal hearings.

In the *A. and others v. Denmark* judgment of 8 February 1996, the Court stated that "*the applicants contributed significantly to the length of the proceedings. It is also mindful of the fact that the proceedings in issue were not inquisitorial but were subject to the principle that it was for the parties to take the initiative with regard to their progress*". However, it also criticised the High Court, before which the case had already been pending for approximately two years, for granting all of the parties' numerous requests for adjournments, "*hardly ever using its powers to require them to specify their claims, clarify their arguments, adduce relevant evidence or decide on who should be appointed as experts*" (§80). Yet in Denmark, it is for the court to decide when to close the preliminary oral or written stage of the proceedings, intended to establish the facts and the legal issues of the case, to ensure that the case is elucidated in the best possible way and to identify the subject-matter of the dispute. Once the preparation of the case has been completed the parties may not make new submissions or adduce new evidence unless they satisfy certain restrictive conditions.

In a recent case, the Court regretted that "more than 2 years between the second and third hearings held by the municipal court"<sup>111</sup>.

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<sup>108</sup> Source: List of General measures adopted to prevent new violations of the European Convention on Human Rights. Stock-taking of measures reported to the Committee of Ministers in its control of the execution of judgments and decisions under the Convention (updated May 2006, p. 155).

<sup>109</sup> *Baraona v. Portugal* judgment of 8 July 1987

<sup>110</sup> *Duclos v. France* judgment of 17 December 1996

<sup>111</sup> *Volesky v. Czech Republic* judgment of 29 June 2004, §105.

Adjournments of hearings were held to be even more detrimental in a case where a procedural objection that had been presented three years earlier was finally accepted by the court, thus nullifying all the preceding stages of the proceedings (*Ferreira Alves v. Portugal* (n°2) judgment of 4 December 2003).

- **Origin of delays: judicial errors of law**

"An error of law made by a judge can lead to an appeal and thus extend the length of proceedings. If this in itself were to give rise to a violation of the right to a hearing "within a reasonable time"<sup>112</sup>, that would be tantamount to acknowledging that there is a right to court decisions free of error." The Court is not totally convinced by this argument and considers that an error imputable to a court might justify a violation finding, but only in combination with other factors.

In the above-mentioned judgment *Rashid v. Bulgaria* of 5 June 2008, the Court stressed that the delay had stemmed primarily from a series of referrals of the case by the higher courts back to the first-level court and to the preliminary investigations stage, owing to breaches of procedural rules (particularly unlawful summons of witnesses).

- **Origin of delays: various types of court negligence**

Another prevalent cause of delays in proceedings is negligence on the part of the judicial authorities, including the loss of case-files.

In the (aforementioned) case of *Pokhalchuk v. Ukraine*, decision of 7 October 2010, for instance, the Court recalled that the loss of the applicant's file represented negligence entirely attributable to the authorities and could in no way be deemed an objective fact requiring the Court to reduce its estimation of the length of proceedings (see also *Karov v. Bulgaria*, decision of 16 November 2006).

### 3. Delays occurring after the procedure

- **Origin of delays: excessive lapse of time between the handing down of judgment and its notification to the court registry or to the parties**

In certain countries, several months may elapse between the handing down of judgment and its notification to the party responsible for executing it. The problem often lies in the court registry or the inadequacy of its information technology facilities, while sometimes judgments are not notified because of a shortage of court officials.

Close attention therefore needs to be paid to the role of such court official in considering the causes of delays.

#### **Case-law example**

"Finally, it is difficult to understand why the judgment was not notified in writing to the parties until two months after its delivery" (*Buchholz v. Germany* judgment of 6 May 1981).

#### **National reforms:**

In France, "contracts of objectives" have been agreed in certain pilot appeal courts (some administrative appeal courts). In exchange for additional staff and other resources, they undertake to make significant reductions in the time taken to hand down and implement judgments.<sup>113</sup>

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<sup>112</sup> *Bock v. Germany* judgment, 23 March 1989

<sup>113</sup> Resolution ResDH(2005)63 of 18 July 2005 concerning the judgments of the European Court of Human Rights in 58 cases against France (see Appendix to this Resolution) with respect to excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before the administrative courts. See also 2008 Annual Report of the Committee of Ministers, p.88

In Austria, information technology is being introduced to manage the flow of cases and monitor their progress<sup>114</sup>.

## C. CAUSES OF DELAY BY TYPES OF PROCEEDINGS

### 1. Civil proceedings

Courts' failure to use the powers or discretion granted by the rules of procedure

- **Origin of delays: Judicial inertia in producing evidence**

These are cases where the civil courts are insufficiently active when the rules of procedure allow them to be.

#### Case-law example

In the aforementioned *Kubiznakova* judgment (French only), the Court accepted the applicant's argument that the reason she had had to present evidence, often repeatedly, was because the court had failed in its obligation to secure evidence of its own motion, as it was required to do in this type of case.

- **Origin of delays: Failure of courts to check that summonses to appear are properly drawn up, when the code of civil procedure places this responsibility on them.**

#### Case-law examples:

The *Capuano v. Italy* judgment of 11 November 1994 offers one of many examples. Reference may also be made to the *Serrentino v. Italy* judgment of 27 February 1992, §18 and, *mutatis mutandis*, the *Cifola* judgment of 27 February 1992, § 16.

- **Origin of delays: Cases where civil procedure prevents the examination of new grounds on appeal**

The fact that civil procedure prevents the examination of new grounds on appeal, which means that lower courts must show special vigilance, cannot justify excessive length of proceedings at first instance.

#### Case-law example

In the *Lechner and Hess* case<sup>115</sup>, the Government relied on the fact that civil proceedings in Austria were founded on the principle that new matters could not be raised on appeal (*Neuerungsverbot*) to justify granting the trial court extra time to reach a decision, since the higher court was restricted to reviewing the impugned decision on the basis of the material before the court below. The judgment stated: "*Without minimising the relevance of this factor, the Court does not believe it to be of such weight as to absolve the lower court from having to comply with the requirements of Article 6 para. 1 (art. 6-1) regarding the conduct and expeditiousness of trial.*"

- **Origin of delays: Civil procedure does not allow courts to rectify parties' failure to conduct proceedings at a reasonable rate**

In connection with accusatorial proceedings, the Court often states that although under the civil proceedings code in question it is for the parties to take the initiative with regard to progress, this does not absolve the courts from ensuring compliance with the requirement of Article 6 concerning reasonable time

#### Case-law examples:

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<sup>114</sup> Final Resolution ResDH (2004) 77 on the G.S v. Austria case

<sup>115</sup> *Lechner and Hess v. Austria* judgment of 23 April 1987

The above comment occurs in the following judgments: *Capuano v. Italy* of 25 June 1987, §§ 24 and 25, *Martins Moreira v. Portugal* of 26 October 1988, § 46, *Vernillo v. France* of 20 February 1991, and *Proszak v. Poland* of 16 December 1997.

More recently, in the *Tsirikakis v. Greece* judgment of 17 January 2002 (French only)<sup>116</sup>, the Court found that even though the proceedings were governed by the initiative of the parties principle, the reasonable time requirement also required courts to scrutinise the conduct of the proceedings and exercise great care in granting adjournments or requests to hear witnesses and ensuring that necessary expert reports were submitted on time.

It has emerged from several cases that domestic law does not give courts power to intervene to expedite proceedings. According to the *Fütterer v. Croatia* judgment of 20 December 2001, "*the Government point out that in the civil proceedings the courts are limited in their activity as they may not take procedural steps on their own initiative but mostly according to the requests of the parties.*"

In certain cases, the Court implicitly invites national authorities to amend their legislation to offer courts the necessary powers to order recalcitrant parties to expedite proceedings. "*As to the Government's contention that the first-instance court was impeded in progressing with the proceedings because the defendant did not comply with the court's orders to attend the hearings and the DNA tests, the Court reiterates that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time*"<sup>117</sup>.

For this reason, it is advisable to note, the Danish practice of the schedule for the court sessions: this practice appeared obviously effective in several cases submitted to the Court which did not note any idle period in the litigations and allowed him to show a non violation.

#### **Case-law examples:**

The *Ciricosta and Viola v. Italy* judgment of 4 December 1995 (§30) noted that the "*principio dispositivo*", to which civil proceedings in Italy were subject, made the parties responsible for taking the initiative with regard to the progress of the proceedings. It criticised the parties' abuse of this facility and added that it did not dispense the courts from ensuring compliance with the requirements of Article 6.

In the (aforementioned) case of *McFarlane v. Ireland*, decision of 10 September 2010, the Court observed that while domestic law required the parties to civil proceedings to take the initiative to in moving the proceedings forward, this did not dispense the State from its obligation to organise its system in such a way as to process cases within a reasonable period of time. If a State allows proceedings to continue beyond a "reasonable time" without doing anything to advance them, it will be responsible for the resultant delay.

#### **National reforms**

Certain states that use the inquisitorial approach have reformed their civil procedures after Court findings of excessive length of proceedings. For example, in legislation that came into force on 1 January 2002, Slovakia replaced the inquisitorial with the accusatory principle. The burden of proof now lies exclusively with the parties, who in principle can only adduce evidence and facts at first instance.<sup>118</sup>

The 1990 reform of Italian civil procedure, modified in 1995, aimed to improve the conduct of proceedings by introducing a system of time-limits, which required parties to present their evidence at

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<sup>116</sup> Violation of Article 6§1 for proceedings lasting thirteen years and three months in a complex case of expropriation with an appeal on points of law still pending (three levels of court)

<sup>117</sup> *Mitkulic v. Croatia* judgment of 7 February 2002

<sup>118</sup> Source: List of General measures adopted to prevent new violations of the European Convention on Human Rights. Stock-taking of measures reported to the Committee of Ministers in its control of the execution of judgments and decisions under the Convention (Application of former Articles 32 and 54 and of Article 46)

the second hearing, and a new judicial body, in the form of justices of the peace, to enable full judges to concentrate on more important cases.

In 1973, the Italian authorities introduced a reform establishing a special procedure for employment and labour disputes, for which the Court requires particular diligence, while in 1990 it approved emergency measures to expedite the conduct of proceedings of this sort (see, most recently the *Lestini v. Italy* judgment of 26 February 1992, § 18).

Croatia reformed its civil procedure in legislation of 14 July 2003, which replaced inquisitorial with adversarial proceedings in civil cases. As a result, only the parties to the proceedings are required to establish the facts, and then only at first instance. It is therefore no longer possible to have court decisions quashed and cases referred back for re-examination because courts have failed to establish certain facts on their own initiative (articles 7 and 195)<sup>119</sup>. New pecuniary penalties were planned for the parts which misuse their procedural laws and thus cause unjustified delays in the procedures (Articles 4, 56 and 84).<sup>98</sup> Moreover, the possibility for the representative of the public prosecution of asking for the revision of final decisions of the court within the framework of an extraordinary procedure was repealed by Article 239 of the law of 14 July 2003<sup>120</sup>.

The Hungarian system has also changed. Judges are no longer required to instruct the parties about their rights; measures designed to delay proceedings may now be sanctioned; since 1995, evidence has had to be presented at the same time as requests; deadlines may only be extended once by the courts and never by more than 45 days; and alternative means of settling disputes, such as mediation and arbitration, have been introduced.

In his report "*Access to Justice*"<sup>121</sup>, Lord Woolf has criticised the often excessive length of civil proceedings in the United Kingdom and their disorganised nature. The overriding objectives of the 1999 reform of civil procedure that followed his report's proposals included the more rapid resolution of cases. This reform involved introducing three types of procedures depending on the importance of the dispute (one procedure for minor claims not exceeding £5 000; a speedy procedure for claims not exceeding £25 000; and the normal procedure for larger sums), publication of clear rules set out in a code of civil procedure (Civil Procedure Rules), comprising guiding principles on civil proceedings aiming at proportionality, speed and fairness of procedures, the involvement of the judge, who must actively prepare court cases, the preliminary phase to be observed before bringing proceedings in specified matters, and sanctions on parties for non-compliance with the rules<sup>122</sup>. These reforms have not had the desired effects and Lord Jackson submitted a fresh report to the British Government in January 2010<sup>123</sup>.

## 2. Criminal proceedings

### • Origin of delays: structural problems relating to the organisation of the prosecution service

In certain cases, such organisational problems lead to an accumulation of delays and procedural errors.

#### Case-law examples:

In the *Mitev v. Bulgaria* judgment of 22 December 2004, the Court criticised the numerous referrals of the case back to the investigation stage over two years to correct procedural errors. The case of *Kitov*

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<sup>119</sup> Resolution ResDH(2005)60 concerning the judgments of the European Court of Human Rights in the case of Horvat and 9 other cases against Croatia (see appendix I) adopted on 18 July 2005

<sup>120</sup> Resolution ResDH(2005)60 idem.

<sup>121</sup> *Access To Justice - Interim Report to the Lord Chancellor on the civil justice system in England and Wales*, June 1995

<sup>122</sup> Re. these reforms and an appraisal, see M. Haravon, "*Dix années de réforme de la procédure civile anglaise: révolte ou révolution*", R.I.D.C., No. 4-2004, p. 825; "Quel procès civil en 2010? Regards comparé sur l'accès à la justice civile en Angleterre, aux Etats-Unis et en France", R.I.D.C., No. 4-2010.

<sup>123</sup> Review of Litigation Costs, Final Report (December 2009).



*v. Bulgaria*, decision of 3 July 2003, concerned protracted periods of inertia during criminal investigations owing to negligence and disagreements between the investigators and the prosecutor (§ 72).

#### **National reforms:**

Bulgaria brought in a new Code of Criminal Procedure on 29 April 2006, under the overall reform of the Bulgarian criminal justice system geared to expediting criminal procedures. It explicitly requires the courts and investigatory bodies to deal with criminal cases within a reasonable time (the provisions stipulate, in particular, short timescales for consideration of a case and for adjournment of hearings, and the wider use of simplified procedures)<sup>124</sup>.

- **Origin of delays: periods of the investigation stage where little or no progress is made in the proceedings or in inquiries**

The Court criticises inactivity, even in the investigation phase.

One of the problems is that of dormant cases, because no regular checks are carried out to identify cases no longer being dealt with actively by investigating judges.

#### **Case-law examples:**

In the *Nuvoli v. Italy* judgment of 16 May 2002 (French only), the Court found that more than one year and five months elapsed after the search of the applicant's premises before an application was made to bring the case to court.

In the *Mutimura v. France* judgment of 8 June 2004 (French only), the Court acknowledged that the case was slightly complex but still criticised the dilatory nature of the investigation and the fact that international requests for judicial assistance were issued more than five years after the state prosecutor's initial indictment. It found that there had been a violation of Article 6§1 in a case whose investigation had lasted nine years and was still under way when the Court delivered its judgment. The case concerned criminal complaints alleging that a Rwandan clergyman residing in France had taken part in acts of genocide in Rwanda

#### **National reforms:**

Several countries have introduced deadlines to expedite criminal proceedings.

The new Italian code of criminal procedure that came into force on 24 October 1989 established deadlines for prosecutors or investigating judges and provided for more rapid criminal proceedings. Direct judgments are used for cases where the offender was apprehended in the act and immediate judgments where the prosecuting authorities consider the evidence to be irrefutable.

Similarly, on 28 April 2003 Spain introduced rapid criminal proceedings with limited deadlines for various stages: 72 hours each for the judicial police inquiries and for the duty investigating judge to investigate the case and start the oral proceedings, with the prosecuting authorities presenting their indictment as soon as the oral stage has started. The aim is to secure a verdict no later than one and a half months after the suspect's arrest, particularly in cases, such as marital violence and burglary, with a high social impact.

In Germany, accelerated proceedings are used for cases carrying a sentence of no more than one year's imprisonment. Hearings must take place no more than six weeks after the prosecuting authorities have requested the relevant court to order the accelerated procedure.

Since its 1998 reform of the criminal procedure code, Portugal has operated an abridged procedure similar to the accelerated one in Germany.

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<sup>124</sup> 2010 Annual Report of the Committee of Ministers, p. 131, and 2007 Annual Report of the Committee of Ministers, p. 80.

In France, 75% of cases, compared with 45% ten years ago, are subject to rapid referral to the criminal court, either by the investigating judge or by direct summons, without a preliminary investigation. These developments have helped to expedite proceedings, with 75% of persons concerned now appearing before the courts within a period of two days to four months<sup>125</sup>.

• **Origin of delays: too long a period before or between hearings**

The state is responsible for delays in hearing cases once the investigations are complete.

**Case-law examples:**

In the *Mattocchia* case<sup>126</sup>, three years and seven months elapsed between the applicant's committal for trial and the first hearing before the trial court.

The Court also criticised the fact that more than a year passed between the lodging of the appeal and the first hearing in the appeal court in the *Hamanov v. Bulgaria* and *Belchev v. Bulgaria* judgments of 8 April 2004.

On the other hand, in a Polish case that lasted five years and eight months, the Court's non-violation finding can be explained not only by the complexity of this international drug smuggling case but also by the numerous steps taken by the court to expedite proceedings.

In particular, it noted the court's refusal to grant a motion lodged by one of the accused at the first hearing to have the case returned to the prosecution to allow investigations to be completed, the decision to separate consideration of the applicant's case from that of two absent co-accused and several refusals of requests by the applicant that would have extended the proceedings. Although several hearings were adjourned, these were imputable to the accused or to absent witnesses. None could be imputed to the court's failure to expedite the proceedings<sup>127</sup>.

• **Origin of delays: whether or not to join criminal cases**

The Court sometimes have to rule on courts' decisions on whether to join related cases, particularly complex criminal cases with several co-accused. It has to decide whether such decisions are consistent with the reasonable time requirement, while also bearing in mind the importance of the proper administration of justice, which may require an alternative approach.

**Case-law examples:**

In the *Wejrup v. Denmark* decision 7 March 2002, which concerned international fraud and misleading accounting, the applicant maintained that the proceedings were unnecessarily prolonged due to the consolidation of his trial with that of the co-accused, and that various considerations did not concern him. However, the Court approved the prosecution's decision to join the cases against the defendants, the aim being to reduce court costs, and described it as "undoubtedly appropriate".

However, it has to strike a balance between separating proceedings in the interests of speed and the proper administration of justice. In the case of *Absandze v. Georgia* of 15 October 2002 (inadmissibility decision – French only), the Court made it clear that separating the applicant's case from that of the other accused would have probably expedited the proceedings but that there was nothing to indicate that such a separation would have been compatible with the proper administration of justice<sup>128</sup>.

• **Origin of delays: Failure of witnesses to attend hearings, causing repeated adjournments**

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<sup>125</sup> Information report no. 17 of the French Senate of 12 October 2005 on accelerated criminal proceedings by Senator François Zocchetto, and Survey of comparative legislation No 146-May 2005- accelerated criminal proceedings - See website: <http://www.senat.fr>

<sup>126</sup> *Mattocchia v. Italy* judgment of 25 July 2000

<sup>127</sup> *Salapa v. Poland* judgment of 19 December 2002

<sup>128</sup> See also the *Neumeister v. Austria* judgment, *idem*, §21

Regarding the importance of evidences in criminal proceedings, delays linked to failure of witnesses or their repeated failures is source of worrying delay.

When national criminal codes authorise courts to fine witnesses who have been duly summoned and then fail to attend without good cause, or even to have them brought in by the police, the Court criticises courts that fail to use these powers to expedite proceedings.

**Case-law examples:**

In the *Iłowiecki v. Poland* judgment of 4 October 2001, concerning international criminal fraud, the Court criticised the adjournment of hearings over a period of a year because witnesses were not present. The proceedings had lasted seven years, ten months and seven days and were still pending when the Court ruled. Of this period, two years and ten months were imputable to the authorities, which were in violation of Article 6§1.

Reference should also be made to the *Trzaska v. Poland* judgment of 11 July 2000, § 90, and the *Kusmierek v. Poland* judgment of 21 December 2004, in which the Court found Poland to be in breach of the Convention in a defamation case that had lasted nine years and six months (of which only eight years and four months came within the Court's temporal jurisdiction). In the *Kuibichev v. Bulgaria* judgment of 30 September 2004, the Court raises the issue of the ascribable delays to the Bulgarian courts, in particular those holding with the absence of the witnesses and the insufficiency of the measurements taken by the authorities to ensure itself of their presence at the court session.

The (aforementioned) case of *Stefanova v. Bulgaria*, decision of 11 January 2007, illustrates a combination of causes: belated hearings, unlawful summons procedure and successive and repetitive adjournments of hearings.

• **Effects of delays in criminal proceedings on civil proceedings**

When criminal proceedings drag on, this can also prevent or hinder progress in the civil courts.

**Case-law examples:**

In the *Motta* judgment of 12 February 1991, where a civil dispute between a doctor and the social security authorities led to criminal proceedings against the applicant for fraud, the Court found that the criminal proceedings had been too slow and added that "*the civil proceedings were prevented from pursuing their course by the slowness of the criminal proceedings*". The *Djangozov v. Bulgaria* judgment of 8 July 2004 offers a more recent illustration.

**3. Administrative proceedings**

• **Origin of delays: delays attributable to non-judicial authorities**

Delays caused by the conduct of ministers or their representatives or public health establishments, in cases that must first be referred to the relevant authorities, are imputable to the contracting state. In the *Schouten and Meldrum v. Netherlands* case of 9 December 1994, the applicant had had to wait twenty months for a decision from a professional association before he could lodge an appeal.

**Case-law examples:**

The French cases concerning haemophiliacs contaminated by the HIV virus during blood transfusions offer a good illustration of this problem. In the *Vallée* case of 12 December 1989, the applicant submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, in accordance with Article R.102 of the Administrative Courts and Administrative Courts of Appeal Code. On 30 March 1990, shortly before the expiry of the statutory four-month time-limit, the Director-General for Health rejected the applicant's claim. In the more recent *Kritt* case<sup>129</sup>, the Court criticised the Paris public hospitals authority (AP-HP), stating that when a public law institution was party to proceedings, delays resulting from its conduct were imputable to the "authorities" as defined in established case-law. This had therefore been the case with the delays imputable to the AP-HP.

<sup>129</sup> *Kritt v. France* judgment of 19 March 2002 (French only)

Rather than explicitly rejecting the applicants' preliminary claim, the AP-HP had remained silent, which meant that they had had to wait four months before they could apply to the administrative court. The AP-HP had also taken six months to submit its observations to the administrative court. The Court also criticised the administrative court's conduct. It had waited until 16 February 1999 before issuing directions to the AP-HP, and the court-appointed expert had taken eleven months to produce his report.

In a Spanish case, the Court observed that the *Audiencia Nacional* had had to ask the authorities several times to send the relevant files, thus showing a lack of diligence on the latter's part. It had only supplied the documentation four years and six months after the first request<sup>130</sup>.

In the *Clinique Mozart SARL* case<sup>131</sup>, the tax authorities were deemed to be responsible for a two year and nine months' delay in the proceedings because of the late submission of their defence pleadings.

#### **National reforms:**

In disputes concerning social security contributions where a professional association does not reach a decision in a reasonable time or refuses to do so, the Netherlands general administrative code that came into force on 1 January 1994 authorises citizens to lodge an immediate appeal directly with the court.

(Re. the French reform of administrative justice, see Part 2, II. B. below).

## **II. DOMESTIC REMEDIES TO REDUCE LENGTH OF PROCEEDINGS AND OVERVIEW OF RELEVANT PROCEEDINGS**

### **A. Directives of the European Court**

The European Court's directives are now set out in great detail in the so-called pilot judgments based on Article 46 of the Convention, which, although they only concern one single application, find a violation of the Convention deriving from a structural problem which also affects a whole category of persons, and comprise pointers towards a general measure conducive to resolving the underlying problem and providing a model for an effective domestic remedy<sup>132</sup>.

More generally, the various Council of Europe bodies have taken a number of decisions and conducted intensive work with a view to pinpointing the appropriate remedies to infringements of the reasonable length of proceedings requirement.

At its 114th session in May 2004, the Council of Europe adopted a Declaration aimed at member States on "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels".

At the Committee of Ministers' request, the Steering Committee for Human Rights (CDDH) is looking at ways of implementing the Committee's recommendations, including the one on improving domestic remedies, via its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights<sup>133</sup>.

Measures to reduce length of proceedings are an important aspect of this activity.

When it was drawing up Recommendation Rec (2004) 6, the CDDH asked national authorities for examples of good practices designed to improve domestic remedies.

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<sup>130</sup> *Alberto Sanchez v. Spain* judgment of 16 November. 2004

<sup>131</sup> *Clinique Mozart SARL v. France* judgment of 8 June 2004

<sup>132</sup> See eg Grand Chamber judgments *Broniowski v. Poland* of 22 June 2004, *Burdov v. Russia* (No. 2) of 15 January 2009, *Ivanov v. Ukraine* of 15 October 2009, and the above-mentioned Italian cases giving rise to several Grand Chamber judgments on 29 March 2006 (see Part I. A. above).

<sup>133</sup> Recommendation (2004) 6 of the Committee of Ministers of 12 May 2004

The Committee of Ministers has just adopted an important recommendation on effective remedies for excessive length of proceedings<sup>134</sup>, accompanied by a Guide to Good Practice, intended to improve the implementation of the right to a hearing within a reasonable time and to an effective remedy, which in fact also refers to all the CEPEJ activities and tools (Guide, pp. 7-10)<sup>135</sup>.

Following the aforementioned *Kudla* judgment, several states have introduced arrangements to enable citizens who have suffered excessively lengthy proceedings or who are still awaiting completion of a particular stage to have their case expedited. It is gradually becoming clear that the alternative offered by the European Court of Human Rights itself has a number of disadvantages. By allowing countries to choose between compensation for damage suffered from over-lengthy proceedings and the possibility of expediting proceedings, the Court has created the possibility of new remedies.

Indeed, like the application of the *Pinto* law already expressed, the damages granted to the plaintiff, to fulfil the requirements of the European Court, made this remedy “extremely attractive”<sup>136</sup> and currently generate an overload of the Italian Courts of Appeal, without a prevention of unreasonable timeframes in the future. 110.

In the aforementioned major judgment *Scordino v. Italy*, the ECHR refers to the work of the CEPEJ: “In its framework programme (CEPEJ (2004) 19 Rev 2 § 6), the CEPEJ noted that the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process, and provide compensation only *a posteriori* in the event of a proven violation instead of trying to find a solution for the problem of delays”.

It continues in these terms: “When a legal system is failing in this respect, a remedy making it possible to accelerate the procedure in order to prevent an excessive duration constitutes the most effective solution. Such remedy introduces an undeniable advantage compared to a remedy only focussing on the payment of a financial compensation because it also avoids having to note successive violations for the same procedure and, like a remedy of financial compensation, is not limited to act only *a posteriori*, such as that envisaged by the Italian law for example”.

The States are granted a margin of discretion in choosing which remedy to introduce in order to comply with the requirements of Article 13 of the Convention. As mentioned above, the judgment *Kudla v. Poland* offers a choice between a remedy geared to speeding up proceedings and one intended to remedy the consequences (Part 1. A. above), even though the Court regularly recalls here that “the ideal solution is prevention” (eg in *Vokurka v. Czech Republic*, decision of 16 October 2007). Moreover, all the remedies provided under domestic law may meet the requirements of Article 13, even if none of them is sufficient on its own (aforementioned *Kudla v. Poland*, § 157). Some States have opted for combining two types of remedy, one to expedite proceedings and the other to provide compensation (eg judgment *Missenjov v. Estonia*, 29 April 2009, § 44).

The States have introduced a wide range of remedies to expedite proceedings or compensate for the consequences of delays<sup>137</sup>.

Compensation can also take the form of an appropriate reduction of certain costs, of the sentence or of the damage suffered by the appellant<sup>138</sup>. Nevertheless, the Court has considered “*that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention*” (eg Grand Chamber judgment *Riccardo Pizzati v. Italy*, 29 March 2006, § 70).

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<sup>134</sup> CM/Rec(2010)3, adopted by the Committee of Ministers on 24 February 2010 at the 1077<sup>th</sup> meeting of the Ministers' Deputies.

<sup>135</sup> We should also mention the report of the Venice Commission (Doc. CDL-AD(2006)036rev).

<sup>136</sup> Fourth information report CM/Inf/DH (2005) 31 of 6 June 2005.

<sup>137</sup> See the aforementioned Venice Commission report, doc. CDL-AD(2006)03rev., §§ 69-87:

<http://www.venice.coe.int/docs/2006/CDL-AD%282006%29036-en.asp>

<sup>138</sup> Guide to Good Practice, No. 112, p. 25.

The Court accepts that a State which has introduced various preventive and compensatory remedies, where the relevant decisions, in line with the country's legal tradition and standard of living, are rapid, reasoned and usually swiftly enforced, *grants sums which, while lower than those set by the Court, are not unreasonable* (*Dubjakova v. Slovakia*, 10 October 2004).

The Report of the Venice Commission noted that "in criminal cases, there exist specific forms of compensatory remedies which are to be considered as forms of *restitutio in integrum*: the discontinuance of the prosecution, the mitigation or reduction of the sentence; an acquittal; setting a low level of fine; and the non-deprivation of civil and political rights. They may cause however, in some cases, a lack of substantive justice. Acquittal and discontinuance of the proceedings should be only applied in exceptional cases. In the motivation used by the judge when assessing the length of the proceedings, the link between the latter and the assessment of the punishment should be made explicit, and it would seem appropriate to indicate what sentence would have been imposed if the duration had been reasonable"<sup>139</sup>.

## **B. Existing domestic remedies: summary<sup>140</sup>**

A number of interesting domestic remedies are currently available.

In Austria, Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*) offers a remedy that the Court recently described as "effective" in the *Holzinger* judgment of 30 January 2001. It has since reiterated this conclusion, eg in *Saccoccia v. Austria*, decision of 5 July 2007. New provisions were introduced in March 2004 into the criminal procedure code, granting accused persons the right to have their proceedings terminated within a reasonable time.

In Belgium, a new law reformed the Code of Criminal Investigation in 1998 and introduced a remedy into domestic law allowing the accused to complain of the excessive length of a criminal investigation. Examples of case-law show that the remedy provided in the provisions permit the acceleration of investigations. The Court deemed this remedy effective in its judgment *Stratégies and Communications and Dumoulin v. Belgium* of 15 October 2002. Furthermore, on 12 December 2000 Belgian law introduced a sanction in the event of excessive length of criminal proceedings: "the judge may pass sentence by means of a simple finding of guilt or impose a lighter sentence than the minimum sentence stipulated by law"<sup>141</sup>.

The Czech Republic has instituted reforms following the *Hartman* judgment of 10 July 2003, in which the European Court found that appeals to the Constitutional Court, which enabled individuals to challenge any final decision of another body, be it administrative or judicial, were not effective. Act No. 192/2003 has added a provision to Act No. 6/2002 on courts and judges under which, from 1 July 2004, it has been possible to seek a remedy for excessive delays in judicial proceedings by applying for a deadline to be set for completion of a particular procedural stage or formality. This procedure is similar to the one in Austria described earlier.

In *Vokurka v. Czech Republic*, decision of 16 October 2007, the Court considered the effectiveness of a new "preventive" remedy and ruled it ineffective. It did, on the other hand, deem effective the compensatory remedy which came into force in April 2006, permitting compensation for non-material damage resulting from non-compliance with the reasonable time requirement<sup>142</sup>.

Under Article 21 of the Finnish constitution, "Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice."

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<sup>139</sup> Op. cit., § 240, incorporated into the Guide to Good Practice, No. 114, p. 26.

<sup>140</sup> For a study of this question, see the aforementioned Venice Commission report

<sup>141</sup> 2007 Annual Report of the Committee of Ministers, p. 79.

<sup>142</sup> For a more detailed account, see the 2009 Annual Report of the Committee of Ministers, p. 121.

The code of criminal procedure also provides for a special selection procedure aimed at reducing the total length of proceedings in criminal and civil cases. Article 6 § 3 of the criminal code allows courts to reduce sentences when a particularly long period has elapsed since the offence was committed and when the normal penalty would have an unreasonable or exceptionally detrimental effect.

From 26 July 2004, it is considered that the Pinto law constituted an effective remedy and that he must be required applicants for purposes of Article 35 § 1 of Convention.

Where France is concerned, Article L. 141-1 of the Judicial Code (former L. 781-1) provides for State liability in the event of serious negligence or denial of justice. Infringement of the reasonable time requirement may be sanctioned and compensation paid. In a judgment of 23 February 2011 (Bull. Ass. Plén. No. 5) the Plenary Assembly of the Court of Cassation extended the scope of serious State negligence, ruling that such negligence covered any shortcoming characterised by a fact or series of facts reflecting the inability of the judiciary to fulfil the task assigned to it. Shortly afterwards the European Court specified that this remedy could not be regarded as an effective remedy to be exhausted by the applicant, because the “serious negligence” criterion required to adduce State liability impeded a finding of such liability (judgment *Girard v. France* of 30 June 2011, § 54). Since the judgment *Zannouti v. France* of 26 September 2000 and the aforementioned decisions in the cases *Giummarra v. France* and *Mifsud*, the European Court has acknowledged the effectiveness of this remedy. This remedy must therefore now be used by anyone wishing to complain of the excessive length of a set of proceedings, whereby all applications submitted on this basis to the ECHR since 21 September 1999 in which the prior domestic remedy has not been used are declared inadmissible.

In connection with the administrative courts, the European Court initially considered that there was no *domestic case-law demonstrating the effectiveness of the (domestic) remedy* in terms of State liability for defective functioning of the administrative courts (judgment *Lutz v. France* of 26 March 2002). In response, the *Conseil d’Etat*, in a judgment of 28 June 2002 (*Magiera*), held that an applicant could obtain compensation in an administrative court for damage resulting from violation of the right to a hearing within a reasonable time. The European Court now considers sufficient the corresponding action to establish State liability (judgment *Broca and Texier-Micault v. France*, 21 October 2003). Complementing this case-law, Decree No. 2005-911 of 28 July 2005 (Article R. 311-1-7 of the Code of Administrative Justice) recognises the competence of the *Conseil d’Etat* to adjudicate at first and last instance on *actions for damages against the State for excessive length of proceedings before the administrative courts*. Moreover, Decree No. 2005-1586 of 19 December 2005 introduced preventive administrative review of administrative courts with a view to remedying their excessive dilatoriness (Article R. 112-2 and 3 of the Code of Administrative Justice). Lastly, the *Conseil d’Etat* posits that the excessive length of proceedings in a case where the reasonable time for hearing a case is presumed to cause moral damage *per se* (CE, 19 October 2007)<sup>143</sup>.

Tellingly, some five years after this recognition of the effectiveness of French actions for damages, the number of findings against France on this count has significantly decreased (See Appendix No.). In its Resolution CM/ResDH(2009)59 the Committee of Ministers closed the examination of the enforcement of seven judgments against France for excessive length of administrative proceedings on the ground that the necessary general measures to prevent similar violations had been adopted.

In Poland, the Law of 17 June 2004 (as amended with effect from 1 May 2009) provides for two types of “preventive” (acceleration) and compensatory remedies. Under the first remedy, a party to proceedings can submit a complaint to the effect that his right to a hearing within a reasonable time has been violated. The criteria for determining the unreasonable length of proceedings are based on the case-law of the Strasbourg Court. If the complaint is well-founded, the relevant court must order, within two months from submission of the complaint to the competent court or prosecutor, any appropriate action within a set time. Where the compensatory remedy is concerned, the practice of Polish domestic courts confirms that it is possible to request just satisfaction for non-material damages caused by excessive length of proceedings on the basis of Article 448 of the Civil Code, in conjunction

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<sup>143</sup> See also the 2008 Annual Report of the Committee of Ministers, p. 125.

with Article 417. The European Court found that the latter remedy was effective (judgment *Krasuski v. Poland* of 14 June 2005, § 72).

Article 24 of the Spanish Constitution grants everyone the right to a public trial or hearing with no unjustified delays.

The *recurso di amparo* before the Constitutional Court offers plaintiffs two remedies for unreasonably lengthy proceedings, in which the pending proceedings are immediately set in train, either by an order to cease the period of inactivity or by setting aside the decision that is unjustifiably prolonging the proceedings.

Sections 292 ff of the Judicature Act authorises individuals, once proceedings are over, to apply to the Ministry of Justice for compensation for judicial malfunctioning.

According to the relevant case-law (*Gonzalez Marín v. Spain* (dec.) no 39521/98, ECHR 1999-VII), unreasonable lengthy proceedings constitute a malfunctioning of the judicial system. The minister's decision is liable to appeal to the administrative courts. The Court has also ruled on the effectiveness of the remedies in Sections 292 ff of the Judicature Act in connection with excessively lengthy proceedings in the Constitutional Court, in its admissibility decision of 28 January 2003 in the *Caldas Ramirez de Arellano* case.

In Croatia, these two types of remedy are combined into one set of proceedings: Article 63 § 3 of the Constitutional Law provides for a remedy before the Constitutional Court geared to both setting deadlines for the procedural stages and establishing the amounts of compensation for the violation. The European Court initially found that this new provision provided an effective remedy for excessive length of judicial proceedings (see judgment *Radoš and others v. Croatia* of 7 November 2002 and the decisions on admissibility in the cases of *Slaviček* of 4 July 2002, *Nogolica* of 5 September 2002, *Plaftak and others* of 3 October 2002, *Jeftić* of 3 October 2002 and *Sahini* of 11 October 2002).

However, the implementation of this remedy has since led to difficulties. On several occasions the constitutional complaint procedure itself took too long. The Strasbourg Court therefore ruled that the effectiveness of the constitutional complaint as a remedy for the length of pending civil procedures was undermined by its excessive duration (judgment *Vidas v. Croatia* of 3 July 2008, para. 37)<sup>144</sup>.

The Constitution of the Slovak Republic (as amended with effect from 1 January 2002) provides for two types of "expediting" and compensatory remedies before the Constitutional Court (Article 127 of the Constitution). The Court has considered this remedy effective (see *Andrášik and others v. Slovakia*, decision of 22 October 2002, and *Mazurek v. Slovakia*, decision of 3 March 2009).

The European Court has, however, also pinpointed shortcomings in the implementation of Article 127 by the Constitutional Court, such as:

- insufficient or non-existent compensation (eg *Komanický v. Slovakia* (No. 5), decision of 13 October 2009; *Báňas v. Slovakia*, decision of 12 February 2008; *Judt v. Slovakia*, decision of 9 October 2007; and *Magura v. Slovakia*, decision of 13 June 2006);
- the Constitutional Court's failure to take account of the total time taken for consideration of the case by the domestic courts (eg *Keszeli v. Slovakia*, decision of 13 October 2009; *Softel v. Slovakia* (No. 2), decision of 16 December 2008; and *Jakub v. Slovakia*, decision of 28 February 2006).

Despite these failings, the Court has confirmed the effectiveness on principle of the constitutional complaint, in view of the sufficient compensation granted by the Constitutional Court (eg *Bartl v. Slovakia*, decision of 6 October 2009; *Becová v. Slovakia*, decision of 18 September 2007; *Cervanová*

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<sup>144</sup> Re. the evolution of the Court's case-law on the situation in Croatia, cf. Guide to Good Practice Nos. 60-62, pp 14 and 15.



*v. Slovakia*, decision of 9 January 2006; *Machunka v. Slovakia*, decision of 27 June 2006; and *Končeková*, decision of 9 May 2006)<sup>145</sup>.

Article 39 of the Maltese Constitution establishes the right to a hearing within a reasonable time. Litigants who consider that their right to a hearing within a reasonable time has been violated may submit an appeal to the Civil Court acting in a constitutional capacity, whose decision may be appealable to the Constitutional Court. This appeal covers civil, administrative and criminal proceedings. The Strasbourg Court has held that this appeal is generally effective, although in some cases the levels of compensation granted have been deemed insufficient (judgments *Zarb v. Malta*, decision of 4 July 2006, and *Central Mediterranean Development Corporation Limited v. Malta*, decision of 24 October 2006).

In Slovenia, a 2006 Law on protection of the right to a hearing within a reasonable time (coming into force on 1 January 2007)<sup>146</sup> permits litigants to introduce a compensatory remedy only after they have exhausted all “expediting” remedies. The Court noted that this mechanism had the legitimate aim of simplifying procedure and considered that this Slovenian remedy did, in principle, seem effective (*Zunic v. Slovenia*, decision of 18 October 2007, §§ 49, 50 and 54).

In Bulgaria, in cases where a court fails to complete a particular procedural stage within a reasonable time, Article 255 of the 2006 Bulgarian Civil Code permits parties, at any stage in the proceedings, to submit an application for setting an appropriate time-limit for completion of the said stage. Article 257 requires the higher court to consider this application within one week of receiving it, and, if it considers the timescale unreasonable, to set a time-limit for implementation of the said procedural stage. The Strasbourg Court has deemed this remedy effective in principle, even though it must be combined with a compensatory remedy (judgment *Jeliazkow and others v. Bulgaria*, 3 April 2008).

In Germany the right to be tried or heard within a reasonable time is guaranteed by the Basic Law, and complaints of violations of this right can be brought before the Federal Constitutional Court, which is solely empowered to ask the court concerned to expedite or settle the proceedings. The Federal Constitutional Court is not competent to impose time-limits on lower courts or to order other measures to speed up proceedings, nor is it able to award compensation.

A bill to introduce a new remedy against inaction was tabled in advance of the parliamentary elections of 18 September 2005. According to the government, this will make it possible to reduce the Federal Constitutional Court’s case-load, since complaints will henceforth be lodged with the court dealing with the case or, should that court refuse to take steps to expedite the proceedings, an appellate court.

The European Court held that “the Government, in opting for a preventive remedy, have taken the approach most in keeping with the spirit of the protection system set up by the Convention, since the new remedy will deal with the root cause of the length-of-proceedings problem and appears more likely to offer litigants adequate protection than compensatory remedies, which merely allow action to be taken *a posteriori*.”<sup>147</sup>

Furthermore, the German Federal Court of Justice overturned its case-law in a decision of 17 January 2008, granting compensation for the excessive length of proceedings in cases of life sentences, enabling a specified section of the sentence to be deemed already to have been served (a conception known as *Vollstreckungslösung*, or “enforcement solution”). The European Court welcomed this reversal of precedents, even though the applicants in question were ineligible for it because it occurred after their conviction (judgment *Kaemena and Thöneböhn v. Germany*, 22 April 2009).

### **III. The research of the reasonable time**

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<sup>145</sup> See Guide to Good Practice, No. 93-96, pp. 22 and 23. For an overall assessment of supervision of execution of judgments of the European Court of Human Rights by Slovakia, see the 2010 Annual Report of the Committee of Ministers., pp. 142 and 143.

<sup>146</sup> 2007 Annual Report of the Committee of Ministers, p. 94.

<sup>147</sup> Grand Chamber judgment in the case of *Sürmeli v. Germany*, 8 June 2006, § 138

From a reading and detailed analysis of numerous European Court of Human Rights judgments and Committee of Ministers resolutions, the following tendencies are apparent.

#### **A. The main tendencies of the European Court regarding reasonable time:**

The procedural phases of a case deemed to comply with the requirement of reasonable time generally last **less than 2 years**.

**When this period lasts longer than 2 years but goes uncriticised by the European Court, it is nearly always the applicant's behaviour that is to blame** and the delay is at least partly down to their inactivity or bad faith<sup>148</sup>. In 23 complex cases where there were rulings that no rights had been violated, it is striking to note that in twelve cases – over half – **the applicant's conduct is criticised by the Court** as having contributed to the delay. The finding of no violation is explained by the inappropriate conduct of the applicant.

For instance, in the case of *Özsoy v Turkey*, decision of February 2006, in which proceedings had lasted six years and which involved 33 defendants charged with assisting the PKK and/or attacking the State, the Court noted *no major period of inertia attributable to the domestic authorities. On the other hand, it notes that for some seven months the applicant failed to appear at hearings before the State Security Court, which certainly did not make things any easier for the trial courts in terms of hearing the applicant. [...] The Court concludes that the duration of proceedings in the instant case, which were held before two different courts, although contentious, was not excessive*" (§§ 2-4).

Similarly, in the case of *Ançel v. Turkey*, decision of 17 February 2009, the Court notes that *some of the delays in proceedings are attributable to the applicant, particularly those resulting from her failure to appear at hearings, which twice led to her application being struck off the list, and her failure to appear [at one hearing], which resulted in an adjournment, in addition to the unexplained delay in enforcing the decision in her favour* (§ 44).

Even if the applicant does not act with the required diligence, the Court always considers how the courts have responded: if the courts cannot be found at fault for any particular failure to act and if the case involves proceedings in which the parties bear responsibility in the conducting of the process, the parties will be held entirely to blame for the delays due to their failings and inappropriate demands and it will be ruled that there has been no violation, even if the length of proceedings seems excessive in objective terms.

**For any proceedings lasting longer than 2 years**, the ECHR examines the case in detail to check the diligence of both national authorities and the parties in the light of the case's complexity; for proceedings short of the two-year mark, the Court does not carry out this detailed examination.

In the case of *Nikola Nikolov v. Bulgaria*, decision of 14 June 2007, for example, the Court noted a number of complexities, including the lack of eye-witnesses to the facts, prompting the domestic authorities to order a series of expert opinions (§ 9); it concluded that *having regard to all the circumstances of the case, particularly the overall duration and complicity of proceedings, as well as the fact that the case was considered at three different levels, the Court considers that the delays attributable to the authorities are not such that the length of proceedings can be deemed excessive* (§14).

Similarly, in the aforementioned case of *Veriter v. France*, decision of 14 October 2010, the Court does not consider the length of proceedings excessive in view of the legal complexity of the case, which raised a major question of interpretation of EU law.

Again, in the case of *Tan and others v. Turkey*, decision of 20 June 2006, the Court drew on the complexity of the type of offence at issue to find that *the main feature of the case was its great complexity. The suspicions against the applicants concerned "white-collar" crime, ie large-scale fraud*

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<sup>148</sup> Aforementioned *Dosta v. Czech Republic* judgment, 25 May 2004: an interesting judgment in this connection as eight sets of civil procedures were lodged by the same applicant in simple cases examined by the ECHR.

*involving several companies. This type of offence is often committed, as in the instant case, by means of complex transaction geared to evading the supervision of the investigating bodies (§ 40).*

**What is at stake for the applicant in the dispute** is a major criterion for assessment and may prompt the European Court to reconsider its usual practice of considering a period of less than 2 years as acceptable for any court instance<sup>149</sup>.

It may also be a reason for a court to prioritise this type of case in its schedule of hearings<sup>150</sup>. Given the backlogs in the courts, the European Court seeks to reconcile the concern with reasonable time with that of proper administration of justice; when considering the treatment to be given to pending cases, it therefore invites courts with a backlog to call cases by order of importance and no longer only on a first come first served basis; it implicitly suggests taking account of what is at stake for the applicant in the dispute<sup>151</sup>. Prioritising certain categories of cases has already been successfully tried by the courts of States in northern Europe<sup>152</sup>.

**In complicated cases**, the Court, bearing the complexity of the case in mind, focuses only on the lengths of proceedings that are manifestly excessive and demands precise explanations regarding these “abnormal” durations if it is to rule that there has been no violation<sup>153</sup>. But it is distinctly less strict in simple cases.

## **B. A few illustrations of “reasonable time”:**

### **1. Simple civil cases:**

**For a civil case involving a dispute over co-ownership** a total duration of 5 years and 3 months for three levels of instance breaking down as follows:

- 1 year and 10 months at first instance
- 1 year and 8 months on appeal
- 1 year and 9 months on cassation, is judged to be reasonable (*Martin Lemoine v. France* judgment, 29 April 2003).

### **For a labour dispute: classified by the European Court as a priority case**

The case is judged within a reasonable time, if dealt with:

- at first instance for 1 year and 7 months
- on appeal for 1 year and 9 months
- on cassation for 1 year and 9 months. (*Guichon v. France* judgment, 21 March 2000).

The conduct of the parties in this case was the focal point of criticism from the Court, which emphasised the delays both in the applicant’s request for referral to the industrial relations tribunal and in his appeal, as well as the delay in the lodging of the parties’ conclusions before the Court of cassation. **Deduction of the delays attributable to the parties gives: 1 year and 1 month before the industrial relations tribunal and eleven months before the Court of cassation.**

**For another case involving a labour dispute**, judged in 6 years and 3 months for four court instances (labour tribunal at 1st instance, labour appeal court, supreme court and constitutional court), the Court held that the following durations were reasonable:

- 1 year and 6 months before the first instance judge, with regular hearings

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<sup>149</sup> *Le Bechennec v. France* judgment of 28 March 2006.

<sup>150</sup> See in this connection the CEPEJ Framework Programme “A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe” of 11 June 2004, Line of Action 10: “defining priorities in case management”, p. 15.

<sup>151</sup> *Union Alimentaria Sanders SA v. Spain* judgment of 7 July 1989.

<sup>152</sup> See CEPEJ report “Time management of justice systems: a Northern Europe study”(CEPEJ(2006)14).

<sup>153</sup> “the investigating judge concluded the preliminary judicial investigation [...] four years and seven months after the applicant was first questioned as a suspect. This would appear to be a disturbingly long period of time.[...]. In the circumstances, it is particularly necessary for the length of this period to be convincingly justified.” (§ 51) *Hozee v. Netherlands* judgment of 22 May 1998 (no violation in a complex criminal case).

- 4 months on cassation
- appeal lasting 1 year and 9 months.

But it attributed a delay of four months before the first judges to the applicant owing to their unjustified absence at a hearing. (*Antolic v. Slovenia* of 1 June 2006)

And while a similar type of labour dispute was judged more swiftly at 1<sup>st</sup> instance (5 months) and on appeal (1 year and 5 months), the Court tolerated a longer duration (of 2 years and 2 months) before the court of cassation (while considering the period rather long): **its overall assessment of the case remained positive** (*Gergouil v. France* judgment, 21 March 2000).

#### **For a review of a decision cancelling an adoption:**

The contested proceedings lasted a total of some five years two months, involving two judicial levels. Much of this delay is exclusively attributable to the applicant (judgment *Bican v. Romania*, decision of 22 September 2009).

### **2. Simple criminal cases**

#### **For a banking fraud offence: a total duration of 3 years and 6 months for 3 instances breaking down as follows:**

- 6 months of investigation
- 1 year and 2 months at 1st instance
- 11 months on appeal
- 1 year and 5 months on cassation **was judged reasonable** (*Kuibichev v. Bulgaria* judgment, 30 September 2004).

#### **For offences involving illegal demonstrations and use of explosives causing death: a total duration of 5 years and 11 months for 4 instances breaking down as follows:**

- 1 year and 8 months before the State Security Court
- 1 year and 7 months before the Court of cassation
- 1 year and 2 months before the Security Court ruling on referral
- 11 months before the Court of cassation **was judged reasonable** (*Soner Önder v. Turkey* judgment of 12 July 2005)

#### **For a case of rape by a police officer in the exercise of his functions:**

The proceedings lasted some five years five months at two different judicial levels, during which time a total of four applications were submitted. The proceedings were in two phases, namely an administrative phase and a criminal one, during which the applicant's case was examined twice by the Izmir Criminal Court and twice by the Court of Cassation. It began on 25 May 1997, when the applicant was remanded in custody, and ended on 16 October 2002, when the Court of Cassation confirmed the decision at first instance (judgment *Yeniay v. Turkey*, 26 June 2007).

### **3. Complex cases**

#### **For a criminal case involving fraud and conspiracy: a total duration of 8 years and 5 months breaking down as follows:**

- Preparatory investigation of 4 years and 7 months: duration justified by the number of witnesses to be heard and documents to be examined.
- Judgment by three court instances lasting 3 years and 10 months (*Hozee v. Netherlands* judgment, 22 May 1998) **was judged reasonable**.

**For a criminal case involving negligent homicide:** proceedings lasting 6 years and 3 months for four court instances could not be considered unreasonable; (*Calvelli and Ciglio v. Italy* judgment of 17 January 2002).

**For a case of attempted murder:** the proceedings lasted just over 7 years 9 months at five different levels, although the time taken was not unreasonable. The Court noted the complexity of the case in terms of the facts at issue and the conduct of the accused, who constantly contradicted himself (judgment *Pêcheur v. Luxembourg*, 11 December 2007).

**In the complex cases where a violation has been found**, of the forty one cases judged between 1987 and 2004 and set out in appendix 3, a distinction should be drawn between the criminal cases and the others<sup>154</sup>.

**Regarding the nineteen criminal procedures:**

- durations all of more than 5 years of proceedings for one to two court instances, with one exception: 2 years for one court instance.
- six cases were still pending at the date of the ECHR judgment.
- in seven cases, it was the inquiry and investigation phase that was criticised.
- in four cases, the Court criticised the excessive intervals between hearings before the court of judgment or between first instance judgment and the first appeal hearing.

**Regarding the eleven civil procedures:**

- durations ranging from 2 years and 3 months for the shortest and 19 years for the longest;
- in five cases something was at stake for the applicant, therefore requiring special diligence in the eyes of the European Court;
- in the shorter cases there is a requirement of special diligence linked to what is at stake for the applicant in the dispute.

**In the complex cases where no violation has been found**, among the twenty three cases studied, there are:

- 16 criminal procedures
- 6 civil procedures
- 1 administrative procedure.

In these disputes, it is striking that **in twelve cases – over half – the applicant’s conduct is criticised by the Court** as having contributed to the delay.

In the criminal cases, the longest duration is 8 years and 8 months for three court instances, in a French case involving international drug trafficking (*Van Pelt v. France* judgment of 23 May 2000): the Court noted that the 3 years of proceedings before the investigating judge had been punctuated by numerous investigative measures, and that the courts of judgment had taken decisions swiftly. The conduct of the applicant was not criticised. In the civil cases, the longest duration was 6 years in a pending case: the Court found that the applicant had lodged one action after another, some of which had proved pointless and further complicated a case already considered “highly complex”. On the other hand, no period of inactivity could be attributed to the authorities.

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<sup>154</sup> The remainder being procedures both before the ordinary court and the administrative court, as well as one procedure before a constitutional court.

## CONCLUSION:

In its "survey of cases examined in 2004", the Court noted that "*as in previous years, a large percentage of the judgments delivered by the Court concerned exclusively or primarily the excessive length of court proceedings. The number of these judgments was virtually identical to that for the previous year (increasing from 235 to 248), as was the figure shown as a percentage of all judgments (increasing from 33.43% to 34.49%)*". This finding has since been reiterated in all the Court's annual reports, with the almost ritual assertion that non-compliance with the right to a hearing within a reasonable time is one of the main causes of violation of the Convention.

Addressing a conference to mark the fiftieth anniversary of the Convention, Mr Luzius Wildhaber, President of the European Court since the 1998 reform, described the challenges facing the European human rights protection machinery. In the coming years, he told his audience, the success of the Convention system would be judged according to three criteria: the length of proceedings before the Court, the standard of its judgments and the effectiveness with which those judgments were implemented. He called for contracting states to give that system their total support, which was essential if the Convention machinery was to be successful.

The length of judicial proceedings remains a major concern, not only for domestic courts everywhere but also and above all for the European Court.

In 2006, of a total of 1560 judgments finding a violation of the Convention, 567 originated in excessive length of proceedings<sup>155</sup>. In 2007, the figure was 384 out of 1503<sup>156</sup>; in 2008, 456 out of 1543<sup>157</sup>; in 2009, 449 out of 1645<sup>158</sup>; and in 2010, 461 out of 1499<sup>159</sup>. This shows that the number of adverse findings has remained fairly stable, accounting for over one quarter of all such findings.

The Court's judgments and decisions show that there is a clear need for a "culture of expedition or dispatch", which is not necessarily synonymous with speed but signifies above all a commitment to proper judicial time management.

This aim implies to mobilise all the parties to the trial, first of all the courts, and inside them, magistrates, clerks and administrative staff. Information technology offers now interesting tools facilitating the follow-up of proceedings and allowing a better watch of delays. Proposals are made for mobilising the different parties<sup>160</sup>. The "Best practice project" in Denmark should be mentioned, intending to increase the capacity of courts, while assuring constant quality of the judicial service<sup>161</sup>.

All those involved in the process need to be mobilised, starting with the courts, including judges, court registrars and administrative staff. But achieving this objective also requires the involvement of other legal professions such as lawyers, notaries, bailiffs and court appointed experts, all of whom have a contribution to make in their respective spheres.

Courts also function in co-operation with an increasing number of other institutions. The required "diligence" must concern all national authorities and the officials working for them, whether they are responsible for drafting defence submissions on behalf of governments or for responding to requests for out-of-court settlements. Other decentralised or devolved public bodies are equally concerned, when they become parties to certain proceedings concerned with guardianship or statutory care, for

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<sup>155</sup> 2006 Annual Report, pp. 107 and 108 ; available on the Court website <http://www.echr.coe.int/echr>

<sup>156</sup> 2007 Annual Report, pp. 144 and 145.

<sup>157</sup> 2008 Annual Report, pp. 134 and 135.

<sup>158</sup> 2009 Annual Report, pp. 146 and 147.

<sup>159</sup> 2010 Annual Report, pp 149-151.

<sup>160</sup> One of the selected applications for the Crystal scales of justice award in 2006 intended to reduce the length of proceedings: the first Instance court of Torino (Italie) "Programme Strasbourg" First experience of case management in Italy to combat backlogs and speed up the treatment of civil proceedings.

<sup>161</sup> See the aforementioned CEPEJ report report "Time management of justice systems: a Northern Europe study"(CEPEJ(2006)14).

example, or are consulted by the courts in proceedings relating to social services or social security matters.

Finally, we need to pay attention to ordinary citizens themselves, when they are parties to proceedings. When their negligent conduct is not in bad faith, it is often the result of lack of information on their rights and obligations. Such information should itself be supplied with diligence, and dilatory conduct must be answered with court orders and penalties prescribed by law, as the Court has consistently advocated.

If this worry for the information of the public is written in the rules of the functioning of courts, delaying behaviours, cause of extension of proceedings and bonus for dishonesty, would be easier to sanction, as recommended by the European Court of Human Rights.

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## Appendix 1 updated

## Violations under the "length of proceedings" (article 6 § 1) per country(\*)

	Population (in millions of inhabitants) (**)	2006			2007			2008			2009			2010		
		Total number of judgments of which violation	Length of proceedings		Total number of judgments of which violation	Length of proceedings		Total number of judgments of which violation	Length of proceedings		Total number of judgments of which violation	Length of proceedings		Total number of judgments of which violation	Length of proceedings	
<b>Albania</b>	3,2				6	5	2							7	5	1
<b>Germany</b>	82,3	10	6	4	12	7	5	10	6	5	21	18	14	36	29	29
<b>Austria</b>	8,4	21	20	3	23	20	8	14	11	7	15	13	6	19	16	9
<b>Azerbaijan</b>	9,2							9	7	2						
<b>Belgium</b>	10,7	7	4	2	15	14	10	14	12	9	11	8	2			
<b>Bulgaria</b>	7,5	45	43	16	53	51	19	60	51	25	63	61	21	81	69	31
<b>Cyprus</b>	1,1	15	15	15	7	7	6	9	6	2	3	3	3			
<b>Croatia</b>	4,4	22	21	16	39	29	14	19	16	11	19	16	6	21	21	8
<b>Denmark</b>	5,6							2	2	2	3	3	3			
<b>Spain</b>	46,1										17	11	3			
<b>Estonia</b>	1,3				3	3	2				4	4	1			
<b>Russian Federation</b>	143,0	102	96	18	192	175	11	244	233	20	219	210	34	217	204	29
<b>Finland</b>	5,4	17	12	7	26	16	9	9	8	2	29	28	19	17	16	9
<b>France</b>	62,8	96	87	25	48	19	6	34	24	1	33	20	2	42	28	1
<b>Georgia</b>	4,4							6	4	1	11	11	2			
<b>Greece</b>	11,4	55	53	32	65	61	38	74	73	53	75	69	41	56	53	33
<b>Hungary</b>	10,0	31	31	27	24	24	22	44	43	39	30	28	20	21	21	14
<b>Ireland</b>	4,5													2	2	1
<b>Italy</b>	60,6	103	96	17	67	58	25	82	72	51	69	61	12	98	61	44
<b>Latvia</b>	2,3	10	9	3	12	8	2									
<b>«former Yugoslav Republic of Macedonia»</b>	2,1	8	7	7	17	16	11	15	15	10	17	16	10	15	14	7
<b>Liechtenstein</b>	0,4	1	1	1										1	1	1
<b>Lithuania</b>	3,3	7	6	3	5	3	2				9	8	7	8	7	3
<b>Liechtenstein</b>	0,4	1	1	1										1	1	1
<b>Lithuania</b>	3,3	7	6	3	5	3	2				9	8	7	8	7	3

	Population (in millions of inhabitants) (**)	2006			2007			2008			2009			2010		
		Total number of judgments	of which violation	Length of proceedings	Total number of judgments	of which violation	Length of proceedings	Total number of judgments	of which violation	Length of proceedings	Total number of judgments	of which violation	Length of proceedings	Total number of judgments	of which violation	Length of proceedings
<b>Luxembourg</b>	0,5	2	2	1	7	6	2	6	4	3				7	5	3
<b>Malta</b>	0,4	8	8	3				5	2	1						
<b>Moldova</b>	3,6	20	18	1	60	59	2	33	28	3	30	29	3			
<b>Norway</b>	4,9				5	5	1	5	3	1						
<b>Netherlands</b>	16,6															
<b>Poland</b>	38,3	115	107	51	111	101	35	141	129	63	133	123	50	107	87	37
<b>Portugal</b>	10,7	5	4	1				12	12	1	17	17	3	19	15	6
<b>Czech Republic</b>	10,5	39	37	27	11	9	3							11	9	1
<b>Romania</b>	21,5	73	64	7	93	88	8	199	189	25	168	153	16	143	135	16
<b>United Kingdom</b>	62,0	23	10	1	50	19	1	26	27	1	18	14	2	21	14	1
<b>San Marino</b>	0,3															
<b>Serbia</b>	9,9				14	14	8	9	8	3	16	14	5	9	9	2
<b>Slovakia</b>	5,5	35	35	32	23	22	14	15	12	11	39	38	29	40	40	29
<b>Slovenia</b>	2,0	190	185	183	15	14	13	9	8	7	8	7	4	6	3	2
<b>Sweden</b>	9,4	8	3	2	7	5	4	2	2	1				6	4	1
<b>Switzerland</b>	7,7	9	9	1							7	5	1			
<b>Turkey</b>	72,8	334	312	48	331	319	67	264	257	64	356	341	95	278	228	83
<b>Ukraine</b>	45,4	120	119	12	109	108	34	110	110	32	126	126	35	109	107	60
<b>TOTAUX</b>	<b>811,9</b>	<b>1531</b>	<b>1420</b>	<b>566</b>	<b>1450</b>	<b>1285</b>	<b>384</b>	<b>1481</b>	<b>1374</b>	<b>456</b>	<b>1566</b>	<b>1455</b>	<b>449</b>	<b>1397</b>	<b>1203</b>	<b>461</b>

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(\*) Rapports annuels 2007 à 2010, Greffe de la Cour européenne des droits de l'homme, Strasbourg

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Annexe 1 bis  
updated

Violations under the "length of proceedings" (article 6 § 1) per country(\*)

	Population (in millions of inhabitants)	Total number of judgments	Judgments establishing at least one violation	1999 2006		1959 2010	
				Length of proceedings	Total number of judgments	Judgments establishing at least one violation	Length of proceedings
<b>Albania</b>	3,2				27	23	3
<b>Germany</b>	82,3	76	53	23	193	128	83
<b>Austria</b>	8,4	141	111	45	287	215	81
<b>Azerbaïjan</b>	9,2				42	38	2
<b>Belgium</b>	10,7	67	50	33	162	113	55
<b>Bulgaria</b>	7,5	116	109	45	375	343	141
<b>Cyprus</b>	1,1	35	29	22	60	50	34
<b>Croatia</b>	4,4	101	72	41	191	154	80
<b>Denmark</b>	5,6	20	5	2	34	13	8
<b>Spain</b>	46,1	32	24	6	91	56	11
<b>Estonia</b>	1,3	12	9	1	23	19	4
<b>Russian Federation</b>	143,0	207	197	47	1079	1019	141
<b>Finland</b>	5,4	64	47	18	151	119	57
<b>France</b>	62,8	541	431	245	815	604	279
<b>Georgia</b>	4,4	10	9	2	39	32	5
<b>Greece</b>	11,4	301	258	181	613	541	353
<b>Hungary</b>	10,0	92	84	75	211	200	170
<b>Ireland</b>	4,5	12	7	4	25	15	6
<b>Italy</b>	60,6	1648	1264	923	2121	1617	1139
<b>Latvia</b>	2,3	18	16	4	45	37	6

	Population (in millions of inhabitants (**))	Total number of judgments	Judgments establishing at least one violation	1999 2006		1959 2010	
				Length of proceedings	Total number of judgments	Judgments establishing at least one violation	Length of proceedings
«former Yugoslav Republic of Macedonia»	2,1	14	11	9	78	72	47
Liechtenstein	0,4	4	4	1	5	5	2
Lithuania	3,3	30	23	7	65	52	19
Luxembourg	0,5	12	11	8	36	29	16
Malta	0,4	15	14	4	31	25	5
Moldova	3,6	45	42	2	196	178	10
Norway	4,9				28	20	2
Netherlands	16,6	60	36	5	128	73	8
Poland	38,3	378	318	210	874	761	397
Portugal	10,7	131	74	59	206	138	77
Czech Republic	10,5	117	106	73	158	142	77
Romania	21,5	186	152	13	791	719	78
United Kingdom	62,0	206	141	17	443	271	25
San Marino	0,3	10	8	2	11	8	2
Serbia	9,9				49	46	18
Slovakia	5,5	128	104	83	248	218	166
Slovenia	2,0	195	188	195	233	220	211
Sweden	9,4	35	13	5	95	47	12
Switzerland	7,7	34	27	4	102	71	6
Turkey	72,8	1310	1076	127	2573	2245	440
Ukraine	45,4	263	258	32	717	709	193
<b>TOTAUX</b>	<b>811,9</b>	<b>6666</b>	<b>5381</b>	<b>2573</b>	<b>13651</b>	<b>11385</b>	<b>4469</b>

**Sources :**

(\*) Rapports annuels 2007 à 2010, Greffe de la Cour européenne des droits de l'homme, Strasbourg

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## Appendix 2

### "Priority" cases for which the European court of human rights requires particular diligence by the authorities (29/10/05)

Although the Court's precise wording may vary, ranging from "exceptional expedition" (HIV case) to a "certain diligence" (mental capacity of a plaintiff), the Court does not operate any real gradation with regard to the types of cases concerned. Its view is that they all require the courts to show particular vigilance about the length of proceedings. The value of this table is that it shows what was at stake for the applicants in the cases concerned.

#### ~~Applicant's state of health: French cases concerning haemophiliacs contaminated by the HIV virus during blood transfusions~~

- Judgment *Gheorghe v. Romania* of 15 June 2007: the Court recalled that *special diligence is required of the authorities where the applicant is suffering from a serious and incurable disease and his condition is rapidly deteriorating (§54) {...}. Given the serious decline in the applicant's health during the proceedings, and since the authorities were required to show a high level of diligence, the Court concludes that the length of the proceedings in question is excessive (§60)*. In this case the main cause of the delay was a dispute as to jurisdiction between two courts which had committed errors of appraisal of their respective competences.
- Judgment *Sopp v. Germany* of 8 October 2009: the Court observed that particular attention should be paid to recognising the occupational origin of a disease in view of the importance of the proceedings to the applicant, since the aim was to provide him with additional means of support by means of a special reversionary annuity.
- French haemophiliacs contaminated by the HIV virus during blood transfusions:
- ECHR judgments: *X v. France* of 31 March 1992, *Vallée v. France* of 26 April 1994, *Pailot v. France* of 22 April 1998: "*Like the Commission, the Court considers that what was at stake in the proceedings complained of was of crucial importance to the applicant in view of the disease from which he is suffering. .... exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with ....*" (Pailot, §68).

#### Exercise of parental authority and custody of children:

- *H v. United Kingdom* judgment of 8 July 1987: in this child care case, the Court stated that not only were the proceedings "*decisive for [the mother's] future relations with her own child, but they had a particular quality of irreversibility, involving as they did what the High Court graphically described as the "statutory guillotine" of adoption .... In cases of this kind the authorities are under a duty to exercise exceptional diligence*" (violation).
- *Johansen v. Norway* judgment of 7 August 1996 (**non-violation**): "*in view of what was at stake for the applicant and the irreversible and definitive character of the measures concerned, the competent national authorities were required by Article 6 para. 1 .... to act with exceptional diligence in ensuring the progress of the proceedings*".
- *EP v. Italy* judgment of 16 November 1999, violation: child custody proceedings, that lasted seven years
- *Nuutinen v. Finland* judgment of 27 June 2000
- *Tetourova v. Czech Republic* judgment of 27 September 2005 (French only): delays in particular parts of proceedings can only be tolerated if the total length of the proceedings is not excessive. Non-violation for three and a half years of proceedings. The conduct of the defendant (the applicant's husband) helped to delay the proceedings and was an objective element that could not be imputed to the state.

- *Jahnova v. Czech Republic* judgment of 19 October 2004: a length of 3 years and 5 months still pending, while the mother is separated from her child since 1997, is declared.

#### **Concession of alimony:**

This is the case when the decision determines the completion of a divorce proceedings: *Kubiznakova v. Czech Republic* of 21 June 2005: violation for a duration of 6 years and 4 months and two level of proceedings having taken a decision three times each.

In the judgment *Dinu v. Romania and France*, 4 November 2008) an applicant secured a decision against both France and Romania on the grounds of enforcement proceedings which had taken nine years because of delays not only in the two judicial systems but also in the ministries concerned.

#### **The applicant's age:**

- *Sussmann v. Germany* judgment of 16 September 1996 concerning a case relating to the calculation of a supplementary retirement pension
- *Styranowski v. Poland* judgment of 30 October 1998: the Court took account of the age of the applicant, a retired judge, in compensation proceedings following a reduction of the applicant's pension.
- Judgment *Pantaleon v. Greece* of 10 May 2007 concerning a war pension requested by an eighty-year-old litigant: the applicant had difficulty obtaining the enforcement of a judicial decision on the granting of his pension. The Court considered that the two-year period of proceedings was too long and that the administrative authorities had failed to show the requisite diligence in the case in view of the applicant's advanced age and the important of the proceedings to him.

#### **Dismissal proceedings – employment cases, granting of a retirement pension or any other source of income:**

- *Ruotolo v. Italy* judgment of 27 February 1992, decision of violation for proceedings which lasted 11 years and 7 months, for three court levels, followed by a review of the case decided by the Court of Cassation: excessive length of the deliberation at the appeal level (7.5 months).
- Inadmissibility decision of the Commission *Labate v. Italy* of 14 January 1998 (French only): The Commission found that Italy had shown the degree of diligence required in labour law cases by introducing in 1990 special measures to expedite proceedings.
- *Frydlender v. France* judgment of 27 June 2000 concerning administrative proceedings in an employment dispute between a government department and a contractual employee (applicability of Article 6§1 to this type of case and violation for proceedings lasting 9 years and 8 months, including six before the *Conseil d'Etat* on points of law). "*employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence*".
- *Mianowicz v. Germany* judgment of 18 October 2001 (French only): According to the Court, particular diligence was required in employment disputes, which had to be settled with particular expedition since they concerned issues that were crucial to individuals' occupational situation – violation (12 years and 10 months).
- *Garcia v. France* judgment of 14 November 2000 (French only): The Court noted that the continuation of the applicant's employment had depended in large measure on the proceedings in question and concluded that, as in employment disputes, what was at stake for the applicant had called for a rapid decision. The case had concerned an application to set aside a prefect's implicit refusal to grant the applicant, a bar owner, an extension to his opening hours.



- *Oliviera Modesto and others v. Portugal* judgment of 8 June 2000 (French only): the Court pointed out that in cases concerning employees' entitlement to their salaries or to allowances forming part of their earnings, particular attention must be given to the point at which the reasonable time requirement in Article 6§1 could be considered to have been breached. See also *Fernandes Cascao v. Portugal* judgment of 1 February 2001 and *Farinha Martins v. Portugal* judgment of 10 July 2003.
- Judgments *Mianowicz v. Germany* (No.2), decision of 11 June 2009, and *Petko Ivanov v. Bulgaria*, decision of 26 March 2009, challenging dismissals.
- (Aforementioned) judgment *Sartory v. France*, decision of 24 September 2009: the 6 years taken to decide a dispute on the transfer of a civil servant was deemed excessive.
- Judgment *Vassilios Athanasiou and others v. Greece* of 21 December 2010: this case concerned an administrative dispute on the granting of an additional retirement premium from the Army Solidarity Fund.
- Judgment *Kalfon v. France* of 29 October 2009: speed is of the essence in the field of employment disputes, as they require an early decision by definition because of the issues at stake in proceedings for the applicant, his personal and family life and his professional career (§ 34).
- The same applies where the issue at stake for the applicant is being able to set up an agricultural business (judgment *Gouillard v. France*, 30 September 2011 – the applicant had to wait almost seven years to set up his farm).

#### **Length of prison sentence served by the applicant:**

- *Soto Sanchez v. Spain* judgment of 25 November 2003 (§ 41 - French only ): violation for a period of 5 years, 5 months and 18 days before the Constitutional Court.
- *Motsnik v. Estonia* judgment of 29 April 2003; in a non complex sexual offence case the Court stated that there was no violation of Article 6§1 considering the length of the proceedings at three levels of jurisdiction during the period under consideration 2 years and 7 month, the competence *ratione temporis* considering only the period after April 1996. For the applicant, taken into custody in February 1998, the case presented a special stake for exceptional speed from the national authorities.
- Judgment *Şinegu and others v. Turkey* of 13 October 2009: the Court notes that the applicants were remanded in custody throughout the proceedings, which situation requires special diligence from the trial courts in order to administer justice as quickly as possible.
- Judgment *Mihalkov v. Bulgaria*, 10 April 2008: this case concerned an action for damages for unlawful conviction, unlawful detention (11 months) and injury to reputation.
- Judgment *Gocmen v. Turkey*, 17 October 2006: the Court noted that this speed requirement was particularly important to the applicant because he had been in custody for over six years 9 months.

#### **Individuals' civil status and capacity:**

- **action to establish paternity:**
- *Costa Ribeiro v. Portugal* judgment of 30 April 2003 (French only). The Court said that cases concerning individuals' civil status and capacity required special diligence. The court in question had had a duty to proceed with particular diligence because what was at stake for the applicants, particularly the second applicant, was the right to a name and to the establishment of paternity.

- Judgment *Ebru and Tayfun Colak v. Turkey*, 30 May 2006: the Court recalled that special diligence was required in cases relating to the condition and capacity of individuals. Given the importance of this case to the applicant vis-à-vis his right to establish or refute paternity, and therefore to put an end to his uncertainty as to the identity of his natural father, the Court considered that Article 6 § 1 required the competent domestic authorities to act with particular diligence and to expedite proceedings accordingly.
- Judgment *Tsikakis v. Germany*, 10 May 2011: the acknowledgment of paternity proceedings in this case took almost six years five months, involving three judicial levels, including four years before the appeal court.
- **Applicants' mental capacity to bring legal proceedings:**
- *Bock v. Germany* judgment of 23 March 1989. The case required "swift determination" (§47). The Court concluded "*regard being had to the particular diligence required in cases concerning civil status and capacity, there has accordingly been a breach of Article 6 para. 1 .... of the Convention*", concerning divorce proceedings lasting nine years, coupled with the issue of the application's admissibility (the applicant's capacity to bring legal proceedings).

#### **Investigation of complaints of assault by law enforcement officials:**

- *Caloc v. France* judgment of 20 July 2000: "*special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers*".
- In a Bulgarian case concerning unlawful police violence and state liability for damages arising from such conduct, the Court stated that "*as regards the importance of what was at stake for the applicant, the Court observes that his action concerned payment for grave injuries sustained as a result of police violence. In such cases special diligence is required of the judicial authorities*" (*Krastanov v. Bulgaria* judgment of 30 September 2004, § 70).

#### **Applicant's limited income and difficult financial situation, resulting from embezzlement by the defendants**

- In the *Dachar v. France* judgment of 10 October 2000, concerning criminal charges with an application for damages, in which two sets of proceedings lasted respectively four years and four years and three months before two tiers of courts, the Court considered that in view of what had been at stake for the applicant, the case should have been dealt with with proper diligence.

#### **Application based on an authority to execute:**

- *Comingersoll SA v. Portugal* judgment of 6 April 2000: "*a final decision that has yet to be delivered in proceedings issued on the basis of an authority to execute – which by their very nature need to be dealt with expeditiously*" (§ 23). Violation for a case lasting 17 years and 6 months.
- See also *Frotal-Aluguer de Equipamentos SA v. Portugal* judgment of 4 December 2003, which lasted nearly nine years (from November 1994 and still pending at time of judgment – inactivity since March 2000 imputable to the applicant) – violation.

#### **Compensation for damage suffered by the applicant:**

- Judgment *Floarea Pop v. Romania* of 6 April 2010: the domestic proceedings concerned compensation for damages caused to the applicant by her son's death.
- Judgment *Stefanova v. Bulgaria* of 11 January 2007: the proceedings concerned compensation for accidental injuries which had caused permanent damage to the applicant's health, without endangering his life.

**Other reasons for particular speed:**

- Judgment *Wilczkowska and others v. Poland* of 8 January 2008: action for recovery of possession of real estate after expropriation, and claim for damages.
- Judgment *Gunes v. France* of 20 November 2008: the applicant wished to secure items of personal information, the possible inaccuracy of which was liable to injure his reputation.
- Judgment *ORŠUŠ and others v. Croatia* of 16 March 2010: this case concerned the right to education in the context of discrimination against Roma. Although the Court accepted that the Constitutional Court's role of guardian of the Constitution sometimes made it particularly necessary for it to take into account considerations other 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, the Court found that a period exceeding four years to decide on the applicants' case, particularly in view of what was at stake, was excessive.
- Judgment *Siffre, Ecoffet, Bernardini v. France* of 12 December 2006: the Court pointed out that the case was of particular importance to the applicants because at the time of the facts the extension of proceedings had had decisive consequences for their political careers, resulting in their resignation from office and a three-year period of ineligibility before they obtained a final discharge from their *de facto* financial responsibilities by the *Chambre Régionale des Comptes*. They therefore had a serious personal interest in obtaining an early final decision discharging them from their financial responsibilities.

**APPENDIX 3 - COMPLEX CASES - VIOLATION OF ARTICLE 6 § 1**

<b>CASE</b>	<b>REASONS FOR COMPLEXITY</b>	<b>GROUND OF VIOLATION</b>	<b>TYPE OF PROCEEDINGS</b>	<b>LENGTH</b>
<b>Ilijkov v. BULGARIA,</b> 2 July 2001	- several co-accused who had fraudulently obtained tax rebates	- excessively long intervals between hearings - judicial authorities authorised adjournments without sufficient justification - absence of judges who were not replaced	<b>CRIMINAL</b>	<b>5 years</b>
<b>Nikolova v. BULGARIA,</b> 25 March 1999	- several co-accused - criminal activities over a three year period	- the complexity of the case insufficient to explain the length of the proceedings - reform of the code of criminal procedure cannot justify the delays - lack of progress of investigations despite instructions from the prosecuting authorities	<b>CRIMINAL</b>	<b>5 years</b> for one level of courts
<b>Mitev v. BULGARIA,</b> 22 December 2004	- numerous witnesses - use of experts - difficult to locate witnesses	- insufficient efforts by the authorities to ensure that one of the accused had legal representation - excessively long investigation period (more than five years)	<b>CRIMINAL</b>	<b>6 years, 7 months</b> for two levels of courts
<b>Hamanov v. BULGARIA,</b> 8 April 2004	- several persons suspected - numerous financial offences	- court of appeal first hearing more than a year after the judgment at first instance was quashed - case pending since 5 June 2000, including a challenge to the admissibility of the appeal lodged with the court of cassation	<b>CRIMINAL</b>	<b>7 years, 1 month</b> (case still pending on the date of judgment)
<b>Belchev v. BULGARIA</b> 8 April 2004	- several persons suspected - numerous financial offences	- court of appeal first hearing more than a year after the judgment at first instance was quashed - case pending since 5 June 2000, including a challenge to the admissibility of the appeal lodged with the court of cassation	<b>CRIMINAL</b>	(case still pending on the date of judgment)
<b>Sahiner v. TURKEY,</b> 25 September 2001	- large number of accused and of charges	- excessive time taken to hand down judgments - change of legislation <i>but</i> states must organise their judicial systems appropriately	<b>CRIMINAL</b>	<b>6 years, 2 months</b> (real length 15 years)
<b>Mitap v. TURKEY,</b> 21 February 1996	- nature of the charges against the applicants (terrorist activities) - 627 criminal offences - 726 accused	- long periods of inactivity (three years for the martial law court to draft the reasons for the judgment) and the government offered no information to justify such a long period	<b>CRIMINAL</b>	<b>6 years</b> (real length 15 years)
<b>Demirel v. TURKEY,</b> 28 April 2003	- case heard with that of four other co-accused for membership of the PKK	- the preliminary inquiries should have been conducted more rapidly - it had taken a long time to hear witnesses	<b>CRIMINAL</b>	<b>7 years, 7 months</b>

<b>Iwanczuk v. POLAND</b> 15 November 2001	- inherent complexity of this type of case (forgery and use of counterfeit documents)	- change in the court's composition - hearings restarted from the beginning, after 71 had already taken place	<b>CRIMINAL</b>	<b>8½ years</b> (real length: 10½ years, case still pending)
<b>Ilowiecki v. POLAND,</b> 4 October 2001	- numerous international bank transactions - need to call in several experts	- total of two years and ten months for which the government supplied no explanation	<b>CRIMINAL</b>	<b>7 years, 10 months</b> (case still pending)
<b>Grauslys v. LITHUANIA,</b> 10 October 2000	- fraud case	- authorities' repeated failures to question the victims	<b>CRIMINAL</b>	<b>5 years</b> (case still pending)
<b>Kalashnikov v. RUSSIA,</b> 15 July 2002	- financial offences, involving a considerable volume of evidence and the need to question numerous witnesses	- even though the applicant helped to prolong the proceedings, Article 6§1 does not require defendants to co-operate with the authorities - the applicant was kept in custody, which required the courts to show particular diligence and administer justice expeditiously	<b>CRIMINAL</b>	<b>2 years</b> (real length: 5 years, 1 month for one level of courts)
<b>Lavents v. LATVIA,</b> 28 February 2003	- very large scale financial crime - several co-accused - exceptional volume of evidence - scale of the investigation	- the delays were imputable to the courts (see the joint communiqué from the prime minister and the justice minister acknowledging their responsibility)	<b>CRIMINAL</b>	<b>6 years, 7 months</b> (real length: 7 years, 8 months)
<b>Stratégies et communications and Dumoulin v. BELGIUM</b> 15 July 2002	- complex investigation, because of the circumstances of the case (45 boxes of case files)	- the Court considered that six years just for the investigation stage of the proceedings, which had not yet even been completed, could not be considered reasonable	<b>CRIMINAL</b>	<b>6 years</b>
<b>Boddaert v. BELGIUM</b> (Commission), 17 April 1991	- no witness to the murder - the applicant and his co-accused each claimed the other was responsible	- total suspension of the investigation for three years, a period imputable to the authorities	<b>CRIMINAL</b>	<b>6 years, 2 months</b>

<b>Metzger v. GERMANY,</b> 31 May 2001	<ul style="list-style-type: none"> <li>- issues relating to criminal law and the environment</li> <li>- water pollution</li> <li>- need for expert testimony</li> <li>- numerous witnesses</li> </ul>	<ul style="list-style-type: none"> <li>- the investigation made no progress for fifteen months between the lodging of the police report and the laying of charges</li> <li>- unjustified delays in the trial courts, particularly between the laying of charges and the regional court's decision not to allow the trial to open, and between the decision to suspend proceedings and the appointment of an expert by the regional court</li> <li>- two years and three months' delay resulting from the federal court of justice quashing the regional court's judgment on procedural grounds, because it had not received this judgment within the legally prescribed period</li> </ul>	<b>CRIMINAL</b>	<b>more than 9 years</b>
<b>Nuvoli v. ITALY,</b> 16 August 2002	<ul style="list-style-type: none"> <li>- economic and financial crime (seizure of a banking instrument on the instructions of the prosecuting authorities)</li> </ul>	<ul style="list-style-type: none"> <li>- the authorities were held responsible for overall delays lasting about three years and four months</li> </ul>	<b>CRIMINAL</b>	<b>5 years, 10 months</b> for one level of courts
<b>Ouattara v. FRANCE,</b> 2 August 2005	<ul style="list-style-type: none"> <li>- complexity increased by the fact that the person against whom the applicant had lodged a complaint, with an application for damages, could not be extradited</li> </ul>	<ul style="list-style-type: none"> <li>- investigation still under way, more than eleven years after the applicant had lodged his complaint</li> <li>- several periods of inactivity imputable to the authorities</li> </ul>	<b>CRIMINAL</b>	<b>11 years, 6 months</b> (investigation still under way)
<b>Dobbertin v. FRANCE,</b> 25 February 1993	<ul style="list-style-type: none"> <li>- real difficulties arising from the highly sensitive nature of the offences charged, which related to national security (communication with agents of a foreign power, the German Democratic Republic)</li> </ul>	<ul style="list-style-type: none"> <li>- authorities took no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly</li> <li>- ordinary courts were slow to resolve the issue of the validity of the indictment (nine months) and to quash the order commissioning experts (two years)</li> </ul>	<b>CRIMINAL</b>	<b>12 years, 10 months</b> for three levels of courts
<b>H. v. UNITED KINGDOM</b> 8 July 1987	<ul style="list-style-type: none"> <li>- numerous parties: the applicant, her husband, the prospective adopters, the official solicitor and the local county council</li> <li>- difficult to assess such a large body of evidence</li> </ul>	<ul style="list-style-type: none"> <li>- in the pre-High Court phase the county council (and thus the state) was responsible for the delays</li> <li>- the mother's future relations with her child were at stake, creating a duty to exercise exceptional diligence</li> </ul>	<b>CIVIL</b>	<b>2 years, 7 months</b>
<b>Müller v. SWITZERLAND,</b> 5 November 2002	<ul style="list-style-type: none"> <li>- novel and fundamental issues of compensation for expropriation on account of noise nuisance</li> </ul>	<ul style="list-style-type: none"> <li>- excessively lengthy proceedings prior to the proceedings before the Federal Court (<i>Süssmann</i> case deemed inapplicable, as concerning the "unique political context of German reunification")</li> </ul>	<b>CIVIL</b>	<b>11 years, 6 months</b>

<b>Nuutinen v. FINLAND</b> , 27 June 2000	- not a complex case at the outset but became so at the enforcement stage, with the continuous reassessment of the child's best interests	- time elapsed between the initial application and the first hearing and between the latter and the main proceedings - what was at stake in the case (essential for custody cases to be dealt with speedily)	<b>CIVIL</b>	<b>5 years, 5 months</b>
<b>T. v. AUSTRIA</b> , 14 November 2000	- bank's claim and applicant's counterclaim were both extended in the course of the proceedings	- delays imputable to the applicant, who often changed counsel, were much less significant than those imputable to the authorities (altogether four years and three months imputable to the district court)	<b>CIVIL</b>	<b>8 ½ years</b> for one level of courts
<b>Wiesinger v. AUSTRIA</b> , 24 September 1991	- case concerned land consolidation, by its nature a complex process, affecting the interests of both individuals and the community as a whole - legally complex	- adoption of an amendment to the zoning plan by the municipal council - difficulties stemming from a lack of coordination between the municipal and the agricultural authorities in finalising their schemes	<b>CIVIL</b>	<b>more than 9 years</b>
<b>Bayrak v. GERMANY</b> , 20 December 2001	- complexity caused by the case's foreign links (the dispute came under Turkish rather than German law) - complexity of the resulting legal issues, such as German courts' geographical jurisdiction	- six different courts were involved in the case: considered individually the time they took was not unreasonable but the overall length of proceedings, which was imputable to the authorities, was unreasonable	<b>CIVIL</b>	<b>more than 8 years</b>
<b>Mianowicz v. GERMANY</b> , 18 October 2001	- case relating to the dismissal of a disabled person, whose complexity was linked to the protection against dismissal legislation and that on severely disabled persons	- main delays caused by the delays in the Munich employment court of appeal, where there were two inactive periods - particular diligence is required in employment disputes, which have to be settled with particular dispatch since they concern issues that are crucial to individuals' occupational situation	<b>CIVIL</b>	<b>12 years, 10 months</b> for two levels of courts
<b>H.T. v. GERMANY</b> , 11 October 2001	- the Constitutional Court was asked to rule on the constitutionality of certain aspects of the reform of the survivors' pension system	- delays imputable to the social court - particular diligence was required in view of what was at stake	<b>CIVIL</b>	<b>nearly 12 years</b>
<b>Klein v. GERMANY</b> , 27 July 2000	- fairly complex case, as shown by the length of and reasons for the judgment of the Constitutional Court, which had solicited the observations of various authorities	- the chronic backlog of cases in the Constitutional Court could not justify the length of proceedings - important issues at stake for many German citizens	<b>CIVIL</b>	<b>9 years, 8 months</b>

<b>K. v. ITALY</b> , 20 July 2004	- action to secure execution of a maintenance order (Polish decision ordering Italian father to pay maintenance to his illegitimate daughter at the Polish mother's request)	- the Italian authorities waited too long before starting the various proceedings	<b>CIVIL</b>	<b>8 ½ years</b>
<b>Obermeier v. AUSTRIA</b> , 28 June 1990	- interaction between administrative and civil proceedings in connection with the dismissal of disabled persons - numerous courts involved	- "the fact remains, however, that a period of nine years without reaching a final decision exceeds a reasonable time"	<b>ADM + CIVIL (dismissal)</b>	<b>more than 9 years</b>
<b>F.E v. FRANCE</b> , 30 October 1998	- reference to plenary Court of Cassation indicated that the case was somewhat complex	- the Court of Cassation had already given several rulings on legal issue raised - exceptional expedition called for	<b>CIVIL (HIV)</b>	<b>2 years, 3 months</b>
<b>Kanoun v. FRANCE</b> , 3 October 2000	- nature of the asset to be shared between the ex-spouses - their inability to agree before a lawyer, necessitating numerous referrals to court	- the authorities failed to show the necessary dispatch in arranging the settlement, following the divorce in 1974, for example the Court of Cassation was open to criticism	<b>CIVIL</b>	<b>19 years</b>
<b>Satonnet v. FRANCE</b> , 2 August 2000	- the applicant's status as a dismissed contractual employee, which meant that both the judicial and administrative courts had to rule on the case	- the complexity of the case and the applicant's conduct were not sufficient justification for the total length of the proceedings - several periods of inactivity imputable to the judicial authorities	<b>CIVIL then ADM</b>	<b>17 ½ years</b> (case still pending)
<b>Vallée v. FRANCE</b> , 26 April 1994	- difficult problems raised by the subrogation of the Fund to the rights of persons who had received compensation	- the information needed to determine the State's liability had been available for a long time - what was at stake	<b>CIVIL then ADM (HIV)</b>	<b>4 years</b> in one single court
<b>Pailot v. FRANCE</b> , 22 April 1998	- certain complexity due to the nature of the case	- information needed to determine State's liability had been available for a long time - period of one year and ten months between adoption of Commission's report noting that there had been a friendly settlement and <i>Conseil d'Etat's</i> judgment bringing to an end proceedings that had already lasted five years and six months up to conclusion of that settlement far exceeded reasonable time in such a case - exceptional diligence called for	<b>ADM + CIVIL (HIV)</b>	<b>1 year, 10 months</b>



<b>Nouhaud v. FRANCE,</b> 9 July 2002	- numerous parties involved and long lapse of time since the events took place - defendants' public law status - problems of settling jurisdiction between judicial and administrative courts	- the complexity of the case and the applicant's conduct were not sufficient to explain the overall length of the proceedings	<b>ADM</b>	<b>10 years</b> for four levels of courts
<b>Piron v. FRANCE,</b> 14 November 2000	- land consolidation	- long periods of inactivity solely imputable to the authorities and for which no explanation supplied	<b>ADM</b>	<b>26 years, 5 months</b> (case still under way)
<b>Marschner v. FRANCE,</b> 28 September 2004	- financial offences	- delays in submitting expert reports and in holding hearings	<b>ADM</b>	<b>5 years, 4 months</b>
<b>Styranowski v. POLAND,</b> 30 October 1998	- transfer from one court to another	- 15 months of unexplained inactivity	<b>ADM</b>	<b>2 years, 8 months</b>
<b>Naumenko v. UKRAINE,</b> 30 March 2005	- the state lacked the necessary technical documentation on the problem (invalidity following employment at the Chernobyl site)	- unreasonable delays imputable to the state - importance of what was at stake for the applicant (health)	<b>ADM</b>	<b>5 years, 8 months</b>
<b>Janosevic v. SWEDEN,</b> 23 July 2002	- the tax authority and the courts had to assess the turnover of the applicant's taxi business and his liability to additional taxes and tax surcharges	- this did not justify the length of proceedings – on the contrary, the enforcement measures taken against the applicant called for a prompt examination of his appeals	<b>ADM</b>	<b>6 years, 8 months</b>

**Appendix 3: complex cases non-violation of Article 6§1**

CASE	REASONS FOR COMPLEXITY	GROUNDS OF VIOLATION	TYPE OF PROCEEDINGS	LENGTH
<b>Gast and Popp v. GERMANY,</b> 25 February 2000	- complexity of the points of law to which the decisions dismissing the applicants' appeals referred	- the delays that occurred did not appear substantial enough for the length of the proceedings before the Constitutional Court to have exceeded a reasonable time	<b>CRIMINAL</b>	<b>approximately 2 years for each applicant</b>
<b>Neumeister v. AUSTRIA,</b> 27 June 1968	- difficulties the Austrian authorities encountered abroad in obtaining the execution of their numerous letters rogatory	- the delays in opening and reopening the hearing were in large part caused by the need to give the legal representatives of the parties and also the judges sitting on the case time to acquaint themselves with the case record, which comprised twenty-one volumes of about five hundred pages	<b>CRIMINAL</b>	<b>7 years</b> (case still pending on the date of judgment)
<b>Pedersen and Baadsgaard v. DENMARK,</b> 17 December 2004	- no details on the points of the case considered complex	- the applicants contributed to the delays (not very involved, did not object to adjournments and their counsel did not attend scheduled hearings) - the Court detailed the length of each set of proceedings and did not find any period of inactivity sufficiently protracted to constitute a violation	<b>CRIMINAL</b>	<b>5 years, 9 months</b>
<b>Van Pelt v. FRANCE,</b> 23 May 2000	- international drugs traffic, numerous persons involved, international nature of the trafficking organisation, offences partly committed abroad, need to translate documents	- numerous measures taken by the investigating judge and prompt decisions taken by the trial court - two dissenting opinions on this point	<b>CRIMINAL</b>	<b>8 years, 8 months</b>
<b>Calvelli and Ciglio v. ITALY,</b> 17 January 2002	- certainly complex (death of a newborn child in hospital)	- no significant periods of inactivity - six years, three months and ten days for four levels of courts cannot be considered unreasonable	<b>CRIMINAL</b>	<b>6 years, 3 months</b> for four levels of courts

<b>I.J.L. and others v. United Kingdom</b> 19 September 2000	<ul style="list-style-type: none"> <li>- financial offences</li> <li>- applicants' decision to plead not guilty</li> </ul>	<ul style="list-style-type: none"> <li>- authorities could not be held responsible for the delays</li> </ul>	<b>CRIMINAL</b>	<b>4 ½ years</b>
<b>Karabas v. TURKEY</b> 21 July 2005	<ul style="list-style-type: none"> <li>- charges carrying heavy prison sentences</li> <li>- seven co-accused</li> <li>- need to question some of the co-accused and witnesses in other courts following a request for judicial assistance from the state security court, which occasioned a certain delay, particularly concerning exchanges of correspondence between courts in different towns.</li> </ul>	<ul style="list-style-type: none"> <li>- no significant periods of inactivity</li> </ul>	<b>CRIMINAL</b>	<b>3 years, 9 months</b> for two levels of courts
<b>Özden v. TURKEY,</b> 24 May 2005	<ul style="list-style-type: none"> <li>- five co-accused, including two who were fleeing justice</li> </ul>	<ul style="list-style-type: none"> <li>- applicants' lack of interest (failure to appear, absence on the day judgment handed down, which delayed the appeals process)</li> </ul>	<b>CRIMINAL</b>	<b>4 years, 9 months</b> for two levels of courts
<b>Sari v. TURKEY,</b> 8 November 2001	<ul style="list-style-type: none"> <li>- complexity partly linked to extradition</li> <li>- case also became complex when the applicant fled to Denmark</li> <li>- shared jurisdiction of the two countries, leading to bureaucratic difficulties and requirements for translations</li> </ul>	<ul style="list-style-type: none"> <li>- applicant contributed to the delay, since the obligation to appear in court is a key element of criminal procedure</li> <li>- authorities did not contribute to prolonging the proceedings</li> </ul>	<b>CRIMINAL</b>	<b>8 years, 7 months</b>
<b>Kenan Yavuz v. TURKEY,</b> 13 February 2004	<ul style="list-style-type: none"> <li>- 21 accused</li> <li>- nature of the charges against the applicant</li> <li>- several offences</li> <li>- need to assemble considerable quantity of evidence</li> </ul>	<ul style="list-style-type: none"> <li>- even though the state was responsible for certain delays the total length of proceedings was not unreasonable</li> </ul>	<b>CRIMINAL</b>	<b>more than 5 years</b>
<b>Akçakale v. TURKEY,</b> 25 August 2004	<ul style="list-style-type: none"> <li>- three accused for several offences (great deal of work on reconstructing events, assembling evidence and establishing level of involvement)</li> </ul>	<ul style="list-style-type: none"> <li>- the applicant contributed to delays, by failing to appear or furnish written material necessary for the court's deliberations</li> <li>- no periods of inactivity</li> </ul>	<b>CRIMINAL</b>	<b>5 years, 3 months</b>

<p><b>Intiba v. TURKEY,</b> 24 May 2005</p>	<ul style="list-style-type: none"> <li>- numerous persons concerned</li> <li>- tax law</li> </ul>	<ul style="list-style-type: none"> <li>- the applicant contributed to delays, by failing to appear, asking for an adjournment, dismissing his counsel, changing address to avoid notification and refusing to be represented</li> <li>- authorities responsible for one year's inactivity but no impact on the length of proceedings</li> <li>- in proceedings on this scale deciding on a timetable depends on the availability of the lawyers as well as on the court</li> </ul>	<p><b>CRIMINAL</b></p>	<p><b>7 years, 11 months</b></p>
<p><b>Keçeci v. TURKEY,</b> 15 July 2005</p>	<ul style="list-style-type: none"> <li>- numerous accused, nature of the offences, difficult to re-establish events and determine individual roles</li> </ul>	<ul style="list-style-type: none"> <li>- no significant periods of inactivity</li> </ul>	<p><b>CRIMINAL</b></p>	<p><b>6 years, 2 months</b> for five levels of courts</p>
<p><b>Klamecki v. POLAND,</b> 28 March 2002</p>	<ul style="list-style-type: none"> <li>- nature of the charges</li> <li>- need to assemble considerable quantity of evidence</li> <li>- large number of witnesses heard at first instance</li> </ul>	<ul style="list-style-type: none"> <li>- applicants contributed to delays by failing to comply with court summonses</li> <li>- accused absent on a number of occasions, leading to adjournments</li> <li>- applicant dismissed counsel on a number of occasions</li> </ul>	<p><b>CRIMINAL</b></p>	<p><b>6 years, 1 month</b></p>
<p><b>Salapa v. POLAND,</b> 19 December 2002</p>	<ul style="list-style-type: none"> <li>- international drug trafficking case</li> <li>- ten co-accused</li> <li>- numerous witnesses</li> <li>- need to consult the files of current criminal proceedings in other courts, for evidence purposes</li> </ul>	<ul style="list-style-type: none"> <li>- applicant contributed to delays through numerous absences (as did certain witnesses)</li> <li>- court tried to expedite proceedings by refusing the applicant's requests to have the case returned to the prosecution and separating the applicant's case from that of two of the co-accused, who were absent</li> </ul>	<p><b>CRIMINAL</b></p>	<p><b>5 years, 8 months</b></p>
<p><b>G.K. v. POLAND,</b> 20 January 2004</p>	<ul style="list-style-type: none"> <li>- complex case as shown by the volume of evidence obtained and heard during the proceedings</li> <li>- 13 accused, 104 witnesses and 9 expert witnesses</li> </ul>	<ul style="list-style-type: none"> <li>- accused contributed to delays, through absences or requests for adjournment</li> <li>- delays were not particularly long and certainly not imputable to the authorities</li> </ul>	<p><b>CRIMINAL</b></p>	<p><b>nearly 5 years</b></p>

<b>Sablon v. BELGIUM,</b> 10 April 2001	- very complex case, because of need to establish twenty years later whether applicant had been in a state of bankruptcy and difficulty of determining his assets	- applicant had lodged many applications, some of which had been irrelevant or pointless, thus complicating the case still further - no significant periods of inactivity imputable to the authorities	<b>CIVIL</b>	
<b>Soc v. CROATIA,</b> 9 August 2003	- death of co-contracting party, who had sold property to a third party, despite the contract - the other contracts had not been registered	- applicant had not supplied answers to the defendant's allegations and was absent from certain hearings - hearings were otherwise held regularly	<b>CIVIL</b>	<b>4½ years x two sets of proceedings</b>
<b>Acquaviva v. FRANCE,</b> 21 November 1995	- tense political climate in Corsica	- applicants contributed to prolonging the proceedings - necessary steps in the investigation had proceeded at a regular pace - delays justified by the political situation	<b>CIVIL</b>	<b>4 years, 4 months</b>
<b>Proszak v. POLAND,</b> 16 December 1997	- specialist medical advice essential	- applicant contributed to delays through three groundless challenges, missed hearings and refusal to attend psychiatric examination - almost the whole period falling within its jurisdiction <i>ratione temporis</i> was essentially taken up with the search for an expert with sufficient specialist qualifications, as the applicant herself had wished. With particular regard "to the part played by the applicant in the conduct of the proceedings", the Court concluded that there had been no violation.	<b>CIVIL</b>	<b>3 years, 9 months</b>
<b>Glaser v. UNITED KINGDOM</b> 13 December 2000	- complex family history: need to re-establish confidence between applicant and his child and mother's determination to avoid contacts	- applicant contributed to delays - delays not imputable to authorities	<b>CIVIL</b>	<b>3 years, 11 months</b>

<p><b>Olsson II v. SWEDEN,</b> 27 November 1992</p>	<p>- difficult assessments and extensive investigations</p>	<p>- hearings extended over 13½ months in three levels of courts, which was not excessive</p>	<p><b>CIVIL</b></p>	<p><b>13½ months</b> for three levels of courts</p>
<p><b>Süssmann v. GERMANY,</b> 16 September 1996</p>	<p>- case "<i>was one of twenty-four constitutional appeals raising similar issues of some difficulty, concerning supplementary pensions of large numbers of German civil servants, which necessitated a detailed examination in substance by the court</i>"</p>	<p><i>"bearing in mind the unique political context of German reunification and the serious social implications of the disputes which concerned termination of employment contracts, the Federal Constitutional Court was entitled to decide that it should give priority to those cases"</i></p>	<p><b>ADMINISTRATIVE</b></p>	<p><b>3 years, 4 months</b></p>

Appendix 3 bis – Complex cases: violation of Article 6 § 1

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
<b>SÜRMELE V. GERMANY,</b> 8 June 2006, 77529/01	The complexity is due to the fact that several medical assessments were carried out to establish the physical and mental damage suffered by the applicant. This difficulty was compounded by the fact that a further accident occurred during the proceedings, necessitating further expert assessments.	The Court notes that the case is not of a particularly complex nature. However, it accepts that its complexity increased from a procedural standpoint when it became necessary, after the applicant's second accident, to seek the opinion of several medical experts as to what extent the first accident had caused him physical and mental damage. Furthermore, while the Court accepts that a certain amount of time was necessary for the production of expert reports, it considers that the overall time this took exceeded a reasonable length. Lastly, it notes that the delays caused by the applicant's four applications for judges to withdraw cannot in themselves account for the length of the proceedings.	Civil: claim for an increased disability pension following two accidents.	16 years and 7 months
<b>CASSE V. LUXEMBOURG</b> 27 April 2006, 40327/02	The complexity of the case stems from the fact that the civil proceedings seeking to confirm the validity of the attachment order were stayed pending the outcome of the criminal proceedings (for embezzlement) in accordance with the principle that "civil proceedings must await the outcome of criminal proceedings". The case is still on the appeal court's list of cases in the absence of any further steps by the parties to the proceedings. At the time of the Court's ruling, the applicant had still not been charged.	Regarding the alleged violation of civil procedure, the Court notes that the staying of the civil proceedings pending the outcome of the criminal proceedings resulted in the civil proceedings lasting for over 10 years. It points out that it is for the national authorities to organise their judicial system in such a way as to ensure that the reasonable time requirement in Article 6 is satisfied in respect of everyone. It further points out that, having still not been charged, the applicant does not have any procedural status under domestic law, which constitutes an aggravating circumstance in relation to the violation of Article 6 § 1.	Civil: attachment  Criminal: embezzlement	Total length (civil and criminal proceedings): 9 years and 10 months, criminal proceedings pending
<b>SIFFRE, ECOFFET, BERNARDINI V. FRANCE</b> 12 December 2006 49699/99, 49700/99, 49701/99	The complexity of this case stems from the overlapping of two sets of proceedings in the Regional Court of Auditors (CRC) and the Court of Auditors. Financial proceedings are based on the "double judgment" rule, under which the CRC gives an interim decision, then a final decision, leading the Court of Auditors to stay proceedings pending the final decision.	The Court notes that the CRC delivered six interim or final judgments in accordance with the "double judgment" rule. Three of these judgments were referred by way of appeal to the Court of Auditors, which ordered a stay of execution before giving rulings on the merits seven months later in the case of the first appeal and nearly two years and five months later in the case of the second and third appeals, the delay in the last two cases being due to the fact that the appeal proceedings before the financial courts were stayed pending the outcome of the administrative proceedings concerning the validity of the municipal council's decision. Although proceedings in financial courts have specific characteristics which render them complex, the Court does not regard this as a convincing explanation in itself for the delays in the proceedings and does not consider that the applicants took advantage of these specific characteristics to justify delays. The Court points out that, according to domestic case law (Conseil d'Etat, 14 December 2001,	Administrative: de facto management of an association by municipal councillors	5 years and 4 months

		<i>Société Réflexions, Médiations, Ripostes</i> ), such proceedings constitute a single set of proceedings even if they involve several judgments. The domestic courts cannot be accused of inactivity. Paradoxically, however, the large number of procedural steps involved in these financial proceedings, aimed at protecting the rights of the defence, have the effect of backfiring on the defendant. The “double judgment” procedure is criticised within the Court of Auditors itself, in the name of the right to a fair trial.		
<b>KAROV V. BULGARIA</b> 16 November 2006 45964/99	The complexity of this case is due to the loss of the criminal case file and, in particular, the many unjustified remissions of the case to the investigation stage.	The Court notes from the outset that the proceedings were delayed for three and a half years because of the time taken by the authorities to reconstitute the missing criminal case file. The Court points out, however, that it cannot accept the Government’s contention that such a long delay can be explained by the “objective” fact of the case file’s disappearance, but considers on the contrary that the judicial authorities did not act with due diligence. The Court further considers that many remissions were due to procedural irregularities which could only be rectified by remitting the case to the investigation stage. The Court points out that repeated unjustified remissions of cases to the investigation stage were the cause of excessive delays in proceedings in previous cases against Bulgaria ( <i>Vasilev v. Bulgaria</i> , n° 59913/00, 2 February 2006).	Criminal: accepting and soliciting bribes	9 years and 9 months
<b>RAZLOVA V. CZECH REPUBLIC</b> 20252/03 28 March 2006	The complexity of this case is due to the size of the case file, with seven persons, including the applicant, charged with financial crimes. An in-depth investigation was necessary to identify the links between a large number of people. Many witnesses were questioned. The investigator required prior authorisation to have access to certain documents which were subject to bank secrecy. It was argued that the applicant had also contributed to the length of the proceedings owing to her state of mental health, which made it necessary to produce several reports. Although evidence was quickly collected, it was not possible to conclude the investigation because the applicant had been unable to acquaint herself with the file owing to her state of health.	The Court accepts that the main feature of the case is its complexity. The applicant was suspected of financial crime committed by means of complex transactions designed to escape the scrutiny of the investigating bodies. The scale of the investigation and the complexity of the case file are undeniable, these being at first sight arguments which could be used to justify the protracted proceedings. The Court then notes that some significant delays in the proceedings were due to the state of health of the applicant, who was admitted to hospital for psychiatric disorders. Insofar as these delays are attributable to the applicant’s treatment and hospitalisation, they constitute a force majeure factor. The applicant’s illness prevented her from participating in the proceedings, which undoubtedly hindered the conduct of the investigation. Furthermore, the applicant failed to attend the scheduled hearings and on two occasions refused to take delivery of notices inviting her to consult the case file. The Court points out, however, that Article 6 does not require parties to co-operate actively with the authorities. While accepting that the conduct of the investigation was hindered by the applicant’s illness, the Court emphasises that this fact does not justify the delays in the proceedings.	Misuse of information in business relations	7 years and 9 months



		Under Article 173 of the Czech Code of Criminal Procedure, the investigator and, since 1 January 2002, the public prosecutor may suspend criminal proceedings if the defendant has a serious illness which makes it impossible to bring him or her before the court or if, having developed a mental illness after committing the offence with which he or she is charged, the defendant is unable to understand the meaning of the criminal proceedings against him or her; if the reason for such a suspension ceases to exist, the proceedings must be resumed. It would seem, however, that in the case in point the authorities did not consider making use of this measure. The Court therefore considers that the national authorities did not show the diligence required for the proper conduct of proceedings.		
<b>MONTHSEJEVS V. LATVIA</b> <b>64846/01</b> <b>15 June 2006</b>	The complexity of this case is due to the fact that it involved twelve instances of armed robbery committed in various places in Latvia and several offences of aggravated theft involving sixteen defendants. As a result, the case file is very large, running to some twenty volumes.	The Court accepts that the complexity of this criminal case is undeniable. The charges concerned twelve instances of armed robbery committed in various parts of Latvia and several offences of aggravated theft. Sixteen people were charged and the authorities had to identify the exact nature of the acts committed by each of them. The Court is aware of the practical problems of a procedural or technical nature which may arise at any time in proceedings involving a large number of defendants. The Court notes the large size of the case file, comprising initially fifteen, then twenty volumes. It accepts that analysis of all the documents in the file by the public prosecutor's department and then by the courts took a long time. However, the Court notes that matters pertaining to the administrative functioning of the courts, such as an excessive caseload, judges' holidays, the allocation of cases among them, their knowledge of the particular field of law etc, are the sole responsibility of the respondent State and can under no circumstances be used to justify delays in criminal proceedings. While recognising the complexity of the case, the Court considers that the authorities did not show the diligence required for the proper conduct of proceedings.	Criminal: armed robbery involving the use of violence	4 years and 10 months
<b>HRISTOVA V. BULGARIA</b> <b>60859-00</b> <b>7 December 2006</b>	This case concerns a series of different offences committed jointly in the territory of several countries. 129 people were called as witnesses and the investigation file ran to over 30 volumes.	The Court observes that the charges concerned offences on a wide scale affecting many people, some of which were committed in other countries. The examination of the case involved numerous investigative steps, including requests for judicial assistance. Dozens of witnesses and experts were also heard by the court. The case was therefore highly complex in terms of both facts and law. The Court notes, however, that during the pre-trial investigation, which lasted three years and four months in all, several delays are	Jointly committed fraudulent transactions	Detention: 3 years, 7 months and 19 days Total: 9 years, 3 months and 3 days, covering the pre-trial investigation and 3 levels of jurisdiction

		<p>attributable to the authorities. Three times the investigation was closed, but the public prosecutor remitted the case file because of procedural irregularities or because the investigation was incomplete. These are circumstances which are attributable to the authorities and whose repetitive nature cannot be explained solely by the complexity of the case. These remissions and the periods of several months needed by the investigators on each occasion to take the steps required by the public prosecutor's department led to significant delays in the proceedings. It then took nearly seven months to draw up the indictment. The Court also notes that the appeal court hearing took place around one year and two months after the defendant's appeal, which cannot be considered reasonable in the circumstances of the case, given that the proceedings had already lasted for nearly six years.</p>		
<p><b>REMZI AYDIN V. TURKEY</b> 30911/04 20 February 2007</p>	<p>The applicant was accused of 43 terrorist acts, including bombings and armed attacks, committed in various cities on behalf of an illegal organisation.</p>	<p>The Court notes the relative complexity of the proceedings, owing in particular to the scale of the investigation and the number of expert assessments required for 43 terrorist acts committed in different cities. The absence of the applicant's lawyer at one hearing and his applications for extensions of time had no particular impact. The Court acknowledges the effort made by the trial judges. However, having regard to its established case law concerning the problems caused by congestion of the courts, the Court considers that the proceedings were not completed within a reasonable time. It is unnecessary for the Court to seek to determine the authority responsible for the excessive length of proceedings because, in all such cases, responsibility falls to the State.</p>	<p>Criminal: terrorism</p>	<p>8 years and 6 months, with five actions initiated at two levels of jurisdiction</p>
<p><b>DIMOV V. BULGARIA</b> 56762/00 8 March 2007</p>	<p>Obtaining of evidence, recourse to several expert assessments</p>	<p>Regarding the complexity of the case, the Court notes that it was relatively complex, both factually and legally. On the one hand, the applicant never admitted the offence and claimed that it was committed by one of the victims, who subsequently wounded himself. The courts had to obtain evidence and have recourse to a series of expert assessments in order to establish the truth of the different versions. On the other hand, the Court notes that the applicant was responsible for two postponements of proceedings. However, the overall delay caused by this, amounting to less than four months, is not sufficient to explain the length of the proceedings.</p>	<p>Criminal: homicide and attempted homicide</p>	<p>7 years and 9 months</p>
<p><b>RAWAY AND WERA V. BELGIUM</b> 25864/04</p>	<p>The responsibility of the Belgian State is invoked on the basis of Belgian case law, on several grounds:</p>	<p>The Court notes that the proceedings at first instance lasted seven years. The expert report ordered by the court of first instance, which was to be filed within three months of the</p>	<p>Civil: property construction</p>	<p>15 years</p>

<p><b>27 November 2007</b></p>	<ul style="list-style-type: none"> <li>- the judges' actions</li> <li>- excessive length of administrative proceedings</li> <li>- excessive length of civil proceedings</li> </ul>	<p>expert's appointment, took three and a half years. Even subtracting the time taken up by the applicants' application to replace the expert, that still leaves two and a half years. The Court points out that the expert was working in the context of judicial proceedings supervised by a judge who was responsible for the preparation and expeditious conduct of the case. Lastly, the Court notes that the Court of Cassation adjourned the proceedings <i>sine die</i>. In the light of the evidence before it, the Court considers that no valid explanation for these delays has been provided to it by the Government. In the light of the recent judgments delivered on this subject in respect of Belgium, the Court considers that the length of proceedings is excessive and cannot be regarded as "reasonable".</p>		
<p><b>VALLAR V. FRANCE</b>  <b>27314/02</b>  <b>4 October 2007</b></p>	<p>The complexity of this case is due to the overlapping of administrative proceedings (action before the administrative court disputing the legality of the decision by the labour inspectorate authorising the dismissal of a protected employee and action to establish the responsibility of the State for the malfunctioning of the justice system) and judicial proceedings (application to the labour court disputing the dismissal, criminal proceedings against the applicant for forgery and use of forged documents, misappropriation and fraud, which had been the grounds for dismissal).</p> <p>The applicant applied for a stay of proceedings in relation to his claims for salary arrears, severance pay, compensation for unused leave and reimbursement of travel expenses pending a final decision in the criminal proceedings against him. He also applied for a stay of proceedings in relation to his claim for compensation for wrongful dismissal pending a final decision from the administrative courts.</p>	<p>The Court points out that it is for Contracting States to organise their judicial systems in such a way that their courts can guarantee everyone the right to obtain a final decision on claims relating to their civil rights and obligations within a reasonable time.</p> <p>The Court considers that the applicant cannot be criticised for having exercised all the remedies (ordinary and cassation appeals) available to him. As regards the appeals judged by the domestic courts to have been lodged as a delaying tactic or for other wrongful purposes, only the action brought against the appeal court judgment for failure to decide a point raised in the pleadings is likely to have had any impact on the overall length of the labour proceedings. Lastly, the fact that the applicant requested a stay of proceedings did not exempt the domestic authorities from their responsibility with regard to the length of the administrative proceedings.</p>	<p>Labour court: dismissal of a protected employee</p> <p>Administrative:  - action disputing the legality of the decision by the labour inspectorate authorising the dismissal  - responsibility of the State for the malfunctioning of the justice system</p> <p>Criminal: forgery and use of forged documents, misappropriation and fraud</p>	<p>14 years</p>
<p><b>REMZI AYDIN V. TURKEY</b>  <b>30911/04</b>  <b>20 February 2007</b></p>	<p>The applicant was accused of 43 terrorist acts, including bombings and armed attacks, committed in various cities on behalf of an illegal organisation.</p>	<p>The Court notes, as does the Government, the relative complexity of the impugned proceedings, owing in particular to the scale of the investigation and the number of expert assessments required for 43 terrorist acts committed in different cities. However, having regard to its established case law concerning the problems caused by congestion of the courts, the Court considers that the proceedings were not completed within a reasonable time. It is unnecessary for</p>	<p>Terrorism</p>	<p>8 years and 6 months for two levels of jurisdiction applied to 5 times</p>

		the Court to seek to determine the authority responsible for the excessive length of proceedings because, in all such cases, responsibility falls to the State.		
<b>DIMOV V. BULGARIA</b> 56762/00 8 March 2007	<p>The courts heard 17 witnesses, organised numerous witness confrontations and ordered several expert reports. The case was heard by six levels of jurisdiction.</p> <p>Furthermore, the hearing of this case was delayed by the reform of the Bulgarian judicial system in April 1998.</p>	<p>The Court observes that this case was relatively complex both factually and legally.</p> <p>On the one hand, the applicant never admitted the offence and claimed that it was committed by one of the victims, who subsequently wounded himself. The courts had to obtain evidence and have recourse to a series of expert assessments in order to establish the truth of the different versions.</p> <p>On the other hand, the Court notes that the applicant's first appeal was not heard until nearly a year and three months after being lodged. The Court accepts that this delay was partly due to the reorganisation of the Bulgarian judicial system. However, this reorganisation was not put in place until 1 April 1998, ie after the appeal had been lodged. The time which elapsed prior to that date was attributable to the regional court, which failed to send all the case material to the Supreme Court.</p> <p>Lastly, the Court noted a second period of inactivity at the investigation stage. The investigation lasted over three years, which seems excessive even allowing for the difficulties in establishing the facts.</p>	Criminal: homicide and attempted homicide	7 years and 9 months
<b>GÜNSELİ AND YAYIK V. TURKEY</b> 20872/02 21 February 2008	<p>The difficulty stemmed from the joinder of six criminal prosecutions for obstructing freedom of work and employment.</p> <p>This case is complex because of repeated procedural incidents and the number of criminal prosecutions concerned, involving 39 defendants.</p>	<p>The Court accepts that the proceedings were relatively complex insofar as the courts with jurisdiction had to handle proceedings involving 39 defendants and the regional criminal court of first instance had to join several related cases. This fact and the very nature of the alleged offences meant a lengthy process of reconstructing facts, gathering evidence and establishing the responsibility of each of the alleged offenders. However, these features in themselves do not justify the length of the proceedings. From the time when the proceedings were joined, the regional criminal court took five years and eight months to deliver its judgment.</p> <p>Furthermore, the regional criminal court repeatedly adjourned hearings simply because one of the defendants was absent. In this connection, the Court points out that Article 6 § 1 requires Contracting States to organise their judicial system in such a way that the courts can satisfy each of its requirements, including the reasonable time requirement. It notes that hearings were unnecessarily adjourned by the regional criminal court, which led to undue protraction of the proceedings.</p>	Criminal: obstructing freedom of work and employment	<p>6 years and 5 months in the case of one applicant</p> <p>6 years and 2 months in the case of the other</p>
<b>SHORE TECHNOLOGIES V.</b>	The Government argue that the length of the	The Court recognises that the investigation was relatively	Criminal: civil party in	6 years and

<p><b>Luxembourg</b> <b>35704/06</b> <b>31 July 2008</b></p>	<p>investigation is accounted for by the time taken to establish the whereabouts of the accused and the fact that international judicial assistance is currently being sought so that she can be questioned.</p>	<p>complex, particularly in view of the need to request international judicial assistance so that the accused could be questioned once she had finally been located. However, this alone cannot account for the length of the proceedings. With regard to the applicant company's conduct, the Court sees no evidence that it obstructed the proper conduct of the investigation at any stage. Under these circumstances, the Court considers that a period of six years just for the investigation stage, which is still ongoing, cannot be deemed reasonable.</p>	<p>criminal proceedings relating to the issuing of false cheques</p>	<p>8 months at the investigation stage</p> <p>Case pending</p>
<p><b>WAUTERS AND SCHOLLAERT V. BELGIUM</b> <b>13414/05</b> <b>13 May 2008</b></p>	<p>This financial crime case involves various associations and companies, six defendants and several requests for judicial assistance in various countries (including France and Luxembourg), requiring a major process of reconstructing facts and collecting evidence (information gathering, hearings, seizures, searches etc). The case file consists of some thirty boxes and several files of documents, taking up several metres of shelving. A very large number of documents were seized (200 000) and analysed by specialist investigators.</p> <p>Many bank transactions were analysed, as were various financial set-ups put together over a period of around ten years. The fiscal component was also extremely complex. The applicants argue that this complexity was compounded by the fact that the investigating judge lacked the necessary staff and no expert was appointed.</p>	<p>The Court notes the great complexity of the case, as do the Government and the applicants. The investigation concerned a financial crime case involving several associations and companies. The financial and fiscal set-up covered several countries. The Court notes, however, that some delays were due to problems, apparently of a structural nature, specific to the court of first instance, including the reduction of the team of investigators from twenty to three and the admission by the investigating judge that it was impossible for logistic reasons to question the applicants. Lastly, the Court noted several periods of inactivity from which it emerges that the length of the investigation exceeded reasonable limits.</p>	<p>Criminal: misappropriation of funds in a group of associations whose work consisted in looking after persons with disabilities and supporting socio-educational integration projects.</p>	<p>10 years and 11 months</p>
<p><b>Case</b></p>	<p><b>Reasons for complexity</b></p>	<p><b>Grounds of violation</b></p>	<p><b>Type of proceedings</b></p>	<p><b>Length</b></p>
<p><b>WILCZKOWSKA AND OTHERS V. POLAND</b> <b>28983/02</b> <b>8 January 2008</b></p>	<p>The complexity of this case is due, on the one hand, to the long time that has elapsed since the facts occurred, as the procedure for expropriation in the public interest dates back to 1975.</p> <p>On the other hand, the Polish judicial system has meanwhile been reformed, which impacted on the applicant's action against the administration for failure to act.</p>	<p>The Court notes that the applicant lodged an appeal against the administrative appeal authority for failure to act. Actions against the administration for failure to act, as provided for in the old (1995) law on the Supreme Administrative Court and in the law currently in force on proceedings before the administrative courts, are supposed to be an effective remedy against excessive length of administrative proceedings (<i>Bukowski v. Poland</i>, n°38665/97, 11 June 2002).</p> <p>The Court accepts that the proceedings were relatively complex. It considers, however, that the length of the proceedings cannot be explained by the complexity of the case alone.</p> <p>The Court has dealt on numerous occasions with cases</p>	<p>Administrative, action for recovery of property after expropriation and compensation</p>	<p>14 years 10 years and 8 months covered by the Court's jurisdiction <i>ratione temporis</i></p>

		raising similar issues to those of the present case and has found a violation of Article 6 § 1 of the Convention.		
<b>KEMAL BALIKÇI V. TURKEY</b> 20605/03 7 October 2008	The Government submit that property-related cases are more complex than others, requiring consideration of the nature and position of the property in question. The court therefore has to request relevant documents at each stage in the proceedings. The Government argue that neither the applicant nor his father participated in the collection of documentary evidence and therefore delayed the proceedings.	After examining all the evidence before it, the Court holds that the absence of the applicant, his father and his legal representative from the hearings cannot be considered as the main reason for the excessive length of the proceedings. It may be seen from the records of the hearings that the length of the proceedings is due mainly to the intervention of third parties in the proceedings, the collection of documentary evidence and the drawing up of expert reports. It should therefore be accepted that the case was relatively complex. However, it was not so complex as to justify proceedings lasting sixteen and a half years.	Property dispute: action contesting the cadastral survey	16 years and 7 months for two levels of jurisdiction.
<b>PETRE IONESCU V. ROMANIA</b> 12534/02 2 December 2008	This case gave rise to four sets of proceedings.  The Government consider that the case was particularly complex, that there were no long periods of inactivity attributable to the authorities and that it was the applicant's conduct which protracted the proceedings.	The Court accepts that the case was relatively complex and that the applicant's conduct may have led to delays in the proceedings. It considers, however, that neither the complexity of the case nor the applicant's conduct can explain the length of the proceedings. The Court notes that the delay in the proceedings was caused mainly by the successive cassation decisions, followed each time by the sending back of the case. The case was sent back three times, to the court of first instance or the county court, following errors or omissions on the part of the lower courts. The sending back of the case could have continued indefinitely as there is no legal provision to prevent that happening. The repetition of cassation decisions points to a malfunctioning of the judicial system. In the light of its relevant case law, the Court considers the length of proceedings to be excessive in this case.	Action for damages for being unable to build owing to a nearby gas pipeline. Refusal to issue a building permit.	6 years, 9 months and 2 days
<b>SHORE TECHNOLOGIES V. Luxembourg</b> 35704/06 31 July 2008	Difficulty of locating the accused + international judicial assistance being requested so that the accused may be questioned	The Court recognises that the investigation was relatively complex, particularly in view of the need to request international judicial assistance so that the accused could be questioned once she had finally been located. However, this alone cannot account for the length of the proceedings.	Criminal: civil party in criminal proceedings relating to the issuing of false cheques	6 years and 8 months at the investigation stage  Case pending
<b>ŞİNEĞÜ AND OTHERS V. TURKEY</b> 4020/07, 4021/07, 9961/07 and 11113/07 13 October 2009	Joinder of four cases  The Government submit that the length of the impugned proceedings cannot be considered unreasonable in view of the complexity of the cases, the size of the case files, the nature of the charges against the (four) applicants, the number of offences committed, the number of defendants,	The Court accepts that these proceedings relating to organised crime were relatively complex, notably because of the number of defendants, witnesses and plaintiffs, the number of offences of which the defendants were suspected and the size of the case files. However, that complexity is not enough in itself to justify the length of the proceedings, which ranges from nine years and one month to over thirteen years and ten months. The Court considers that the lengths of the impugned	Criminal: membership of an illegal armed organisation and attempt to overthrow the Turkish constitutional order by force	In the case of two applicants: 13 years and 10 months In the case of one applicant: 13

	witnesses, plaintiffs and victims, and the particular difficulties raised by proceedings relating to organised crime.	proceedings are excessive and fail to satisfy the "reasonable time" requirement.		years and 8 months In the case of one applicant: 9 years and 1 month Two levels of jurisdiction
<b>MIANOWICZ V. GERMANY</b> (n° 2) 71972/01 11 June 2009	The case is complex because of the changes made by the applicant to his claims in the course of the proceedings and the number of actions which he initiated.	The Court accepts that the proceedings are relatively complex. It notes that they were adjourned for eleven years pending the outcome of the dismissal proceedings. It further notes that the delays were caused by the labour courts in violation of Article 6 of the Convention. The fact that the length of the proceedings is partly due to the adjournment decision does not make it any less excessive, but must be taken into consideration under Article 41 of the Convention.	Labour proceedings: dismissal then annulment, judgment setting aside the employment contract, application to maintain the employment contract	19 years
<b>BICAN V. ROMANIA</b> 37338/02 22 September 2009	Long time which has elapsed since the facts occurred..	The case concerned the revision of a judicial decision given in 1959 revoking the applicant's adoption. It was therefore relatively complex, owing to the long time that had elapsed since the facts occurred.	Revision of a decision revoking an adoption.	5 years and 2 months
<b>VERITER V. FRANCE</b> 31508/07 14 October 2010	The complexity stems from questions relating to the application and interpretation of Community law arising in two sets of proceedings.	The Court considers that the first set of proceedings was undoubtedly complex owing to the questions that arose with regard to the application and interpretation of Community law. The point at issue was whether the applicant, of Belgian nationality but recruited to the French civil service by virtue of his French nationality, thus falling under the exception provided for in Article 48 § 4 of the EC Treaty, could nevertheless avail himself of the provisions of Community law relating to freedom of movement and equal treatment of workers. Having regard in particular to the complexity of the case, the Court considers that the length of the proceedings did not violate the reasonable time requirement of Article 6 § 1. The Court notes that the second set of proceedings was relatively complex insofar as the Law of 16 December 1996 bringing French law into line with Community law did not apply retrospectively. The Court observes in this connection that three ministries (Interior, defence and Foreign Affairs) submitted observations to the administrative court. The Court observes that no delay can be noted on the part of the administrative court and finds no violation of Article 6 § 1.	Administrative  Two sets of proceedings:  Calculation of the applicant's length of service and promotion and pension rights  Proceedings to determine the State's responsibility for malfunctioning of the justice system	Calculation of the applicant's length of service and promotion and pension rights: 5 years and 6 months for two levels of jurisdiction

<p><b>KUHN v. LUXEMBOURG</b>  <b>53869/07</b>  <b>4 November 2010</b></p>	<p>Twenty passengers killed in a plane crash.</p>	<p>This case was undoubtedly complex. Expert evidence was taken together with other investigative steps, including requests for international judicial assistance, to determine the causes of the accident and the responsibility of the various protagonists. Furthermore, given that twenty passengers died in the crash, many people joined the proceedings as civil parties.</p>	<p>Criminal: plane crash</p>	<p>6 years and 4 months Case pending</p>
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Appendix 3 bis (continued) – Complex cases: non-violation of Article 6 § 1

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
<p><b>PECHEUR V. LUXEMBOURG</b> 16308/02 11 December 2007</p>	<p>The complexity of this case stems from the extremely laborious investigations carried out in Luxembourg and other countries in the opaque economic and financial environment in which the alleged crime was committed</p>	<p>The Court considers that the case was undoubtedly relatively complex. Numerous investigations had to be carried out in Luxembourg and other countries to establish the circumstances of the assault committed by the applicant on an Austrian businessman in connection with a financial deal involving several people. The Court also notes that the applicant added to the burden of the investigation through his conduct, and in particular by giving investigators several versions of the events. Having regard to all the circumstances of the case, the length of the proceedings should not be considered excessive.</p>	<p>Criminal: attempted murder</p>	<p>7 years and 9 months for 5 levels of jurisdiction</p>
<p><b>KEZIĆ V. SLOVENIA</b> 76395/01 18 January 2007</p>	<p>Complex administrative case relating to the legalisation of buildings erected without a permit, raising several questions of law and fact and involving several parties with conflicting interests.</p>	<p>After examining all the evidence before it, and having regard to its relevant case law, the Court held that the length of the proceedings is not excessive in this case and therefore satisfies the “reasonable time” requirement.</p>	<p>Administrative: building permits</p>	<p>4 years and 10 months for four levels of administrative jurisdiction</p>
<p><b>GIOSAKIS V. GREECE</b> (N° 3), 5689/08 15 September 2011</p>	<p>Factually complex case which necessitated eleven hearings before the criminal court of appeal and gave rise to a 300-page judgment</p>	<p>The Court notes inter alia that the proceedings before the criminal court of appeal were conducted in an extremely short time (from 22 November 2005 to 20 February 2006). While nine months elapsed between the judgment of the criminal court of appeal and the public prosecutor’s appeal, the examination of the appeal lasted less than six months. The Court therefore considers that the length of the impugned proceedings did not exceed a “reasonable time”.</p>	<p>Criminal</p>	<p>4 years and 3 months</p>

Appendix 4: non-complex cases - Violation of Article 6§1

CASE	WHAT WAS AT STAKE FOR THE APPLICANT	GROUNDS FOR DECISION	TYPE OF PROCEEDINGS	LENGTH
<p><b>Broca and Texier-Micault v. FRANCE,</b> 21 October 2003</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Concerning the first applicant the Government acknowledged that the duration of the proceedings at first instance and on appeal "could be considered relatively long"</li> <li>- Concerning the second, the appeal proceedings had been pending for three years and the Government had given no explanation for this</li> </ul>	<p><b>ADMINISTRATIVE</b></p>	<ul style="list-style-type: none"> <li>- First applicant: eight years and eight months in three tiers of court</li> <li>- Second applicant: five years and three months (case pending)</li> </ul>
<p><b>Guiraud v. FRANCE,</b> 29 March 2005</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Although the length of the trial stage seemed reasonable, in the circumstances of the case the investigation could not be deemed to have been conducted with diligence</li> </ul>	<p><b>CRIMINAL</b></p>	<ul style="list-style-type: none"> <li>- Ten years and three months for an investigation and three tiers of proceedings, including six years and eight months for the investigation alone</li> </ul>
<p><b>Quemar v. FRANCE,</b> 1 February 2005</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Unjustified delays and periods of inactivity by both the investigating judge and the appeal court division dealing with appeals concerning investigations. For instance, the investigating judge (who was already replacing another investigating judge) took more than ten months to join the civil party complaint to the main proceedings, and almost a further year (during which no procedural steps were taken) to call a witness</li> </ul>	<p><b>CRIMINAL</b></p>	<p>Investigation:</p> <ul style="list-style-type: none"> <li>- ten years and four months for Mrs Quemar</li> <li>- ten years and two months for Mr Quemar</li> </ul>
<p><b>Fattell v. FRANCE,</b> 27 January 2005</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Unjustified delay of two and a half years between registration of the applicant's appeal and the administrative appeal court's decision</li> <li>- Unjustified delay of four and a half years between registration of the appeal on points of law and the decision by the Conseil d'Etat</li> </ul>	<p><b>ADMINISTRATIVE</b></p>	<ul style="list-style-type: none"> <li>- Fourteen years and eleven months for examination of the preliminary complaint and the seven subsequent stages in the proceedings</li> </ul>

<p><b>Schwarkmann v. FRANCE,</b> 8 February 2005</p>	<p>No particular stake</p>	<p>- The investigating judge, who, despite four reminders, had received no response to a request for evidence to be taken on commission issued two years previously, merely repeated the request in the same terms</p>	<p><b>CRIMINAL</b></p>	<p>- The investigation lasted seven years and one month</p>
<p><b>Guez v. FRANCE,</b> 17 May 2005</p>	<p>No particular stake</p>	<p>- Unjustified delays of: 1/ three years and seven months in the Paris administrative court for the first dismissal (between the filing of the application and the judgment determining compensation for loss of income) 2/ four years and eight months in the Paris administrative appeal court for the second dismissal (between the judgment annulling the second dismissal and the order to reinstate the applicant) 3/ eight years and six months for the subsequent compensation request (proceedings still pending).</p>	<p><b>ADMINISTRATIVE - LABOUR COURT</b></p>	<p>- Eleven years in two tiers of court (the administrative appeal court had still not ruled on the application for annulment of the first dismissal)</p>
<p><b>Podbielski v. POLAND,</b> 30 October 1998</p>	<p>Given the then rampant inflation the applicant had an economic interest in securing adjudication of his claim within a reasonable time</p>	<p>- Delays caused to a large extent by legislative changes resulting from transition to free-market system and by procedural complexity</p>	<p><b>CIVIL</b></p>	<p>- Five years and six months in two tiers of court (proceedings still pending)</p>
<p><b>Bursuc v. ROMANIA,</b> 12 October 2004</p>	<p>Applicant's state of health</p>	<p>- From June 1999 to June 2000 the court ordered successive adjournments on the ground that witnesses had failed to appear, despite the fact that it had summoned them virtually every month and threatened them with procedural penalties, which were, however, not applied.  The judicial authorities were required to show particular diligence in expediting these proceedings in view of the applicant's state of health</p>	<p><b>CRIMINAL</b></p>	<p>- Four years, of which: - One year and nine months for the prosecution service's investigation - Two years and three months in the first-instance court</p>

<p><b>Frydlender v. FRANCE,</b> 27 June 2000</p>	<p>Loss of livelihood</p>	<p>- The Conseil d'Etat gave its decision almost six years after the case was brought before it, and the Government offered no explanation for this clearly excessive duration</p>	<p><b>ADMINISTRATIVE</b> (employment dispute)</p>	<p>- Nine years and eight months (nearly six years in the Conseil d'Etat)</p>
<p><b>Garcia v. FRANCE,</b> 26 September 2000</p>	<p>Loss of livelihood</p>	<p>- The proceedings were rapid in the Dijon administrative court (a little over one year) but not in the Conseil d'Etat (four years and four months) - The applicant's continuation in business depended to a large extent on the outcome of the proceedings</p>	<p><b>ADMINISTRATIVE</b></p>	<p>- Five years and eight months in three tiers of court</p>
<p><b>Ferdandes Cascao v. PORTUGAL,</b> 1 February 2001</p>	<p>Loss of livelihood</p>	<p>- No essential procedural steps were taken between the date of an order by the judge and the date of the preparatory decision - this two year delay is unquestionably excessive - In the case of disputes concerning employees' rights to be paid or to receive compensation in lieu of pay, the moment from which the reasonable time requirement of Article 6 can be deemed to have been breached must be examined with particular care</p>	<p><b>CIVIL</b> (employment dispute)</p>	<p>- Four years and seven months in one tier of court (resulted in a friendly settlement)</p>
<p><b>Farinha Martins v. PORTUGAL,</b> 10 July 2003</p>	<p>Employment dispute</p>	<p>- The time taken by the court of appeal to examine an interlocutory appeal considerably delayed the proceedings. It took more than two years to decide that a judgment by the labour court must be annulled</p>	<p><b>CIVIL</b> (employment dispute)</p>	<p>- Seventeen years and nine months</p>
<p><b>Kress v. FRANCE,</b> 7 June 2001</p>	<p>No particular stake</p>	<p>- Significant delays in proceedings both at first instance and concerning the appeal on points of law - In particular, the Conseil d'Etat, took four years and slightly more than one month to examine the applicant's appeal on points of law</p>	<p><b>ADMINISTRATIVE</b></p>	<p>- Ten years and one month</p>

Appendix 4 (continued): non-complex cases non violation of Article 6§1

CASE	WHAT WAS AT STAKE FOR THE APPLICANT	GROUNDS FOR DECISION	TYPE OF PROCEEDINGS	LENGTH
<p><b>Kuibichev v. BULGARIA,</b> 30 September 2004</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Despite a five-month delay between two hearings of the appeal court, the inadequacy of the steps taken by the authorities to secure witnesses' presence at the hearing and a further delay of three and a half months due to inaction by the prosecution service, the proceedings, which took place in four stages and at three levels of court, with no excessive delay in the Sofia Court of Appeal or the Court of Cassation, did not exceed a reasonable time</li> </ul>	<p><b>CRIMINAL</b></p>	<p>- Four years and three months for three tiers of court (+ investigation)</p>
<p><b>Punzelt v. CZECH REPUBLIC,</b> 25 April 2000</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- The applicant contributed to the length of the proceedings by making numerous requests for the taking of further evidence between the filing of the indictment and the first hearing</li> <li>- Over the period of November to December 1994 courts at two levels dealt with the applicant's request for exclusion of certain judges</li> <li>- No period of inactivity imputable to the authorities. The case was examined twice by courts at two levels. Hearings were held at regular intervals and adjourned only in order to seek further evidence</li> </ul>	<p><b>CRIMINAL</b></p>	<p>- Three years and three months for three tiers of court</p>
<p><b>Zielinski v. POLAND,</b> 15 February 2005</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- The applicant contributed to the length of the proceedings (failed to reply in writing to the opposite party's observations within the fourteen day time-limit allowed, but did respond at the hearing; failed to take any steps whatsoever to expedite the proceedings; failed to submit a health certificate on time, resulting in a delay of about three months; etc.)</li> <li>- The opposite party also contributed to delaying the proceedings on the merits</li> <li>- An approximately eleven-month period of inactivity by the judicial authorities was due in part to the applicant's conduct. Similarly, a delay of nine to twelve months was caused by the opposite party's failure to pay a deposit on time.</li> <li>- Apart from these periods of inactivity, lasting approximately one year and eight months, for which the parties and the courts bear joint responsibility, the hearings were held at regular intervals</li> </ul>	<p><b>CIVIL</b></p>	<p>- Five years and one month for three tiers of court</p>

<p><b>Dostál v. CZECH REPUBLIC,</b> 25 May 2004</p>	<p>No particular stake</p>	<p><u>Case No. 23 C 227/94</u> - Dealt with relatively fast. Period of inactivity from June 1994 to October 1996 imputable to the applicant (late payment of fees) <u>Case No. 30 C 580/95</u> - Numerous requests and objections on grounds of bias filed by applicant (the national courts endlessly had to transfer the case-file from one court to another, which considerably delayed the proceedings) <u>Case No. 30 C 581/95</u> - The applicant submitted several imprecise or unfounded procedural requests <u>Case No. 58 C 37/96</u> - Numerous procedural requests: the courts merely reacted to these requests, and did so without undue delay <u>Case No. 23 C 66/98</u> - Numerous procedural requests: the courts were obliged to transfer the case-file (dealt with expeditiously)</p>	<p><b>CIVIL</b></p>	<p><u>Case No. 23 C 227/94</u>: Six years and six months for two tiers of court <u>Case No. 30 C 580/95</u>: Seven years and two months for two tiers of court <u>Case No. 30 C 581/95</u>: Seven years and two months for two tiers of court <u>Case No. 58 C 37/96</u>: Five years and three months for two tiers of court <u>Case No. 23 C 66/98</u>: Four years and eight months</p>
<p><b>Soner Önder v. TURKEY,</b> 12 July 2005</p>	<p>No particular stake</p>	<p>- No period of inactivity imputable to the national judicial authorities</p>	<p><b>CRIMINAL</b></p>	<p>- Five years and eleven months (two sets of proceedings in the State Security Court and two in the Court of Cassation)</p>
<p><b>Gergouil v FRANCE,</b> 21 March 2000</p>	<p>No particular stake</p>	<p>- More than one year and two months in the court of appeal, and more than four months in the Court of Cassation, for the parties to file their submissions  - The proceedings before the Court of Cassation lasted two years, two months and one day: a period described as fairly long, but no period of inactivity was imputable to the authorities (the length of the proceedings in the Labour Court (five months) and the court of appeal (one year and five months) was not open to criticism.</p>	<p><b>CIVIL (employment dispute)</b></p>	<p>- Four years and three months for three tiers of court</p>

<p><b>Guichon v. FRANCE,</b> 21 March 2000</p>	<p>No particular stake</p>	<p>- Six-month delay due to the applicant's request for adjournment of the hearing in the Labour Court. The applicant took over three months to appeal against the first-instance decision and the parties took nine months to file their submissions with the Court of Cassation.</p> <p>- No significant period of inactivity imputable to the national authorities. The length of the proceedings in the Labour Court (one year and seven months), the court of appeal (one year and nine months) and the Court of Cassation (one year and eight months) was not open to criticism.</p>	<p><b>CIVIL (employment dispute)</b></p>	<p>- Five years and three months for three tiers of court</p>
<p><b>Piccolo v. ITALY,</b> 7 November 2000</p>	<p>No particular stake</p>	<p>- Two years and two months were necessary to obtain an expert opinion, leading to an out-of-court settlement (following which there was no further dispute between the parties). This duration could be seen to be acceptable (in the light of the overall length of the proceedings).</p>	<p><b>CIVIL</b></p>	<p>- Three years and seven months for one tier of court</p> <p><i>N.B.: Three judges issued a joint dissenting opinion<sup>162</sup></i></p>
<p><b>P.G.V. v. ITALY,</b> 7 November 2000</p>	<p>No particular stake</p>	<p>- One year and eight months for the investigation, following which 20 months elapsed before the hearing of the case. The Court held that this duration could nonetheless be seen to be acceptable if compared (as was appropriate) with the overall length of the proceedings.</p>	<p><b>CIVIL</b></p>	<p>- Three years and nine months for one tier of court</p> <p><i>N.B.: Two judges issued a joint dissenting opinion<sup>163</sup></i></p>
<p><b>Marcotrigiano v. ITALY,</b> 1 March 2001</p>	<p>Employment dispute</p>	<p>- Case frozen for two years and eight months (transfer of a judge): imputable to the authorities. However, the time actually taken to deal with the case was about five years and two months in two tiers of court (by signing, in 1999, a statement waiving his right to resume the proceedings in the territorially competent court the applicant showed his lack of interest in pursuing the proceedings)</p>	<p><b>CIVIL</b></p>	<p>- Five years and five months (two tiers of court)</p>

<sup>162</sup> "Even though a period of three years and seven months for a single tier of court, in a case of no great complexity, can in principle be regarded as acceptable, we note that this lapse of time has been calculated over a period running only until July 1997, when the applicant indicated that he had reached an arrangement with the respondent. However, the proceedings in fact continued well beyond that date, and would seem to have been still pending, at first instance, in September 1999, more than five years and ten months after their inception. In our opinion, this is clearly excessive." (judges Tulkens, Bratza and Costa - unofficial translation)

<sup>163</sup> "In our opinion a period of three years and nine months for a single tier of proceedings, in a case of no particular complexity, goes beyond what is reasonable and hence constitutes a breach of the requirements of Article 6§1 of the Convention. In particular we note that there was an unexplained interval of twenty months between the parties' submissions and the Milan court's judgment; in addition a further five months was necessary for the judgment to be filed at the registry." (judges Tulkens and Bratza - unofficial translation)

<p><b>Mangualde Pinto v. FRANCE,</b> 9 April 2002</p>	<p>Employment dispute</p>	<ul style="list-style-type: none"> <li>- Successive adjournments requested by the parties led to a delay of more than one year and eight months. Delays also caused by suspension of the proceedings on the ground that the applicant had failed to appear and their subsequent resumption.</li> <li>- Only two delays were imputable to the national authorities: six months for the Labour Court's adjournment of hearing the case, and seven months for consideration of the applicant's request for legal aid.</li> <li>- The Court held that the overall duration of more than six years was fairly long, but that the delays could not be deemed unreasonable</li> </ul>	<p><b>CIVIL (employment dispute)</b></p>	<ul style="list-style-type: none"> <li>- Six years and three months</li> </ul>
<p><b>Martial Lemoine v. FRANCE,</b> 29 April 2003</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Exchange of pleadings and documents between the parties constituted a cause of delay: this took one year and one month in the Paris appeal court and one year and two months in the second appeal court although the judge responsible for preparing the case for hearing had laid down a time-table and set a closing date for the preparatory stage.</li> <li>- The applicant's slowness in filing his initial submissions with the Paris appeal court and the parties' request to adjourn the closing date of the preparatory stage in the second appeal court delayed the proceedings by nearly eight months.</li> <li>- The Court held that the overall duration (seven years and eight months) was fairly long but the time lapses attributable to the authorities could not be deemed unreasonable</li> </ul>	<p><b>CIVIL</b></p>	<ul style="list-style-type: none"> <li>- Seven years and eight months including: <ul style="list-style-type: none"> <li>- one year and ten months at first instance, and one year and eight months on appeal,</li> <li>- one year and nine months in the court of cassation</li> <li>- two years in the second appeal court</li> </ul> </li> </ul>
<p><b>Mõtsnik v. ESTONIA,</b> 29 April 2003</p>	<p>Applicant detained pending trial</p>	<ul style="list-style-type: none"> <li>- Hearings adjourned on several occasions because of the absence of the applicant or his counsel</li> <li>- Some procedural delays not imputable to the applicant, but the overall length of the proceedings was deemed reasonable</li> </ul>	<p><b>CRIMINAL</b></p>	<ul style="list-style-type: none"> <li>- Four years and six months but the Court had no jurisdiction <i>ratione materiae</i> to deal with the proceedings in three levels of court</li> <li>- The period to be considered was therefore two years and seven months</li> </ul>



<p><b>Liadis v. GREECE,</b> 27 May 2004</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- All the adjournments in the first-instance proceedings were caused by the applicant's failure to appear. In addition, the applicant was consistently extremely slow to request a new date for a hearing, culminating in a delay of over twenty years.</li> <li>- The applicant showed no interest in resuming the proceedings with the result that the court had no leeway to act (under Articles 106 and 108 of the Code of Civil Procedure control of the course of civil proceedings lies entirely with the parties).</li> <li>- No period of inactivity or unjustified delay was attributable to the authorities. Each time the applicant requested a new date for a hearing, the court was quick to react (and it delivered its judgment one year and three months after the relevant request). The proceedings in the court of appeal lasted one year and two months.</li> </ul>	<p><b>CIVIL</b></p>	<p>- Twenty-one years and eleven months (including more than fourteen years and nine months subsequent to 20 November 1985, the date on which Greece recognised the right of individual petition)</p>
<p><b>Patrianakos v. GREECE,</b> 15 July 2004</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- The parties failed to appear (this was the cause of all the adjournments in the first-instance proceedings) and were consistently excessively slow to request a new date for a hearing. This delayed the proceedings by nearly fourteen years.</li> <li>- The parties showed no interest in resuming the proceedings in the first-instance court and, pursuant to Articles 106 and 108 of the Code of Civil Procedure, the court of appeal had no leeway to act.</li> <li>- The applicant delayed lodging an appeal on points of law for one year and more than two months.</li> <li>- No period of inactivity or undue delay was imputable to the authorities: <ul style="list-style-type: none"> <li>- each time the parties requested a new date for a hearing, the courts were very quick to react</li> <li>- the first-instance court delivered its judgment seven months after a new date had been given for a hearing</li> <li>- the proceedings in the court of appeal lasted one year</li> <li>- the Court of Cassation gave its decision after one year and four months</li> </ul> </li> </ul> <p>The Court held that these periods were far from unreasonable.</p>	<p><b>CIVIL</b></p>	<p>- Twenty-two years and three months for three tiers of court, including almost fifteen years subsequent to 20 November 1985, the date on which Greece recognised the right of individual petition.</p>
<p><b>Wroblewski v. POLAND,</b> 1 December 2005</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Having failed to consult the case-file within the time-limit set by the public prosecutor, the applicant requested that the indictment be sent back to the prosecutor for rectification only after the investigation had been closed and a date set for the trial: this delayed the investigation, and hence the hearing of the case, by about four months.</li> <li>- The Government provided no explication for a period of inactivity of about eleven months for which the judicial authorities were held responsible. However, apart from this failure to deal rapidly with the proceedings, the authorities did not remain inactive and showed the required diligence.</li> </ul>	<p><b>CRIMINAL</b></p>	<p>- Five years for one tier of court</p>

<p><b>Vendittelli v. ITALY,</b> 18 July 1994</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- Although legitimate, the two adjournments requested by the applicant caused a delay of about six months (which was fairly substantial given the proceedings' overall duration of fourteen months).</li> <li>- The first-instance court took eleven months to serve its decision on the applicant. However, the applicant had attended the hearing and could reasonably have been expected to obtain a copy of the judgment of his own initiative.</li> <li>- The appeal court's decision was not served at all, but this did not affect the length of the proceedings since it consisted in taking note of an amnesty decree.</li> </ul>	<p><b>CRIMINAL</b></p>	<p>- Four years and five months for two tiers of court</p>
<p><b>Cesarini v. ITALY,</b> 12 October 1992</p>	<p>No particular stake</p>	<ul style="list-style-type: none"> <li>- For nearly two years the applicant remained inactive and took no steps to lodge an appeal (allegedly in order to seek an amicable settlement).</li> <li>- Several periods of inactivity attributable to the authorities: the first-instance court waited seventeen months before delivering its judgment, and the court of appeal twenty months.</li> <li>- However "having regard to the fact that the case came before three different courts and to the friendly settlement, the delays that occurred do not appear substantial enough for the total length of the proceedings to be able to be regarded as excessive."</li> </ul>	<p><b>CIVIL</b></p>	<p>- Six years and eight months for three tiers of court</p>

**NB:** In some cases the Court held that a delay could be regarded as acceptable if compared, as was appropriate, with the total length of the proceedings and the fact that the proceedings were dealt with by two tiers of court . This applied in particular to the following case against Italy (as in the above-mentioned PGV judgment):

1. **G.L. v. ITALY**, 3 October 2002
2. **GEMIGNANI v. ITALIE**, 6 December 2001

Appendix 4 bis – Non-complex cases: violation of Article 6 § 1

Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>EUCONE D.O.O V. SLOVENIA</b> 49019/99 9 March 2006	Nothing in particular at stake	The Court rejected the Government's defence of failure to exhaust domestic remedies because it considered that the remedies available to the applicant were ineffective.	Execution procedure	First set of proceedings: 6 years Third set of proceedings: 8 years and 4 months
Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>KOS V. SLOVENIA</b> 77769/01 30 March 2006	Damages	After examining all the evidence before it, and having regard to its relevant case law, the Court held that the length of the impugned proceedings, particularly in the court of first instance, is excessive and does not satisfy the "reasonable time" requirement.	Action for damages, civil liability	5 years and 8 months
Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>LATRY V. FRANCE</b> 50609/99 23 February 2006	Nothing in particular at stake	In the Court's view, a period of nearly seven years just for the investigation of a complaint together with an application to join the proceedings as a civil party calls for an overall assessment and can only be justified by particular circumstances. The mere fact that the case exhibited a certain degree of complexity, due inter alia to the nature of the alleged offence, the difficulty of locating witnesses and the lack of documents relating to the conditions on which the money was transferred, is not sufficient to constitute such circumstances in this case. The Court also considers that the applicant cannot be criticised for having taken full advantage of the remedies available to him under domestic law. Having regard to these elements, the Court considers that the applicant's case was not heard within a reasonable time.	Misappropriation, complaint with application to join proceedings as civil party	6 years and 10 months
Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>SMASKOU V. GREECE</b> 37270/02 30 March 2006	Nothing in particular at stake	Notwithstanding the fact that the domestic court withdrew the applicant's civil party status, the Court considers that the impugned proceedings fall within the scope of Article 6 § 1 of the Convention. The Court has dealt on numerous occasions with cases raising similar issues to those of the present case and has found a violation of Article 6 § 1 of the Convention. Having regard to its relevant case law, the Court considers that the length of the impugned proceedings is excessive and does not satisfy the "reasonable time" requirement.	Fraud, complaint with application to join proceedings as civil party	4 years, 11 months and 4 days
Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>VILHO ESKELINEN AND OTHERS V. FINLAND</b> 63235/00 19 April 2007	Claim by police personnel for individual wage supplements	The Court agrees with the parties that the case was not a complex one. The conduct of the applicants did not have the effect of prolonging the proceedings. As regards the authorities, the Court observes that the County Administrative Board received the applicants' request on 19 March 1993 and gave its decision on 19	Administrative: claim by police personnel for individual wage supplements	7 years

		March 1997. It thus took four years to examine the case. This lapse of time is explained neither by the procedural steps taken nor by any perceived need to await the outcome of the <i>Askola</i> case which had already become final on 7 December 1994. The Court concludes that there were delays in the proceedings before the County Administrative Board for which it has found no sufficient explanation. There has therefore been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings		
	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>ARAGUAS V. FRANCE</b> <b>28625/02</b> <b>9 January 2007</b>	Action by an employee protected by virtue of his status as a trade union representative to challenge the decision to make him redundant	The Court has dealt on numerous occasions with cases raising similar issues to those of the present case and has found a violation of Article 6 § 1 of the Convention. Having examined the evidence before it, and having regard to its relevant case law, the Court considers that the length of the impugned proceedings is excessive and fails to satisfy the "reasonable time" requirement.	Administrative: application to set aside the decisions by the labour inspectorate and the minister authorising his dismissal.  Ancillary criminal proceedings: obstruction to the exercise of trade union rights and the functions of trade union representative, obstruction to the functioning of the works committee	9 years and 9 months, for three levels of jurisdiction
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>SPADARO V. ITALY</b> <b>52578/99</b> <b>20 September 2007</b>	Nothing in particular at stake	The Court recalls having examined a complaint identical to that of the applicant and having found a violation of Article 6 § 1 of the Convention ( <i>Delle Cave v. Italy</i> n° 14626/03, 5 June 2007). Having examined the facts in the light of the information provided by the parties, and having regard to its relevant case law, the Court considers that, in the instant case, length of the impugned proceedings is excessive and fails to satisfy the "reasonable time" requirement.	Criminal: forgery	7 years at one level of jurisdiction
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>ROMAN WILCZYNSKI V. POLAND</b> <b>35840/05</b> <b>17 July 2008</b>	Action to establish ownership of a plot of land	The national court recognised that the applicant's right to a fair hearing within a reasonable time had been violated, but did not award him anything by way of just satisfaction. Having examined all the evidence before it, the Court considers that the Government have not adduced any fact or argument which could lead to a different conclusion in the present case. Having regard to its relevant case law, the Court holds that the length of the impugned proceedings is excessive and fails to satisfy the "reasonable time" requirement.	Administrative: action to establish ownership of a plot of land	8 years and 3 months in one court
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>DEDEMAN V. TURKEY</b> <b>12248/03</b> <b>16 December 2008</b>	Defamation	Regarding the defence of failure to exhaust domestic remedies, the Court points out that no effective remedy was available to litigants under the Turkish legal system. The period considered by the Court – three years for two levels of	Defamation via the press	3 years for two levels of jurisdiction

		jurisdiction – does not seem particularly long. The Court notes, however, that the applicant's case remained pending for two years and five months before the Court of Cassation. Having examined all the evidence before it, the Court considers that the Government have not adduced any fact or argument enabling that delay to be attributed to the applicant. Having regard to its relevant case law, the Court holds that the length of the proceedings is therefore excessive in the present case and fails to satisfy the "reasonable time" requirement.		
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>CASTRO FERREIRA LEITE V. PORTUGAL</b> 19881/06 1 <sup>st</sup> December 2009	Action to establish paternity	The Court considers that the applicant cannot be criticised for having made use of the various remedies and other procedural possibilities available to him under domestic law. The applicant's conduct is an objective element, not attributable to the respondent State, which must be taken into account in determining whether or not reasonable time was exceeded. However, the applicant's attitude cannot account for the delays attributable to the judicial authorities which were seen during the proceedings: in particular, nearly four years elapsed between the time when the action to establish paternity was brought and the holding of the hearing on 31 October 1997 before the court of Vila Nova de Gaia. Having regard to all the circumstances, the Court notes that the length of the impugned proceedings failed to satisfy the "reasonable time" requirement.	Civil: action to establish paternity	12 years for three levels of jurisdiction
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>ARIKAN AND OTHERS V. TURKEY</b> 43033/02 2 June 2009	Action to set aside the registration of 100 hectares of farmland on the land registers in the name of third parties and to have it re-registered in her name following a fraudulent contract of sale of which she was allegedly victim..	The Court notes that the proceedings of which the applicants complain began on 15 May 1968 and have not yet come to an end. From 28 January 1987, the date on which Turkey's recognition of the right of individual petition took effect, to the present day, nearly twenty-two years have elapsed, for one level of jurisdiction, bearing in mind that over eighteen years had already elapsed up to that time.	Property	22 years at one level of jurisdiction  Case pending
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>CASTRO FERREIRA LEITE V. PORTUGAL</b> 19881/06 1 <sup>st</sup> December 2009	Action to establish paternity	As already noted by the Court in the case of <i>Costa Ribeiro v. Portugal</i> , n° 54926/00, 30 April 2003, the present case exhibited no particular legal or factual complexity.	Action to establish paternity	12 years for three levels of jurisdiction
<b>Case</b>	<b>What was at stake for the applicant</b>	<b>Grounds of violation</b>	<b>Type of proceedings</b>	<b>Length</b>
<b>MYASHEV V. BULGARIA</b> 43428/02 8 January 2009	Nothing in particular at stake	The Court has already noted in previous cases against Bulgaria that, at the relevant time, there was no remedy under domestic law that could be used to expedite criminal proceedings or obtain compensation for excessive length of proceedings, and found that Article 13 had accordingly been violated. It sees no reason to reach a different conclusion in the present case. Furthermore, the Court observes that the case, which concerned illegal possession of a weapon, did not appear to be particularly complex. It notes that the	Illegal possession of a weapon	10 years

Case	What was at stake for the applicant	Grounds of violation	Type of proceedings	Length
<b>KOLA V. GREECE</b> <b>1483/07</b> <b>2 April 2009</b>	Nothing in particular at stake	<p>proceedings remained at a standstill for lengthy periods (1993-1998, then 1999-2002) without any procedural or investigative steps being taken.</p> <p>The Court points out that the appeal proceedings alone lasted nearly four years. It notes more specifically that the date for the hearing before the five-judge criminal court of appeal was set about two years after the appeal had been lodged. Furthermore, while this court agreed to two adjournments, requested, admittedly, on the applicant's behalf, it scheduled the hearings for dates far in the future: the first twelve months and the second ten months later. Neither the seriousness of the offence with which the applicant was charged nor the sentence delivered at first instance can justify such delays. The length of the proceedings therefore fails to satisfy the "reasonable time" requirement.</p>	Illicit drug trafficking	6 years and 2 months for three levels of jurisdiction

Appendix 4 bis – Non-complex cases: non-violation of Article 6 § 1

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
<b>YENIAY V. TURKEY</b> 14802/03 26 June 2007	Prosecution for rape with an aggravating circumstance	The assize court decided to stay the criminal proceedings pursuant to the law on prosecution of public officials. However, the delay caused by this does not justify regarding the length of the proceedings as excessive, especially as the proceedings were only adjourned for five months. The Court observes that no significant delay can be attributed to the national judicial authorities, which held hearings regularly every two to three months. The adjournments were mainly due to the fact that the applicant, his representative and the victim failed to attend certain hearings at first and second instance despite repeated invitations by the national courts to attend. The assize court stated, however, that it would continue the proceedings in the victim's absence "according to the principle of procedural economy" and showed particular diligence in the conduct of the case. The Court does not consider that the length of the proceedings against the applicant was unreasonable.	Criminal: rape committed by a police officer in the course of his duties  Ancillary administrative proceedings	5 years and 5 months
Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
<b>BICAN V. ROMANIA</b> 37338/02 22 September 2009	Review of a decision revoking an adoption	The Court notes that the excessive length of the proceedings is attributable to the applicant's conduct. The hearing of the case was suspended owing to the applicant's absence, then at the applicant's request, in order to lodge criminal complaints and submit pleadings to the Ministry of Justice with a view to bringing an action to have the decision set aside by the Romanian Attorney General. The three suspensions amounted to a delay of about two years and four months, which cannot be attributed to the judicial authorities, but must be attributed to the applicant himself.	Civil: review of a decision revoking an adoption	5 years and 2 months
Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
<b>NEVRUZ BOZKURT V. TURKEY</b> 27335/04 1 June 2011	Accusations of terrorism	The Court considers that, having regard to the circumstances of the case, the length of the proceedings, for two levels of jurisdiction, is not unreasonable and refers to the examination of this issue in the case of <i>Ayhan Işık v. Turkey</i> (n° 33102/04, §§ 23-29) of 30 March 2010.	Terrorism	4 years and 10 months