



# **The length of civil and criminal proceedings in the case-law of the European Court of Human Rights**



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**The length  
of civil and criminal proceedings  
in the case-law  
of the European Court  
of Human Rights**

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# Introduction

Article 6§1 of the European Convention on Human Rights (“the Convention”) states:

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.

According to the well-known *Golder v. the United Kingdom* judgment of 21 February 1975. “Article 6 ... enunciates rights which are distinct but stem from the same basic idea and which, taken together, make up a single right”: thus the right to a court is coupled with a string of “guarantees laid down ... as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing.”<sup>1</sup>

One of these guarantees concerns compliance with the reasonable-time requirement, intended by the Convention to counter excessively long judicial proceedings.

As the Court has pointed out, “in requiring cases to be heard within a ‘reasonable time’, the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility.”<sup>2</sup>

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1. §28 and §36 respectively.

2. *Vernillo v. France*, 20 Feb. 1991, §38; *Moreiro de Azevedo v. Portugal*, 23 Oct. 1990; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §61.



Access to the courts will remain largely theoretical and illusory if they do not deliver judgment within a reasonable time, since the right to a court is exercised for the purpose of obtaining a decision. It is the court's duty to settle cases, that is, to put an end to uncertainty.<sup>3</sup> Delay in legal proceedings has the effect of keeping an individual in a protracted state of doubt that may be considered akin to a denial of justice. By making "reasonable time" an element of a fair trial the Convention might be said to enshrine a favourite maxim of British jurists, namely that "justice delayed is justice denied".

Unfortunately, quite a few European countries have legal systems that are subject to delay. Length of judicial proceedings is in fact the issue that has most occupied the European Court of Human Rights in quantitative terms – so much so that since 1968 it has accounted for almost 30% of the judgments handed down by the Court. These cases actually peaked in the years prior to 2003, when "they ... accounted for over half of all judgments delivered", but since 2003 the situation seems to have stabilised again, at approximately "a third of the total number of judgments".<sup>4</sup>

There follows an overview of European requirements relating to length of proceedings under four headings:

- scope of reasonable time: judicial proceedings
- the Article 6§1 obligation: compliance with the reasonable-time requirement
- the obligation under Article 6§1, Article 13 and Article 35§1: establishing an effective domestic remedy for unreasonably long proceedings
- redress for breach of the reasonable-time requirement.

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3. Ricœur (Paul), *Le juste*, Paris, Esprit, 1995, p. 98.

4. European Court of Human Rights, *2003 Annual Report*, Strasbourg, Council of Europe Publishing, 2004, p. 71.





# **Chapter I. Scope of reasonable time: judicial proceedings**

Discussing the scope of the right to a hearing within a reasonable time amounts to discussing the scope of Article 6 of the Convention as such. This subject has given rise to extensive and complex case-law that goes well beyond the limits of this study. It is nevertheless important to provide some idea of where the reasonable-time requirement applies, especially as the wording of Article 6 and the case-law arising out of it are far from straightforward.

Theoretically (and as originally conceived), the right to proceedings within a reasonable time as guaranteed by ECHR law is not a general right applicable to all trials or to everybody involved in judicial proceedings. As worded in the Convention, the right to a hearing within a reasonable time may be invoked in relation only to a tribunal responsible for determining – in the words of Article 6 – “civil rights and obligations” or “any criminal charge”. However, dynamic interpretation by the European Court seems to be gradually changing the position regarding these two concepts. Today in practice – although the European Court has refrained from describing the situation in these terms – Article 6 can clearly apply to any judicial proceedings, apart from certain spheres ruled out by judicial doctrine as being impossible to assimilate to civil or criminal cases.



## **I. APPLICABILITY TO PROCEEDINGS RELATING TO “CIVIL RIGHTS AND OBLIGATIONS”**

The concept of a civil case is interpreted very broadly. It covers “all proceedings the result of which is decisive for private rights and obligations”<sup>5</sup> and encompasses the whole of what continental law defines as private law, regardless of the law governing a particular case – civil, commercial, administrative, etc. – or the authority with jurisdiction to settle the dispute – whether civil courts or criminal courts,<sup>6</sup> administrative courts,<sup>7</sup> constitutional courts,<sup>8</sup> professional tribunals,<sup>9</sup> or even administrative bodies.<sup>10</sup> Civil cases thus include disputes relating to the status of individuals,<sup>11</sup> family law,<sup>12</sup> private property,<sup>13</sup> etc.

Generally speaking, the determining factor in delimiting the scope of Article 6 is whether or not the applicant’s action has pecuniary implications.<sup>14</sup> If it does, the proceedings are held to be a civil case.

The sphere of proceedings relating to “civil rights and obligations” has thus expanded considerably to take in an assortment of disputes. The pecuniary nature of a dispute, for example, has made it possible to class as a civil case proceedings which, in domestic law, would come under public law. Thus, Article 6 is applicable to disputes between private individuals and a public authority – regardless of whether the latter is acting as a private individual or the depositary of public authority – if the administrative proceedings involved affect exercise of property rights, as with proceedings relating to expropriation,<sup>15</sup> pre-emption,<sup>16</sup> planning permission,<sup>17</sup> a

5. *König v. the Federal Republic of Germany*, 28 June 1978, §90.

6. *Perez v. France*, 12 Feb. 2004, §§57-75 (concerning a civil-party complaint lodged during a criminal investigation).

7. *Ringeisen v. Austria*, 16 July 1971, §94.

8. *Ruiz-Mateos v. Spain*, 23 June 1993, §§57-60.

9. *König v. the Federal Republic of Germany*, 28 June 1978, §90; *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §§40-51.

10. In the sense of non-judicial bodies, depending on how they are classified in domestic law. For example, *Rolf Gustafson v. Sweden*, 1 July 1997, §§35-42.

11. For example: *H. v. the United Kingdom*, 8 July 1987; *Rasmussen v. Denmark*, 28 Nov. 1984.

12. For example, *Keegan v. Ireland*, 26 May 1994, §57.

13. For example, *Sporrong and Lönnroth v. Sweden*, 23 Sept. 1982, §§79-83.

14. For a typical example: *Éditions Périscope v. France*, 26 Mar. 1992, §40.



dispute over a development plan regulating building,<sup>18</sup> land consolidation,<sup>19</sup> environmental protection,<sup>20</sup> etc. Compensation cases also fall under Article 6: damages claims (usually in the civil courts) for a road accident,<sup>21</sup> defamation<sup>22</sup> or dismissal<sup>23</sup> or by way of civil-party application in the criminal courts,<sup>24</sup> or actions for damages against the state (usually through the administrative courts),<sup>25</sup> or challenges to withdrawal of a licence to serve alcoholic beverages,<sup>26</sup> etc. The pecuniary aspect is also what makes Article 6 applicable to disputes relating to social security<sup>27</sup> and welfare assistance.<sup>28</sup> Disciplinary cases pertain to the civil sphere as well when they involve the right to practise a profession, as in disciplinary cases before professional bodies.<sup>29</sup> Article 6 is also applicable to disputes in the civil service – whether concerning established staff or staff under contract – if they have to do with recruitment, careers or termination of service and provided that the staff concerned occupy posts which do not entail “direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities”.<sup>30</sup> Similarly, proceedings relating to *de facto* management and to auditing by public accountants belong to the civil sphere.<sup>31</sup>

15. *Aldo and Jean-Baptiste Zanatta v. France*, 28 Mar. 2000, §§22-26.

16. *Hentrich v. France*, 22 Sept. 1994, §52.

17. *Allan Jacobsson v. Sweden*, 25 Oct. 1989, §§72-74.

18. *Skärby v. Sweden*, 28 June 1990, §§26-30.

19. *Poiss v. Austria*, 23 Apr. 1987, §48.

20. *Zander v. Sweden*, 25 Nov. 1993, §§26-28.

21. *Guincho v. Portugal*, 10 July 1984, §28.

22. *Moreira de Azevedo v. Portugal*, 23 Oct. 1990, §§66-68.

23. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §46.

24. *Acquaviva v. France*, 21 Nov. 1995, §§45-48.

25. *H v. France*, 24 Oct. 1989, §47.

26. *Tre Traktörer Aktiebolag v. Sweden*, 7 July 1989, §§43-44.

27. *Feldbrugge v. the Netherlands*, 25 May 1986, §§26-40.

28. *Salesi v. Italy*, 26 Feb. 1993, §19.

29. *König v. the Federal Republic of Germany*, 28 June 1978, §§86-96; *H v. Belgium*, 30 Nov. 1987, §§37-48.

30. *Pellegrin v. France*, 8 Dec. 1999, §66.

31. Admissibility decision, *Richard-Dubarry v. France*, 7 Oct. 2003, §1; admissibility decision, *Michel Martinie v. France*, 13 Jan. 2004, §§25-30.



The fields to which Article 6 does not apply are those in which proceedings call in question the state’s law-making prerogatives or political rights and obligations, but they are gradually becoming fewer in number:

Tax disputes (non-criminal<sup>32</sup>) fall outside the scope of Article 6 in the civil sphere since they are held to form part of “the hard core of public-authority prerogatives”.<sup>33</sup> As the Court pointed out in an admissibility decision of 20 April 1999,

Nor is it sufficient to show that a dispute is “pecuniary” in nature for it to be covered by the notion of “civil rights and obligations”. Apart from fines imposed by way of “criminal penalty”, this will be the case, in particular, where an obligation which is pecuniary in nature derives from tax legislation.<sup>34</sup>

Litigation concerning immigration-control measures is also excluded from the scope of Article 6 in respect of decisions regarding entry, stay and deportation of aliens – expulsion, extradition, etc. – even if they have repercussions on the applicants’ private and family lives.<sup>35</sup>

Disputes about political representation – both local and national – lie outside the scope of Article 6 in as much as the right to stand for election and keep one’s seat, or the right to parliamentary immunity, is viewed as a political right rather than a civil right within the meaning of Article 6 even if a pecuniary aspect is involved (and provided that there is no criminal dimension).<sup>36</sup>

Lastly, also outside the scope of Article 6 (though solely in matters of recruitment, careers and termination of service) are disputes concerning certain categories of public servant: those who wield authority in that they participate in the exercise of powers conferred by public law and perform duties designed to safeguard the general interests of the state within the meaning of the *Pellegrin v. France* judgment of 8 December 1999.

32. See below, p. 11, on developments concerning applicability to similar proceedings in criminal law.

33. *Ferrazzini v. Italy*, 12 July 2001, §29.

34. Admissibility decision, *Vidacar S.A. and Opergrup S.L. v. Spain*, 20 Apr. 1999, “The Law”, §1.

35. *Maaouia v. France*, 5 Oct. 2000, §§35-38.

36. *Pierre-Bloch v. France*, 21 Oct. 1997, §§49-52.



Members of the police, army and judiciary are examples. Article 6 was deemed not to apply, for instance, to disciplinary proceedings against a judge that led to her dismissal.<sup>37</sup>

In fact, as has been pointed out, “this exclusion of four main categories of litigant – taxpayers, aliens, officials with power to make decisions, and voters – produces an outcome which is nothing short of peculiar in terms of the ideal of justice embodied by a ‘fair’ trial”<sup>38</sup>

## **II. APPLICABILITY TO PROCEEDINGS RELATING TO “ANY CRIMINAL CHARGE”**

Like “civil” cases, the concept of “criminal” cases has been endowed with an autonomous European meaning regardless of how it is defined in the domestic law of member states; it has been construed broadly, thanks to essentially substantive definition by the European Court.

The classification in domestic law is a preliminary criterion which in some cases may be enough for it to be concluded that a criminal charge is being determined; however, the domestic definition is only a partial indication. The truly relevant criteria for determining whether a case is criminal are, on the one hand, the nature of the offence – that is, the contravention of a general rule whose purpose is both deterrent and punitive – and/or, on the other hand, the seriousness of the penalty incurred. We will not here go into the details of how the Court determines whether a case is criminal; suffice it to say that the European Court bases its reasoning sometimes purely on the domestic classification of the offence,<sup>39</sup> sometimes on the three above-mentioned criteria, sometimes solely on the nature of the offence<sup>40</sup> or the seriousness of the penalty incurred, and sometimes on a combination of several criteria none of which is decisive

37. Admissibility decision, *Pitkevich v. Russia*, 8 Feb. 2001.

38. Sudre (Frédéric), *Droit européen et international des droits de l'homme*, Paris, PUF, 2005 (7th edition), p. 330 (§207, end).

39. For example, *Engel and others v. the Netherlands*, 8 June 1976.

40. For example, the admissibility decision in *Putz v. Austria*, 22 Feb. 1996.



on its own but which, taken together, are enough make the charge a criminal one.<sup>41</sup> This question is therefore largely a matter of case-law analysis.

Deprivation of liberty (or an extension of that deprivation) is obviously a pointer to the criminal nature of an offence,<sup>42</sup> as are large fines and the punitive or deterrent effect of a penalty.<sup>43</sup> The nature of the body ordering the penalty is of no consequence; the European Court has extended the criminal sphere to encompass administrative penalties, including disciplinary and tax penalties. Thus disputes arising out of administrative penalties have been held to come within the criminal sphere if, as in Greece, such penalties are imposed for non-compliance with trade rules.<sup>44</sup> Most of the penalties imposed by the “independent administrative authorities” existing in French law also fall within the scope of Article 6: an example is those imposed by the authority responsible for supervising financial markets.<sup>45</sup> Tax penalties may bring tax law within the scope of Article 6: because of their size, for example, some tax fines are essentially deterrent and punitive in purpose.<sup>46</sup> Article 6 also applies to disciplinary regulations, both in the army and in prison. In *Campbell and Fell*, for example, the Court held that a loss of remission (totalling 570 days, plus a further 91 days of various penalties such as withdrawal of certain privileges, exclusion from associated work, stoppage of earnings and cellular confinement) counted as “criminal”.<sup>47</sup> Similarly, in the field of military discipline, it found in *Engel and others*, with regard to one of the applicants, that the threat of serious punishments involving deprivation of liberty caused the case to fall within the criminal sphere even though the applicant’s punishment had not in

41. For example, *Bendenoun v. France*, 24 Feb. 1994.

42. *Engel and others v. the Netherlands*, 8 June 1976, §82; *Campbell and Fell v. the United Kingdom*, 28 June 1984, §73.

43. For example, *A.P., M.P. and T.P. v. Switzerland*, 29 Aug. 1997.

44. *Garyfallou AEBE v. Greece*, 24 Sept. 1997.

45. Admissibility decision, *Jean-Louis Didier v. France*, 27 Aug. 2002.

46. For example: *Bendenoun v. France*, 24 Feb. 1994, §§46-47; *A.P., M.P. and T.P. v. Switzerland*, 29 Aug. 1997, §39.

47. *Campbell and Fell v. the United Kingdom*, 28 June 1984, §73.



fact entailed such deprivation.<sup>48</sup> The same holds true for customs penalties,<sup>49</sup> economic penalties,<sup>50</sup> traffic penalties,<sup>51</sup> etc.

Ultimately, proceedings which do not fall within the ambit of Article 6 under its criminal head are few and far between, unlike civil cases, which are unfortunately subject to greater restrictions.

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48. *Engel and others v. the Netherlands*, 23 Nov. 1976, §§80-85.

49. *Funke v. France*, 25 Feb. 1993.

50. *Deweert v. Belgium*, 27 Feb. 1980.

51. *Malige v. France*, 23 Sept. 1998.



## **Chapter II. The Article 6§1 obligation: compliance with the reasonable-time requirement**

The requirement laid down in Article 6§1 for a hearing to be held within a reasonable time is akin to an obligation to produce a specific result. In reviewing compliance with the reasonable-time requirement, the European Court of Human Rights is in essence assessing a particular result: has the length of proceedings in the case before it been reasonable or not?

The Court has not laid down any particular means of attaining the required outcome. After an adverse judgment a state has “the choice of the means to be used in its domestic legal system to give effect to its obligation [to execute the judgment]”,<sup>52</sup> and “it is not the Court’s function to indicate which measures [the state] should take”.<sup>53</sup> In fact the European Court has provided virtually no guidelines on this.

At most the Court regularly reiterates that “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 civil rights and obligations”.<sup>54</sup> The Court is here laying down a positive obligation whose content remains largely

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52. *Belilos v. Switzerland*, 29 Apr. 1988, §78.

53. *Johnston and others v. Ireland*, 18 Dec. 1986, §77.

54. See, among many other examples, *Frydlender v. France*, 27 June 2000, §45.





unspecified and is therefore at the discretion of the state, which has a wide domestic margin of appreciation in meeting it.

It is actually the Committee of Ministers of the Council of Europe that indirectly checks on measures taken by states to comply with this obligation. This is part of its monitoring of execution of judgments, when states must specify the general measures that they have adopted or intend to adopt in order to avoid further violations. The member states have thus established a practice whereby they not only inform the Committee of Ministers concerning payment of the just satisfaction awarded by the Court to the applicant but also specify the general measures that they have taken or intend to take in order to prevent further violations.<sup>55</sup>

For example, after the judgment against it in the case of *Martins Moreira* on 26 October 1988, Portugal took a range of measures, explaining firstly that the local courts involved in the case “[had] been reinforced in terms of both judges and administrative staff” and secondly that at national level “the forensic medicine institutes [had] also been the subject of reform with a view to making them suitable aids to the effective administration of justice”, in terms of both “personnel and resources” and “organisational reforms ... designed to enable a prompt response to be given to requests for the institutes’ services”<sup>56</sup> (this having been the main problem in the case). Even more noteworthy was Spain’s reaction following the judgment against it in *Unión Alimentaria Sanders SA* on 7 July 1989. Spain carried out a far-reaching reform in which it “completely reorganised judicial districts and redefined the territorial jurisdiction of the courts”; it also began recruiting for “1 570 new judicial posts” and decided on “the creation of a number of new courts”<sup>57</sup>. Similarly – following the judgment delivered on 9 November 2000 in *Jóri and 18 other cases* – Slovakia amended its Code of Civil Procedure to expedite judicial proceedings and its Bankruptcy and Settlement Act to prevent growing delays in

55. For an overview: Committee of Ministers, “General measures adopted to prevent new violations of the European Convention on Human Rights”, H/Exec (2006) 1 (updated June 2006).

56. Committee of Ministers, Resolution DH (1989) 22.

57. Committee of Ministers, Resolution DH (1990) 40.



that sphere, as well as adopting a series of administrative measures aimed at improving the organisation and management of the courts (such as creating a new post of senior court clerk in order to relieve judges of certain administrative tasks, and increased computerisation of the courts).<sup>58</sup> The United Kingdom – by way of executing the *Somjee* judgment of 15 October 2002 concerning excessively lengthy proceedings in employment cases – adopted regulatory measures giving chairs of employment tribunals greater case-management powers, introduced internal procedural changes with regard to the Employment Appeal Tribunal, and increased the number of its judges.<sup>59</sup> Other countries have made do with more ad hoc measures: Switzerland, for example, following the *Zimmermann and Steiner* judgment of 13 July 1983, reinforced the Federal Court (against which the proceedings had been brought) for a limited period with fifteen part-time substitute judges.<sup>60</sup>

The general measures cited in these various examples can all be seen as meeting states' positive obligation to organise their judicial systems in such a way that their courts can guarantee everyone the right to a final decision within a reasonable time. It should be pointed out, however, that evaluation of these general measures according to an objective standard is solely a Committee of Ministers function.

The European Court itself is only empowered to examine, with reference to the particular circumstances and by way of its judicial review role whether or not, in a specific case brought before it, the proceedings in which the applicant was involved were too long. For that purpose it almost always scrutinises a case in two stages. The first deals with the factual position and consists in adding up the relevant length of the proceedings. The second, although relying on a series of objective criteria, is more of a value judgment, assessing whether the length was excessive.

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58. Committee of Ministers, Resolution DH (2005) 67.

59. Committee of Ministers, Resolution DH (2006) 29.

60. See Committee of Ministers, Resolution DH (1983) 01.



## I. THE PERIOD TO BE CONSIDERED

Applicants usually complain of the total length of judicial proceedings, which may have entailed more than one tier of jurisdiction.

Sometimes, however, the Court may not consider the entire course of the applicant's proceedings for the simple reason that the applicant is complaining of judicial delay only at a certain stage of the proceedings. In its *Portington v. Greece* judgment of 23 September 1998, for example, the Court noted that "the applicant's complaint concerns the length of the appeal proceedings before the ... Court of Appeal", and therefore held that the period to be taken into account began on "the date on which he lodged an appeal against the judgment of the trial court" and ended "when his appeal was finally heard and judgment delivered by the Court of Appeal";<sup>61</sup> in this case the appeal proceedings lasted almost eight years, and "at the time of the Court's consideration of the case the applicant had lodged an appeal on points of law".<sup>62</sup>

Whatever the circumstances, when reviewing compliance with the reasonable-time requirement the Court always begins by determining the starting point (*dies a quo*) and the end (*dies ad quem*) of the period to be considered.

### 1. Starting-point of period

As a rule, put simply, criminal proceedings begin on the date on which the person is charged (within the autonomous meaning of the Convention), and civil proceedings (also within the autonomous meaning of the Convention) begin on the date on which the case is referred to a judicial authority.

However, this principle admits of one exception, whose legal justification is unconnected to the logic of Article 6 and which, in reality, mainly concerns new states acceding to the European Convention on Human Rights: the period to be taken into account can never begin before the

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61. *Portington v. Greece*, 23 Sept. 1998, §20.

62. *Ibid.*, §15.



date on which the Convention entered into force in respect of the respondent state. If the dispute arose earlier the Court will deal only with the subsequent stage.

Nevertheless, and this point is worth making right away, the stage prior to the entry into force of the Convention is not entirely ignored. While it is not taken into account as such, in calculation of the period to be considered it is included as a relevant factor at the next stage of the Court's scrutiny – the assessment of whether the length of proceedings was reasonable. In order to establish whether the time which elapsed following the date of the Convention's entry into force was reasonable, the Court specifies that "it is ... necessary to take account of the stage which the proceedings had reached" at the end of the earlier phase.<sup>63</sup> Thus it does not entirely disregard the actual length of the proceedings.

To take an example of this twofold attitude on the part of the European Court, in the *Styranowski v. Poland* judgment of 30 October 1998 the Court noted:

... the period to be taken into consideration began not on 17 December 1991, when the applicant filed a compensation claim with the Olsztyn District Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of Article 25 of the Convention took effect ... However, in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 1 May 1993. On the above understanding the pro-

63. See, for example: for Portugal, *Neves e Silva*, 27 Apr. 1989, §40; *Moreira de Azevedo* (merits), 23 Oct. 1990, §§69-70; *Silva Pontes*, 23 Mar. 1994, §38; and, for Poland, *Proszak*, 16 Dec. 1997, §31; *Styranowski*, 30 Oct. 1998, §45; *Sobczyk*, 26 Oct. 2000, §54; *Wasilewski*, 21 Dec. 2000, §55. The same holds true, *mutatis mutandis*, when the declaration signed under the former Articles 25 and 46 excludes from the jurisdiction of the European Commission of Human Rights concerning individual petitions, or from that of the Court, acts occurring prior to depositing the declaration, at least if the state concerned has expressly raised this limitation, which is missing from a number of declarations, including those of France, Germany, Luxembourg, Malta, the Netherlands and Norway. See, in this connection, *Pretto and others v. Italy*, 8 Dec. 1983, §30; *Brigandi v. Italy*, 19 Feb. 1991, §§28 and 30; *Phillis v. Greece*, 27 Aug. 1991, §14; *Pandolfelli and Palumbo v. Italy*, 27 Feb. 1992, §14; *Billi v. Italy*, 26 Feb. 1993, §16; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §23; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §52; *Yağcı and Sargın v. Turkey*, 8 June 1995, §§40 and 58; *Mansur v. Turkey*, 8 June 1995, §§44 and 60.



ceedings lasted four years and one month, out of which two years, eight months and sixteen days are taken into consideration by the Court.<sup>64</sup>

Obviously this exception and its application essentially to this group of countries hold for both civil and criminal cases.<sup>65</sup> But otherwise it is important to distinguish between civil and criminal proceedings as regards the starting point of the period to be considered.

### Civil proceedings

In civil proceedings the period to be considered normally begins, of course, with commencement of the action before the court having jurisdiction – generally a court of first instance<sup>66</sup> but occasionally a supreme court ruling as a court of first and last resort, such as the Swiss Federal Court,<sup>67</sup> Italy’s Court of Audit<sup>68</sup> and the Belgian Conseil d’Etat.<sup>69</sup>

As the European Court held in its *Erkner and Hofauer* judgment, “in civil proceedings the ‘reasonable time’ referred to in Article 6 paragraph 1 normally begins to run from the moment the action was instituted before the ‘tribunal’”.<sup>70</sup>

In practical terms the period begins when a case is referred to a court through service of process. This may be, as in French procedure, the date on which the writ served on the defendant is entered in the court’s list of

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64. *Styranowski v. Poland*, 30 Oct. 1998, §§45-46.

65. See, in the field of criminal law, for example: *Foti and others v. Italy*, 10 Dec. 1982, §53; *Baggetta v. Italy* and *Milasi v. Italy*, 25 June 1987, §20 and §14 respectively.

66. See, for example, the first case-law illustration of this: *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §48 (commencement of the action before the Labour Court).

67. For example, in *Zimmermann and Steiner*, 13 July 1983, §23 (after proceedings before the Federal Assessment Commission, but the applicants did not bring any complaints on this score).

68. For example: *Francesco Lombardo v. Italy* and *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §19 and §18 respectively; *Massa v. Italy*, 24 Aug. 1993, §28; *Muti v. Italy*, 23 Mar. 1994, §12; *Paccione v. Italy*, 27 Apr. 1995, §17; *Terranova v. Italy*, 4 Dec. 1995, §19.

69. For example, in *De Moor v. Belgium*, 23 June 1994, §62 (after proceedings before the Hasselt Bar Council, whose length the applicant did not challenge).

70. *Erkner and Hofauer v. Austria*, 23 Apr. 1987, §64; see also *Poiss v. Austria*, 23 Apr. 1987, §50.



cases,<sup>71</sup> or else the date of any other method of referring a case to a court laid down in domestic law (a joint application, filing in the registry, etc.).

However, in some cases a court order or process other than those mentioned above may mark the start of the period: for example, an order to pay,<sup>72</sup> confiscation of attached property,<sup>73</sup> a complaint with a claim for damages in criminal proceedings,<sup>74</sup> a request for interim measures,<sup>75</sup> an objection to enforcement proceedings instituted by the applicant,<sup>76</sup> an intervention in pending proceedings,<sup>77</sup> or even the appearance of the defendants before the court.<sup>78</sup>

In addition, in its *Golder* judgment cited above, the Court made the following point: "It is conceivable ... that in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute."<sup>79</sup> In the Court's view, conformity with the spirit of the Convention requires that the latter word should not be construed too technically and should be given a substantive rather than a formal meaning.<sup>80</sup>

Thus the Court can take as the starting point the date of a preliminary application to an administrative authority, especially when this is a prerequisite for commencement of proceedings. By way of illustration, it has had

71. As D. Cholet points out, "'Reasonable time' should logically begin to run from the date on which the case is filed in the court register, since before this point the court has not been notified of the proceedings and cannot affect their length." *La célérité de la procédure en droit processuel*, Paris, LGDJ, 2006, p. 314.

72. *Pugliese v. Italy (No. 2)*, 24 May 1991, §16; *Tumminelli v. Italy*, 27 Feb. 1992, §14.

73. *Raimondo v. Italy*, 22 Feb. 1994, §42.

74. *Ciascaroli v. Italy*, 27 Feb. 1992, §16; *Tomasi v. France*, 27 Aug. 1992, §124; *Acquaviva v. France*, 21 Nov. 1995, §50.

75. *Cesarini v. Italy*, 12 Oct. 1992, §16.

76. *Barbagallo v. Italy*, 27 Feb. 1992, §14.

77. *Variapati v. Greece*, 26 Oct. 1999, §22.

78. *Capuano v. Italy*, 25 June 1987, §22.

79. *Golder v. the United Kingdom*, 21 Feb. 1975, §32 (this is actually an *obiter dictum* inasmuch as the judgment did not concern compliance with the reasonable-time requirement).

80. Further judgments not directly relating to reasonable time: *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §45; *Bentham v. the Netherlands*, 23 Oct. 1985, §32; *Van Marle and others v. the Netherlands*, 26 June 1986, §32; *Pudas v. Sweden* and *Bodén v. Sweden*, 27 Oct. 1987, §31 and §30 respectively; *Moreira de Azevedo v. Portugal*, 23 Oct. 1990, §66.



occasion to accept the following as the *dies a quo*: the date of a preliminary claim for compensation sent to an administrative authority;<sup>81</sup> the date of a non-contentious claim lodged with the Prime Minister;<sup>82</sup> the date on which an objection was lodged by the applicant with the administrative authorities that had withdrawn his authorisation to practise medicine and run a clinic;<sup>83</sup> the date of a request for termination of public care of three children;<sup>84</sup> the date on which the applicants lodged a challenge to a decision with the authority that had issued it;<sup>85</sup> the date of the applicants' request for formal confirmation of an association's decision;<sup>86</sup> the date of an application for restitution of real estate;<sup>87</sup> the date of the first challenge to a government department regarding the total amount of compensation following nationalisation of a company,<sup>88</sup> etc.

On the other hand the mere pursuit of a friendly settlement with the administrative authority through negotiation is not enough to mark the beginning of "reasonable time".<sup>89</sup>

Similarly, but in the social-security field this time: in the context of French proceedings to settle disputes concerning payment of benefits to which an applicant maintained he was entitled following an industrial accident, the Court took into consideration the dates on which the applicant had lodged his claims with the various review boards of the social security offices.<sup>90</sup>

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81. In particular, the preliminary compensation claim addressed to the relevant minister by haemophiliacs infected by the AIDS virus after blood transfusions: *X v. France*, 31 Mar. 1992, §31; *Vallée v. France*, 26 Apr. 1994, §33; *Karakaya v. France*, 26 Aug. 1994, §29. For proceedings relating to award of a disability pension: *Mocie v. France*, 8 Apr. 2003, §21.
82. *Allet de Ribemont v. France*, 10 Feb. 1995, §46.
83. *König v. the Federal Republic of Germany*, 28 June 1978, §98.
84. *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §101.
85. *Erkner and Hofauer v. Austria*, 23 Apr. 1987, §64; *Wiesinger v. Austria*, 30 Oct. 1991, §51.
86. In this case the Occupational Association for Health and Mental and Social Well-being: *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §62.
87. *Schmidtová v. Czech Republic*, 22 July 2003, §§54-55.
88. *Jorge Nina Jorge and others v. Portugal*, 19 Feb. 2004, §§31-32 (the Court held that "it was only at that point that the 'dispute' to be settled arose").
89. *Lithgow and others v. the United Kingdom*, 8 July 1986, §199.
90. *Duclos v. France*, 17 Dec. 1996, §54 (application to the review board of the Health Insurance Office (CPAM) and complaint to the Benefits Payment Board of the Family Allowances Office (CAF)).



In inheritance cases, still in France, the Court takes into consideration the non-contentious preliminary stage at which the estate is divided up before a notary because “the proceedings before the notaries are so closely linked to the supervision of the District Court that they cannot be dissociated from that supervision”, as it held in its *Dumas v. France* judgment of 23 September 2003.<sup>91</sup> The starting point can therefore be the date on which an applicant applies for court partition of an estate for purposes of appointing a notary.<sup>92</sup>

### Criminal proceedings

As stated by the European Court of Human Rights in its *Neumeister v. Austria* judgment of 27 June 1968 and in a string of other groundbreaking judgments in this field, in criminal cases “the period to be taken into consideration ... necessarily begins with the day on which a person is charged”.<sup>93</sup> As employed in Article 6, the concept of a charge – like that of a civil dispute – has an autonomous and substantive rather than a formal meaning.<sup>94</sup> According to the Court it may in general be defined “as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”,<sup>95</sup> but “it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect”.<sup>96</sup>

The *Philippe Bertin-Mouroit v. France* judgment of 2 August 2000 perfectly sums up established case-law in this field:

91. *Dumas v. France*, 23 Sept. 2003, §41.

92. *Siegel v. France*, 28 Nov. 2000, §42.

93. *Neumeister v. Austria*, 27 June 1968, §18.

94. *Deweere v. Belgium*, 27 Feb. 1980, §44.

95. *Ibid.*, §46.

96. *Foti and others (merits) v. Italy* and *Corigliano v. Italy*, 10 Dec. 1982, §52 and §34 respectively. The test of whether the suspect’s situation has been “substantially affected” was first used by the Commission and then taken up by the Court – initially in reference to the Commission – for example in *Deweere v. Belgium*, 27 Feb. 1980, §46. More recently, see: *Pantea v. Romania*, 3 June 2003, §257; *Kangasluoma v. Finland*, 20 Jan. 2004, §26; *Slimane-Kaid v. France (No. 2)*, 27 Nov. 2003, §25; *Pedersen and Baadsgaard v. Denmark*, 17 Dec. 2004, §44. For an example of a suspect’s situation being specifically affected, although in a relatively limited way: *Merit v. Ukraine*, 30 Mar. 2004, §§9 and 70.





The Court recalls that the period to be taken into consideration in respect of Article 6 paragraph 1 begins to run as soon as a person is formally charged or when the suspicions relating to this person have substantially affected the latter's situation because of measures taken by the prosecuting authorities.

Consequently,

this may have occurred on a date 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 the preliminary investigations were opened ... Whilst "charge", for the purposes of Article 6 paragraph 1, may in general be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect.<sup>97</sup>

As we can see, this definition<sup>98</sup> is more flexible and comprehensive than technical. It has enabled the European Court to accept the following starting points, depending on the circumstances of the particular case: the date on which a preliminary investigation was opened;<sup>99</sup> the date on which an arrest warrant<sup>100</sup> or search warrant<sup>101</sup> was issued; the date of the

97. *Philippe Bertin-Mouroit v. France*, 2 Aug. 2000, §52. For a slightly different wording: "The Court notes that in criminal matters, the 'reasonable time' referred to in Article 6 §1 begins to run as soon as a person is 'charged'; this may occur on a date 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. Furthermore, '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 also corresponds to the test whether the situation of the suspect has been substantially affected." *Hoze v. the Netherlands*, 22 May 1998, §43; or *Reinhardt and Slimane-Kaid v. France*, 31 Mar. 1998, §93.

98. It has emerged, in particular, from the following original judgments in this sphere: *Neumeister v. Austria*, 27 June 1968, §18, and *Adolf v. Austria*, 26 Mar. 1982, §30; *Engel and others v. the Netherlands*, 8 June 1976, §81; *König v. the Federal Republic of Germany*, 28 June 1978, §88, *Eckle v. the Federal Republic of Germany*, 15 July 1982, §73, and *Öztürk v. the Federal Republic of Germany*, 21 Feb. 1984, §5; *Deweever v. Belgium*, 27 Feb. 1980, §§42 and 44; *Foti and others v. Italy* and *Corigliano v. Italy*, 10 Dec. 1982, §52 and §34 respectively; *Imbrioscia v. Switzerland*, 24 Nov. 1993, §36.



applicant's actual arrest;<sup>102</sup> the date on which he was charged (or, in other words, indicted)<sup>103</sup> or on which his parliamentary immunity was lifted;<sup>104</sup> the date, in Italy, on which judicial notification was sent or received<sup>105</sup> or notice of criminal proceedings was received;<sup>106</sup> the date on which the applicant was officially notified of the criminal proceedings against him or her;<sup>107</sup> the latest date on which he appointed defence counsel;<sup>108</sup> the date of a decision ordering the confiscation of items seized<sup>109</sup> or confirming the sequestration of a flat,<sup>110</sup> etc.

Thus, in *Vendittelli v. Italy* (judgment of 18 July 1994), the police had sealed the applicant's flat on the ground that he had carried out work infringing town-planning regulations. Criminal proceedings had been instituted and his flat sequestered under a measure ancillary to the criminal penalty laid down for the offence. The Court held that the period to be taken into consideration began "with the decision by the Rome magistrate, who upheld the placing of seals on Mr Vendittelli's flat".<sup>111</sup>

99. For example: *Ringeisen v. Austria*, 16 July 1971, §110; *Eckle v. the Federal Republic of Germany*, 15 July 1982, §74; *Motta v. Italy*, 19 Feb. 1991, §15; *Philippe Bertin-Mouroit v. France*, 2 Aug. 2000, §53.

100. For example: *Manzoni, Girolami, Ferraro, Triggiani v. Italy*, 19 Feb. 1991, §16, §13, §15 and §15 respectively; *Boddaert v. Belgium*, 12 Oct. 1992, §35.

101. For example: *Eckle v. the Federal Republic of Germany*, 15 July 1982, §75; *Coëme and others v. Belgium*, 22 June 2000, §133; *Stratégies et Communications and Dumoulin v. Belgium*, 15 July 2002, §42.

102. For example: *Wemhoff v. the Federal Republic of Germany*, 27 June 1968, §19; *B. v. Austria*, 28 Mar. 1990, §48; *Alimena v. Italy*, *Viezzer v. Italy*, *Maj v. Italy*, 19 Feb. 1991, §15, §15 and §13 respectively; *Messina v. Italy*, 26 Feb. 1993, §25; *Abdoella v. the Netherlands*, 25 Nov. 1992, §19; *Bunkate v. the Netherlands*, 26 May 1993, §21; *Dobbertain v. France*, 25 Feb. 1993, §38; *Yağcı and Sargin v. Turkey*, 8 June 1995, §58; *Gelli v. Italy*, 19 Oct. 1999, §37; *Ipsilanti v. Greece*, 6 Mar. 2003, §31.

103. For example: *Neumeister v. Austria*, 27 June 1968, §18; *Alimena v. Italy*, 19 Feb. 1991, §15; *Kem-mache v. France (Nos. 1 and 2)*, 27 Nov. 1991, §59; *Lavents v. Latvia*, 28 Nov. 2002, §85.

104. For example, *Frau v. Italy*, 19 Feb. 1991, §14.

105. For example: *Pugliese v. Italy (No. 1)*, *Ficara v. Italy*, *Colacioppo v. Italy*, 19 Feb. 1991, §14, §15 and §13 respectively.

106. For example, *Adiletta and others v. Italy*, 19 Feb. 1991, §15.

107. For example: *Mori v. Italy*, 19 Feb. 1991, §14; *Hozee v. the Netherlands*, 22 May 1998, §45.

108. For example, *Angelucci v. Italy*, 19 Feb. 1991, §13.

109. For example: *Raimondo v. Italy*, 22 Feb. 1994, §42; *Šleževičius v. Lithuania*, 13 Nov. 2001, §26.

110. *Vendittelli v. Italy*, 18 July 1994, §21.

111. *Ibid.*



On the other hand a mere decision to take no further action is not taken into account,<sup>112</sup> nor is the existence of a press campaign against an applicant.<sup>113</sup>

The Court exercises unfettered discretion in determining the point at which criminal proceedings first substantially affect the suspect's situation. In its *Ipsilanti v. Greece* judgment of 6 March 2003, the Court took as the *dies a quo* the day on which the Greek applicant was arrested at Athens airport in 1995 on her return from a lengthy stay in the United Kingdom, during which time a complaint had been lodged against her (in 1986) and an investigation carried out which had concluded with a referral to a trial court in 1990. The European Court dismissed this first stage, holding that "during her stay in the United Kingdom, the applicant was not affected by the proceedings being conducted in Greece".<sup>114</sup>

It is not the case that Article 6§1 has "no application to pre-trial proceedings",<sup>115</sup> as shown by the fact that the Court sometimes finds that "reasonable time" has been exceeded in cases ending in a discharge<sup>116</sup> or still under investigation.<sup>117</sup>

## 2. End of period

Regarding the end of the period to be taken into account, it is generally unnecessary to distinguish between civil and criminal proceedings; in both spheres the period considered by the Court ends, in principle, with the last decision delivered by the domestic legal system that has become final and been executed.

This may even, in certain circumstances, include a decision by the European Court if the case is still pending before domestic courts.

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112. For example, *Eckle v. the Federal Republic of Germany*, 15 July 1982, §74.

113. *Coëme and others v. Belgium*, 22 June 2000, §133.

114. *Ipsilanti v. Greece*, 6 Mar. 2003, §31.

115. *Imbrioscia v. Switzerland*, 24 Nov. 1993, §36.

116. For example: *Angelucci v. Italy*, *Maj v. Italy*, *Colacioppo v. Italy*, 19 Feb. 1991, §13, §§13-15 and §13 respectively.

117. For example: *Viezzler v. Italy*, 19 Feb. 1991, §§15-17; *Tumminelli v. Italy*, 27 Feb. 1992, §18.



## Date of actual execution of the last domestic decision to become final

Generally speaking, the end of the period is marked by actual execution of the last final domestic decision. More specifically, there are two eventualities: either actual execution roughly coincides with the date on which the last domestic decision became final, or else actual execution occurs after the date of the last final domestic decision.

### *A. Actual execution roughly coincides with the date on which the last domestic decision became final*

The period taken into account usually ends with the occurrence of a final judgment or decision. This is what happens in the majority of the cases handled by the Court. The occurrence of the last final domestic decision that irrevocably settles the dispute then largely coincides with its actual execution. The *dies ad quem* taken by the Court is therefore the date of the final domestic decision, whatever its form and whatever the level in the judicial pyramid at which it occurs.<sup>118</sup>

#### **i. Whatever the level at which the final domestic decision occurs, whether first instance or appeal**

As the Court has specified, “the period whose reasonableness falls to be reviewed takes in the entirety of the proceedings in issue, including any appeals”.<sup>119</sup>

Consequently the final domestic decision marking the end of the period may be a judgment of a court of first instance (ordinary<sup>120</sup> or administrative<sup>121</sup>).

It can also be a decision by an appellate court such as a court of appeal (ordinary<sup>122</sup> or administrative<sup>123</sup>). The appellate authority may also be a supreme court, such as the Courts of Cassation in France,<sup>124</sup> Belgium,<sup>125</sup> Greece,<sup>126</sup> Italy,<sup>127</sup> the Netherlands (*Hoge Raad*)<sup>128</sup> and Turkey,<sup>129</sup> the Supreme Courts of Austria (*Oberster Gerichtshof*),<sup>130</sup> Finland<sup>131</sup> and Portugal,<sup>132</sup> the German Federal Court (*Bundesgerichtshof*),<sup>133</sup> the House of

118. *Wemhoff v. the Federal Republic of Germany* and *Neumeister v. Austria*, 27 June 1968, §18 and §19 respectively; *König v. the Federal Republic of Germany*, 28 June 1978, §98; *Erkner and Hofauer v. Austria*, 23 Apr. 1987, §65; *Poiss v. Austria*, 23 Apr. 1987, §50.

119. *Erkner and Hofauer v. Austria*, 23 Apr. 1987, §65.



Lords,<sup>134</sup> the Swiss Federal Court,<sup>135</sup> the State Councils of France,<sup>136</sup> Belgium,<sup>137</sup> Greece<sup>138</sup> and Italy,<sup>139</sup> the Supreme Administrative Courts of Portugal<sup>140</sup> and Sweden,<sup>141</sup> the Courts of Audit of Italy<sup>142</sup> and Greece,<sup>143</sup> and so on. In its *Kudła v. Poland* judgment of 26 October 2000 the European Court summed up its position on appellate authorities as follows:

120. For example: *Humen v. Poland*, 15 Oct. 1999, §58; *Duclos v. France*, 17 Dec. 1996, §53 (for an example of applicability, in France, to social-security appeal tribunals); or *Ringeisen v. Austria*, 16 July 1971, §110; *Foti and others v. Italy*, 10 Dec. 1982, §54; *Milasi v. Italy*, 25 June 1987, §14; *Pugliese (No. 1)*, *Girolami, Ferraro, Adiletta and others v. Italy*, 19 Feb. 1991, §14, §§9 (last sentence) and 13, §§10 and 15, and §15 respectively; *Pugliese v. Italy (No. 2)* and *Caleffi v. Italy*, 24 May 1991, §16 and §14 respectively; *Borgese v. Italy, Monaco v. Italy, Lestini v. Italy*, 26 Feb. 1992, §15, §14 and §15 respectively; *G., Arena, Cormio, Golino, Taiuti, Caffè Roversi S.p.a., Barbagallo, Cifola v. Italy*, 27 Feb. 1992, §14, §15, §13, §14, §14, §15, §14 and §13 respectively; *Dobbertin v. France*, 25 Feb. 1993, §16; *Trevisan v. Italy* and *Billie v. Italy*, 26 Feb. 1993, §15 and §16 respectively; *Scopelliti v. Italy*, 23 Nov. 1993, §18; *Silva Pontes v. Portugal*, 23 Mar. 1994, §§16-19; *Yağcı and Sargin v. Turkey*, 8 June 1995, §58.
121. For example: *Scuderi v. Italy*, 24 Aug. 1993, §14; *Vallée v. France*, 26 Apr. 1994, §33; *Karakaya v. France*, 26 Aug. 1994, §29.
122. For example: *Eckle v. the Federal Republic of Germany*, 15 July 1982, §77; *Corigliano v. Italy*, 10 Dec. 1982, §36; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §30; *Brigandi, Santilli, Frau, Ficara, Triggiani v. Italy*, 19 Feb. 1991, §28, §18, §14, §15 and §15 respectively; *Diana v. Italy, Ridi v. Italy, Idrocalce S.R.L. v. Italy*, 27 Feb. 1992, §14, §14 and §15 respectively; *Ruiz-Mateos v. Spain*, 23 June 1993, §§24 and 33; *Darnell v. the United Kingdom*, 26 Oct. 1993, §21; *Raimondo v. Italy*, 22 Feb. 1994, §42; *Vendittelli v. Italy*, 18 July 1994, §21.
123. *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §101; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§17, 27 and 62.
124. *Vernillo v. France*, 20 Feb. 1991, §29; *Tomasi v. France*, 27 Aug. 1992, §24; *Dobbertin v. France*, 25 Feb. 1993, §38; *Monnet v. France*, 27 Oct. 1993, §26; *Hentrich v. France*, 22 Sept. 1994, §58; *Allet de Ribemont v. France*, 10 Feb. 1995, §44; *Acquaviva v. France*, 21 Nov. 1995, §§50-52.
125. *Boddaert v. Belgium*, 12 Oct. 1992, §35.
126. *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §§53-54.
127. *Foti and others v. Italy* (merits), 10 Dec. 1982, §54; *Pretto and others v. Italy*, 8 Dec. 1983, §30; *Baggetta v. Italy*, 25 June 1987, §20; *Motta, Manzoni, Alimena, Mori v. Italy*, 19 Feb. 1991, §15, §16, §15 and §14 respectively; *Gana v. Italy, Pandolfelli and Palumbo v. Italy, Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §13, §14 and §13 respectively; *Cesarini v. Italy* and *T. v. Italy*, 12 Oct. 1992, §16 in each case; *Salesi v. Italy*, 26 Feb. 1993, §21; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §50.
128. *Abdoella v. the Netherlands*, 25 Nov. 1992, §19; *Bunkate v. the Netherlands*, 26 May 1993, §21.
129. *Mansur v. Turkey*, 8 June 1995, §60.
130. *Lechner and Hess v. Austria*, 23 Apr. 1987, §36; *B v. Austria*, 28 Mar. 1990, §48.
131. *Hokkanen v. Finland*, 23 Sept. 1994, §71.
132. *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §70.
133. *Wemhoff v. the Federal Republic of Germany*, 27 June 1968, §18.
134. *H v. the United Kingdom* (merits), 8 July 1987, §70.
135. *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §23.



The Court reiterates that Article 6 paragraph 1 does not compel the States to set up courts of appeal or of cassation. Nevertheless, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before them the fundamental guarantees contained in Article 6 ... While the manner in which Article 6 is to be applied in relation to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that appellate or cassation proceedings come within the scope of Article 6 ... Accordingly, the length of such proceedings should be taken into account in order to establish whether the overall length of the proceedings was reasonable.<sup>144</sup>

Lastly, it may even take the form of a decision by a constitutional court, for “according to the Court’s well-established case-law, proceedings in a Constitutional Court are to be taken into account for calculating the relevant period where the result of such proceedings is capable of affecting the outcome of the dispute before the ordinary courts.”<sup>145</sup>

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136. *H. v. France*, 24 Oct. 1989, §§48-49, *Périscope v. France*, 26 Mar. 1992, §30; *Beumartin v. France*, 24 Nov. 1994, §30
137. *De Moor v. Belgium*, 23 June 1994, §62.
138. *Varipati v. Greece*, 26 Oct. 1999, §22.
139. *Steffano v. Italy*, 27 Feb. 1992, §14.
140. *Neves e Silva v. Portugal*, 27 Apr. 1989, §40.
141. *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §§101, 105 and 106.
142. *Francisco Lombardo v. Italy and Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §19 and §18 respectively; *Massa v. Italy*, 24 Aug. 1993, §28; *Muti v. Italy*, 23 Mar. 1994, §12; *Paccione v. Italy*, 27 Apr. 1995, §17; *Terranova v. Italy*, 4 Dec. 1995, §19.
143. *Belaousof and others v. Greece*, 27 May 2004, §41.
144. *Kudła v. Poland*, 26 Oct. 2000, §122.
145. *Ruiz-Mateos v. Spain*, 23 June 1993, §35. See also: *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §77; *Poiss v. Austria (merits)*, 23 Apr. 1987, §52; *Wiesinger v. Austria*, 30 Oct. 1991, §52; as well as *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §37; *Süßmann v. Germany*, 16 Sept. 1996, §41; *Pammel v. Germany and Probstmeier v. Germany*, 1 July 1997, §§53-58. This issue apparently cannot arise with regard to the French Constitutional Council under the existing requirements for referring cases to that body.



**ii. Whatever the form of the final domestic decision: judgments by higher or lower courts, or any other step marking the definitive end of the proceedings**

The period usually ends with a final judgment or decision. What do we mean by final judgments or decisions? The reply will inevitably hinge on the various national legal systems.

The Court has had occasion to accept the following as the end of the period to be taken into consideration: *a*) the date on which a decision was handed down: a discharge (at the earliest),<sup>146</sup> the judgment of a court of first instance in a criminal case,<sup>147</sup> a decision by an administrative appeals tribunal,<sup>148</sup> or a judgment by a supreme court's civil,<sup>149</sup> criminal<sup>150</sup> or administrative divisions;<sup>151</sup> *b*) the date on which the applicant was notified of a judgment at first instance,<sup>152</sup> an appeal-court judgment<sup>153</sup> or a judgment by a supreme court;<sup>154</sup> *c*) the date on which the applicant learnt that his appeal to the Court of Cassation had been dismissed;<sup>155</sup> *d*) the date, in non-criminal cases in Italy for example, on which the judgment was filed with the registry of the court delivering it;<sup>156</sup> *e*) the expiry of the statutory time-limit for the parties (for example, to lodge an appeal in France<sup>157</sup> or Italy;<sup>158</sup> to appeal on points of law in France,<sup>159</sup> Italy<sup>160</sup> or Turkey;<sup>161</sup> or to resume the proceedings before the trial court when they have been referred back after a judgment has been set aside,<sup>162</sup> etc.).

146. *Maj v. Italy*, 19 Feb. 1991, §13.

147. *Milasi v. Italy*, 25 June 1987, §14.

148. *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§17, 27 and 62.

149. Court of Cassation hearing civil cases: *Vernillo v. France*, 20 Feb. 1991, §29; *Tomasi v. France*, 27 Aug. 1992, §24; *Monnet v. France*, 27 Oct. 1993, §26; *Vendittelli v. Italy*, 18 July 1994, §58; *Allenet de Ribemont v. France*, 10 Feb. 1995, §44; *Acquaviva v. France*, 21 Nov. 1995, §§50 and 52; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §54; *Pandolfelli and Palumbo v. Italy*, 27 Feb. 1992, §14.

150. Court of Cassation hearing criminal cases: *Boddaert v. Belgium*, 12 Oct. 1992, §35; *Baggetta v. Italy*, 25 June 1987, §20; *Motta v. Italy*, 19 Feb. 1991, §15; *Mansur v. Turkey*, 8 June 1995, §60.

151. French Conseil d'État: *Editions Périscope v. France*, 26 Mar. 1992, §43; *Beaumartin v. France*, 24 Jan. 1994, §30; or Belgian Conseil d'État: *De Moor v. Belgium*, 23 June 1994, §62.

152. *Karakaya v. France*, 26 Aug. 1994, §29.

153. *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §30.

154. Supreme Court of Austria (*Lechner and Hess v. Austria*, 23 Apr. 1987, §36) or Portugal (*Moreira de Azevedo v. Portugal*, 26 Oct. 1988, §70); France's Conseil d'État (*H. v. France*, 24 Oct. 1989, §§48-49), Portugal's Supreme Administrative Court (*Neves e Silva v. Portugal*, 27 Apr. 1989, §40), Austria's Constitutional Court (*Poiss v. Austria* (merits), 23 Apr. 1987, §52); etc.

155. *Alimena v. Italy*, 19 Feb. 1991, §15 (a criminal case).



Usually the judgments marking the end of the period in this way are therefore ones which settle civil disputes or rule on the merits of criminal charges. However, the period can also end with any other procedural step indicating that a judgment is final.

This function may be performed by decisions: *a*) that refuse a party leave to appeal (for example, in Finland,<sup>163</sup> the United Kingdom<sup>164</sup> and Sweden<sup>165</sup>); *b*) that set off against a previous sentence the period spent in detention on remand<sup>166</sup> or subsequently combine sentences deriving from separate prosecutions;<sup>167</sup> *c*) that terminate proceedings without settling the merits of a case (decisions that there is no case to answer,<sup>168</sup> striking a case off the list after friendly settlement,<sup>169</sup> discontinuance of

156. Court of Appeal (*Brigandi v. Italy* and *Santilli v. Italy*, 19 Feb. 1991, §28 and §18 respectively); Court of Cassation (*Pretto v. Italy*, 8 Dec. 1983, §30; *Vocaturò v. Italy*, 24 May 1991; *Steffano v. Italy*, *Gana v. Italy* and *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §10, §13 and §13 respectively; *Salerno v. Italy*, 12 Oct. 1992, §18; *Salesi v. Italy*, 26 Feb. 1993, §21; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §50; *Philis v. Greece*, 27 Aug. 1991, §14; etc.); Court of Audit: *Francesco Lombardo v. Italy* and *Giancarlo Lombardo v. Italy*, 26 Nov. 1992; *Massa v. Italy*, 24 Aug. 1993, §28; *Muti v. Italy*, 23 Mar. 1994, §12; *Paccione v. Italy*, 27 Apr. 1995, §17; *Terranova v. Italy*, 4 Dec. 1995, §19; etc.).

157. *Vallée v. France*, 26 Apr. 1994, §33; it should be noted that in the *Karakaya* case, which was nevertheless very similar, the Court took the date on which the judgment at first instance was served (see *b* above).

158. *Angelucci, Maj, Girolami, Ferraro v. Italy*, 19 Feb. 1991, §13 (at the latest), §13 (at the latest), §§9 (last paragraph) and 13, and §§10 and 15 respectively; *Pugliese v. Italy (No. 2)*, 24 May 1991, §§10 (last paragraph), 11 and 16; *Arena, Golino, Caffè Roversi S.p.a., Cifola v. Italy*, 27 Feb. 1992, §§9 and 14, §§9 (last paragraph), 10 and 14, §§9 (last paragraph), 10 and 15, and §§9 (last two paragraphs) and 13 respectively; *Trevisan v. Italy* and *Billi v. Italy*, 26 Feb. 1993, §15, and §§11 (last paragraph), 12 and 16 respectively; *Scuderi v. Italy*, 24 Aug. 1993, §14. On the various time-limits for bringing appeals, see *Cesarini v. Italy*, 12 Oct. 1992, §11.

159. *Dobbetin v. France*, 25 Feb. 1993, §38 (at the latest).

160. *Frau v. Italy*, *Ficara v. Italy*, *Colacioppo v. Italy*, 19 Feb. 1991, §14, §15 and §13 respectively; *Borgese v. Italy*, 26 Feb. 1992, §§9 (last paragraph), 10 and 15; *G., Ridi, Idrocalce S.R.L., Cappello v. Italy*, 27 Feb. 1992, §§9 (last paragraph), 10 and 14, §§9 (last paragraph), 10 and 14, §§9 (last paragraph), 10 and 15, and §§10 and 14 (at the latest) respectively.

161. *Yağcı and Sargın v. Turkey*, 8 June 1995, §§28 and 58.

162. *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §§9 (last two paragraphs) and 13 (at the latest).

163. *Hokkanen v. Finland*, 23 Sept. 1994, §71.

164. *H v. the United Kingdom* (merits), 8 July 1987, §70.

165. *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §§18, 20, 105 and 106.

166. *Ringeisen v. Austria*, 16 July 1971, §110.

167. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §77.

168. *Angelucci v. Italy*, *Maj v. Italy* and *Colacioppo v. Italy*, 19 Feb. 1991, §13 in each case.





proceedings because the charge against the defendant is not serious<sup>170</sup> or because the offence has been time-barred<sup>171</sup> or amnestied<sup>172</sup>); or d), in Portugal for example, that enforce a decision on the merits.<sup>173</sup>

The Court has also taken into consideration, more unusually, the date of a specific act – payment by the debtor of the damages awarded to the creditor by a judgment against which no appeal had been lodged,<sup>174</sup> the departure of a tenant, after a further visit by the bailiff, from a flat from which the landlord had for many years been attempting in vain to evict him,<sup>175</sup> etc.

Equally it has disregarded certain court decisions relating to appeals that were not decisive, in its opinion, for the outcome of the dispute,<sup>176</sup> such as an application to re-open proceedings<sup>177</sup> or for an interpretation of a judgment.<sup>178</sup>

#### *B. Actual execution occurs after the date of the last final domestic decision*

The Court has held that the period to be taken into consideration includes – in some cases – the stage of enforcing the decision on the merits: “Execution of a judgment given by any court must ... be regarded as an integral part of the ‘trial’ for the purposes of Article 6.”<sup>179</sup> In the Court’s opinion, “the end of proceedings whose length is being examined under Article 6 paragraph 1 is the moment when the right asserted actually became effective.”<sup>180</sup>

In its *Robins v. the United Kingdom* judgment of 23 September 1997 the Court stated:

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169. *Caleffi v. Italy*, 24 May 1991, §14; *Cormio v. Italy*, 27 Feb. 1992, §§9 and 13; *Cesarini v. Italy*, 12 Oct. 1992, §9 (last paragraph) and 16.

170. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §78.

171. *Mori v. Italy*, 19 Feb. 1991, §14; *Schumacher v. Luxembourg*, 25 Nov. 2003, §28.

172. *Pugliese v. Italy* (No. 1), 19 Feb. 1991, §14; *Vendittelli v. Italy*, 18 July 1994, §21.

173. *Guincho v. Portugal*, 10 July 1984, §29; *Martins Moreira v. Portugal*, 26 Oct. 1988, §44.

174. *Andreucci v. Italy*, 27 Feb. 1992, §§10 and 14.

175. *Scollo v. Italy*, 28 Sept. 1995, §44.

176. *Neves e Silva v. Portugal*, 27 Apr. 1989, §§26 and 40.

177. *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §77.

178. *Ruiz-Mateos v. Spain*, 23 June 1993, §33.

179. *Hornsby v. Greece*, 19 Mar. 1997, §40.

180. *Jarreau v. France*, 8 Apr. 2003, §27.



Article 6 paragraph 1 of the Convention requires that all stages of legal proceedings for the ‘determination of ... civil rights and obligations,’ not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time.<sup>181</sup>

In the *Robins* case the length of legal-costs proceedings subsequent to a judgment on the merits was considered unreasonable. That period was included in the total period taken into account, which here ended on the date of the appeal court’s dismissal of the appeal against the judgment in the costs proceedings.<sup>182</sup>

In its *Estima Jorge v. Portugal* judgment of 21 April 1998 the Court had occasion to rule, in respect of debt enforcement proceedings, that “a period of thirteen years to obtain a final decision on the basis of an authority to execute cannot be said to have been reasonable”.<sup>183</sup> The *dies ad quem* in this case was the date on which the applicant obtained a payment for recovery of her debt.<sup>184</sup>

In its *Immobiliare Saffi v. Italy* judgment of 28 July 1999 the Court condemned the conduct of the Italian state, which had unduly delayed proceedings to evict a tenant pursuant to a judicial decision.<sup>185</sup> The end of the period in this case was the date on which the accommodation was actually vacated.<sup>186</sup>

### **The date of the European Court decision if proceedings are still pending before domestic courts**

It very often happens that a civil dispute or criminal charge is still pending in the domestic legal system when the European Court hears the case.

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181. *Robins v. the United Kingdom*, 23 Sept. 1997, §28; see also, among other examples: *Silva Pontes v. Portugal*, 23 Mar. 1994, §§33-36; *Di Pede v. Italy*, 26 Sept. 1996, §24; *Zappia v. Italy*, 26 Sept. 1996, §§20-22; *Bouilly v. France*, 7 Dec. 1997, §17; *Pinto de Oliveira v. Portugal*, 8 Mar. 2002, §26; *Mocie v. France*, 8 Apr. 2003, §21.

182. *Robins v. the United Kingdom*, 23 Sept. 1997, §30.

183. *Estima Jorge v. Portugal*, 21 Apr. 1998, §45.

184. *Ibid.*, §40.

185. *Immobiliare Saffi v. Italy*, 28 July 1999, §§74 and 75.

186. *Ibid.*, §17 (in this case following the death of the tenant, who had still not been evicted). Similarly: *Cvijetic v. Croatia*, 26 Feb. 2004, §35.



In such cases the period that the Court takes into consideration necessarily cannot extend beyond adoption of the judgment delivered in Strasbourg.<sup>187</sup> When proceedings at national level are clearly taking too long the admissibility requirements for a complaint about the unreasonable length of time are relaxed to allow an applicant to apply direct to the Convention's supervisory bodies without waiting until domestic proceedings are complete. In other words, it is possible to complain of excessive length of proceedings to the European Court of Human Rights before the final domestic decision has been delivered, precisely because that decision is slow in coming.

However, this should become somewhat rarer as, pursuant to the case-law arising out of the *Kudła v. Poland* judgment of 26 October 2000, it is now obligatory for the High Contracting Parties to make available in their national legal systems a means of obtaining effective redress for breaches of the reasonable-time requirement laid down in Article 6 paragraph 1 and for applicants to exhaust this remedy before bringing legal proceedings in Strasbourg (see below, *The applicant's duty to exhaust existing domestic remedies*, p. 79).

## II. HOW TO ASSESS WHETHER A PERIOD IS REASONABLE

The Court has ruled that

the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of

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187. See, for example, the first judgment on this point: *Neumeister v. Austria*, 27 June 1968, §§19-20 (no breach of Article 6§1); see also: *Guincho v. Portugal*, 10 July 1984; *Erkner and Hofauer v. Austria* and *Poiss v. Austria* (merits), 23 Apr. 1987; *Capuano v. Italy*, 25 June 1987; *Baraona v. Portugal*, 8 July 1987; *Martins Moreira v. Portugal*, 26 Oct. 1988; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989; *Obermeier v. Austria*, 28 June 1990; *Zanghi, Motta, Viezzer v. Italy*, 19 Feb. 1991; *Wiesinger v. Austria*, 30 Oct. 1991; *Kemmache v. France* (Nos. 1 and 2), 27 Nov. 1991; *Nibbio v. Italy* and *Biondi v. Italy*, 26 Feb. 1992; *Casciaroli, Mastrantonio, Manieri, Cardarelli, Manifattura FL, Vorrasi, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Tumminelli v. Italy*, 27 Feb. 1992; *Pizzetti v. Italy* and *Messina v. Italy*, 26 Feb. 1993; *Vallée v. France*, 26 Apr. 1994; *Circicosta and Viola v. Italy*, 4 Dec. 1995; etc.



the relevant authorities and what was at stake for the applicant in the dispute.<sup>188</sup>

In stating that reasonableness is to be assessed primarily with reference to “the circumstances of the case”, the Court emphasises that the assessment is highly relative and specific to each case.

It has nevertheless laid down a number of criteria (complexity, what is at stake, and the conduct of the parties) which are systematically used to assess whether the length of proceedings is reasonable and which thus help to reduce the subjective element of such an assessment.

### **1. A comparative assessment: in the light of “the circumstances of the case”**

Generally the reasonableness of the length of judicial proceedings is assessed case by case: the assessment will depend to a large extent on “the circumstances of the case” – the Court’s way of indicating that these will substantially affect the application of the general rules – and entails thorough scrutiny by the Court of the distinctive features of the particular case.

There is, however, one exception, when the European Court will make an assessment unrelated to the circumstances of the case and the criteria that it has laid down. If the case has occurred in a context of repeated breaches of the reasonable-time requirement by the defendant state, reflecting organisational failure of its judicial system, the Court confines itself to very limited scrutiny.

#### **The principle: dominant role of “the circumstances of the case”**

As a rule the Court, when called upon to determine whether reasonable time has been exceeded, begins with an observation marked by realism and relativism:

The reasonableness of the duration of proceedings covered by Article 6 paragraph 1 ... must be assessed in each case according to its circumstances.<sup>189</sup>

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188. *Frydlender v. France* [GC], 27 June 2000, §43.



In the abstract, therefore, a particular duration cannot be termed reasonable or unreasonable solely according to whether it keeps within or overruns a certain period of time specified beforehand. When some member states, frustrated by this, expressly asked the Court to provide a sort of reference table “explain[ing] in each case how many years had to be regarded as ‘natural’ for each stage of proceedings [and] how many might be acceptable” with respect to the various criteria laid down in its case-law, the Court refused to supply it, merely recalling its substantive position on this matter:

Concerning the question of exceeding a reasonable time, it reiterates that regard must be had to the circumstances of the case and the criteria laid down in the Court’s case-law.<sup>190</sup>

In other words, more than scrutiny in other spheres, scrutiny of compliance with the reasonable-time requirement calls for assessment of the specific case.

However, a given lapse of time demands particular scrutiny if it seems at first sight “considerable”,<sup>191</sup> “surprising” and “serious”,<sup>192</sup> “unreasonable”,<sup>193</sup> “excessive”,<sup>194</sup> “exceptional”<sup>195</sup> or “inordinate”.<sup>196</sup> The respondent state must then “give satisfactory explanations”, otherwise it will be found in breach of the reasonable-time requirement.<sup>197</sup> There is something of a

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189. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §99; *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §49; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §24; *Pretto and others v. Italy*, 8 Dec. 1983, §31. A similar or identical sentence occurs in a number of later judgments.

190. Request made by Italy in *Scordino v. Italy* (No. 1), 29 Mar. 2006, §157.

191. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §52; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §24; *Baraona v. Portugal*, 8 July 1987, §46.

192. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§102, 104 and 107.

193. *Guincho v. Portugal*, 10 July 1984, §30; *Capuano v. Italy*, 25 June 1987, §30.

194. *Lechner and Hess v. Austria*, 23 Apr. 1987, §39; *Andreucci v. Italy*, 27 Feb. 1992, §17; *Arena v. Italy and Cormio v. Italy*, 27 Feb. 1992, §17 and §16 respectively.

195. *Neumeister v. Austria*, 27 June 1968, §20.

196. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §80.

197. *Ibid.*; *Foti and others v. Italy*, 10 Dec. 1982, §§65, 68, 69, 72 and 76, and *Corigilano v. Italy* (merits), 10 Dec. 1982, §47; *Alimena, Triggiani, Adiletta and others v. Italy*, 19 Feb. 1991, §17 in each case; *Manieri v. Italy*, 27 Feb. 1992, §18; *Abdoella v. the Netherlands*, 25 Nov. 1992, §23; *Bunkate v. the Netherlands*, 26 May 1993, §22.



presumption against the state that the proceedings are unreasonably long, requiring that it show that it is not responsible for the time lapse.

Must we therefore resign ourselves to not having any guidelines at all or any elements of a system? The answer is no – the Court has in fact laid down a number of criteria. We shall be looking at these in greater detail but for the time being the important point is that the Court examines every case closely – and very closely if at first sight it appears to be lengthy – in the light of the above-mentioned criteria. This is the normal standard of scrutiny, as opposed to the special standard of scrutiny applied by the Court in very specific circumstances.

### **The exception: organisational failure of the judicial system**

In some European countries certain types of litigation have given rise to breaches of the right to a trial within a reasonable time so frequent, so recurrent and so tolerated by the state – as evidenced by its failure to offer a genuinely appropriate remedy – that excessively long proceedings have become almost institutionalised, an unwritten rule. In such cases the Court has found, since its *Bottazzi v. Italy* judgment of 28 July 1999, that there exists “a practice that is incompatible with the Convention”.

When such a “practice” forms the background to a case the Court considers itself justified in applying a much more summary standard of scrutiny than usual, and in determining a breach of Article 6§1 the Court does not examine the specific circumstances of the case: the existence of previous judgments against the state in the same sphere and an established absence of appropriate general measures to remedy the situation are adequate evidence of non-compliance with the Convention, the case under consideration merely being a further illustration of the administrative practice in question.

The 1999 *Bottazzi* judgment illustrates this:

The Court ... draws attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment ... it has already delivered 65 judgments in which it has found violations of Article 6 paragraph 1 in proceedings exceeding a “reasonable time” in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more



than 1 400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason. The frequency with which violations are found shows that there is an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents. Such breaches reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy. This accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention.<sup>198</sup>

A series of judgments from the same year also concerning Italy added that “where the Court finds such a breach, the accumulation concerned constitutes an aggravating circumstance of the violation of Article 6 paragraph 1”.<sup>199</sup>

Since then Italy has had verdicts regularly go against it on the basis of this standard of scrutiny.<sup>200</sup> This has enabled the Court to deal swiftly with a large number of cases, merely noting in each case “that this was one more instance of the above-mentioned practice”.<sup>201</sup> As the Court itself has summed up the situation:

[T]he Court, like the Commission, after years of examining the reasons for the delays attributable to the parties under the Italian procedural rules, has had to resolve to standardise its judgments and decisions. This has allowed it to adopt more than 1 000 judgments against Italy since 1999 in civil length-of-proceedings cases.<sup>202</sup>

Italy is in fact the only state concerning which the Court has referred unflatteringly to an “administrative practice” in view of the extraordinarily

198. *Bottazzi v. Italy*, 28 July 1999, §22. See also three other judgments delivered on the same date: *Di Mauro v. Italy*, *A.P. v. Italy* and *Ferrari v. Italy*, §23, §18 and §21 respectively.

199. *Masi v. Italy*, 14 Dec. 1999, §18; see also, among very many other examples: *Cultraro v. Italy*, 27 Feb. 2001, §17.

200. Which subsequently led Italy to opt for friendly settlement of numerous cases in this field. The Court moreover stated in its *Scordino v. Italy (No. 1)* judgment of 29 March 2006 that “Italy’s position in this regard has not changed sufficiently to call into question the conclusion that this accumulation of breaches constitutes a practice that is incompatible with the Convention” (§224).

201. Among very many other authorities: *Cultraro v. Italy*, 27 Feb. 2001, §17.

202. *Scordino v. Italy (No. 1)*, 29 Mar. 2006, §176.



high number of violations of the right to prompt proceedings found in certain types of litigation.

On account of their court systems, however, the Court has found against other countries for recurrently contravening the reasonable-time requirement and has here applied a standard of scrutiny which, without expressly being the same as in cases of an “administrative practice”, is nevertheless very similar, especially since the Grand Chamber judgment in *Frydlender v. France* on 27 June 2000.<sup>203</sup> This has happened with Poland,<sup>204</sup> Greece<sup>205</sup> and France,<sup>206</sup> and in the cases concerned the Court employed the following form of words:

The Court has dealt on many occasions with cases raising similar issues to that in the present case and has found violations of Article 6 paragraph 1 of the Convention.<sup>207</sup>

In cases of this kind scrutiny is again summary, the Court merely stating:

After examining all the material before it, the Court holds that the Government has put forward no evidence or arguments that might lead to a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the present case the length of the proceedings was excessive and failed to meet the ‘reasonable-time’ requirement.<sup>208</sup>

In sum, whether it finds an “administrative practice” that is incompatible with the Convention or notes that it has “dealt on many occasions with cases raising similar issues”, the Court is passing judgment on an organisational failure and therefore does not engage in detailed scrutiny.

203. The leading case to which the Court refers in such circumstances is, in fact, *Frydlender v. France*, 27 June 2000 (§46); however, we do not yet find the subsequently typical phrase asserting that it has “dealt on many occasions with cases raising similar issues”.

204. For example: *Czech v. Poland*, 15 Nov. 2005, §§45–46; or *Sitariski v. Poland*, 8 Aug. 2006, §§37–38.

205. For example: *Aggelopoulos v. Greece*, 9 June 2005, §§17–18; or *Tsiotras v. Greece*, 1 June 2006, §§14–15.

206. For example: *Nicolas v. France*, 27 June 2006, §§19–20; *SARL du Parc d'Activités de Blotzheim v. France*, 11 July 2006, §§28–29.

207. For example, *Czech v. Poland*, 15 Nov. 2005, §45.

208. *Ibid.*, §46.





If there is a recurrent practice of this type the state cannot confine itself to *ad hoc* measures: it has a positive obligation to adopt general measures to reform its institutions or judicial procedures.

## **2. An objective assessment deriving from a number of criteria**

When exercising its full powers of review, the Court uses a number of criteria to assess whether or not proceedings have been reasonable: some concern the nature of the case (that is, its complexity and what is at stake) while others relate to the conduct of the parties (that is, the applicant and the relevant authorities).

Apart from a few details the European Court's wording has remained more or less the same throughout its judgments:

[T]he "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute.<sup>209</sup>

In addition, only delays for which the state can be held responsible can justify a finding of failure to comply with the reasonable-time requirement.

### **Criteria concerning the nature of the case**

The Court, then, first takes into account the nature of the case – firstly its degree of complexity and secondly what is at stake in the proceedings for the applicant.

#### *A. The case's complexity*

The main criterion with regard to the nature of the case is its degree of complexity.<sup>210</sup> The complexity may have to do with the facts to be established, the legal issues to be decided or the proceedings.

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209. *Frydlender v. France* [GC], 27 June 2000, §43.



### i. Complexity of the facts

The complexity of the facts may arise out of the following: the number and particular nature of the charges;<sup>211</sup> confusion and concealment of punishable acts with which the defendant is charged;<sup>212</sup> the highly sensitive nature of the offences charged, relating to national security;<sup>213</sup> the number of defendants and witnesses;<sup>214</sup> the need for expert opinions;<sup>215</sup> difficulties inherent in a land-consolidation operation affecting dozens of people and covering hundreds of hectares,<sup>216</sup> apportionment of indivisible property among several heirs<sup>217</sup> or examining a request for termination of public care of children;<sup>218</sup> difficult questions of evidence;<sup>219</sup> etc.

### ii. Complexity of the legal issues

This may stem, for example, from application of a recent and unclear statute;<sup>220</sup> respect for the principle of equality of arms;<sup>221</sup> questions of

210. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §99; *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §49; *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §80; *Foti and others v. Italy* (merits) and *Corigliano v. Italy*, 10 Dec. 1982, §56 and §37 respectively; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §24. Many subsequent judgments have expressly recalled the relevance, in principle, of this criterion.

211. See, for example: *Arap Yalgin and others v. Turkey*, 25 Sept. 2001, §27. A case may be complex, for example, because it concerns “white-collar crime, that is, large-scale fraud involving a number of companies”: *C.P. and others v. France*, 1 Aug. 2000, §30.

212. *Neumeister v. Austria*, 27 June 1968, “As to the law”, §21, and “The facts”, §20; *Ringeisen v. Austria*, 16 July 1971, §110; *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §§81 and 89; *B v. Austria*, 28 Mar. 1990, §§10-11 and 50; *Viezzler, Maj, Ferraro, Triggiani v. Italy*, 19 Feb. 1991, §17, §15, §17 and §17 respectively; *Boddaert v. Belgium*, 12 Oct. 1992, §37.

213. *Dobbertin v. France*, 25 Feb. 1993, §42.

214. See, for example: *Bejer v. Poland*, 4 Oct. 2001, §49, as well as *Milasi v. Italy*, 25 June 1987, §16, and *Golino v. Italy*, 27 Feb. 1992, §17.

215. See, for example, *Ilowiecki v. Poland*, 4 Oct. 2001, §87, as well as the following: *Cardarelli, Golino and Pandolfelli and Palumbo v. Italy*, 27 Feb. 1992, §17 in each case; *Francesco Lombardo v. Italy*, 26 Nov. 1992, §22; *Billi v. Italy*, 26 Feb. 1993, §19; *Scopelliti v. Italy*, 23 Nov. 1993, §23.

216. *Erkner and Hofauer* (merits) and *Poiss v. Austria* (merits), 23 Apr. 1987, §67 and §56 respectively; *Wiesinger v. Austria*, 30 Oct. 1991, §53.

217. *Vorrasi v. Italy*, 27 Feb. 1992, §17.

218. *Olsson v. Sweden* (No. 2), 27 Nov. 1992, §102.

219. *Allenet de Ribemont v. France*, 10 Feb. 1995, §§48-50.

220. *Pretto and others v. Italy*, 8 Dec. 1983, §32.

221. *Baraona v. Portugal*, 8 July 1987, §50.



jurisdiction,<sup>222</sup> constitutionality<sup>223</sup> or town-planning law;<sup>224</sup> or interpretation of an international treaty<sup>225</sup>.

### iii. Complexity of the proceedings

Procedural complexity may be due to the following, for example: the number of parties;<sup>226</sup> a large number of interlocutory applications filed by the parties;<sup>227</sup> a large number of defendants and witnesses;<sup>228</sup> sundry problems (such as collecting and studying a considerable amount of evidence,<sup>229</sup> tracing and hearing witnesses having changed name or address,<sup>230</sup> obtaining execution of letters rogatory at home<sup>231</sup> or abroad,<sup>232</sup> corroborating certain allegations or processing certain claims,<sup>233</sup> mastering an enormous case-file<sup>234</sup> or obtaining the file of foreign proceedings,<sup>235</sup> coordinating two actions concerning the same person but pending before two separate chambers of the same court<sup>236</sup> or untangling several sets of parallel proceedings<sup>237</sup>); or the need to refer a case to the

222. *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §16; *De Moor v. Belgium*, 23 June 1994, §§16, 19-20, 22, 27 and 67; *Allenet de Ribemont v. France*, 10 Feb. 1995, §§15-20 and 48-50.

223. *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §2; *Ruiz-Mateos v. Spain*, 23 June 1993, §41.

224. *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §55; see also *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§65-66.

225. *Beaumartin v. France*, 24 Jan. 1994, §33.

226. *H v. the United Kingdom* (merits), 8 July 1987, §72; *Manieri v Italy and Cardarelli v. Italy*, 27 Feb. 1992, §18 and §17 respectively; *Billi v. Italy*, 26 Feb. 1993, §19.

227. *Monnet v. France*, 27 Oct. 1993, §28.

228. *Neumeister v. Austria*, 27 June 1968, “As to the law”, §21, and “The facts”, §20; *Milasi v. Italy*, 25 June 1987, §16; *B. v. Austria*, 28 Mar. 1990, §§11 and 50; *Angelucci v. Italy*, 19 Feb. 1991, §15; *Andreucci v. Italy*, 27 Feb. 1992, §17; *Messina v. Italy*, 26 Feb. 1993, §28.

229. *H v. the United Kingdom* (merits), 8 July 1987, §72.

230. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§102 and 107.

231. *Messina v. Italy*, 26 Feb. 1993, §28.

232. See, for example: *Van Pelt v. France*, 23 May 2000, §§41-42. Also: *Neumeister v. Austria*, 27 June 1968, “As to the law”, §21, and “The facts”, §20.

233. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §55; *Lechner and Hess v. Austria*, 23 Apr. 1987, §43.

234. *Neumeister v. Austria*, 27 June 1968, “As to the law”, §21, and “The facts”, §19; *B. v. Austria*, 28 Mar. 1990, §§10-11 and 50. See, however, *Yağcı and Sargin v. Turkey*, 8 June 1995, §63.

235. *Manzoni v. Italy*, 19 Feb. 1991, §18.

236. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§102 and 107.

237. *Lechner and Hess v. Austria*, 23 Apr. 1987, §44; *Obermeier v. Austria*, 28 June 1990, §72; *Diana v. Italy*, 27 Feb. 1992, §17; *Vallée v. France*, 26 Apr. 1994, §38.



plenary Court of Cassation or transfer a case from one indictment division to another on grounds of public safety.<sup>238</sup>

The Court sometimes confines itself to acknowledging that a case is of some complexity and referring to the summary of the facts.<sup>239</sup> It also frequently has occasion to note that a case is not complex or does not involve great or particular complexity.<sup>240</sup>

However, if the problems are a result of the organisational complexity of national procedure and therefore objectively attributable to the state, they may count against the respondent government (especially if the complexity increases the risk of infringement of other rights guaranteed by the Convention).<sup>241</sup> This is the case if national law makes it necessary to apply successively to different types of court.

In its *Guillemin v. France* judgment of 21 February 2001, for example, the Court found against France on account of the unreasonable length of expropriation proceedings (totalling over fourteen years and mainly due to “organisational difficulties”<sup>242</sup> connected with the proceedings). The Court pointed out:

... expropriation proceedings are relatively complex, in particular in that they come under the jurisdiction of both sets of courts – the administrative courts in respect of the lawfulness of expropriation measures and the

238. *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §55; *Acquaviva v. France*, 21 Nov. 1995, §§29 and 57.

239. *Santilli v. Italy*, *Frau v. Italy* and *Adiletta and others v. Italy*, 19 Feb. 1991, §20, §16 and §17 respectively; *Diana v. Italy*, *Manieri v. Italy* and *Ruotolo v. Italy*, 27 Feb. 1992, §17, §18 and §17 respectively; *X. v. France*, 31 Mar. 1992, §36; *Salesi v. Italy*, 26 Feb. 1993, §18; *Vallée v. France*, 26 Apr. 1994, §38; *Karakaya v. France*, 26 Aug. 1994, §34; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §66.

240. *Corigliano v. Italy*, 10 Dec. 1982, §§57-58; *Terranova v. Italy*, 4 Dec. 1995, §23. Marc-André Eissen has identified a good fifty examples over the period between 10 December 1982 and 4 December 1995.

241. Conversely, the Court has accepted complexity arising out of the practice of applying to the Ministry of Foreign Affairs for an official interpretation of an international treaty (*Beaumont v. France*, 24 Jan. 1994, §33). Yet this is a practice which is attributable to the state and, what is more, has been held to be incompatible with the concept of an independent tribunal competent to deal with all aspects of a case (Article 6§1). It thus seems strange that it works in favour of the respondent government here.

242. The Court specifically refers to “delays due to organisational difficulties”, *Guillemin v. France*, 21 Feb. 1997, §43.



ordinary courts in respect of the transfer of the property in question, the assessing of compensation and, in general, interferences with private property. Furthermore, as in the present case, an administrative court may have to rule on the lawfulness of the initial stage of the proceedings at the same time as an ordinary court has to deal with the consequences of an expropriation order whose lawfulness has been challenged in the other court. Such a situation may give rise to conflicting decisions, and this is a risk which prompt consideration of claims might help to diminish.<sup>243</sup>

The respondent Government could not therefore rely on the inherent complexity of expropriation proceedings to escape responsibility for their length.

### *B. What is at stake in the proceedings for the applicant?*

The second criterion relating to the nature of the case is what is at stake in the proceedings for the applicant.<sup>244</sup> This may be non-pecuniary as well as pecuniary.<sup>245</sup>

Regarding the speed required of the authorities the Court draws a distinction between cases demanding “special or particular diligence” and those necessitating “exceptional diligence”.<sup>246</sup>

#### **i. Cases necessitating special or particular diligence**

Article 6§1 requires the authorities to exercise special or particular diligence in the following fields:

##### *a. Civil status and capacity (especially affecting enjoyment of the right to respect for family life)*<sup>247</sup>

In its *Bock v. the Federal Republic of Germany* judgment of 29 March 1989 the Court noted that for some nine years the applicant had suffered by reason of the doubts – subsequently proved unfounded – which had

243. *Ibid.*, §42.

244. See *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §49.

245. *Vallée v. France*, 26 Apr. 1994, §49; *Karakaya v. France*, 26 Aug. 1994, §45.

246. *Süßmann v. Germany*, 16 Sept. 1996, §61.

247. *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §§48-49; *Taiuti v. Italy*, *Maciariello v. Italy* and *Gana v. Italy*, 27 Feb. 1992, §18, §18 and §17 respectively.



been cast on his mental health and thus his capacity to conduct legal proceedings and had constituted a serious encroachment on human dignity. Regard being had, it said, to the particular diligence required in cases concerning civil status and capacity, there had been a breach of Article 6 paragraph 1 of the Convention.<sup>248</sup>

Regarding civil status the Court has further stated – for example, in its *Laino v. Italy* judgment of 18 February 1999 concerning custody proceedings – that

what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life.

In the *Laino* case it said:

As to the conduct of the authorities dealing with the case, the Court considers that, having regard to what was at stake for the applicant (judicial separation and determination of the arrangements for custody of the children and access rights), the domestic courts failed to act with the special diligence required by Article 6 paragraph 1 of the Convention in such cases.

The Court reiterated in its *Voleský v. the Czech Republic* judgment of 29 June 2004: “It is thus essential that custody cases be dealt with speedily.”<sup>249</sup>

The Court also demands particular diligence in paternity proceedings, where what is at stake for the applicant is “to have his uncertainty as to the identity of his natural father eliminated”, as stated, for example, in the *Ebru and Tayfun Engin Colak* judgment of 30 May 2006.<sup>250</sup>

The same applies to divorce proceedings, which, if excessively long, unquestionably affect enjoyment of the right to respect for family life, as

248. §§48 and 49.

249. §102. And particularly when the issue of child custody is being dealt with through summary proceedings: *Boca v. Belgium*, 15 Nov. 2002, §28.

250. *Ebru and Tayfun Engin Colak v. Turkey*, 30 May 2006, §75. See also *Mikulic v. Croatia*, 7 Feb. 2002, §44.



illustrated by the *Berlin v. Luxembourg* judgment of 15 July 2003 concerning divorce proceedings lasting seventeen years.<sup>251</sup>

b. *Victims of road accidents (as regards damages) and criminal violence (as regards prosecutions)*

Concerning road accident victims<sup>252</sup> and their right to damages within a reasonable time the Court has stated – in its *Martins Moreira v. Portugal* judgment of 26 October 1988 – that they are among “those whose need is greatest precisely because of the particular gravity of their injuries”.<sup>253</sup> In its *Silva Pontes v. Portugal* judgment of 23 March 1994 the Court stressed that “special diligence is called for in determining compensation for the victims of road accidents”.<sup>254</sup>

Concerning victims of criminal violence, “the Court considers that special diligence [is] required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he ha[s] been subjected to violence by police officers”, in the words of the *Caloc v. France* judgment of 20 July 2000. In the *Caloc* case the Court found against France because “the proceedings lasted more than seven years merely in respect of the investigation of the applicant’s criminal complaint and civil-party application”.<sup>255</sup> Special diligence is similarly required in proceedings concerning compensation for injuries sustained as a result of police violence, as decided in the *Krastanov v. Bulgaria* judgment of 30 September 2004.<sup>256</sup>

251. *Berlin v. Luxembourg*, 15 July 2003, §48. On the other hand, in *Monnet v. France* (27 Oct. 1993), concerning judicial separation and then divorce proceedings, the Court nevertheless concluded that there had been no violation, owing mainly to the way in which the spouses in dispute had tended to protract the proceedings.

252. See, for example: *Martins Moreira v. Portugal*, 26 Oct. 1988, §59; *Serrentino v. Italy*, 27 Feb. 1992, §19; *Silva Pontes v. Portugal*, 23 Mar. 1994, §39.

253. *Martins Moreira v. Portugal*, 26 Oct. 1988, §59.

254. *Silva Pontes v. Portugal*, §39; see also *Signe v. France*, 14 Oct. 2003, §§28 and 38.

255. *Caloc v. France*, 20 July 2000, §§120 and 119 respectively.

256. *Krastanov v. Bulgaria*, 30 Sept. 2004, §70.



c. *Individuals' professional activities (especially when put at risk by a claim for a large sum or by an employment dispute) and social issues*

Particular diligence is called for in employment disputes, such as disputes concerning the professional livelihood of a doctor who is contesting the withdrawal of permission to practise his profession and run a clinic.<sup>257</sup> The same applies when the applicant's professional activity is under threat because of a vital sum of money. This was the case in *Doustaly v. France*, a case in which an architect had brought proceedings to determine the balance of a lump sum payable under a public works contract that represented a significant proportion of his professional activity: "the Court considers 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".<sup>258</sup> Broadly speaking, this will be the case when the Court "notes that continuation of the applicant's professional activity depended in large measure on the proceedings ... and infers that, as in employment disputes, it called for expeditious decision in view of what was at stake for the person concerned".<sup>259</sup>

Employment disputes, "which include pensions disputes"<sup>260</sup> – particularly those concerning disability pensions – are thus another factor necessitating speedier proceedings.<sup>261</sup> In its *Frydender v. France* judgment of 27 June 2000 the Court reiterated that

an employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in

257. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §111.

258. *Doustaly v. France*, 23 Apr. 1998, §48.

259. *Garcia v. France*, 26 Sept. 2000, §14.

260. *Nibbio v. Italy*, 26 Feb. 1992, §18.

261. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §52; *Obermeier v. Austria*, 28 June 1990, §72; *Caleffi v. Italy*, 24 May 1991, §17; *Philis v. Greece*, 27 Aug. 1991, §17; *Nibbio, Borgese, Biondi, Monaco, Lestini v. Italy*, 26 Feb. 1992, §§18-19, §§18-19, §§18-19, §§17-18, and §§18-19 respectively; *Ruotolo v. Italy*, 27 Feb. 1992, §17; *Salesi v. Italy* and *Trevisan v. Italy*, 26 Feb. 1993, §§8 and 25, and §§18-19 respectively; *Muti v. Italy*, 23 Mar. 1994, §§8 and 18; *Terranova v. Italy*, 4 Dec. 1995, §23; and *Wiot v. France*, 7 Jan. 2003, §29.





view of what is at stake for the person concerned, who through dismissal loses his means of subsistence.<sup>262</sup>

It should therefore be borne in mind that “employment disputes by their nature call generally for expeditious decision”.<sup>263</sup>

In its *Zawadzki v. Poland* judgment of 20 December 2001 the Court reaffirmed its view that “proceedings relating to social issues [were] especially important for the applicant”<sup>264</sup> and therefore required greater promptness. Specific examples include proceedings to secure a compensatory pension following an industrial accident. Social-security proceedings also come within the category of proceedings relating to social issues.<sup>265</sup>

d. *Defendants held in custody*

As regards criminal charges the Court has held, since its *Abdoella v. the Netherlands* judgment of 25 November 1992, that “persons held in detention pending trial [such as Mr Abdoella] are entitled to ‘special diligence’ on the part of the competent authorities”.<sup>266</sup> Similarly, in its *Kalashnikov v. Russia* judgment of 15 July 2002, the Court observed:

... throughout the proceedings the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously.<sup>267</sup>

262. *Frydlender v. France*, 27 June 2000, §45.

263. *Caleffi v. Italy*, 24 May 1991, §17; see also: *Vocaturò v. Italy*, 24 May 1991 §17; *Nicolas v. France*, 27 June 2006, §18; *Tóth v. Hungary*, 30 Mar. 2004, §62; *Sanglier v. France*, 27 May 2003, §33.

264. *Zawadzki v. Poland*, 20 Dec. 2001, §101; and *Mocie v. France*, 8 Apr. 2003, §22; *Santoni v. France*, 29 July 2003, §39; *Kiefer v. Switzerland*, 28 Mar. 2000, §31.

265. *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §90.

266. *Abdoella v. the Netherlands*, 25 Nov. 1992, §24. In this judgment, the Court makes reference, undoubtedly somewhat questionably, to two of its previous judgments relating to “reasonable time” in the rather different context of Article 5§3 (*Tomasi v. France*, 27 Aug. 1992, mentioned above, §84, and *Herczegfalvy v. Austria*, 24 Sept. 1992, §71). See also *Wemhoff v. the Federal Republic of Germany*, 27 June 1968, pp. 19-20).

267. *Kalashnikov v. Russia*, 15 July 2002, §132, as well as, among many other examples: *Phillis v. Greece (No. 2)*, 27 June 1997, §35; *Portington v. Greece*, 23 Sept. 1998, §21; *Sari v. Turkey and Denmark*, 8 Nov. 2001, §72; *Djaid v. France*, 29 Sept. 1999, §33; *Debboub alias Hussein Ali v. France*, 9 Nov. 1999, §46; *Jablonski v. Poland*, 21 Dec. 2000, §102. However, it added, in its *Lavents v. Latvia* judgment of 28 Nov. 2002, that “the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the judicial authorities to carry out their tasks with proper care” (§102).



Conversely, the Court has sometimes held that a certain delay was reasonable if the accused was not being held in custody<sup>268</sup> or had been released.<sup>269</sup>

e. *Other spheres*

The following more miscellaneous cases may also be mentioned: disputes relating to return of a passport;<sup>270</sup> proceedings concerning the installation of a telephone line in the apartment of an elderly disabled person;<sup>271</sup> land consolidation proceedings relating to the provisional transfer of land from one owner to another;<sup>272</sup> a claim for return of a property to its vendors as a result of misrepresentation to the detriment of the buyers;<sup>273</sup> or to purchasers whom the tax authorities had dispossessed by invoking a right of pre-emption;<sup>274</sup> a dispute as to whether an injunction to pay a company a very large sum of money was well-founded;<sup>275</sup> and a dispute in which what was at stake socially and economically for the nation was more important than what was at stake for the individuals concerned (in the *Ruiz-Mateos* case, for example, in which former shareholders of the parent company of a large Spanish industrial and commercial group nationalised by decree in 1983 complained of the length of time taken to examine the action for restitution of their assets that they had brought in the Spanish courts, the judgment of 29 June 1993 emphasised that what was at stake in the case, not only for the applicants but also for Spanish society in general, was considerable in view of the huge social and economic implications. The large number of persons concerned - employees, shareholders and third parties - and the amount of capital involved militated in favour of a prompt resolution of the dispute<sup>276</sup>).

268. *Corigliano v. Italy*, 10 Dec. 1982, §49.

269. *Boddaert v. Belgium*, 12 Oct. 1992, §38; and *Gast and Copp v. Germany*, 25 Feb. 2000, §80.

270. *Napijalo v. Croatia*, 13 Nov. 2003, §61.

271. *Dewicka v. Poland*, 4 Apr. 2000, §55.

272. *Erkner and Hofauer v. Austria* (merits) and *Poiss v. Austria* (merits), 23 Apr. 1987, §§69-70, and §§58 and 60 respectively; *Wiesinger v. Austria*, 30 Oct. 1991, §61.

273. *Lechner and Hess v. Austria*, 23 Apr. 1987, §§11-17, 57 and 59.

274. *Hentrich v. France* (merits), 22 Sept. 1994, §§10-18 and 61.

275. *De Micheli v. Italy*, 26 Feb. 1993, §§11 et 21.



## ii. Cases entailing exceptional diligence

In the Court's opinion exceptional diligence is necessary in the following two spheres.

- a. *Parents affected by educational measures ordered by a court and restriction of parental authority (because of potentially serious and irreversible consequences for the parent-child relationship)*

Proceedings brought by parents with regard to the placing and keeping of their children in public care or with regard to their own custody and access rights call for exceptional speed. In the Court's view such proceedings are decisive for future relations between parents and children, they have "a particular quality of irreversibility" if "the 'statutory guillotine' of adoption" by third parties is involved, and "any ... delay will result in the de facto determination of the issue submitted to the court before it has held its hearing".<sup>277</sup> In its *Paulsen-Medalen and Svensson v. Sweden* judgment of 19 February 1998 the Court summed up its position as follows:

In cases concerning restrictions on access between a parent and a child taken into public care, the nature of the interests at stake for the applicant and the serious and irreversible consequences which the taking into care may have on his or her enjoyment of the right to respect for family life require the authorities to act with exceptional diligence in ensuring progress of the proceedings.<sup>278</sup>

The same applies to proceedings brought by adoptive parents to enforce adoption orders. The Court holds that "the enforcement of decisions of this kind requires urgent handling as the passage of time can have irremediable consequences for relations between children and parents who do not live with them".<sup>279</sup>

276. *Ruiz-Mateos v. Spain*, 23 June 1993, §52.

277. *H. v. the United Kingdom* (merits), 8 July 1987, §85; *Olsson v. Sweden* (No. 2), 27 Nov. 1992, §103; *Hokkanen v. Finland*, 23 Sept. 1994, §72. In the last two examples, however, the particular circumstances of the case – relative shortness of the proceedings, complexity of the case, etc. – led the Court to find that there had been no violation. See also: *Johansen v. Norway*, 7 Aug. 1996, §88; *Schaal v. Luxembourg*, 18 Feb. 2003, §35 (criminal case); *E.O. and V.P. v. Slovakia*, 27 Apr. 2004, §85.

278. *Paulsen-Medalen and Svensson v. Sweden*, 19 Feb. 1998, §39.



b. *Persons with reduced life expectancy suffering from incurable diseases*

“Exceptional diligence” is also required of national authorities with respect to compensation for haemophiliacs infected with the AIDS virus after blood transfusions: “having regard to the incurable disease from which he was suffering and his reduced life expectancy, [...] there [is] a risk that any delay might render the question to be resolved by the court devoid of purpose”.<sup>280</sup> In such cases “the Court holds that, in the light of the applicant’s state of health, what is at stake in the dispute [is] extremely important”.<sup>281</sup>

Many judgments have specifically established a link between this criterion – what is at stake in the proceedings for the applicant – and the conduct of the relevant authorities, which have a basic duty to expedite proceedings in proportion to the seriousness of what is at stake.<sup>282</sup> This brings us to the second category of criteria.

### **Criteria concerning the conduct of the parties to the proceedings**

According to established case-law and the now classic wording of the *Buchholz v. the Federal Republic of Germany* judgment of 6 May 1981, “only delays attributable to the State may justify [the Court’s] finding ... a failure to comply with the requirements of ‘reasonable time’”.<sup>283</sup>

Consequently, before scrutinising the conduct of the relevant national authorities, the Court will always examine that of the parties. Numerous decisions have established this criterion as a general rule in both crim-

279. *Pini and Bertani and Manera and Atripaldi v. Romania*, 22 June 2004, §175.

280. *X. v. France*, 31 Mar. 1992, §§44 and 47; *Vallée v. France*, 26 Apr. 1994, §§47 and 49; *Karakaya v. France*, 26 Aug. 1994, §§43 and 45. See also: *A. and others v. Denmark*, 8 Feb. 1996, §78; *K.T. v. France*, 19 Mar. 2002, §14; *Beaumer v. France*, 8 June 2004, §30.

281. *W.Z. v. Poland*, 24 Oct. 2002, §42.

282. *X. v. France*, 31 Mar. 1992, §32; *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §99; *Vallée v. France*, 26 Apr. 1994, §34; *Karakaya v. France*, 26 Aug. 1994, §30; *Hokkanen v. Finland*, 23 Sept. 1994, §69.

283. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §49 (last sentence); *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §24; *H. v. the United Kingdom (merits)*, 8 July 1987, §71; *Martins Moreira v. Portugal*, 26 Oct. 1988, §50; *H. v. France*, 24 Oct. 1989, §55; *Vernillo v. France*, 20 Feb. 1991, §34; *Wiesinger v. Austria*, 30 Oct. 1991, §54; *Monnet v. France*, 27 Oct. 1993, §30; *Vendittelli v. Italy*, 18 July 1994, §25; *Acquaviva v. France*, 21 Nov. 1995, §61; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §28.



inal<sup>284</sup> and civil proceedings but many more have applied it with reference to specific cases.

### A. Conduct of the parties

In civil cases the parties to the proceedings are the plaintiff, obviously (in the great majority of cases heard by the Court this is the applicant<sup>285</sup>) but also the defendant<sup>286</sup> and other parties, whether private<sup>287</sup> or public.<sup>288</sup>

In criminal cases the parties are the accused, the co-defendants if any<sup>289</sup> and the prosecuting authority (although the latter, like the public parties to civil proceedings, should really be included with the relevant national authorities; the same applies to some administrative departments involved in proceedings without being directly implicated).<sup>290</sup>

The Court regularly points out, as in its *Wiesinger v. Austria* judgment of 30 October 1991, that

284. *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §80; *Foti and others v. Italy* (merits), *Corigliano v. Italy*, 10 Dec. 1982, §56 and §37 respectively; *Kemmache v. France* (Nos. 1 and 2) (merits), 27 Nov. 1991, §56.

285. See, however, *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990 (status of assistant (*assistente*) of the prosecuting authority in Portugal); *Vernillo v. France*, 20 Feb. 1991; *Philis v. Greece*, 27 Aug. 1991 and *Manifattura FL v. Italy*, 27 Feb. 1992 (status of defendants).

286. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§49 and 57; *Guincho v. Portugal*, 10 July 1984, §34; *Lechner and Hess v. Austria*, 23 Apr. 1987, §47; *Capuano v. Italy*, 25 June 1987, §§28 and 33; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §§41 and 45; *Santilli v. Italy*, 19 Feb. 1991, §§12 and 20; *Vernillo v. France*, 20 Feb. 1991, §34; *Golino* (§17), *Manifattura FL* (§18), *Ruotolo* (§17), *Vorrasi* (§17), *Cappello* (§17), *Caffè Roversi S.p.a.* (§18), *Pandolfelli and Palumbo* (§17), *Tusa* (§17), *Serrentino* (§18), *Lorenzi, Bernardini and Gritti* (§16), *Tumminelli* (§17) *v. Italy*, 27 Feb. 1992; *Monnet v. France*, 27 Oct. 1993, §13; *Scopelliti v. Italy*, 23 Nov. 1993, §24; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §29. Oddly enough, the second and third of these judgments find that the applicants are not responsible for the failure of the defendants' lawyers to appear or those lawyers' requests to adjourn proceedings, but they do not say that the state cannot be held responsible either.

287. *H. v. the United Kingdom* (merits), 8 July 1987, §78 ("prospective" adopters).

288. *Erkner and Hofauer v. Austria* (merits), 23 Apr. 1987, §69 (district agricultural authority); *Poiss v. Austria* (merits), 23 Apr. 1987, §§58-59 (*idem*); *H. v. the United Kingdom* (merits), 8 July 1987, §§79-82 and 84 (Official Solicitor and County Council); *Baraona v. Portugal*, 8 July 1987, §§53-56 (state Counsel).

289. *Boddaert v. Belgium*, 12 Oct. 1992, §38.

290. *Lechner and Hess v. Austria*, 23 Apr. 1987, §52 (the planning department, asked to produce a file by the court); *Martins Moreira v. Portugal*, 26 Oct. 1988, §60 (the Institute of Forensic Medicine, ordered by the court to provide an expert opinion).



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 paragraph 1 has been exceeded.<sup>291</sup>

**i. Delays caused by the parties' behaviour constitute an objective fact**

There are many examples of the various ways in which parties may contribute to the length of proceedings: *a)* initial referral to a court which lacks jurisdiction;<sup>292</sup> *b)* requests for adjournment, further preliminary inquiries or extension of time-limits;<sup>293</sup> *c)* repeated changes of lawyer, or a very large number of counsel present at hearings;<sup>294</sup> *d)* submission of evidence;<sup>295</sup> *e)* fresh allegations of fact which have to be checked and which prove to be incorrect;<sup>296</sup> *f)* failure to appear at a hearing<sup>297</sup> despite, in a criminal case, an arrest warrant issued by an indictments division;<sup>298</sup> *g)* a defendant who absconds;<sup>299</sup> *h)* a released co-defendant who commits fur-

291. *Wiesinger v. Austria*, 30 Oct. 1991, §57.

292. *Beaumont v. France*, 24 Jan. 1994, §§12-13 and 33. See also *Allenet de Ribemont v France*, 10 Feb. 1995, §53 ("difficulty of determining exactly which hierarchy of courts had jurisdiction in the case").

293. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§56-57; *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §90; *Pretto and others v. Italy*, 8 Dec. 1983, §33; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §80; *Lechner and Hess v. Austria*, 23 Apr. 1987, §47; *Capuano v. Italy*, 25 June 1987, §28; *Santilli, Ficara, Adiletta and others v. Italy*, 19 Feb. 1991, §§12 and 20, §17, and §19 respectively; *Kemmache v. France (Nos. 1 and 2)* (merits), 27 Nov. 1991, §64; *Lestini v. Italy*, 26 Feb. 1992, §18; *Diana* (§17), *Casciaroli* (§18), *Golino* (§17), *Manifattura FL* (§18), *Vorrasi* (§17), *Caffè Roversi S.p.a.* (§18), *Gana* (§16), *Pandolfelli and Palumbo* (§17), *Pierazzini* (§18), *Tusa* (§17), *Cooperativa Parco Cuma* (§18), *Serrentino* (§18), *Lorenzi, Bernardini and Gritti* (§16), *Tumminelli* (§17) *v. Italy*, 27 Feb. 1992; *Tomasi v. France*, 27 Aug. 1992, §125; *Pizzetti v. Italy* and *Billi v. Italy*, 26 Feb. 1993, §18 in each case; *Ruiz-Mateos v. Spain*, 23 June 1993, §44; *Massa v. Italy*, 24 Aug. 1993, §31; *Scopelliti v. Italy*, 23 Nov. 1993, §24; *Vendittelli v. Italy*, 18 July 1994, §27; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §64; *Allenet de Ribemont v. France*, 10 Feb. 1995, §§52 and 53; *Paccione v. Italy*, 27 Apr. 1995, §20; *Acquaviva v. France*, 21 Nov. 1995, §61; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §§29 and 32.

294. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§103 and 108; *Lechner and Hess v. Austria*, 23 Apr. 1987, §45; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §41; *Yağcı and Sargın v. Turkey*, 8 June 1995, §66.

295. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §57; *Capuano v. Italy*, 25 June 1987, §28.

296. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§56 and 59.

297. *Lechner and Hess v. Austria*, 23 Apr. 1987, §47; *Arena, Cormio, Idrocalce S.R.L., Gana v. Italy*, 27 Feb. 1992, §17, §16, §18 and §18 respectively; *Acquaviva v. France*, 21 Nov. 1995, §61.

298. *Kemmache v. France (Nos. 1 and 2)* (merits), 27 Nov. 1991, §§63-64.



ther offences necessitating prosecution and resulting in the shelving of proceedings pending against the applicant;<sup>300</sup> i) delay: in filing a reply;<sup>301</sup> in taking proceedings against the defendants after a finding of lack of jurisdiction and then in taking out a new writ against one of them;<sup>302</sup> in identifying the witnesses to be examined;<sup>303</sup> in replying to the other party's pleadings<sup>304</sup> or in a party's filing of their own submissions;<sup>305</sup> in notifying the plaintiff's death and then in seeking leave to act as trustee of the estate;<sup>306</sup> in replying to an offer of a compromise;<sup>307</sup> in requesting that proceedings be resumed following the death of the defendant<sup>308</sup> or the plaintiff's counsel;<sup>309</sup> or in applying to the court to which the Court of Cassation had referred the case;<sup>310</sup> j) an unsuccessful attempt at a friendly settlement;<sup>311</sup> k) making numerous appeals and so creating a procedural maze (with, for example, applications for release, challenges against judges, requests for transfer of proceedings to other courts, disciplinary complaints, appeals concerning failure to act, appeals against interlocutory orders, preliminary questions of jurisdiction or criminal charges)<sup>312</sup>; l) use of all, or almost all, available remedies and time-limits;<sup>313</sup> m) a defendant's not immediately collecting from the registry a copy of a judg-

299. *Girolami v. Italy*, 19 Feb. 1991, §15.

300. *Boddaert v. Belgium*, 12 Oct. 1992, §38.

301. *Manifattura FL v. Italy*, 27 Feb. 1992, §18.

302. *Barbagallo v. Italy*, 27 Feb. 1992, §17; see also *Alenet de Ribemont v. France*, 10 Feb. 1995, §§52 and 53.

303. *Idrocalce S.R.L. v. Italy*, 27 Feb. 1992, §18.

304. *H. v. France*, 24 Oct. 1989, §55; *Alenet de Ribemont v. France*, 10 Feb. 1995, §§52 and 53.

305. *Vernillo v. France*, 20 Feb. 1991, §34; *Monnet v. France*, 27 Oct. 1993, §30; *Vallée v. France*, 26 Apr. 1994, §33; *Alenet de Ribemont v. France*, 10 Feb. 1995, §§52 and 53. See also *Karakaya v. France*, 26 Aug. 1994, §§35-37.

306. *Cardarelli v. Italy*, 27 Feb. 1992, §17.

307. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §57.

308. *Cardarelli v. Italy*, 27 Feb. 1992, §17.

309. *Capuano v. Italy*, 25 June 1987, §28.

310. *Ruotolo v. Italy*, 27 Feb. 1992, §17.

311. *Trevisan v. Italy*, 26 Feb. 1993, §18.

312. *Ringeisen v. Austria*, 16 July 1971, §110; *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§103 and 108; *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §§82 and 90; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §80; *Lechner and Hess v. Austria*, 23 Apr. 1987, §§45-50; *Baraona v. Portugal*, 8 July 1987, §53; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §41; *Yağcı and Sargın v. Turkey*, 8 June 1995, §66.



ment, despite its being delivered in his presence, and waiting for it to be served before appealing;<sup>314</sup> n) delay in serving a civil judgment on the losing party,<sup>315</sup> or outright failure to serve it, which, in Italy, has the effect of significantly prolonging the period for bringing an appeal or appealing on points of law;<sup>316</sup> o) taking steps the point of which is obscure or which reflect obstructiveness or at the very least an uncooperative attitude (refusal to appoint a lawyer, produce evidence, sign a record or undergo a medical examination; objections to making files available for inspection or to the presence of a witness's lawyers; p) hunger strikes and self-mutilation by a prisoner,<sup>317</sup> etc.<sup>318</sup>

The Court does not hold the state responsible for the period of one year which elapses in Italy between the filing of a civil judgment with the registry and the date on which it becomes final in the absence of service and of a subsequent ordinary appeal or appeal on a point of law.<sup>319</sup> But as a private citizen's failure to bring an appeal clearly does not usually depend on the state, does the Italian legislature possibly bear some responsibility here for setting such a long time-limit?

As for delay in applying to the courts, it is not considered decisive since "what the Court has to do ... is ... assess the reasonableness of the length of the proceedings as they actually took place."<sup>320</sup>

313. *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §82; *Corigliano v. Italy*, 10 Dec. 1982, §42; *Pretto and others v. Italy*, 8 Dec. 1983, §34; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §80; *Erkner and Hofauer v. Austria* (merits) and *Poiss v. Austria* (merits), 23 Apr. 1987, §68 and §57 respectively; *Lechner and Hess v. Austria*, 23 Apr. 1987, §49; *Nibbio, Biondi, Monaco, Lestini v. Italy*, 26 Feb. 1992, §18, §18, §17 and §18 respectively; *Idrocalce S.R.L.* (§18), *Steffano* (§16), *Cappello* (§17), *Gana* (§16), *Pandolfelli and Palumbo* (§17), *Tusa* (§17) v. *Italy*, 27 Feb. 1992; *Tomasi v. France*, 27 Aug. 1992, §125; *Cesarini v. Italy*, 12 Oct. 1992, §§19-20.

314. *Vendittelli v. Italy*, 18 July 1994, §28.

315. *Borgese v. Italy*, 26 Feb. 1992, §18; *Ridi v. Italy*, 27 Feb. 1992, §17.

316. *Cesarini v. Italy*, 12 Oct. 1992, §11; *Salesi v. Italy*, 26 Feb. 1993, §§23-24; *Scopelliti v. Italy*, 23 Nov. 1993, §22.

317. *Jablonski v. Poland*, 21 Dec. 2000, §104.

318. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §82; *Corigliano v. Italy*, 10 Dec. 1982, §41; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §80; *Erkner and Hofauer v. Austria* (merits), *Lechner and Hess v. Austria* (merits), 23 Apr. 1987, §68 and §47 respectively; *Pizzetti v. Italy*, 26 Feb. 1993, §18; *Acquaviva v. France*, 21 Nov. 1995, §61.

319. *Borgese v. Italy*, *Monaco v. Italy* and *Lestini v. Italy*, 26 Feb. 1992, §18, §17 and §18 respectively; *Ridi v. Italy*, *Golino v. Italy* and *Cifola v. Italy*, 27 Feb. 1992, §16, §17 and §18 respectively.





## ii. Delays caused by the parties' behaviour cannot be attributed to the respondent state

How does the Court approach the question of the parties' attitudes as described in the examples above? An answer has already been suggested: such conduct is an objective factor for which the respondent state cannot be held responsible.

In *civil cases* the Court considers that parties may be expected to act with "due diligence"<sup>321</sup> but that it is nevertheless not obliged to ascertain whether or not their conduct has been negligent, unreasonable or delaying: that conduct in itself is an objective factor for which the state cannot be held responsible.<sup>322</sup>

However, the domestic courts must not sit back and do nothing: even in legal systems which have established the rule that the parties control the course of civil proceedings (the *principe du dispositif* in French),<sup>323</sup> the attitude of the parties "does not ... dispense the courts from ensuring the expeditious trial of the action as required by Article 6"<sup>324</sup> When required, the courts can react – often under their own procedural rules, to which the Court makes reference<sup>325</sup> – by, for example, dismissing unjustified requests for adjournments or extensions of time,<sup>326</sup> using their powers to expedite the proceedings<sup>327</sup> or ensuring that an expert carries out his work with the necessary dispatch.<sup>328</sup>

320. *H v. the United Kingdom* (merits), 8 July 1987, §73.

321. *Pretto and others v. Italy*, 8 Dec. 1983, §33; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §35; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §35; *H. v. France*, 24 Oct. 1989, §55.

322. *Pretto and others v. Italy*, 8 Dec. 1983, §34; *Erkner and Hofauer v. Austria* (merits), *Poiss v. Austria* (merits) and *Lechner and Hess v. Austria*, 23 Apr. 1987, §68 (last paragraph), §57 (last paragraph) and §49 respectively; *Baraona v. Portugal*, 8 July 1987, §48; *Wiesinger v. Austria*, 30 Oct. 1991, §57. Yet it would seem that the Court sometimes loses sight of this fact: *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §57 (last paragraph); *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §57 (last sentence); *Allenet de Ribemont v. France*, 10 Feb. 1995, §53 (second paragraph)

323. Also known as the *Parteimaxime* or *principio dispositivo*, depending on the legal tradition.

324. *Guincho v. Portugal*, 10 July 1984, §32; *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §50; *Capuano v. Italy*, 25 June 1987, §§24-25; *Baraona v. Portugal*, 8 July 1987, §48; *Martins Moreira v. Portugal*, 26 Oct. 1988, §46; *Neves e Silva v. Portugal*, 27 Apr. 1989, §43; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §§34-35; *Vernillo v. France*, 20 Feb. 1991, §30; *Scopelliti v. Italy*, 23 Nov. 1993, §25; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §30.



In *criminal cases* this holds even truer: “Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities”;<sup>329</sup> in the system of criminal procedure in force in Europe the judicial authorities are responsible for “taking every measure likely to throw light on the truth or falsehood of the charges”.<sup>330</sup> Nevertheless – although the Court has perhaps occasionally overlooked this<sup>331</sup> – the behaviour of the “accused” also constitutes an “objective fact” that cannot be imputed to the state even if that behaviour turns out to be blameless.<sup>332</sup>

In both civil and criminal cases fairness demands that the Court take account of any success encountered by the parties’ appeals<sup>333</sup> and any restraint that the parties may have shown by not bringing appeals.<sup>334</sup> In particular they must be given credit for any steps that they have taken to

325. For example: in France, Article 3 of the new Code of Civil Procedure (*Vernillo*, 20 Feb. 1991, §30) and Articles R 111, R 150 and R 151 of the Administrative Courts and Administrative Courts of Appeal Code (X., 31 Mar. 1992, §§23 and 48; *Vallée*, 26 Apr. 1994, §47 (last sentence); *Karakaya*, 26 Aug. 1994, §§21 and 43 (last paragraph)); in Germany, section 9 of the Labour Courts Act (*Buchholz*, 6 May 1981, §50) and Article 272 of the Code of Civil Procedure (*Bock*, 29 Mar. 1989, §38); in Austria, laws specifying the time-limits to be observed by the authorities for land consolidation (*Erkner and Hofauer* (merits) and *Poiss* (merits), 23 Apr. 1987, §§46, 55 and 69, and §§33, 41 and 58 respectively; *Wiesinger*, 30 Oct. 1991, §§37, 41 and 61); in Spain, Article 37 §2 of Institutional Law No. 2/1979 on the Constitutional Court (*Ruiz-Mateos*, 23 June 1993, §§27 and 49); in Portugal, Article 266 of the Code of Civil Procedure (*Guincho*, 10 July 1984, §32; *Neves e Silva*, 27 Apr. 1989, §43) and Article 68 of the Road Traffic Code (*Guincho*, 10 July 1984, §32; *Martins Moreira*, 26 Oct. 1988, §46; *Silva Pontes*, 23 Mar. 1994, §39); etc.

326. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §60 (latter paragraphs); *Baraona v. Portugal*, 8 July 1987, §48.

327. *X v. France*, 31 Mar. 1992 §48; *Vallée v. France*, 26 Apr. 1994, §47 (last paragraph); *Karakaya v. France*, 26 Aug. 1994, §43 (last paragraph); *Allenet de Ribemont v. France*, 10 Feb. 1995, §56 (last paragraph).

328. *Capuano v. Italy*, 25 June 1987, §§30-31.

329. *Eckle v. the Federal Republic of Germany* (merits) 15 July 1982, §82; *Corigliano v. Italy*, 10 Dec. 1982, §42; *Dobbertin v. France*, 25 Feb. 1993, §43; *Yağcı and Sargin v. Turkey*, 8 June 1995, §66.

330. *Neumeister v. Austria*, 27 June 1968, §21.

331. *Foti and others v. Italy* (merits), 10 Dec., §59; *Mansur v. Turkey*, 8 June 1995, §66.

332. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §82.

333. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §103; *Foti and others v. Italy* (merits), 10 Dec. 1982, §59; *Erkner and Hofauer v. Austria* (merits) and *Poiss v. Austria* (merits), 23 Apr. 1987, §68 and §57 respectively; *Wiesinger v. Austria*, 30 Oct. 1991, §58; *Dobbertin v. France*, 25 Feb. 1993, §43.

334. *Foti and others v. Italy* (merits), 10 Dec. 1982, §59.



expedite proceedings, for example in challenging a decision to adjourn them, demanding that proceedings be reopened, protesting against extension of time-limits or requesting that the date of a hearing be brought forward or the case be considered more quickly.<sup>335</sup>

However, they are not obliged to take such steps “to avail [themselves] of the scope afforded by domestic law for shortening the proceedings”,<sup>336</sup> especially if there is no proof that they will be effective,<sup>337</sup> if they appear inadequate<sup>338</sup> or if they may turn out to be counterproductive.<sup>339</sup>

Depending on the circumstances the Court has found that the parties’ conduct “certainly”, “doubtless”, “greatly”, “to a large extent”, “up to a certain point” or “to a certain extent” contributed to delaying the proceedings,<sup>340</sup> that it did not really slow them down<sup>341</sup> or that it played no part in a particular case.<sup>342</sup>

335. *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §26; *Pretto and others v. Italy*, 8 Dec. 1983, §34; *Lechner and Hess v. Austria*, 23 Apr. 1987, §§47, 49, 55 and 57; *Capuano v. Italy*, 25 June 1987, §33; *H. v. the United Kingdom* (merits), 8 July 1987, §75; *Baraona v. Portugal*, 8 July 1987, §§48 and 51; *Martins Moreira v. Portugal*, 26 Oct. 1988, §51; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §35; *Motta v. Italy* and *Mori v. Italy*, 19 Feb. 1991, §17 and §16 respectively; *Steffano v. Italy*, 27 Feb. 1992, §16; *Serrentino v. Italy*, 27 Feb. 1992, §18; *Editions Périscope v. France*, 26 Mar. 1992, §44; *X. v. France*, 31 Mar. 1992, §40; *Pizzetti v. Italy*, 26 Feb. 1993, §18; *De Micheli v. Italy*, 26 Feb. 1993, §20; *Ruiz-Mateos v. Spain*, 23 June 1993, §43; *Massa v. Italy*, 24 Aug. 1993, §31; *Scollo v. Italy*, 28 Sept. 1995, §44.

336. *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §35. Numerous judgments in Italian cases seem implicitly to take the same view: *Nibbio, Borgese, Biondi, Monaco v. Italy*, 26 Feb. 1992, §§17-18, §§16-17, §§16-17 and §§15-16 respectively; *Andreucci* (§§16-17), *Cormio* (§§15-16), *Diana* (§§16-17), *Ridi* (§§16-17), *Idrocalce S.R.L.* (§§17-18), *Golino* (§§16-17), *Taiuti* (§§16-17), *Maciariello* (§§16-17), *Manifattura FL* (§§17-18), *Ruotolo* (§§16-17), *Vorrasi* (§§16-17), *Cappello* (§§16-17), *Gana* (§§15-16), *Barbagallo* (§§16-17), *Cifola* (§§15-16), *Pierazzini* (§§17-18), *Lorenzi, Bernardini and Gritti* (§§15-16) *v. Italy*, 27 Feb. 1992; *Salesi v. Italy*, 26 Feb. 1993, §§23-24 – see, however *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §30 (last sentence).

337. *Muti v. Italy*, 23 Mar. 1994, §§14 and 16; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §67; *Terranova v. Italy*, 4 Dec. 1995, §22 (last paragraph).

338. *Guincho v. Portugal*, 10 July 1984, §34.

339. *H. v. the United Kingdom* (merits), 8 July 1987, §77.

340. *Ringelsen v. Austria*, 16 July 1971, §110; *Beaumartin v. France*, 24 Jan. 1994; *Allenet de Ribemont v. France*, 10 Feb. 1995, §53; *Acquaviva v. France*, 21 Nov. 1995, §61; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §32, and a string of other judgments.

341. *Foti and others v. Italy* (merits), 10 Dec. 1982, §59; *Massa v. Italy*, 24 Aug. 1993, §31, and a string of other judgments.

342. *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §26; *Hentrich v. France* (merits), 22 Sept. 1994, §§60-61, and a string of other judgments.



### B. Conduct of the relevant authorities

The fourth and final criterion established by the case-law, in both the civil sphere (since the *König* judgment of 28 June 1978)<sup>343</sup> and the criminal sphere (since the *Foti and others* judgment of 10 December 1982)<sup>344</sup> is the conduct of the relevant authorities.

#### i. Judicial authorities and other authorities involved in the proceedings

Foremost among the “relevant authorities” are, of course, the judicial authorities, whether the investigating courts (where they exist), the trial courts or the appeal courts or Courts of Cassation, the judges or prosecutors (where they exist), and indeed the registries. To these must be added other public authorities involved in the proceedings either as parties or in another capacity.<sup>345</sup>

There are many *examples* of the various ways in which these various authorities may contribute to the length of proceedings: *a)* delay by an administrative authority in reopening proceedings<sup>346</sup> or in providing the formal confirmation of its decision required to begin contentious proceedings;<sup>347</sup> *b)* delay, in Portugal, in delivering a preliminary decision (*despacho saneador*);<sup>348</sup> *c)* unaccustomed length of the investigation;<sup>349</sup> *d)* delay by the public prosecutor in asking the court of cassation to designate the competent authority;<sup>350</sup> *e)* delay in taking the first steps in the investigation or in obtaining documents from other courts;<sup>351</sup> *f)* prolonged failure by the investigating judge to interrogate the persons charged and arrange a confrontation between them;<sup>352</sup> *g)* delay by the

343. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §99.

344. *Foti and others v. Italy* (merits), 10 Dec. 1982, §56; *Mansur v. Turkey*, 8 June 1995, §61.

345. We have already come across some examples: see above, *Conduct of the parties*, p. 51.

346. *Poiss v. Austria* (merits), 23 Apr. 1987, §59.

347. *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§64-69.

348. *Martins Moreira v. Portugal*, 26 Oct. 1988, §52.

349. *Ferraro v. Italy*, 19 Feb. 1991, §17; *Tusa v. Italy*, 27 Feb. 1992, §17; *Cooperativa Parco Cuma v. Italy*, 27 Feb. 1992, §18.

350. *Tomasi v. France*, 27 Aug. 1992, §125.

351. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §104; *Martins Moreira v. Portugal*, 26 Oct. 1988, §52; *Maciariello v. Italy*, 27 Feb. 1992, §17; *Acquaviva v. France*, 21 Nov. 1995, §65.

352. *Neumeister v. Austria*, 27 June 1968, §20.



judge in charge of preparations for the trial in hearing witnesses and ordering expert opinions;<sup>353</sup> h) failure to simplify prosecutions by dropping or separating some of them in so far as consistent with existing law and the requirements of proper administration of justice;<sup>354</sup> i) conversely, failure to join civil cases that are nevertheless interdependent;<sup>355</sup> j) a lengthy interval between examination of a suspect by the public prosecutor and the delivery of a discharge;<sup>356</sup> k) delay in closing an investigation, subject to later completion if necessary;<sup>357</sup> l) delay in committing a defendant for trial<sup>358</sup> or in summoning the defendant to appear before the new court to which the court of cassation has transferred the case at the prosecution's request;<sup>359</sup> m) delay by the prosecution in requesting the court of cassation to assign the case to another trial court;<sup>360</sup> n) delay in commissioning an expert opinion for the trial court;<sup>361</sup> o) a defective summons of a witness;<sup>362</sup> p) delay in examining necessary witnesses or securing necessary expert opinions in the context of judicial proceedings supervised by judges responsible for the preparation of cases and the speedy conduct of trials;<sup>363</sup> q) the taking of evidence on commission by a court from whose jurisdiction the case has been removed by the Court of Cassation;<sup>364</sup> r) absence of any investigative measures by the trial court,<sup>365</sup>

353. *Golino v. Italy, Caffè Roversi S.p.a. v. Italy and Cooperativa Parco Cuma v. Italy*, 27 Feb. 1992, §17, §18 and §18 respectively.

354. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §21; *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §84; *Foti and others v. Italy* (merits), 10 Dec. 1982, §63; *Kemmache v. France (Nos. 1 and 2)* (merits), 27 Nov. 1991, §§68-70.

355. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§59, 60 and 63.

356. *Maj v. Italy*, 19 Feb. 1991, §15.

357. *Neumeister v. Austria*, 27 June 1968, §20.

358. *Frau v. Italy*, 19 Feb. 1991, §16; *Casciaroli v. Italy*, 27 Feb. 1992, §18.

359. *Foti and others v. Italy* (merits), 10 Dec. 1982, §76.

360. *Ibid.*, §74.

361. *Francesco Lombardi v. Italy*, 26 Nov. 1992; *Muti v. Italy*, 23 Mar. 1994, §17.

362. *Tumminelli v. Italy*, 27 Feb. 1992, §17.

363. *Capuano v. Italy*, 25 June 1987, §30; *Martins Moreira v. Portugal*, 26 Oct. 1988, §§56-58; *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §73; *Nibbio v. Italy*, 26 Feb. 1992, §18; *Andreucci* (§17), *Ridi* (§17), *Idrocalce S.R.L.* (§18), *Pandolfelli and Palumbo* (§17), *Pierazzini* (§18), *Tusa* (§17), *Cooperativa Parco Cuma* (§18), *Lorenzi, Bernardini and Gritti* (§16), *Tumminelli* (§17) v. *Italy*, 27 Feb. 1992; *Billi v. Italy*, 26 Feb. 1993, §19 (more than twelve years between when the first expert took the oath and when the second lodged his report!); *Scopelliti v. Italy*, 23 Nov. 1993, §23; *Muti v. Italy*, 23 Mar. 1994, §17.



apart from a request for a document that has already been provided;<sup>366</sup> s) failure to obtain an expert opinion ordered by a court of appeal;<sup>367</sup> t) use of delaying tactics by the administrative authorities, intended to prevent the production of a piece of evidence of vital importance;<sup>368</sup> u) delay by a trial court in ruling on the validity of an indictment or an order commissioning experts,<sup>369</sup> in sending a case file to the defendant,<sup>370</sup> in declining to exercise jurisdiction,<sup>371</sup> in establishing that a summons is not in due form<sup>372</sup> or that some defendants have not been summonsed,<sup>373</sup> in ordering partial acquittal following the entry into force of less stringent criminal legislation,<sup>374</sup> in notifying an appeal to one of the parties,<sup>375</sup> or in dispelling a misunderstanding relating to a summons;<sup>376</sup> v) acceptance of an excessive number of pleadings;<sup>377</sup> w) delay by a ministry in filing pleadings<sup>378</sup> or by the prosecutor in filing his submissions or asking for the case to be referred to the combined divisions of the Court of Audit,<sup>379</sup> x) failure to communicate the date of a hearing to one of the parties;<sup>380</sup> y) delay in fixing the date of the trial, or choice of a date too far in the future;<sup>381</sup> z) hearings that are too numerous or too few and far between or which are adjourned *proprio motu* owing, for example, to the transfer of a lawyer;<sup>382</sup> a') an excessive interval between two interlocutory judgments;<sup>383</sup> b') a long suspension of proceedings pending the outcome of another set of

364. *Corigliano v. Italy*, 10 Dec. 1982, §47.

365. *G. v. Italy* and *Barbagallo v. Italy*, 27 Feb. 1992, §17 and §16 respectively.

366. *H. v. France*, 24 Oct. 1989, §56.

367. *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §44.

368. *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.

369. *Dobbetin c. France*, 25 Feb. 1993; *Tusa v. Italy*, 27 Feb. 1992, §44.

370. *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.

371. *Barbagallo v. Italy*, 27 Feb. 1992, §17; *Pandolfelli and Palumbo v. Italy*, 27 Feb. 1992, §17; *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.

372. *Barbagallo v. Italy*, 27 Feb. 1992, §17.

373. *Cooperativa Parco Cuma v. Italy*, 27 Feb. 1992, §18.

374. *Yağcı and Sargın v. Turkey*, 8 June 1995, §69.

375. *Serrentino v. Italy*, 27 Feb. 1992, §18.

376. *Cifola v. Italy*, 27 Feb. 1992, §16.

377. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §104.

378. *Beaumont v. France*, 24 Jan. 1994, §33; *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.

379. *Francesco Lombardo v. Italy* and *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §22 in each case.

380. *Tumminelli v. Italy*, 27 Feb. 1992, §17.



proceedings or owing to a shortage of registry staff;<sup>384</sup> c') a court's failure to use its powers to order the production of evidence of vital importance<sup>385</sup> or to use its statutory powers to expedite proceedings in a particularly urgent case;<sup>386</sup> d') a long period between declaring that a case is ready for decision and giving judgment<sup>387</sup> or between the reception by an administrative court of an opinion that it has sought from the Conseil d'État and the notification of its own judgment;<sup>388</sup> e') delay in drawing up a judgment after it has been delivered,<sup>389</sup> in serving it,<sup>390</sup> or, in Italy, in filing it with the registry;<sup>391</sup> f') inertia of the competent administrative authorities in enforcing an eviction order against a tenant;<sup>392</sup> g') the handing-over

381. *Neumeister v. Austria*, 27 June 1968, §20; *König v. the Federal Republic of Germany* (merits), 28 June 1978, §110; *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §92; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §36; *H. v. France*, 24 Oct. 1989, §56; *Pugliese v. Italy* (No. 1), 19 Feb. 1991, §19; *Caleffi v. Italy*, 24 May 1991, §17; *Nibbio* (§18), *Borgese* (§18), *Biondi* (§18), *Monaco* (§17) *v. Italy*, 26 Feb. 1992; *Manifattura FL* (§18), *Steffano* (§16), *Vorrasi* (§17), *Gana* (§16), *Cifola* (§16), *Pandolfelli and Palumbo* (§17), *Cooperativa Parco Cuma* (§18), *Serrentino* (§18) *v. Italy*, 27 Feb. 1992; *Salerno v. Italy*, 12 Oct. 1992, §20; *Olsson v. Sweden* (No. 2), 27 Nov. 1992, §103; *Salesi v. Italy*, 26 Feb. 1993, §24; *Massa v. Italy*, 24 Aug. 1993, §30; *Vallée v. France*, 26 Apr. 1994, §48; *Karakaya v. France*, 26 Aug. 1994, §44; *Beaumontin v. France*, 24 Jan. 1994, §33; *Terranova v. Italy*, 4 Dec. 1995, §22.
382. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§59, 60 and 63; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §42; *Santilli v. Italy*, 19 Feb. 1991, §20; *Mastrantonio, Taiuti, Caffè Roversi S.p.a., Cifola, Tumminelli v. Italy*, 27 Feb. 1992, §17, §17, §18, §16 and §17 respectively; *Scopelliti v. Italy*, 23 Nov. 1993, §24; *Yağcı and Sargin v. Turkey*, 8 June 1995, §69; *Circosta and Viola v. Italy*, 4 Dec. 1995, §28.
383. *Karakaya v. France*, 26 Aug. 1994, §44.
384. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§24 and 110; *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §22; *Circosta and Viola v. Italy*, 4 Dec. 1995, §28.
385. *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.
386. *X v. France*, 31 Mar. 1992, §§47-48; *Vallée v. France*, 26 Apr. 1994, §48; *Karakaya v. France*, 26 Aug. 1994, §43.
387. *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §36; *Biondi v. Italy*, 26 Feb. 1992, §18; *De Moor v. Belgium*, 23 June 1994, §67.
388. *Vallée v. France*, 26 Apr. 1994, §48.
389. *B. v. Austria*, 28 Mar. 1990, §52; *Massa v. Italy*, 24 Aug. 1993, §16.
390. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §84; *Karakaya v. France*, 26 Aug. 1994, §44.
391. *Monaco v. Italy and Lestini v. Italy*, 26 Feb. 1992, §17 and 18 respectively; *Ridi* (§17), *Idrocalce S.R.L.* (§18), *Taiuti* (§17), *Manifattura FL* (§18), *Steffano* (§16), *Ruotolo* (§17), *Cappello* (§17), *Gana* (§16), *Pandolfelli and Palumbo* (§17), *Tusa* (§17), *Cooperativa Parco Cuma* (§18), *Serrentino* (§18), *Lorenzi, Bernardini and Gritti* (§16) *v. Italy*, 27 Feb. 1992; *Salerno v. Italy*, 12 Oct. 1992, §20; *Salesi v. Italy*, 26 Feb. 1993, §24; *Scuderi v. Italy*, 24 Aug. 1993, §16; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §61; *Terranova v. Italy*, 4 Dec. 1995, §22.



to other courts of the original evidence in the file instead of simply photocopies;<sup>393</sup> h') delay by a minister in filing an appeal<sup>394</sup> or filing his pleadings;<sup>395</sup> i') delay by a registry in sending a case-file to a higher court or another division sitting in a different city;<sup>396</sup> j') lengthy proceedings – thirteen years or so, including more than six after the Convention's entry into force – resulting in the finding that an action was statute-barred;<sup>397</sup> k') more generally, long periods of "inactivity" or "stagnation";<sup>398</sup> l') conversely, a certain amount of overzealousness. In the case of *Bock v. the Federal Republic of Germany* the competent courts spent years considering the applicant's mental capacity to take legal proceedings. The Court noted that they had displayed "not so much a lack of judicial activity as an excessive amount of activity which focused on the petitioner's mental state".

392. *Scollo v. Italy*, 28 Sept. 1995, §44.

393. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§104 and 110. The Court could have made this criticism on many occasions but failed to do so, which is regrettable.

394. *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §16.

395. *Vallée v. France*, 26 Apr. 1994; §48; *Karakaya v. France*, 26 Aug. 1994, §40.

396. *Foti and others v. Italy* (merits), *Corigliano v. Italy*, 10 Dec. 1982, §75 and §49 respectively; *Lechner and Hess v. Austria*, 23 Apr. 1987, §§55-56; *Martins Moreira v. Portugal*, 26 Oct. 1988, §52; *Casciaroli v. Italy*, 27 Feb. 1992, §18; *Abdoella v. the Netherlands*, 25 Nov. 1992, §§23-25; *Bunkate v. the Netherlands*, 26 May 1993, §22; *Francesco Lombardo v. Italy*, 26 Nov. 1992, §22; *Terranova v. Italy*, 4 Dec. 1995, §22.

397. *Neves e Silva v. Portugal*, 27 Apr. 1989, §45. See also *Paccione v. Italy*, 27 Apr. 1995, §20: almost seven years to find an appeal inadmissible, subsequent to an investigation of the subject-matter of the dispute.

398. *Foti and others v. Italy* (merits) and *Corigliano v. Italy*, 10 Dec. 1982, §68 and §47 respectively; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §§27 and 32; *Guincho v. Portugal*, 10 July 1984, §§35-36; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §§81, 82, 84, 87 and 88; *Poiss v. Austria* (merits) and *Lechner and Hess v. Austria*, 23 Apr. 1987, §59 and §§54, 56, 57 and 59 respectively; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §36; *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §73; *Santilli* (§20), *Pugliese (No. 1)* (§16), *Alimena* (§17), *Ficara* (§17), *Angelucci* (§15), *Girolami* (§15), *Ferraro* (§17), *Adiletta and others v. Italy*, 19 Feb. 1991; *Phillis v. Greece*, 27 Aug. 1991, §17; *Nibbio, Borgese, Biondi, Lestini v. Italy*, 26 Feb. 1992, §18 in each case; *Diana* (§17), *Ridi* (§17), *Casciaroli* (§18), *Manieri* (§18), *Mastrantonio* (§17), *Idrocalce S.R.L.* (§18), *Golino* (§17), *Taiuti* (§17), *Manifattura FL* (§18), *Vorrasi* (§17), *Cappello* (§17), *Gana* (§16), *Barbagallo* (§17), *Cifola* (§16), *Pierazzini* (§18), *Tusa* (§17), *Cooperativa Parco Cuma* (§18), *Serrentino* (§18), *Lorenzi, Bernardini and Gritti* (§16), *Tumminelli* (§17) *v. Italy*, 27 Feb. 1992; *Tomasi v. France*, 27 Aug. 1992, §125; *Cesarini v. Italy* and *Salerno v. Italy*, 12 Oct. 1992, §20 and §21 respectively; *Pizzetti, De Micheli, Salesi, Trevisan v. Italy*, 26 Feb. 1993, §18, §20, §24 and §18 respectively; *Ruiz-Mateos v. Spain*, 23 June 1993, §§47 and 49; *Massa v. Italy*, 24 Aug. 1993, §30; *Muti v. Italy*, 23 Mar. 1994, §17; *De Moor v. Belgium*, 23 June 1994, §66; *Beaumont v. France*, 24 Jan. 1994, §33; *Allenet de Ribemont v. France*, 10 Feb. 1995, §56.





Yet, “in principle, national courts have to proceed on the basis that a prospective or actual plaintiff is not suffering from mental incapacity. Should any reasonable doubt arise in this regard, they have to clarify as soon as possible the extent to which he is competent to conduct legal proceedings”; in this particular case they proved unable “to ensure a swift determination thereof”.<sup>399</sup>

**ii. Other national authorities, including the government and legislature**

In its *Moreira de Azevedo v. Portugal* judgment of 23 October 1990 the Court “notes that the State is responsible for all its authorities and not merely its judicial organs”.<sup>400</sup>

In a number of cases respondent governments have pleaded genuine problems encountered by their courts: local political unrest;<sup>401</sup> an increase in the volume of employment litigation in Germany as a result of an economic recession;<sup>402</sup> a growth in economic crime in that country,<sup>403</sup> a backlog of cases in sundry courts (in Switzerland,<sup>404</sup> Austria,<sup>405</sup> Spain,<sup>406</sup> France,<sup>407</sup> Portugal<sup>408</sup> and especially Italy<sup>409</sup>); problems arising out of the return to democracy of Spain<sup>410</sup> and Portugal in a tense situation, made

399. *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §§36-48.

400. *Moreira de Azevedo v. Portugal*, 23 Oct. 1990, §73.

401. *Foti and others v. Italy* (merits), 10 Dec. 1982, §§10 and 61; *Milasi v. Italy*, 25 June 1987, §§17 and 19; *Acquaviva v. France*, 21 Nov. 1995, §§56, 57 and 60.

402. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §51.

403. *Eckle v. the Federal Republic of Germany* (merits), 15 July 1982, §§85 and 92.

404. *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §28.

405. *B. v. Austria*, 28 Mar. 1990, §54.

406. *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §40.

407. *H. v. France*, 24 Oct. 1989, §56; *Hentrich v. France* (merits), 22 Sept. 1994, §61.

408. *Martins Moreira v. Portugal*, 26 Oct. 1988, §53.

409. *Baggetta v. Italy*, 25 June 1987, §22; *Pugliese v. Italy* (No. 2) and *Caleffi v. Italy*, 24 May 1991, §§18-19 and §17 respectively; *Philis v. Greece*, 27 Aug. 1991, §17; *Nibbio, Borgese, Biondi, Monaco, Les-tini v. Italy*, 26 Feb. 1992, §17, §18, §18, §17 and §18 respectively; *Diana* (§17), *Ridi* (§17), *Casciaroli* (§18), *Mastrantonio* (§17), *Cardarelli* (§17), *Golino* (§17), *Taiuti* (§17), *Maciariello* (§17), *Steffano* (§16), *Ruotolo* (§17), *Cappello* (§17), *Caffè Roversi S.p.a.* (§18), *Gana* (§16), *Barbagallo* (§17), *Tusa* (§17), *Cooperativa Parco Cuma* (§18), *Lorenzi, Bernardini and Gritti* (§16) v. *Italy*, 27 Feb. 1992; *Francesco Lombardo v. Italy* and *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §23 and §22 respectively; *Pizzetti, De Micheli, Salesi v. Italy*, 26 Feb. 1993, §18, §18 and §24 respectively; *Scuderi v. Italy* and *Massa v. Italy*, 24 Aug. 1993, §16 and §31 respectively; *Muti v. Italy*, 23 Mar. 1994, §15.

410. *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §§37-41.



even more sensitive, in the latter case, by decolonisation (that is, a mass influx of settlers being repatriated), an economic crisis and a shortage of judges to provide all desirable safeguards;<sup>411</sup> etc.

The Court is not indifferent to such considerations. It “is not unaware of the difficulties which sometimes delay the hearing of cases by national courts”.<sup>412</sup> However, it still submits compliance with the reasonable-time requirement to close scrutiny: in its opinion Article 6§1 shows the importance that the Convention attaches to “rendering justice without delays which might jeopardise its effectiveness and credibility”.<sup>413</sup>

It has thus established a doctrine combining flexibility with firmness, and understanding with vigilance:

The Convention places a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 paragraph 1, including that of trial within a “reasonable time”. Nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided they have taken reasonably prompt remedial action to deal with an exceptional situation of this kind.<sup>414</sup>

Among the remedies commonly employed to this end are creation of new posts for judges, registrars and secretaries, establishment of additional chambers, drawing up an order of priority for dealing with cases, and, if necessary, legislative reform. As already emphasised, it is not of course the Court’s duty to suggest these remedies; on the other hand, it is responsible for determining whether they are effective, having regard, amongst other things, to whether the state of affairs is purely temporary or, on the contrary, a problem of organisation. In its *Buchholz v. the Federal Republic of Germany* judgment of 6 May 1981 the Court acknowledged that the respondent government had been “fully conscious of their responsibilities” and had made praiseworthy efforts to expedite the con-

411. *Guincho v. Portugal*, 10 July 1984, §37; *Neves e Silva v. Portugal*, 27 Apr. 1989, §§44-45; *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §74.

412. *H v. France*, 24 Oct. 1989, §58; *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §74; *Vernillo v. France*, 20 Feb. 1991, §38.

413. *Ibid.*



duct of business before the labour courts,<sup>415</sup> but in other cases it has been forced to draw the opposite conclusion: it has been obliged to find that a contracting state has not acted soon enough, or on a sufficient scale, to meet its obligations in the relevant field.<sup>416</sup>

More generally a state cannot plead that a similar, or worse, situation obtains in this field abroad<sup>417</sup> or take refuge in either the shortcomings of its domestic legislation or the latter's perfectionism, as illustrated by the *König* judgment of 28 June 1978. The Court here emphasised that it was not its function "to express an opinion on the German system of procedure before administrative courts which ... enjoys a long tradition"; admittedly it "may appear complex on account of the number of courts and remedies, but ... the explanation for this situation is to be found in the eminently praiseworthy concern to reinforce the guarantees of individual rights. Should these efforts result in a procedural maze, it is for the State alone to draw the conclusions and, if need be, to simplify the system with a view to complying with Article 6, paragraph 1 of the Convention."<sup>418</sup>

414. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §51; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §§29-31; *Guincho v. Portugal*, 10 July 1984, §§38 and 40; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §82; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §41; *Brigandi, Zanghi, Santilli v. Italy*, 19 Feb. 1991, §30, §21 and §20 respectively; *Pugliese v. Italy (No. 2)* and *Caleffi v. Italy*, 24 May 1991, §19 and §17 respectively; *Philis v. Greece*, 27 Aug. 1991, §17; *Nibbio, Biondi, Monaco, Lestini v. Italy*, 26 Feb. 1992, §17, §18, §17 and §18 respectively; *G. (S17)*, *Andreucci (S17)*, *Diana (S17)*, *Ridi (S17)*, *Casciaroli (S18)*, *Manieri (S18)*, *Mastrantonio (S17)*, *Cardarelli (S17)*, *Golino (S17)*, *Taiuti (S17)*, *Maciariello (S17)*, *Manifattura FL (S18)*, *Steffano (S16)*, *Ruotolo (S17)*, *Vorrasi (S17)*, *Cappello (S17)*, *Caffè Roversi S.p.a. (S18)*, *Gana (S16)*, *Barbagallo (S17)*, *Pandolfelli and Palumbo (S17)*, *Pierazzini (S18)*, *Tusa (S17)*, *Cooperativa Parco Cuma (S18)*, *Lorenzi, Bernardini and Gritti (S16)*, *Tumminelli (S17) v. Italy*, 27 Feb. 1992; *Abdoella v. the Netherlands*, 25 Nov. 1992, §24; *Bunkate v. the Netherlands*, 26 May 1993, §23; *Francesco Lombardo v. Italy* and *Giancarlo Lombardo v. Italy*, 26 Nov. 1992, §22 and §21 respectively; *Dobbertin v. France*, 25 Feb. 1993, §44; *Pizzetti, De Micheli, Salesi, Trevisan v. Italy*, 26 Feb. 1993, §21, §20, §24 and §18 respectively; *Ruiz-Mateos v. Spain*, 23 June 1993, §48; *Scuderi v. Italy* and *Massa v. Italy*, 24 Aug. 1993, §16 and §31 respectively; *Muti v. Italy*, 23 Mar. 1994, §15; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §67; *Mansur v. Turkey*, 8 June 1995, §68.

415. *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§61 and 63.

416. *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §§29-31; *Guincho v. Portugal*, 10 July 1984, §§37-41; *Baggetta v. Italy* and *Milasi v. Italy*, 25 June 1987, §§22 and 24, and §§17-18 respectively; *Martins Moreira v. Portugal*, 26 Oct. 1988, §53; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §§37-42; *B. v. Austria*, 28 Mar. 1990, §54; *Moreira de Azevedo v. Portugal (merits)*, 23 Oct. 1990, §§73-75.

417. *Martins Moreira v. Portugal*, 26 Oct. 1988, §54.



A wealth of remedies in a domestic legal system may therefore sometimes turn out to be a two-edged sword: while it may have a positive effect on the quality of the legal system it may also have a negative effect on the length of proceedings.

In the case of *Dobbertin v. France* the Court noted that in abolishing the National Security Court and then the Paris Military Court, the authorities had taken no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly;<sup>419</sup> in *Vallée v. France* the Court seems to have agreed with the applicant, who had complained of the lengthy interval between the publication of Law No. 91-1406 of 31 December 1991 and the implementing decree (No. 93-906) of 12 July 1993;<sup>420</sup> in *Foti and others v. Italy* it noted that one of the applicants had criticised Parliament for having delayed waiving the parliamentary immunity of a member of the Chamber of Deputies involved in the prosecution, but it declined to rule on the merits of the complaint;<sup>421</sup> in *Wiesinger v. Austria* it was of the opinion that violation of Article 6 paragraph 1 had arisen above all from "the lack of co-ordination between the various [public] authorities concerned" in land consolidation proceedings;<sup>422</sup> lastly, its *Mansur v. Turkey* judgment noted, in addition to unintelligible conduct of proceedings, "a breakdown of communications between the various State departments concerned".<sup>423</sup>

### 3. A specific assessment or an overall assessment

Between the various considerations – complexity, what is at stake and the conduct of the parties – which do not necessarily all point the same way, there are not, of course, any watertight divisions. For example, the conduct of the parties may increase the complexity of proceedings, while the seriousness of what is at stake requires the relevant authorities to

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418. *König v. the Federal Republic of Germany* (merits), 28 June 1978, §100.

419. *Dobbertin v. France*, 25 Feb. 1993, §44.

420. *Vallée v. France*, 26 Apr. 1994, §§42 and 44.

421. *Foti and others v. Italy* (merits), 10 Dec. 1982, §63.

422. *Wiesinger v. Austria*, 30 Oct. 1991, §§61-64.

423. *Mansur v. Turkey*, 8 June 1995, §§64 and 68.



exercise special diligence, which may also concern the parties. Having considered a case using the standard criteria of complexity of proceedings, what is at stake, and conduct of the parties, the Court makes an overall assessment.<sup>424</sup> Since its *Obermeier v. Austria* judgment of 28 June 1990<sup>425</sup> it has actually been in the habit of making this “overall assessment” straight away;<sup>426</sup> it continues, however, to use its customary method of specific analysis in less straightforward cases.<sup>427</sup>

As an example, in the *Obermeier* case the applicant had instituted proceedings with a view to obtaining a judicial decision on the lawfulness of

424. For example: *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§105 and 111; *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §63; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §32; *Pretto and others v. Italy*, 8 Dec. 1983, §37; *Guincho v. Portugal*, 10 July 1984, §41; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §90; *Erkner and Hofauer v. Austria* (merits), *Poiss v. Austria* (merits) and *Lechner and Hess v. Austria*, 23 Apr. 1987, §70, §60 and §59 respectively; *Capuano, Baggetta, Milasi v. Italy*, 25 June 1987, §35, §25 and §20 respectively; *H. v. the United Kingdom* (merits), 8 July 1987, §86; *Baraona v. Portugal*, 8 July 1987, §57; *Martins Moreira v. Portugal*, 26 Oct. 1988, §61; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §49; *Neves e Silva v. Portugal*, 27 Apr. 1989, §46; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §42; *H. v. France*, 24 Oct. 1989, §59; *Vernillo v. France*, 20 Feb. 1991, §15; *Wiesinger v. Austria*, 30 Oct. 1991, §64; *Kemmache v. France (Nos. 1 and 2)* (merits), 27 Nov. 1991, §71; *Nibbio, Borgese, Biondi, Monaco, Lestini v. Italy*, 26 Feb. 1992; *G., Andreucci, Arena, Cormio, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, Caffè Roversi S.p.a., Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Lorenzi-Bernardini-Gritti, Tumminelli v. Italy*, 27 Feb. 1992; *X. v. France*, 31 Mar. 1992, §49; *Ruiz-Mateos v. Spain*, 23 June 1993, §53; *Monnet v. France*, 27 Oct. 1993, §34; *Vallée v. France*, 26 Apr. 1994, §49; *Karakaya v. France*, 26 Aug. 1994, §45; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §62; *Allenet de Ribemont v. France*, 10 Feb. 1995.

425. *Obermeier v. Austria*, 28 June 1990, §72.

426. For example: *Brigandi, Zanghi, Santilli, Motta, Manzoni, Pugliese (No. 1), Alimena, Frau, Ficara, Viezzer, Angelucci, Maj, Girolami, Ferraro, Triggiani, Mori, Colacioppo, Adiletta and others v. Italy*, 19 Feb. 1991; *Editions Périscope v. France*, 26 Mar. 1992, §44; *Boddaert v. Belgium*, 12 Oct. 1992; *Tomasi v. France*, 27 Aug. 1992, §125; *Cesarini v. Italy*, 12 Oct. 1992; *Francesco Lombardo v. Italy*, 26 Nov. 1992; *Dobbertin v. France*, 25 Feb. 1993, §39; *Pizzetti, Salesi, Trevisan, Billi, Messina v. Italy*, 26 Feb. 1993; *Scuderi v. Italy*, 24 Aug. 1993; *Darnell v. the United Kingdom*, 26 Oct. 1993; *Scopelliti v. Italy*, 23 Nov. 1993; *Muti v. Italy*, 23 Mar. 1994; *Vendittelli v. Italy*, 18 July. 1994; *Hentrich v. France* (merits), 22 Sept. 1994, §59; *Beaumartin v. France*, 24 Jan. 1994, §31; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §55; *Paccione v. Italy*, 27 Apr. 1995, §18, etc. The Court has also adopted this approach implicitly in a large number of judgments.

427. *Vernillo v. France*, 20 Feb. 1991; *Wiesinger v. Austria*, 30 Oct. 1991; *Kemmache v. France (Nos. 1 and 2)* (merits), 27 Nov. 1991; *X. v. France*, 31 Mar. 1992; *Ruiz-Mateos v. Spain*, 23 June 1993; *Monnet v. France*, 27 Oct. 1993; *Vallée v. France*, 26 Apr. 1994; *Karakaya v. France*, 26 Aug. 1994; *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994; *Allenet de Ribemont v. France*, 10 Feb. 1995; *Yağcı and Sargin v. Turkey*, 8 June 1995; *Mansur v. Turkey*, 8 June 1995; *Acquaviva v. France*, 21 Nov. 1995; *Ciricosta and Viola v. Italy*, 4 Dec. 1995; *Terranova v. Italy*, 4 Dec. 1995.



his suspension by his employer; nine years later no final judgment had been given. The Court held that “in this instance, [the particular circumstances of the case] call for a global assessment, so that the Court does not consider it necessary to consider these questions [that is, the usual criteria] in detail” and concluded “that a period of nine years without reaching a final decision exceeds a reasonable time”.<sup>428</sup>

Mere delays that “could probably have been avoided” are not enough for the Court to find a breach of Article 6§1; delays must be considered “sufficiently serious” for “the permissible limit” to have been overstepped.<sup>429</sup> On the other hand, delays which may possibly be acceptable as long as they are considered separately and in isolation may reveal a violation if viewed cumulatively and in combination.<sup>430</sup>

For example, in *Ruotolo* the issue was the length of the proceedings brought by the applicant following his dismissal, proceedings that had lasted over twelve years and undergone several periods of abeyance. The Court began by stating:

The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court’s case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

The overall assessment led to the following finding:

Viewed separately, several of the delays observed may appear normal; however, having regard to the sum of such periods and several delays for which the competent courts were responsible ... the Court considers an overall lapse of time of more than twelve years excessive.<sup>431</sup>

428. *Obermeier v. Austria*, 28 June 1990, §72.

429. *Pretto and others v. Italy*, 8 Dec. 1983, §37; *H. v. France*, 24 Oct. 1989, §57; *Vernillo v. France*, 20 Feb. 1991, §39; *G., Andreucci, Arena, Cormio, Ruotolo v. Italy*, 27 Feb. 1992, §§17-18, §§17-18, §16-17 and §17 respectively; *Cesarini v. Italy* and *Salerno v. Italy*, 12 Oct. 1992, §20 and §21 respectively; *Francesco Lombardo v. Italy*, 26 Nov. 1992, §23; *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §103.

430. *König v. the Federal Republic of Germany (merits)*, 28 June 1978, §105; *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §90; *Erkner and Hofauer v. Austria (merits)* and *Poiss v. Austria*, 23 Apr. 1987, §§69 (penultimate paragraph, last sentence) and 70, and §60 respectively; *Ruotolo v. Italy*, 27 Feb. 1992, §17.

431. *Ruotolo v. Italy*, 27 Feb. 1992, §17.



In weighing the arguments on both sides the Court sometimes uses criteria not mentioned so far:

- the duration of the proceedings, viewed in itself and overall, especially if the respondent government has provided no explanations;<sup>432</sup>
- recognition by the state involved that it is at fault;<sup>433</sup>
- the number of levels of jurisdiction to which a case has been referred;<sup>434</sup>
- the outcome of the proceedings, at least in the case of an out-of-court settlement<sup>435</sup> or amnesty;<sup>436</sup>
- “the fair balance which has to be struck between the various aspects of [the] fundamental requirement” laid down in Article 6§1: “expeditious judicial proceedings” are only one element of “the more general principle of the proper administration of justice”.<sup>437</sup>

Thus a case’s “political context”, when it has “an impact on the course of [an] investigation” triggered by a complaint combined with an application to join the proceedings as a civil party, “may justify delays in proceedings”, for “Article 6, paragraph 1 is intended above all to secure the interests of the defence and those of the proper administration of justice”.<sup>438</sup> Conversely, the need to comply with the reasonable-time require-

432. *Obermeier v. Austria*, 28 June 1990, §72; *Brigandi* (§30), *Zanghi* (§21), *Motta* (§17), *Manzoni* (§18), *Viezzar* (§17), *Triggiani* (§17), *Mori* (§16), *Colacioppo* (§15) *v. Italy*, 19 Feb. 1991; *G., Andreucci, Arena v. Italy*, 27 Feb. 1992, §17 in each case; *Editions Périscope v. France*, 26 Mar. 1992, §44; *Messina v. Italy*, 26 Feb. 1993, §28; *Darnell v. the United Kingdom*, 26 Oct. 1993, §21; *Allenet de Ribemont v. France*, 10 Feb. 1995, §57.

433. *Darnell v. the United Kingdom*, 20 Oct. 1993, §20.

434. *Brigandi v. Italy*, 19 Feb. 1991, §30 (several levels); *Manieri, Mastrantonio, Cooperativa Parco Cuma, Tumminelli v. Italy*, 27 Feb. 1992, §19 (one level of jurisdiction), §18 (proceedings still pending at first instance), §19 (case still pending at first instance), and §18 (proceedings still at investigation stage) respectively; *Cesarini v. Italy and Salerno v. Italy*, 12 Oct. 1992, §20 (three levels) and §21 (ditto) respectively; *Abdoella v. the Netherlands*, 25 Nov. 1992, §22 (five levels); *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §§105 and 106 (three levels); *De Micheli, Billi, Messina v. Italy*, 26 Feb. 1993, §21 (only one level), §20 (ditto), and §28 (case still pending at first instance) respectively; *Raimondo v. Italy*, 22 Feb. 1994, §44 (two levels); *Vendittelli v. Italy*, 18 July 1994, §29 (ditto); *Hokkanen v. Finland*, 23 Sept. 1994, §72 (three levels).

435. *Cormio v. Italy*, 27 Feb. 1992, §§16-17.

436. *Vendittelli v. Italy*, 18 July 1994, §29.

437. *Boddaert v. Belgium*, 12 Oct. 1992, §39.

438. *Acquaviva v. France*, 21 Nov. 1995, §66.



ment may argue against “systematically holding hearings” before a supreme court<sup>439</sup> or affect how the “objective” impartiality of a magistrate (*pretore*) acting under an immediate-trial procedure (*giudizio direttissimo*) should be determined.<sup>440</sup>

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439. *Schuler-Zraggen v. Switzerland*, 24 June 1993, §58.

440. *Padovani v. Italy*, 26 Jan. 1993, §28.





## **Chapter III. An obligation under Article 6§1, Article 13 and Article 35§1**

### **– establishing an effective domestic remedy for unreasonably long proceedings**

Under Article 13,

[e]veryone whose rights and freedoms as set forth in th[e] Convention are violated shall have an effective remedy before a national authority.

Article 6§1, for its part, safeguards an individual's right to a hearing within a reasonable time. Consequently, if litigants or defendants consider that their right to have their case heard within a reasonable time has been infringed, they must have available an effective remedy before a national authority in the domestic legal system enabling the violation to be punished. Such an inference, although it would appear logical, is nonetheless relatively recent.

It applies the subsidiarity principle laid down in Article 35, whereby “the Court may only deal with the matter after all domestic remedies have been exhausted”: a litigant or defendant is justified in complaining to the European Court of a failure to comply with the reasonable-time requirement only if there are no domestic remedies or they are not sufficiently effective. The case-law arising out of Article 35 can thus help to clarify the criteria for determining whether a domestic remedy is effective here.



## I. ARTICLE 6§1 AND ARTICLE 13

While European countries are under an obligation to establish a remedy before a national authority for alleged violations of the reasonable-time requirement, they are nevertheless free to choose the type of remedy, whether it is designed to prevent unreasonably long proceedings or offer redress, or both.

### 1. The obligation to establish a remedy before a national authority for an alleged violation of the reasonable-time requirement

It is only since 2000 that, under the Court's case-law, European states have been obliged to establish an effective remedy before a national authority for alleged judicial delay: before that the Court held that a judgment against a state for violation of Article 6§1 (guaranteeing the right to a hearing within a reasonable time) made it unnecessary to examine a complaint under Article 13 to the effect that the applicant had not had a remedy enabling him or her to challenge non-compliance with the reasonable-time rule before a domestic authority.<sup>441</sup>

In 2000 the Court was prompted to change its interpretation of the relationship between these two articles, in particular owing to the steep rise in individual applications being lodged with it: between 1988 and 2000 the number of individual applications registered by the Court rose from 4 044 to 26 398, an increase of more than 500%; in addition, of the 695 judgments on the merits delivered in 2000, 485 – 70% – related to excessive length of proceedings. This upsurge has continued: in 2004 the number of individual applications actually rose to 40 943<sup>442</sup> and, by the end of 2006, to almost 90 000.

It was in the context of this backlog that the Court delivered an extremely important judgment, *Kudła v. Poland*, on 26 October 2000. The Court there adopted the following position:

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441. Regarding the non-applicability of Article 13 to judicial proceedings and decisions, see, for example, *Pizzetti v. Italy*, 26 Feb. 1993, §20, and in particular the Commission's report of 10 Dec. 1991, Appendix, §41.



In the Court's view, the time has come to review its case-law in the light of the continuing accumulation of applications before it in which the only, or principal, allegation is that of a failure to ensure a hearing within a reasonable time in breach of Article 6 paragraph 1. 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".<sup>443</sup>

Thus

Article 13, giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the *travaux préparatoires* ... is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6§1.<sup>444</sup>

In view of the foregoing considerations the Court considers that the correct interpretation of Article 13 is that that provision guarantees an effec-

442. See in particular: lecture by the President of the Court, Luzius Wildhaber, on 21 June 1999 (*RUDH*, 1999, p. 343); Recommendation 1535 (2001) of the Parliamentary Assembly of the Council of Europe, 26 September 2001; report by L. Nabholz-Haidegger to the Parliamentary Assembly of the Council of Europe, doc. 9200, 17 September 2001; report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, 27 September 2001; report on the audit of the European Court of Human Rights, 3 August 2001; Committee of Ministers of the Council of Europe, "Guaranteeing the long-term effectiveness of the European Court of Human Rights", declaration of 15 May 2003; Steering Committee for Human Rights, final report of 21 March 2003.

443. *Kudła v. Poland*, 26 Oct. 2000, §148; the following case-law is cited: "see, for example, *Bottazzi v. Italy*, §22; *Di Mauro v. Italy*, §23; *A.P. v. Italy*, §18; *Ferrari v. Italy*, §21".

444. *Kudła v. Poland*, 26 Oct. 2000, §152.



tive remedy before a national authority for an alleged breach of the requirement under Article 6§1 to hear a case within a reasonable time.<sup>445</sup>

If such a remedy is not available the Court will find a breach of Article 13, either without ruling on Article 6§1 or in addition to a judgment against the state under Article 6§1.

## **2. Freedom to establish a domestic appeal: for preventing and/or offering redress for unreasonably long proceedings**

As stated in the *Kudła* judgment, “the Contracting States – as the Court has held on many previous occasions – are afforded some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision”.<sup>446</sup> The Court thus allows the contracting states a certain degree of freedom regarding the type of effective remedy to be introduced.

In its *Scordino v. Italy* judgment of 29 March 2006, and eight other judgments delivered on the same date on the same subject,<sup>447</sup> the European Court was more informative on this point, providing an answer to some countries’ uncertainties in something of a “pilot” judgment as referred to by Council of Europe Committee of Ministers’ Resolution Res (2004) 6 accompanying the adoption of Protocol No. 14 to the European Convention of Human Rights. It is worth reproducing the judgment at some length:

In so far as the parties ... seek guidelines on affording the most effective domestic remedies possible, the Court proposes to address the question in a wider context by giving certain indications as to the characteristics which such a domestic remedy should have, having regard to the fact that, in this type of case, the applicant’s ability to claim to be a victim will depend on the redress which the domestic remedy will have given him or her.

445. *Ibid.*, §156.

446. *Ibid.*, §154.

447. *Scordino (No. 1), Riccardi Pizzati, Musci, Giuseppe Mostacciuolo (Nos. 1 and 2), Cocchiarella, Apicella, Ernestina Zullo, Giuseppina and Orestina Procaccini v. Italy*, 29 Mar. 2006.



The best solution in absolute terms is indisputably, as in many spheres, prevention. The Court recalls that it has stated on many occasions that Article 6§1 imposes on the 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 hear cases within a reasonable time.<sup>448</sup> Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy of the type provided for under Italian law for example.

The Court has on many occasions acknowledged that this type of remedy is “effective” in so far as it hastens the decision by the court concerned.<sup>449</sup>

It is also clear that for countries where length-of-proceedings violations already exist, a remedy designed to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long.

Different types of remedy may redress the violation appropriately. The Court has already affirmed this in respect of criminal proceedings, where it was satisfied that the length of proceedings had been taken into account when reducing the sentence in an express and measurable manner.<sup>450</sup>

Moreover, some States, such as Austria, Croatia, Spain, Poland and the Slovak Republic, have understood the situation perfectly by choosing to

448. The Court here adds, in parentheses: “see, among many other authorities, *Süßmann v. Germany*, judgment of 16 Sept.1996, §55, and *Bottazzi*, cited above, §22”.

449. The Court here adds, in parentheses: “see, among other authorities, *Bacchini v. Switzerland* (dec.), no. 62915/00, 21 June 2005; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; *Fehr and Lauterburg v. Switzerland* (dec.), nos. 708/02 and 1095/02, 21 June 2005; *Holzinger (No. 1)*, cited above, §22; *González Marín v. Spain* (dec.), no. 39521/98, ECHR 1999-VII and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX”.

450. The Court here adds, in parentheses: “see *Beck v. Norway*, no. 26390/95, §27, 26 June 2001”.



combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation.<sup>451</sup>

However, States can also choose to introduce only a compensatory remedy, as Italy has done, without that remedy being regarded as ineffective.<sup>452</sup>

The Court has already had occasion to reiterate in the *Kudła v. Poland* judgment<sup>453</sup> that, subject to compliance with the requirements of the Convention, the Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. It has also stressed the importance of the rules relating to the subsidiarity principle so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court's opinion more appropriately, have been addressed in the first place within the national legal system.

Accordingly, where the legislature or the domestic courts have agreed to play their true role by introducing a domestic remedy the Court will clearly have to draw certain conclusions from this.

Where a State has made a significant move by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. It will, in particular, be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – personal injury, damage relating to a relative's death or damage in defamation cases for example – and rely on their innermost conviction, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases ....

451. The Court here adds, in parentheses: "see, for example, *Holzinger (No. 1)*, cited above, §22; *Slavicek v. Croatia* (dec.), no. 20862/02, *Fernández-Molina González and others v. Spain* (dec.), no. 64359/01; *Michalak v. Poland* (dec.), no. 24549/03, 1 Mar. 2005; *Andrášik and others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01".

452. The Court here adds, in parentheses: "see *Mifsud*, cited above".

453. The Court here adds, in parentheses: "cited above, §§154-155".



The principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by Article 6 would be devoid of any substance. In that connection it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective.<sup>454</sup> This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under Article 6.<sup>455 456</sup>

In fact, various types of possible remedy for excessively long proceedings exist in Council of Europe member states. An overview has been compiled by the Steering Committee for Human Rights in connection with implementation of Recommendation Rec (2004) 6 of the of the Council of Europe Committee of Ministers on the improvement of domestic remedies.<sup>457</sup>

Broadly speaking, the situation is as follows.<sup>458</sup> Remedies may be either judicial,<sup>459</sup> frequently enabling a case to be expedited or providing for

454. The Court here adds, in parentheses: "see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §45, ECHR 2001-VIII".

455. The Court here adds, in parentheses: "see, *mutatis mutandis*, *Prince Hans-Adam II of Liechtenstein*, cited above, §45".

456. *Scordino v. Italy* (No. 1), 29 Mar. 2006, §§182-192.

457. The information below is based on information provided by member states of the Steering Committee for Human Rights and contained in CDDH (2006) 008 E (reform of ECHR), in particular: Addendum I, Follow-up sheets; Addendum II, Tables; Addendum III, Information on implementation of recommendations. Further detailed and comparative information on various types of remedies can be found in the relevant reports of the Venice Commission (Venice Commission report, "National Remedies in respect of Excessive Length of Proceedings" (Study No. 316/2004, CDL (2005) 092, English only, restricted, 8 Dec. 2005) and the reports presented at the seminar organised by the Constitutional Court of the Czech Republic, in cooperation with the Venice Commission, on the limits of constitutional review of the ordinary courts' decisions in constitutional complaint proceedings (14-15 Nov. 2005, Brno, CDL-JU (2005) 059-61 and 67-68 in English only)) and the European Commission for the Efficiency of Justice (CEPEJ) report, "Length of court proceedings in the Member States of the Council of Europe based on the case-law" (not yet finalised).

458. In addition to the information provided below, it should be noted that nine member states have pointed out that proposals aimed at introducing specific remedies in respect of excessively long judicial proceedings have been tabled: Austria, the Czech Republic, Denmark, Germany, Greece, Portugal, Slovenia and Ukraine. Five member states have provided no information on this subject.



some other form of relief, or non-judicial, allowing compensation to be awarded or disciplinary action taken,<sup>460</sup> or a combination of the two.<sup>461</sup>

A large number of countries offer compensation for pecuniary and/or non-pecuniary damage caused by excessive delay (Cyprus, Estonia, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Spain, Sweden and Switzerland).<sup>462</sup>

Although the Court has made known its preference for a system of prevention,<sup>463</sup> only a relatively small number of countries currently permit applications to expedite proceedings; these may be lodged with the Constitutional Court (through a constitutional complaint in the Czech Republic, Slovakia and Spain), the court immediately above the court dealing with the case (by letter to the court registry in the Netherlands or a complaint (*queja*) in Spain), the court dealing with the case (Denmark, Finland, Ireland, Spain), the president of the court (Lithuania, Slovakia), the court of appeal (Estonia), a special authority (the Oversight Board in Serbia and Montenegro), or a special judge (the judge in charge of preparations for trial, in Luxembourg).

Some countries make provision for a lighter penalty if the proceedings are pending in criminal and/or administrative cases (Austria, Belgium, Croatia, the Czech Republic [proposal], Denmark, Estonia, Finland, Germany, Hungary, Iceland, Latvia, Moldova, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom).

Other countries, lastly, allow disciplinary action (Estonia, Greece, Latvia, Lithuania, the Netherlands, Iceland, Ireland, Spain, Sweden, “the former Yugoslav Republic of Macedonia”).

459. Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Luxembourg, Moldova, the Netherlands, Norway, Poland, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

460. France, Iceland, Italy, Latvia, Spain and Sweden.

461. France, Iceland, Ireland, Italy and Sweden.

462. And for financial loss only: the Czech Republic (where a law is in preparation for non-pecuniary damages as well) and Switzerland. In Portugal a bill on state liability for non-contractual civil liability is at the approval stage).

463. *Scordino v. Italy (No. 1)*, 29 Mar. 2006, §183.





## II. ARTICLE 6§1 AND ARTICLE 35§1

Under Article 35 – whereby “the Court may only deal with the matter after all domestic remedies have been exhausted” – applicants wishing to complain of breach of their right to a hearing within a reasonable time must first apply to the existing national authorities.

However, if such domestic relief does not exist or is not sufficiently effective – that is, not sufficiently accessible, appropriate or effectual – applicants are then justified in complaining to the European Court in Strasbourg concerning infringement of their right to court proceedings within a reasonable time.

### 1. The applicant’s duty to exhaust existing domestic remedies

Logically, applicants are required to exhaust the domestic remedies available at the time they lodge their applications with the European Court, but not any remedies established subsequently. There is one exception to this rule, and this is when a state introduces a domestic remedy in response to organisational failure in its judicial system.<sup>464</sup> an applicant is then required to redirect his or her application to the new national authority concerned despite the fact that the domestic remedy became available only after he or she had applied to the European Court.

#### *A. The rule: a remedy to be exhausted before applying to the Court*

As the Court has regularly pointed out, notably in its *Kudła v. Poland* and *Scordino v. Italy* judgments cited above,

the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 paragraph 1 of the Convention. The purpose of Article 35 paragraph 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of

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464. See above, *The exception: organisational failure of the judicial system*, p. 36.



preventing or putting right the violations alleged against them before those allegations are submitted to the Court ... The rule in Article 35 paragraph 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights.<sup>465</sup>

As we have just seen, an effective remedy is one which either expedites the decisions of the courts in which the proceedings are pending or affords the litigant fair compensation.

Further to the *Kudła* judgment an applicant must use this domestic remedy before bringing the case before the European Court in order to comply with the rule set out in Article 35§1 that domestic remedies have to be exhausted. Otherwise the application will be declared inadmissible on account of failure to exhaust domestic remedies.

*B. The exception: a remedy to be exhausted, in certain circumstances, even after applying to the European Court*

The Court has actually gone further specifically with regard to countries where the right guaranteed by Article 6§1 is breached owing to organisational problems – that is, in which “the excessive length of proceedings has been a widespread problem in the national legal system” with the result that “several hundreds of applications” are filed with the Court on the matter.<sup>466</sup>

The main country concerned is Italy. In its *Brusco v. Italy* admissibility decision of 6 September 2001, followed by many others in the same vein,

465. *Scordino v. Italy*, 29 Mar. 2006, §§140-141; or alternatively *Kudła v. Poland*, 26 Oct. 2000, §152.

To justify the exception to the rule laid down in Article 35§1, the Court stated, in its admissibility decision in *Brusco v. Italy* on 6 Sept. 2001, that “particular importance should be attached to the fact that the transitional provision in section 6 of the Pinto Act refers explicitly to applications already lodged with the Court in Strasbourg and is therefore designed to bring within the jurisdiction of the national courts all applications currently pending before the Court that have not yet been declared admissible. The provision in question affords Italian litigants a genuine opportunity to obtain redress for their grievances at national level; in principle, it is for them to avail themselves of that opportunity” (§23).

466. Admissibility decision, *Andrášik and others v. Slovakia*, nos. 57984/00, 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, see “The Law” section.



the Court held that the applicants were required to exercise available domestic remedies for alleged breaches of the right to a hearing within a reasonable time, even though the remedies had been introduced only after their applications were lodged with the Court. Following the *Kudła* judgment an Italian law of 24 March 2001, known as the Pinto Act, introduced a domestic remedy affording victims of unreasonably long proceedings the possibility of obtaining redress. The Court took the view that,

having regard to the nature of the Pinto Act and the context in which it was passed, there were grounds for departing from the general principle that the exhaustion requirement should be assessed with reference to the time at which the application was lodged.<sup>467</sup>

Furthermore,

... the Court has held that applicants in cases against Italy which concern the length of proceedings should have recourse to the remedy introduced by the ‘Pinto Act’ notwithstanding that it was enacted after their applications had been filed with the Court ... A similar decision was taken in respect of cases introduced against Croatia following the entry into force of a constitutional amendment permitting the Constitutional Court to provide redress of both a preventive and a compensatory nature to persons complaining about undue delays in judicial proceedings.<sup>468</sup>

The European Court of Human Rights has taken the same line with Slovakia<sup>469</sup> and Poland.<sup>470</sup>

These judgments clearly reflect a determination not only to develop the subsidiarity principle by enabling the authorities of the respondent

467. Admissibility decision, *Rocco Colacrai v. Italy*, 29 Nov. 2001, “The Law”, §1; see also, *Giacometti and others v. Italy* (dec.), no. 34939/97.

468. Admissibility decision, *Andrášik and others v. Slovakia*, nos. 57984/00, 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00. Concerning the cases against Croatia cited, see admissibility decision in *Nogolica v. Croatia*, no. 77784/01: in this case, the Court held, regarding the length-of-proceedings problem in Croatia, that “the new remedy at national level is open to the applicant and may address this problem since it not only provides for compensation to be awarded but also obliges the Constitutional Court to set a time-limit for deciding the case on the merits”.

469. Admissibility decision in *Andrášik and others v. Slovakia*, cited above: in this case, “the Court notes that the new remedy in Slovakia is clearly designed to address, *inter alia*, the problem of the general courts’ failure to proceed with cases without undue delays”.



state to redress breaches of the reasonable-time requirement but also to transfer length-of-proceedings cases immediately to Convention member states and consequently “reduce the number of applications for the Court to consider”.<sup>471</sup>

## **2. The state’s duty to provide an effective domestic remedy that is at once accessible, appropriate and effectual**

If a remedy before a national authority exists in the domestic legal system, the applicant must use it. However, he or she is not required to exercise a doubtful domestic remedy – that is, one which may be expected to fail – or an inappropriate or ineffectual remedy – that is, one not calculated to provide appropriate or adequate redress for a complaint concerning the right to a hearing within a reasonable time. In other words, a state party is under an obligation to establish in its domestic legal system a remedy for complaining about length of proceedings that is at once accessible, appropriate and effectual for the purposes of the case-law relating to Article 35§1.

As the Court has noted,

[a]part from the fact that the existence of a domestic remedy is fully in keeping with the subsidiarity principle embodied in the Convention, such a remedy is closer and more accessible than an application to the Court, is faster and is processed in the applicant’s own language; it thus offers advantages that need to be taken into consideration.<sup>472</sup>

The Court has had occasion to examine the effectiveness of existing domestic remedies in member states and has specified the requirements that these remedies must meet to be considered effective.

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470. Admissibility decision in *Charzyński v. Poland*, no. 15212/03. In this case, the Court noted the existence of a domestic remedy, concerning which it stated: “... the wording of the 2004 Act clearly indicates that it is specifically designed to address the issue of excessive length of proceedings before the domestic courts”.

471. Admissibility decision, *Brusco v. Italy*, 6 Sept. 2001, §23.

472. *Scordino v. Italy*, 29 Mar. 2006, §268.



*A. Requirements for effectiveness of a remedy to expedite proceedings:  
genuine power to issue directions*

In a string of decisions since *Kudła* the Court has specified the characteristics signifying that a remedy for the purpose of expediting proceedings is effective.

The *Hartman v. the Czech Republic* judgment of 10 July 2003 is instructive here and may serve as an example.

Firstly, in terms of procedure, the Court stated that, for length of civil proceedings, the effectiveness of a domestic remedy is to be assessed not as part of scrutiny of an application's admissibility but as part of examining the merits. As has already been emphasised, procedural and substantive issues are here intertwined: the rule laid down in Article 35§1 concerning an application's admissibility is based on the assumption, enshrined in Article 13 as a substantive rule, that there is an effective remedy available in the domestic system in respect of alleged breaches of Article 6. Consequently, if this remedy is effective, the applicant is required to make use of it if his or her application is not to be declared inadmissible under Article 35§1 on account of failure to exhaust domestic remedies. This was precisely the Czech government's argument in *Hartman*. The Court then specified that

in respect of the length of civil proceedings, the question of the methods by which an applicant could have accelerated the proceedings goes to the merits of the application ... Indeed, in its decision on the applicability of the present case, the Court joined this objection to the merits.<sup>473</sup>

Secondly, in terms of the merits, the *Hartman v. the Czech Republic* judgment makes clear that a victim of delayed proceedings must have a personal right to bring an action before an authority with genuine power to issue directions to expedite the case rather than just the right to make recommendations. In the *Hartman* case, with regard to the length of proceedings brought by the applicants for recovery of property, the Czech

473. *Hartman v. the Czech Republic*, 10 July 2003, §60. The Court was here applying the case-law that it had pioneered in its *Horvat v. Croatia* judgment of 26 July 2001, §46.



government pleaded that the applicants had taken no steps within the domestic legal system to expedite the proceedings: neither appeals to a higher authority nor a constitutional appeal. The Court therefore turned its attention to the appropriateness and effectiveness of the remedies in question in order to ascertain whether or not the applicants should have used them. It argued as follows:

The Court notes at the outset that appeals to a higher authority, the remedy advocated by the Government, cannot be regarded as an effective remedy because they do not give litigants a personal right to compel the State to exercise its supervisory powers ... It further notes that where the Czech Constitutional Court finds that proceedings which have led to a constitutional appeal have been held up by delays imputable to a particular court, it can order the latter to put an end to the delays and continue the proceedings forthwith. While accepting that such an order may have the effect of speeding up the course of the proceedings if it is acted upon immediately by the court in question, the Court notes that Czech legislation does not lay down any sanction for failure to comply ...; the Czech Constitutional Court is therefore not empowered to take practical steps to expedite the proceedings complained of.<sup>474</sup>

The Czech remedy in issue was therefore not effective.

In contrast, the effectiveness of remedies for expediting proceedings has been acknowledged in respect of the Swiss Federal Court<sup>475</sup> and the Spanish Constitutional Court,<sup>476</sup> which do have such powers. The same is true in Portugal and Austria, whose remedies in this field set an example.

Portuguese law lays down maximum time-limits for each step in criminal proceedings. If these time-limits are not met, the person concerned may make an application for proceedings to be expedited, which, if granted, may lead, for example, to a decision setting a time-limit within

474. *Hartman v. the Czech Republic*, 10 July 2003, §§66-67 (the Court therefore declared that the application was admissible and found a violation not only of Article 6 but also of Article 13 owing to the total absence in domestic law of an effective remedy whereby the applicants could have contested the excessive length of proceedings: §§82-84).

475. Admissibility decision, *Boxer Asbestos S.A. v. Switzerland*, 9 Mar. 2000.

476. Admissibility decision, *González Marín v. Spain*, 5 Oct. 1999.



which the court or prosecutor as the case may be must take a particular procedural step, such as closing an investigation or fixing a date for a hearing. Given the strict time-limits within which the authorities must rule on applications for expediting the proceedings, use of this remedy will not in itself lengthen the proceedings. The Court recognised the effectiveness of this remedy in its admissibility decision in *Tomé Mota v. Portugal* on 2 December 1999.

Similarly, Austrian law provides that in administrative proceedings the competent authority, unless provided otherwise, must decide within six months upon any request by a party. If this time-limit is not complied with, the party may lodge an application with the Administrative Court under Article 132 of the Federal Constitution. If deemed admissible, it results in an order to the authority to give the decision within three months, a time-limit which can be extended only once. The Court acknowledged the effectiveness of the Austrian remedy in its *Basic v. Austria* judgment of 30 January 2001, reasoning as follows:

The Court finds that there are no fundamental differences which would distinguish the application under Article 132 of the Austrian Federal Constitution under review in the present case from the remedy which was at issue in *Tomé Mota*, cited above. Having regard to the fact that under Austrian law administrative authorities are, as a general rule, under a duty to decide on a party's request within six months, and noting that the use of the application under Article 132 of the Federal Constitution does not normally lead to a further delay in the proceedings, the Court concludes that this application constitutes an effective remedy as regards a complaint about the length of proceedings.<sup>477</sup>

## **B. Requirements for effectiveness of a compensatory remedy: a reasonable quantum within a reasonable time**

A majority of countries have introduced remedies providing compensation for injury caused by excessively long proceedings.<sup>478</sup> For example, France and Spain have fairly similar systems of state liability whereby

<sup>477</sup>. *Basic v. Austria*, 30 Jan. 2001, §38.



unreasonably long proceedings constitute a malfunctioning of the judicial system, conferring the right to compensation.

In Spain, firstly, specific relief for a complaint concerning the right to a fair trial within a reasonable time can be obtained by submitting a complaint to the ordinary court responsible for dealing with the case and, if satisfaction is not obtained, by recourse to a constitutional complaint (*amparo*) to the Constitutional Court. Secondly, once proceedings have come to an end, the party concerned can appeal for compensation pursuant to sections 292ff. of the Judicature Act. These provisions allow litigants having suffered from excessively long proceedings to submit a compensation claim once the proceedings have ended – firstly to the Ministry of Justice, and then, if it is not accepted, to the administrative courts – in respect of any malfunctioning of the judicial system, unreasonable length of proceedings being treated as such a malfunctioning under the case-law of the administrative courts. In its admissibility decision in *González Marín v. Spain* on 5 October 1999 the Court considered this a sufficiently accessible and effective remedy, which should be used prior to any application to Strasbourg.<sup>479</sup>

In France recognition of state liability for judicial delay has been brought about by case-law developments regarding the interpretation of liability of the ordinary and administrative courts.

In its *Bolle-Laroche* judgment of 23 February 2003,<sup>480</sup> which confirmed the trend begun in the courts below, the French Court of Cassation redefined the concept of gross negligence of the ordinary courts for which the state incurs liability as “any deficiency established by an act or series of acts reflecting the unfitness of the public system of justice for its

478. Cyprus, Estonia, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Russian Federation, Serbia-Montenegro, Slovakia (*cf.* admissibility decision, *Aljbeta Csepyová v. Slovakia*, 3 Apr. 2003), Spain, Sweden and Switzerland; pecuniary damages only: the Czech Republic (where a law is in preparation for non-pecuniary damages as well) and Switzerland. In Portugal a bill on state liability for non-contractual civil liability is at the approval stage. CDDH (2006) 008 *Addendum I*, p. 62.

479. Admissibility decision, *Jesús María González Marín v. Spain*, 5 Oct. 1999. See also *Fernandez-Molina González and others v. Spain*, 8 Oct. 2002, Siii.

480. Court of Cassation, Full Court, 23 Feb. 2001, *Bolle-Laroche v. Treasury Solicitor*.





purpose". In its admissibility decision of 12 June 2001 in *Giummarra and others v. France* the European Court noted this more flexible interpretation of Article L. 781-1 of the Code of Judicial Organisation, which governs actions for damages for the malfunctioning of the justice system, and observed that there was a sufficiently established line of domestic decisions against the state for this to be considered an "effective remedy" within the meaning of Article 13 of the Convention.<sup>481</sup> Consequently it held that an application under Article L. 781-1 had now acquired "the requisite degree of legal certainty" to constitute an "effective" remedy within the meaning of Article 35§1 of the Convention and that the applicant must use it before applying to the European Court, regardless of the stage reached in the domestic proceedings, whether they had ended or were pending.<sup>482</sup>

Similarly, in its *Magiera* judgment of 28 June 2002,<sup>483</sup> the French Conseil d'État accepted that, directly pursuant to Article 6§1 of the Convention and the general principles governing the operation of the administrative courts, litigants were entitled to have their applications determined within a reasonable time and that, if the infringement of this right had caused them injury, they could secure redress by holding the state liable for "malfunctioning of the public system of justice" without its being necessary for gross negligence to have been committed in the exercise of judicial power, as had been the case under the previous case-law.<sup>484</sup> In the light of this development the European Court, in its *Broca and Texier-Micault v. France* judgment of 21 October 2003, acknowledged the effectiveness of an action for damages – which until that point it had

481. Admissibility decision, *Mifsud v. France*, 11 Sept. 2002, §16. The European Court had previously found that the remedy was not effective: *Vernillo v. France*, 20 Feb. 1991, §27.

482. Admissibility decision, *Giummarra and others v. France*, 12 June 2001.

483. Conseil d'État, Combined Court, *Minister of Justice v. M. Magiera*, 28 June 2002. In addition, Chapter II of Decree No. 2005-911 of 28 July 2005 amending the regulatory part of the Code of Administrative Justice has established new procedures for dealing with such remedies by adding them to the proceedings coming within the jurisdiction of the Conseil d'État at first and last instance, in order to ensure that applications are settled finally and promptly without triggering further proceedings on the length of the proceedings for actual damages.

484. Conseil d'État, Combined Court, *Darmont*, 29 Dec. 1978.



denied<sup>485</sup> – from 1 January 2003, the date by which the *Magiera* judgment had been adequately publicised.<sup>486</sup>

Another example is Italy, where, as already pointed out, a compensatory remedy was introduced by the Pinto Act of 24 March 2001, providing victims of unreasonably long proceedings with a means of redress. The Court has had occasion to consider whether this domestic remedy might be held to provide appropriate and sufficient redress for the violation of the right to have a hearing within a reasonable time. It ruled on the effectiveness of Italy's new remedy in the *Scordino v. Italy* judgment of 29 March 2006, cited above, in which it expressed the following opinion: specifically, concerning the requirement of

appropriate and sufficient redress, the Court has already indicated that even if a remedy is “effective” in that it allows for an earlier decision by the courts to which the case has been referred or the aggrieved party is given adequate compensation for the delays that have already occurred, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings.<sup>487</sup>

However, the Court held that the remedy introduced in Italy by the Pinto Act did not satisfy these criteria owing on the one hand to excessive delays in compensatory proceedings, and on the other to the low awards. These two considerations made the remedy ineffective, inappropriate and insufficient. In the *Scordino* judgment and eight other judgments delivered on the same day the Court therefore clarified the requirements to be met by domestic remedies for judicial delay and, more specifically, by actions for damages: a reasonable amount of compensation must be paid within a period that was itself reasonable.

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485. The European Court had previously found that this remedy was not effective: *Lutz v. France*, 26 Mar. 2002, §20.

486. *Broca and Texier-Micault v. France*, 21 Oct. 2003, §§19-21.

487. *Scordino v. Italy*, 29 Mar. 2006, §195.



a. *Obligation to award compensation within a reasonable time*

In its *Scordino* judgment and the eight other judgments against Italy delivered on 29 March 2006 the Court stated: "... it cannot be ruled out that excessive delays in an action for compensation will render the remedy inadequate."<sup>488</sup> In these various cases<sup>489</sup> the Court held it to be "unacceptable" that the applicants had had to wait for periods ranging between eleven months and over three years,<sup>490</sup> and sometimes even bring execution proceedings before receiving the compensation awarded to them. It unhesitatingly fixed a period of six months beyond which the execution stage of a decision awarding compensation would be unreasonable and would deprive the compensatory remedy of its effectiveness.

The Court can accept that the authorities need time in which to make payment. However, in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings that period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable.<sup>491</sup>

...

With regard to the concern to have a remedy affording compensation that complies with the reasonable-time requirement, it may well be that the procedural rules are not exactly the same as for ordinary applications for damages. It is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure will best meet the compulsory criterion of "effectiveness", provided that the procedure conforms to the principles of fairness guaranteed by Article 6 of the Convention.<sup>492</sup>

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488. *Ibid.*

489. Apart from the *Scordino* case itself, in which "the applicants did not allege that there were delays in paying the compensation awarded" (§209).

490. *Riccardi Pizzati*: more than 22 months (§99); *Musci*: 23 months (§101); *Giuseppe Mostacciolo (No. 1)*: more than 14 months (§98); *Giuseppe Mostacciolo (No. 2)*: more than 14 months (§98); *Cocchiarella*: more than 3 years (§100); *Apicella*: 11 months (§98); *Ernestina Zullo*: 23 months (§102); *Giuseppina and Orestina Procaccini*: more than 3 years (§98).

491. *Scordino v. Italy*, 29 Mar. 2006, §198.

492. *Ibid.*, §200.



The Court invites the respondent State to take all measures necessary to ensure that the domestic decisions are not only in conformity with the case-law of this Court but are also executed within six months of being deposited with the registry.<sup>493</sup>

*b. Obligation to award a reasonable amount of compensation*

The Court held, in the *Scordino* case and in the eight other cases in which judgments were delivered on 29 March 2006, that the amounts awarded by the Italian courts to the various applicants as compensation for delays in the judicial system were inadequate. Having noted the sums paid to each of the applicants in these different cases, “the Court observes that this amount is approximately [between 8% and 27%] of what it generally awards in similar Italian cases. That factor in itself leads to a result that is manifestly unreasonable having regard to its case-law.”<sup>494</sup>

States are therefore under an obligation to provide victims of judicial delay with a reasonable amount of compensation in comparison with the sums usually awarded by the European Court of Human Rights. Otherwise the violation of the right guaranteed by Article 6§1 will not have been sufficiently redressed, and the domestic remedy referred to in Article 35§1 and used by the applicant will be ineffective. It follows that the applicant can still claim to be a victim of the violation concerned and be entitled to complain of the situation to the Strasbourg authorities. As it itself pointed out in the cases cited above, “[t]he Court has already had occasion to indicate that an applicant’s victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court.”<sup>495</sup>

493. *Scordino v. Italy*, 29 Mar. 2006, §240. The Court has given examples of good practice for payment within a reasonable time: “Moreover, some States, such as Slovakia and Croatia, have even stipulated a date by which payment should be made, namely two and three months respectively.” *Ibid.*, §198.

494. *Scordino*: 10% (§214); *Riccardi Pizzati*: 14% (§105); *Musci*: 27% (§107); *Giuseppe Mostacciolo (No. 1)*: 8% (§105); *Giuseppe Mostacciolo (No. 2)*: 9% (§104); *Cocchiarella*: 14% (§106); *Apicella*: 14% (§104); *Ernestina Zullo*: 15% (§108); *Giuseppina and Orestina Procaccini*: 14% (§104).

495. *Scordino v. Italy*, 29 Mar. 2006, §202.



As to the question of the compensation to be paid, the Court has here again specified the requirements.

Firstly, on the substance of the compensation, the Court has provided the following clarification:

With regard to pecuniary damage, the domestic courts are clearly in a better position to determine the existence and quantum. Moreover, that point has not been disputed by the parties or interveners. Regarding non-pecuniary damage, the Court – like the Italian Court of Cassation ... – assumes that there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. It also accepts that, in some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all .... The domestic courts will then have to justify their decision by giving sufficient reasons.<sup>496</sup>

Secondly, on the extent of compensation, the Court has provided the following guidelines:

[T]he level of compensation depends on the characteristics and effectiveness of the domestic remedy.

The Court can also perfectly well accept that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, will award amounts which – while being lower than those awarded by the Court – are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly ....

However, where the domestic remedy has not met all the foregoing requirements, it is possible that the threshold in respect of which the amount will still allow a litigant to claim to be a “victim” will be higher.

It is even conceivable that the court determining the amount of compensation will acknowledge its own delay and that accordingly, and in order not to penalise the applicant later, it will award a particularly high amount of compensation in order to make good the further delay.<sup>497</sup>

496. *Ibid.*, §§203-204.



In short, the more the domestic system of relief for violation of the right to a hearing within a reasonable time proves inefficient, the higher the amount of compensation will be in relation to that awarded by the European Court, especially if the compensating authority itself causes delay. Conversely, if the system for penalising domestic judicial delay is effective, the level of compensation may be lower than that usually awarded by the Court and in relation to the standard of living in the member state concerned.

The ideal arrangement, and the one towards which the subsidiarity process is moving, would be for the European Court to confine itself to being an authority of last resort, to which European citizens would apply only if the domestic system of relief for violation of the right to prompt proceedings was itself unsatisfactory.

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497. *Ibid.*, §§205-207.



## Chapter IV. Redress for breach of the reasonable-time requirement

A judgment establishing a breach entails a legal obligation, under the Convention, for the respondent state to put an end to it and repair its effects. If internal law allows only partial reparation to be made, Article 41 (formerly Article 50) of the Convention empowers the Court, if necessary, to afford redress to the party injured by the act or omission concerning which the breach of the Convention has been established. Since the nature of the infringement of the right to a trial within a reasonable time does not allow the time lost to be regained, the infringement cannot be redressed by *restitutio in integrum* - that is, restoration to the position before the violation. As the Court has noted, “when proceedings are continued beyond the ‘reasonable time’ laid down in Article 6§1, the intrinsic nature of the wrong prevents complete reparation (*restitutio in integrum*)”.<sup>498</sup> Consequently the only reparation conceivable at European level is financial compensation.

It may be that the parties do not claim any reparation<sup>499</sup> or they may reach a friendly settlement – either partial<sup>500</sup> or full<sup>501</sup> – with the respondent state concerning their claims subsequent to the initial judgment establishing failure to comply with Article 6§1, but in general the

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498. *König v. Austria (Article 50)*, 10 Mar. 1980, §15.

499. For example, *Francesco Lombardo v. Italy*, 26 Nov.1992.

500. For example, *H v. the United Kingdom*, 9 June 1988.

501. For example, *Erkner and Hofauer v. Austria*, 29 Sept.1987.



Court must settle the issue itself. Occasionally it rejects the claim<sup>502</sup> or holds that in the circumstances of the case the finding of a violation provides sufficient satisfaction in itself.<sup>503</sup>

Nevertheless, the most frequent case by far is payment of damages – pecuniary, non-pecuniary, or both – together with reimbursement of the actual costs and expenses that the applicant has necessarily and reasonably incurred in presenting his or her case in the domestic courts and then in Strasbourg.

If the injury sustained is at once personal, direct and irrefutable, the European Court has the power to afford “just satisfaction”. This is usually non-material, but it can also be pecuniary where appropriate.

## I. PECUNIARY DAMAGE

Among the factors taken into consideration by the Court when ruling in this sphere is pecuniary damage – loss actually sustained as a direct result of the violation. In other words, to obtain damages, it is necessary to prove not only the irrefutable existence of injury but also, and above all, a direct causal link with the violation of Article 6§1. The latter condition is difficult to meet since it must be proved that it was specifically the excessive lapse of time which was the cause of the pecuniary damage.

In cases relating to excessive length of judicial proceedings it is therefore very rare for the European Court to award compensation for pecuniary damage. When such a situation does occur the Court awards reparation mainly for loss of opportunity (the no longer existent likelihood of some favourable event), as in the judgment delivered in *Lechner and Hess v. Austria* on 23 April 1987. Here the applicants were complaining of the slowness of civil and criminal proceedings that they had brought, especially those for rescission of the contract of sale on a house that they had purchased and its return to the vendors on account of deception at the buyers’ expense; in the meantime, however, other proceedings

502. For example: *Bunkate v. the Netherlands*, 26 May 1993; *Paccione v. Italy*, 27 Apr. 1995.

503. For example, *Giancarlo Lombardo v. Italy*, 26 Nov. 1992.





brought against them by the authorities had resulted in the house's being sold at auction. Consequently the applicants' above-mentioned civil action was eventually dismissed as it could not succeed because they were no longer in a position to restore the house to the vendors. The Court argued as follows:

As to the pecuniary damage, the material before the Court does not warrant the conclusion that compliance with Article 6§1 would have prevented the auctioning of the house. On the other hand the applicants did suffer, on account of the consequences of the length of the proceedings, some loss of real opportunities which justifies an award of just satisfaction in the present case.<sup>504</sup>

However, this remains a fairly isolated case. In the overwhelming majority of cases, the Court

considers that the alleged pecuniary damage was not caused by the violation it has found. It recalls that it cannot speculate as to the outcome of the proceedings if they had complied with the requirement of Article 6§1 of the Convention as to length.<sup>505</sup>

Proving the causal link is therefore a difficult obstacle to surmount.

In addition, the Court has adopted a particularly restrictive doctrinal approach which tends to exempt the state from international liability in certain circumstances, such as those covered by the *Mascolo v. Italy* judgment of 16 December 2004, and, since that date, all the repeat cases following in its wake and that of the *Immobiliare Saffi v. Italy* judgment of 28 July 1999. The latter was concerned with residential tenancy legislation in Italy, which, after various action by the authorities, had led to the enforcement of court orders for possession being suspended or staggered. The applicant – the owner of a rented flat – had had to wait seven years and seven months from the bailiff's first attempt to evict the tenant before repossessing the flat, the subsequent twenty-five attempts having all proved unsuccessful as the applicant was not entitled to police assist-

504. *Lechner and Hess v. Austria*, 23 Apr. 1987, §64 (in this case the Court also awarded compensation for non-pecuniary damage sustained by the applicants).

505. *Bayrak v. Germany*, 20 Dec. 2001, §38.



ance. While the *Immobiliare Saffi* decision accepted that compensation should be awarded for loss of rent up to the date on which possession of the rented accommodation was recovered, together with bailiffs' and lawyers' fees incurred in the enforcement proceedings, the *Mascolo* decision went back on this position and held that these losses should have been recovered through an action for damages against the tenant, which it was the applicant's responsibility to have brought. The Court held:

The damage, in the present case, actually stems from the unlawful conduct of the tenant, who, whether or not the State cooperated in the enforcement of the judicial eviction order, was bound to return the flat to its owner ... The breach of Article 6 of the Convention which the Court has found that the State committed was procedural in nature and was subsequent to the tenant's own conduct. The Court accordingly finds that Italian domestic law allows reparation to be made for the pecuniary consequences of the breach and considers that the claim of just satisfaction should be dismissed in respect of pecuniary damage.<sup>506</sup>

The reasoning that underlies this reversal of precedent<sup>507</sup> is rather surprising and is open to the following counter-argument: it is precisely to redress the breach of the state's procedural obligation to enforce judicial decisions within the reasonable time guaranteed by Article 6<sup>508</sup> (especially if the violation is alleged to be subsequent to the tenant's own conduct) that the applicant is justified in claiming pecuniary compensation from the state; it is precisely to make good the injury caused by the unreasonable length of execution proceedings that the applicant is justified in

506. *Mascolo v. Italy*, 16 Dec. 2004, §55. See also, among many examples: *Lo Tufo v. Italy*, 21 Apr. 2005, §68 (the Court here employed a happier form of words when it described the breach as "procedural in nature and *incidental* to the tenant's own conduct" (our italics); *Cuccaro Grana-telli v. Italy*, 8 Dec. 2005, §25; *Mazzei v. Italy*, 6 Apr. 2006, §25; etc.

507. It is a reversal of precedent particularly in relation to the doctrine arising out of the *Scollo v. Italy* judgment of 28 Sept. 1995, in which the Court stated: "In the circumstances, the applicant cannot be expected to bring an action against his tenant, who has already been negligent in paying his rent." (§50).

508. The obligation, firstly, to enforce judicial decisions (see *Hornsby v. Greece*, 19 Mar. 1997) and, secondly to enforce these decisions within a reasonable time (see above).



seeking damages in view of the state's international liability arising out of application of the Convention.

## II. NON-PECUNIARY DAMAGE

The other factor taken into consideration by the Court is non-pecuniary damage – reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss. Regarding breaches of the reasonable-time requirement in legal proceedings the Court has assumed “a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage”,<sup>509</sup> such as the fact of “living in a state of uncertainty and anxiety about the outcome of the proceedings”.<sup>510</sup>

In its Chamber judgment of 10 November 2004 in *Apicella v. Italy* the Court announced the doctrine by which it was to be guided concerning reparation for non-pecuniary damage arising out of infringement of the right to a trial within a reasonable time. The Grand Chamber judgment of 29 March 2006 delivered in the same case relies on the same method of calculation, containing a mere reference to the Chamber judgment.<sup>511</sup> This method of calculation is as follows:

As regards an equitable assessment of the non-pecuniary damage sustained as a result of the length of proceedings, the Court considers that a sum varying between EUR 1 000 and 1 500 per year's duration of the proceedings (and not per year's delay) is a base figure for the relevant calculation. The outcome of the domestic proceedings (whether the applicant loses, wins or ultimately reaches a friendly settlement) is immaterial to the non-pecuniary damage sustained on account of the length of the proceedings.

509. *Apicella v. Italy*, 29 Mar. 2006, §93.

510. *Guillemin v. France*, 21 Feb. 1997, §63.

511. The reference notes that “in its judgment the Chamber gave an indication of the method of calculation used by the Court in determining an equitable assessment of the non-pecuniary damage sustained as a result of the length of civil proceedings and the possibility of reducing that sum on account of the existence of a domestic remedy”. *Apicella v. Italy*, 29 Mar. 2006, §129.



The aggregate amount will be increased by EUR 2 000 if the stakes involved in the dispute are considerable, such as in cases concerning labour law, civil status and capacity, pensions, or particularly serious proceedings relating to a person's health or life.

The basic award will be reduced in accordance with the number of courts dealing with the case throughout the duration of the proceedings, the conduct of the applicant – particularly the number of months or years due to unjustified adjournments for which the applicant is responsible – what is at stake in the dispute – for example where the financial consequences are of little importance for the applicant – and on the basis of the standard of living in the country concerned. A reduction may also be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in his or her capacity as heir.

The amount may also be reduced where the applicant has already obtained a finding of a violation in domestic proceedings and a sum of money by using a domestic remedy.<sup>512</sup>

The Grand Chamber judgment that the Court delivered in this case states:

... the amount [the Court] will award in respect of non-pecuniary damage may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy ... The Court considers, however, that where an applicant can still claim to be a "victim" after exhausting that domestic remedy he or she must be awarded the difference between the amount obtained from the court of appeal and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court if it had been awarded by the court of appeal and paid speedily. Applicants should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the domestic courts in the reference period where they can no longer take the case back before the court of appeal seeking application of [a] change of position ... or the remaining

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512. *Apicella v. Italy*, 10 Nov. 2004, §26.



length was not in itself sufficiently long to be regarded as amounting to a second violation in respect of the same proceedings.<sup>513</sup>

The Court added that

the Government should be ordered to pay a further sum where the applicant has had to endure a delay while waiting for payment of the compensation due from the State so that the frustration arising from the delay in obtaining payment is offset.<sup>514</sup>

In short, the method consists of two stages:

- calculation of the basic award (EUR 1 000 to 1 500 per year);
- adjustments to increase or reduce that amount.

Additions depend on:

- the importance of what is at stake in the dispute (additional award of EUR 2 000);
- the existence of procedural stages not taken into consideration by the domestic authority providing the remedy for unreasonable delay;
- the existence of a stage in which an unreasonable delay is redressed by that domestic authority but which is unreasonably long in itself, whether as regards obtaining the national decision awarding compensation or actually receiving the damages, or both.

The deductions depend on:

- the number of courts dealing with the case;
- any negligent conduct on the applicant's part in terms of procedural delay;
- lack of importance of what is at stake in the dispute;
- the briefness of an heir applicant's victim status;
- the country's gross national product (GDP);
- any violation finding or compensation from a domestic authority (deduction of approximately 55%, i.e. award of a sum totalling 45% of the basic amount: between 450 and 675 euros per year according to our observations).

513. *Apicella v. Italy* [GC], 29 Mar. 2006, §§136-138.

514. *Scordino v. Italy*, 29 Mar. 2006, §271.



It must be borne in mind, however, that these criteria are for guidance only, since the Court – as it never fails to point out – rules on an equitable basis, as required by Article 41, and after an overall assessment.

### III. COSTS AND EXPENSES

On the question of costs and expenses we shall be brief and merely say that when the Court finds a breach of the Convention it may award an applicant not only his or her costs and expenses before the bodies of the Convention but also those incurred before the domestic courts for the purpose of having the breach ended or redressed. In addition, in its *Bottazzi v. Italy* judgment of 28 July 1978, the Court emphasised: “According to the Court’s case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum”.<sup>515</sup> In its *Scordino v. Italy* judgment of 29 March 2006, the Court pointed out: “Furthermore, legal costs are only recoverable in so far as they relate to the violation found”.<sup>516</sup>

By way of illustration, in the *Scordino* judgment the Court ruled:

As the applicants’ case before the domestic courts was essentially aimed at remedying the violations of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs ... As regards the costs and expenses incurred in the Strasbourg proceedings, the Court has found ... a double violation of Article 6§1 of the Convention, thus agreeing with the applicants’ submissions<sup>517</sup>

and therefore held that they should be reimbursed on that account.

It should be added that, to the total awarded for all costs incurred before the domestic courts and in Strasbourg, the Court usually adds “any tax that may be chargeable on that amount”.<sup>518</sup>

515. *Bottazzi v. Italy*, 28 July 1978, §30.

516. *Scordino v. Italy*, 29 Mar. 2006, §283.

517. *Ibid.*, §§284 and 285 respectively.

518. For example, *Scordino v. Italy*, 29 Mar. 2006, §286.



## **General conclusion**

The outcome of the right to speedy judicial proceedings guaranteed by the European Convention of Human Rights is highly positive. The substantive scope of the right is constantly expanding as more and more cases are being covered. Its temporal scope is construed generously: where appropriate, calculation of the period to be taken into consideration can take it as beginning even before the filing of the instrument commencing proceedings or as ending after the last final domestic decision, so including the decision enforcement stage. As for the obligation to comply with the reasonable-time requirement, the Court has judiciously qualified it from the outset by identifying areas requiring greater expeditiousness. Similarly there are two levels to the Court's scrutiny: a normal standard of full scrutiny for specific violations of the right to a hearing within a reasonable time, and an exceptional standard of summary scrutiny for organisational failure of a judicial system to try cases promptly. This guarantee has, moreover, been strengthened, since in addition to the safeguard offered by the European Court there is to be the safeguard of a national authority, with the former monitoring the effectiveness of the safeguard provided by the latter; national authorities have thus become the ordinary bodies for redressing excessive judicial delay. And compensation for unreasonable delay has now been clearly charted by guidelines at both national and European level.

Weaknesses nevertheless persist. Some judicial proceedings that by their nature come under public law – to do with taxpayers, foreign



nationals, officials with power to make decisions, and voters – are unfortunately not covered by Article 6§1. This situation is incompatible with a conception of the European Convention of Human Rights as having to be “interpreted in the light of present-day conditions”. In addition, there is the question of compliance with the reasonable-time requirement by the European Court of Human Rights itself. According to a 2001 report to the Council of Europe Parliamentary Assembly, the average length of proceedings before the European Court of Human Rights is more than three years.<sup>519</sup> That must, however, be qualified in the light of the proceedings associated with an application, depending on whether they end, firstly, as in the great majority of cases, with a decision delivered by a committee, secondly, with a Chamber decision or judgment or, thirdly, and more unusually, with a Grand Chamber judgment. A more recent study by the Court for 2005 states that “about three-quarters of the applications before the Court have not been pending for more than two years” since the date on which they were filed and “concerning applications pending before a decision body, it emerges that the proceedings in about two-thirds have lasted for two years or less, in 16% for two to three years and in 16% for more than three years. The proceedings concerning almost 40% of the Chamber applications have lasted for more than three years and 13% (about 2,800 applications) for more than five years.”<sup>520</sup> The situation regarding length of proceedings before the European Court of Human Rights is therefore doubtless far from perfect. To paraphrase a form of words frequently repeated to member states by the European Court,<sup>521</sup> it is for the Council of Europe to organise its legal system for protecting

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519. Nabholz-Haidegger (L.), report to the Parliamentary Assembly of the Council of Europe, “Structures, procedures and means of the European Court of Human Rights”, 17 Sept. 2001. The working party on the Court’s working methods, set up in the Court itself, was of the opinion in 2002 that a reasonable target would be an average length of three years per case, although the ideal target would be two years (Working Party Final Report, §§56 and 57).

520. European Court of Human Rights, *Analysis of statistics 2005*, April 2006, §29 and §§30-31 respectively.

521. “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.”





human rights in such a way that the Court can guarantee the right of every applicant to obtain a decision from it within a reasonable time. Various efforts have been made to this end,<sup>522</sup> especially with the reform of the judicial control system of the European Convention of Human Rights introduced by its Protocol No. 14.

In conclusion, taking a broader view, it is important to note that the right to judicial proceedings within a reasonable time is an original and fundamental achievement of the European Convention of Human Rights and its control system. By creating a genuine right to a trial within a reasonable time, with legal penalties for a state's non-compliance, the European system for safeguarding human rights has played a decisive part in combating the sometimes excessive slowness of judicial systems in Europe and has been at the root of many reforms of judicial institutions and procedure in Convention member states.

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522. The Court has set targets regarding the time-limit within which certain procedural steps should be taken. Twelve months ("one-year target") is regarded as a maximum acceptable duration of the proceedings: i) from allocation of the application to a decision body to the first examination of admissibility; ii) from communication of the application to the respondent Government to a judgment when the joint procedure under Article 29 §3 is applied or to a separate decision on admissibility; iii) from a separate decision on admissibility to delivery of a judgment.



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