

Round Table on excessive length of proceedings:
how to resolve a systemic problem in this area, and avoid
an influx of repetitive applications to the European Court in
a durable manner.

Antalya, 8-9 November 2012

The right to a fair trial within a reasonable time is an essential feature of a state based on the rule of law. This has been repeatedly emphasised by the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

Yet breaches of this right are at the top of the list of major structural and/or complex violations under the enhanced supervision of the Committee of Ministers in the framework of Article 46 of the European Convention on Human Rights. Furthermore, these violations overburden the European Court by causing a massive influx of repetitive individual applications and imperil the protection machinery instituted by the European Convention on Human Rights.

Numerous appeals have been made to States - the last time was at the Brighton Conference - to adopt wide ranging measures at the national level to execute rapidly the judgments concerning such problems and to stem the flood of repetitive applications.

Given the immediate danger posed to the machinery instituted under the Convention by the repetitive applications brought before the European Court, attention in recent years has centred on the adoption of effective domestic remedies that would allow the acceleration of excessively lengthy proceedings and/or compensation for those who are or were parties to those proceedings. In that respect, there are now numerous examples of good practice in various States, and exchanges of experience have already been organised to permit those who must still put in place such remedies, to be inspired (see inter alia the Bled conference organised by the Slovenian Chairmanship in September 2009). The Committee of Ministers has also adopted two general recommendations to member states on this subject: Recommendations (2004)6 and (2010)3.

The introduction of an effective remedy affords a solution to the problem at the level of the European Court by repatriating the handling of complaints about undue length of judicial procedures to the national level, and the Court has recently delivered a number of pilot judgments setting deadlines for the provision of such remedies.

However, this is not enough. Both the Committee and the Court have clearly emphasised that the establishment of domestic remedies does not release States from their general obligation to resolve the structural problems underlying the violations.

This Round Table sets out to provide a forum for exchange on the possible solutions for resolving the structural problem of excessive length of proceedings.

It is proposed to address the issue by examining the various steps required to find a lasting solution. To be able to envisage measures, it is first for the State to determine the sources of the violation, in other words the reasons (often multiple) that lead to unduly lengthy proceedings. Only once the sources are identified can suitable solutions be envisaged for each of them. Finally, once the measures have been chosen and adopted, it is important to be able to measure their impact on the length of proceedings so as to determine the need for possible supplementary measures and be capable in the longer term of anticipating possible "relapses" whether general or in a specific sector.

The discussions proposed in the context of the Round Table are structured round these three themes:

- 1) How to pinpoint the causes of excessively lengthy proceedings?
- 2) Which types of measures can be adapted to these various causes?
- 3) How to ensure effective monitoring of the adoption of the required measures and, in the longer term, effective prevention of new, systemic problems?

The matter is complex, involving economic interests and sometimes difficult choices in justice policy, among other issues. Still, it is crucial not only to the survival of the European human rights protection machinery but also to the preservation of the rule of law.