APPLICATION OF REASONABLE TIME STANDARD IN SERBIA

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Support to the Judiciary in Serbia in the Implementation
of the European Convention on Human Rights

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EXECUTIVE SUMMARY

The Republic of Serbia has introduced legislation in order to provide for an effective remedy as determined by Article 13 of the European Convention on Human Rights (hereafter "ECHR") concerning the right to a fair trial within a reasonable time (Article 6 (1)). This legislation entered into force on 21 May 2014.

Such a remedy is required by the ECHR and should ensure that Serbian citizens are provided with the proper means to access domestic court/s in order to get satisfaction for their grievances under the provisions of the ECHR. Discussions and first decisions have shown nonetheless that the application of these new provisions has been met with some challenges. The present Report refrains from detailed comment on this legislation, but reflects the findings of the consultants, the experiences with this problem in other countries and envisages supporting the Serbian judicial authorities in their efforts to overcome the problems in the implementation of the ECHR right to trial within a reasonable time.

Other member states of the Council of Europe have experienced similar problems and have found appropriate solutions, not least through the adjustment of their legislation.

In particular, the situations in Croatia, the Russian Federation and Slovenia have been compared and contrasted and their experience summarised in this Report.

This Report recommends either considering new legislation or amending the present one, to ensure that the three following situations be distinguished and be subject to different rules:

- Pending cases;
- Resolved cases;
- Enforcement cases.

Another issue concerns the number of judicial instances at the domestic level which must decide upon complaints regarding unreasonable length of judicial proceedings. It seems that the present legislation allows applicants, in certain cases, to bring the same issue not only before the appellate court but also the Supreme Court of Cassation, after which a further complaint before the Constitutional Court may be lodged. This Report suggests limiting the number of instances to consider such complaints at the domestic level.

Finally, it is common ground that backlogs in the judiciary constitute a serious problem, which requires a solution as soon as possible. According to the ECHR organs' consistent position, the setting up of domestic remedies, however important, does not relieve States from their general obligation to solve the structural problems underlying violations. This Report therefore suggests that the authorities have to take measures of both organisational and legislative character on the basis of a thorough analysis of the key factors which lead to the excessive numbers of backlog cases. The Report provides a number of relevant elements that would facilitate such an analysis, thus enabling the Serbian authorities to choose appropriate measures. The Report further emphasises that expediency should never be at the expense of the overall fairness of the system and the quality of judicial decisions. The knowledge of the case law of the European Court of Human Rights (hereafter "ECtHR") is instrumental in enabling judges both to ensure the high quality of justice and to avoid undue delays that would result in violations of the Convention.

The Report accordingly addresses the inevitable tension between the quality of justice and high productivity. The speediness of procedure is just one element of the right to a fair trial[1] that

1 See Opinion No. 6 (2004), the Consultative Council of European Judges

undisputedly has to be dealt with in an appropriate manner with regard to the overall fairness of the proceedings. In this view, "the quality of a judge's performance cannot be measured by counting the number of cases processed regardless of their complexity, or the number of judgments upheld at the higher instance. While it was acknowledged that statistics regarding case processing and reversal rate can be useful for purposes of judicial administration, management and budgeting, they should be used with great caution when it comes to assess the performance of an individual judge.

(...) If there were to be a measurement of workloads, systems would need to be in place to evaluate the weight and the difficulty of different files. Any judgment requires an assessment of the optimum time that should be allocated to each case."[2]

This approach also clearly underlines that competence and quality should prevail over "stopwatch justice". This is of particular importance for transitional countries searching for the right path towards protection of democracy, human rights and rule of law.

The Report supports the idea of investing in a better-equipped and manned judicial system, allowing judges to focus on a competence-based training. The ECHR is a living instrument and its proper implementation requires continuous education and exchange of knowledge. Achieving this would automatically lead to less violations of the ECHR and to better protection of the human rights at the national level.

Thus, the proper training of judges and prosecutors on the ECHR and the ECtHR's jurisprudence is of vital importance. The research conducted under this Project on "Needs for professional education and training of judges and judicial assistants regarding the European Convention on Human Rights and the related case law", clearly demonstrated that judges had recognised the need for perfecting their knowledge of the ECHR. More than 80% of respondents consider that it is necessary for them to know more about the ECHR and the ECtHR's case law.

The ultimate aim is that ECHR-based arguments become a "routine", standard part of the national rulings that will "bring human rights home". In addition, investing in training of judges and their assistants on the ECHR and the ECtHR's case law would prove to be a sound investment, not only in terms of the economic and social impact of a well-functioning judiciary, but also ensuring medium term savings in correlation with reduced compensation payments otherwise required in response to numerous, systemic violations of the ECHR in individual cases.

2 The Venice Commission Opinion No. 751/2013 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)007-e

I. INTRODUCTION

This document has been prepared at the request of the Council of Europe pursuant to the Council of Europe project "Support to the judiciary in Serbia in the implementation of the European Convention on Human Rights" and is based on a fact-finding mission conducted from 6 to 7 June 2014, during which the authors of the report conducted interviews with relevant stakeholders. (Annex 1: Agenda of the meetings).

The request for the fact-finding mission originates from recent changes to the Law on the Organisation of Courts. The Law was amended in November 2013, transferring the jurisdiction for the violation of the right to a fair trial within a reasonable time from the Constitutional Court to the "immediately higher court". Through these amendments, implemented as of 21 May 2014, the majority of cases are related to the violation of Article 6 (1) of the ECHR. The four Appellate Courts of Kragujevac, Nis, Belgrade and Novi Sad, the Administrative Court and the Supreme Court of Cassation will deal with such cases.

If the courts dealing with the cases subject to a violation of Article 6 (1) of the ECHR apply the reasonable time standard consistently and in line with the ECtHR case law, the potential increase in the number of applications against Serbia may be prevented through the action undertaken under the Project. Also, the level of judicial protection of each individual in Serbia would be increased and the functioning of the judiciary in general harmonized with the ECHR requirements. This includes comprehensive measures to enhance the capacity of the judges and judicial assistants who will handle these cases.

The implementation of these measures requires a longer time-frame than originally envisaged by the Project, as well as additional funds as more activities are to be organised for the purpose of acquainting judges dealing with such cases with "the reasonable time standard" developed by the ECtHR.

II. THE CONTEXT

Chapter 1 – Overview of the cases against Serbia before the European Court of Human Rights

The scope of the current Project is aimed at assisting Serbian authorities in overcoming the problem of numerous cases before the European Court of Human Rights and, more importantly, assisting them in the harmonization of national jurisprudence. The Project is also well placed to respond to the need to ensure conformity with the case law of the ECtHR by enhancing the capacity of Serbian judges and judicial assistants.

It has to be borne in mind that Serbia, with more than 12,000 cases, has the largest number (per capita) of applications pending before the ECtHR, i.e. 11% of the total number of applications. As such, it has the fourth highest number of pending applications (99,900) out of the 47 member states[3]. More worryingly, a large majority of those cases appear to be *prima facie* admissible, with large numbers of repetitive, so-called clone cases. From the applications lodged against Serbia, 71.2% of cases are actually *prima facie* admissible, with only 28.8% applications pending before a single judge. This pattern of growth in the number of applications has been consistent. Much needs to be done at national level in order to bring the human rights protection from Strasbourg back home to Serbia. This, however, will not come by and of itself, and Serbian institutions must share responsibility to achieve this goal.

It is important to observe that about 60% of those cases are, according to the Judges Association's data, related to two large groups:

- the discrimination in payment of *per diem* allowances to participants of the war in 1999; and
- the unsettled liabilities of socially-owned enterprises further to enforcing rulings for receivables from employment.

It is precisely these so-called repetitive applications (recurrent cases) which rank Serbia highly before the ECtHR. Russia and Italy form particularly illustrative examples helping to understand that the state is the one that is responsible to provide conditions for exercising the right to a trial within a reasonable time. Both the national courts and the ECtHR have handed down leading judgments in the above-mentioned cases, yet the State has not enforced these judgments by providing the necessary conditions required.

In order to demonstrate the importance of the findings, it is useful to refer to recent cases from the Serbian context.

To begin with, a recent judgment worth mentioning is ***Marinkovic v. Serbia***, 22 January 2014[4], as it also refers to other relevant Serbian cases:

- *R. Kačapor and Others*, 7 July 2008;
- *Marčić and Others v. Serbia*, 30 October 2007;
- *Crnišanin and Others v. Serbia*, 13 January 2009;

3 Data as of 31 December 2013 according to the ECtHR Annual Report. Serbia is behind Russia, Italy and Ukraine.
4 Apllication No. 5353/11

– *Rašković and Milunović v. Serbia*, 31 May 2011; and

– *Adamović v. Serbia*, 2 October 2012.

The relevant reasoning of the judgment is as follows:

"36. The Court reiterates that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 ... Admittedly, a delay in the execution of a judgment may be justified in particular circumstances, but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (Burdov v. Russia, no. 59498/00...).

37. In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the ECHR. Irrespective of whether a debtor is a private or a State-controlled actor, it is up to the State to take all necessary steps to enforce a final court judgment, as well as to, in so doing, ensure the effective participation of its entire apparatus (see, *mutatis mutandis*, Pini and Others v. Romania (...) and R. Kačapor and Others v. Serbia,..). In the context of socially/ State-owned companies a period of non-execution should not be limited to the enforcement stage only, but should also include the subsequent insolvency proceedings (...).

38. In cases of the execution of a final court decision rendered against private actors, the State is not, as a general rule, directly liable for debts of private actors and its obligations under Article 6 and Article 1 of Protocol No. 1 are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through enforcement proceedings or bankruptcy procedures (...).When the authorities are obliged to act in order to enforce a final court decision and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility on the ground of Article 6 § 1 of the ECHR and Article 1 of Protocol No. 1 (...). The Court's task in such cases is to examine whether measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist a creditor in execution of a judgment (...).

39. When it comes to the execution of final court decisions rendered against the State or entities that do not enjoy "sufficient institutional and operational independence from the State", it is not open to the State to cite either the lack of its own funds or the indigence of the debtor as an excuse for the non-enforcement of those decision (see, *mutatis mutandis*, R. Kačapor and Others v. Serbia,(...). In other words, in such cases the State is directly liable for the debts of State-controlled companies irrespective of the fact whether the company at issue at one point operated as a private entity (...). Furthermore, "the fact that the State sold a large part of its share in the company it owned to a private person could not release the State from its obligation to honour a judgment debt which had arisen before the shares were sold. If the State transfers such an obligation to a new owner of the shares...the State must ensure that the new owner complies with the requirements, inherent in Article 6 § 1 of the ECHR and Article 1 of Protocol No. 1, that a final, binding judicial decision does not remain inoperative to the detriment of a party (...)".

40. Turning to the instant case, the Court is aware that the debtor is no longer a State-controlled entity (...). What is crucial however is that the domestic judgments rendered in the applicant's favour became final in September 2007 when the debtor operated as a State-controlled entity (...). In view of that and the ECtHR's case law cited above, the ECtHR finds that the respondent State is directly responsible for the enforcement of the domestic judgments under consideration in this case.

41. The ECtHR observes that it has frequently found violations of Article 6 of the ECHR and/or Article 1 of Protocol No. 1 to the ECHR in cases raising issues similar to those raised in the present case (see R. Kačapor and Others, cited above, §§ 115–116 and § 120; Marčić and Others v. Serbia, no. 17556/05, § 60, 30 October 2007; Crnišanin and Others v. Serbia, nos. 35835/05, 43548/05, 43569/05 and 36986/06, §§ 123–124 and §§ 133–134, 13 January 2009; Rašković and Milunović v. Serbia, nos. 1789/07 and 28058/07, § 74 and § 79, 31 May 2011; and Adamović v. Serbia, no. 41703/06, § 41, 2 October 2012).

42. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. There has, accordingly, been a violation of Article 6 § 1 of the ECHR and Article 1 of Protocol No. 1."

This judgment shows the need for expeditious enforcement of judgments in civil cases; it also refers to the position of socially owned companies and the responsibilities of the State.

A recently-judged Serbian case, the case ***Riđić et al v. Serbia*** of 1 July 2014, highlights the problem clearly. From the Court's judgment the following quotes are illustrative:

"76. The Court (ECtHR) recalls that the execution of a judgment given by a court must be regarded as an integral part of the "trial" for the purposes of Article 6 (...). A delay in the execution of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 (...).

77. The Court has also already held that the respondent State is responsible for the debts of companies predominantly comprised of socially/State owned capital, which is why neither the lack of its own funds nor the indigence of the debtor can be cited as a valid excuse for any excessive delays in this particular enforcement context (see, among many other authorities, R. Kačapor and Others, (...); and Crnišanin and Others(...)).

78. In view of the above and turning to the present case, the Court notes that the Serbian authorities have advanced no reasons for their failure to take all necessary measures in order to enforce the judgments at issue between 3 March 2004 and 1 June 2006, those being the date of entry into force of the ECHR in respect of Serbia and the date of the institution of the enforcement proceedings as regards the sixth applicant respectively, and May, June and July 2011, which was when the applicants were ultimately paid the full amounts awarded in their favour (see, *mutatis mutandis*, Vlahović (...), where a final judgment rendered against a socially owned company had been enforced following a three year delay). It is further understood that, as pointed out by the Supreme Court of Cassation, enforcement proceedings concerning the payment of all work-related pecuniary claims should not have been stayed even where the debtor was being restructured as part of the privatisation process (...).

79. Accordingly, the applicants have suffered a violation of their rights guaranteed under Article 6 § 1 of the ECHR."

Another interesting case is ***Čeh v. Serbia*** of 1 July 2008. In this case the Court concluded that the proceedings had been pending for a total period of more than 17 years. The last four years occurred after Serbia ratified the ECHR. The ECtHR found that the reasonable time requirement in Article 6 was not met. It also referred to previous findings that the repeated re-examination of a single case following remittal indicates a serious deficiency in the judicial system. In this case it happened four times, in proceedings which were of great importance to the applicant. On all four occasions the decisions were in the applicants favour.

A next example is constituted by the judgment in the case of ***Ilic v. Serbia*** of 9 October 2007.

Mr. Ilić (born in 1935 and living in Belgrade) inherited the legal title to a flat which had belonged to his father, but he was unable to use the flat as it belonged to a category called "protected tenancy regime", controlled by the State, and it was occupied. Since 1992 a new law made it possible for owners of such flats to reclaim possession of their property. The applicant started proceedings and on 17 August 1994 the Housing Department of the Palilula Municipality ordered the "protected tenant" to leave the flat by 31 December 1995, later extended to 31 December 2000.

Unable to repossess his flat, the applicant brought separate civil compensation proceedings against the Municipality. In June 2007 the First Municipal Court in Belgrade ruled partly in favour of the applicant and ordered that he be paid compensation for the market rent which he could have obtained had he been in a position to rent the flat. That court also decided that the Municipality had sufficient resources to provide the protected tenant with alternative accommodation, being obliged according to law to enforce the eviction order.

In this case, the ECtHR ruled that there was a violation with respect to the length of proceedings. The ECtHR highlighted as usual the general principles laid down in its case law, adding that a chronic backlog of cases is not a valid explanation for excessive delay, and the repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in the respondent State's judicial system. The contracting states have to organise their courts in such a way as to guarantee everyone's right to a determination of their civil rights and obligations "within a reasonable time". It subsequently determined that there had been a violation of Article 6 (1) on account of the length, within the period of the ECtHR's jurisdiction[5], of the civil proceedings which had lasted three years and six months and are apparently still pending.

This reasonable time requirement is also accentuated in family law cases. The case of ***V.A.M. v. Serbia***, of 13 March 2007, shows the relevance clearly, looking at the issue at stake – contact between parent and child – and taking into account the health condition of the applicant (HIV-infected).

In the case Ms. V.A.M. complained about the length and fairness of the civil proceedings, so far lasting eight years, of which two years and 11 months were to be examined by the ECtHR, and about having been unable to see her only child or exercise her parental rights.

The reasonableness of the length of proceedings is assessed in the light of the circumstances of the case and having regard to the criteria laid down in the ECtHR's case law, in particular the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities. This goes in particular for matters concerning civil status; special diligence is required in view of the possible consequences which the excessive length of proceedings may have, especially on the enjoyment of the right to respect for family life.

A chronic backlog of cases is not a valid justification for excessive delay. Member states have a duty to organise their judicial systems in such a way that their courts can meet each of the right to a fair trial requirements, including the obligation to hear cases within a reasonable time, as specified in the ECtHR case law. Finally, the ECtHR requires exceptional diligence in dealing with cases where the plaintiff is HIV positive, as well as in all matters where the impugned proceedings concerned a child custody dispute. The domestic authorities, instead of showing exceptional diligence in expediting the proceedings, consistently failed to make use of procedures to oblige the other parent to take part. The ECtHR therefore found a violation of Article 6 (1) as regards the length of the civil proceedings.

5 The provisions of the ECHR are applicable as of date of signature and ratification of the Convention and its effective recognition by the Memebr State. In a case of Serbia as of March 2004.

The following cases are worth mentioning in order to clarify the relevance of the reasonable time standard according to the European Court of Human Rights:

Stanković v. Serbia of 16 December 2008 (labour case)

On 7 November 2001 the applicant, a bus conductor, was dismissed by his employer. On 24 December 2001 he filed a claim with the Municipal Court, seeking reinstatement and payment of salary arrears. Following a remittal on 14 April 2003, the next hearing was scheduled and on 27 January 2006 the Municipal Court ruled against the applicant. On 25 April 2006 the applicant was served with this judgment. On 3 May 2006 the applicant filed an appeal with the District Court. On 18 December 2006 the District Court returned the case file to the Municipal Court, requesting it submit certain missing documents after which on 29 March 2007 the District Court upheld the judgment; the Supreme Court rejected the applicant's appeal on points of law in a decision of 3 April 2008.

The ECtHR makes five observations and comes to the conclusion that the case was not heard within a reasonable time:

i. The impugned proceedings lasted between 24 December 2001 and 3 April 2008. Since Serbia ratified the ECHR on 3 March 2004, they have thus been within the Court's competence *ratione temporis* for a period of four years and one month before three levels of jurisdiction.

ii. On 3 March 2004 the applicant's case had already been pending for more than two years and two months.

iii. The nature of the applicant's lawsuit was not particularly complex.

iv. One significant period of judicial inactivity of more than one year and five months occurred.

v. The first instance judgment was served on the applicant some three months following its adoption and there had been further delays and errors in the processing of his appeal lodged subsequently.

Popović v. Serbia 20 February 2008 (monetary claim)

On 9 April 1984 the applicant brought a civil action in the Belgrade Third Municipal Court against a certain N.D., seeking repayment of a loan. Having heard the applicant on 5 November 2002 the court gave a judgment accepting the applicant's claim. On 26 November 2003 the judgment was quashed and the case was remitted. The District Court instructed the first-instance court to hear the parties, as well as to hear the other witnesses proposed by the applicant. In the resumed proceedings, the court held a hearing on 16 November 2004, which the applicant did not attend although duly summoned. In the following steps the applicant's health was discussed, as it made it impossible for him to attend the hearings, and medical reports were duly submitted. The court also obtained an expert opinion on 27 May 2005. At the hearing held on 26 September 2006 the applicant's lawyer specified the claim, whereas the respondent submitted that, if the applicant was ill, the court could not continue the proceedings. The proceedings are still pending before the first-instance court.

The ECtHR did not accept the view that the protracted character of the proceedings had been mainly imputable to the applicant. Once it was established that the applicant was unable to attend court due to his poor health, it was not the court's task to enquire about his capacity to act. However, since the applicant's lawyer was present at every hearing, there were no procedural obstacles to continuing the case and taking other evidence. The court could have read to the record the applicant's statement given in 2002, or invited him to submit any other information

in writing, if this had been vital for deciding the merits of the case. Finally, it was for the court to assess the applicant's failure to give a statement in the proceedings. The ECtHR concludes that the applicant's inability to be heard should not have caused the proceedings to last, following their remittal, over four years at one level of jurisdiction.

Having regard to its case law on the subject, and in particular the fact that the proceedings are still pending at first-instance with no prospects of a speedy conclusion, the ECtHR considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

One feature often catches the eye in this respect: the repeated remittal of cases, also called the "Ping-Pong effect". Although there are no specific cases regarding Serbia, the case of ***Parizov v. the Former Yugoslav Republic of Macedonia*** of 7 February 2008 is very illustrative for the issues with which Serbia is faced:

"58. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case(...) During the time which falls within its competence *ratione temporis*, the case was reconsidered on five occasions. The domestic courts thus cannot be said to have been inactive. However, although the Court is not in a position to analyse the quality of the case law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (...). It further observes that (...) it took the domestic authorities nearly two years to serve the Court of Appeal's decision on the applicant (...).

59. In this context, the Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time ....".

These judgments (and examples) show the need for a set of measures to be implemented in order to reduce number of repetitive cases and to create a situation in which Serbian citizens will enjoy an improved access to court to have their case heard and resolved within a reasonable time. It goes without saying that these and other judgments by the ECtHR place a considerable burden on the Serbian State budget, which is also an issue to be taken into account. Reducing the number of repetitive violations would directly reduce the monetary allocation in the budget to be used for the compensation, in that way making more funds available for the better functioning of the judiciary. These funds can be invested in a better-equipped and manned judicial system, allowing judges to focus on competence-based training, keeping in mind that the ECHR is a living instrument and its proper implementation requires continuous education and exchange of knowledge. Achieving this will gradually lead to less human rights violations and better protection at the national level, ultimately reducing the number of violation-of-reasonable-time cases. This approach also clearly underlines that competence and quality should prevail over "stopwatch justice". This is of particular importance for transitional countries searching for the right path towards protection of democracy, human rights and rule of law.

Many transitional countries find that their judiciaries are having difficulties in coping with excessive backlog of cases and dealing with reasonable time standards set up by the ECtHR, thus violating fundamental human rights. Delays affect both the fairness and the efficiency of the system. They impede the access to the courts, weakens democracies, the rule of law and the ability to enforce human rights.

For this reason, the Report provides an overview of different solutions, presents the manner in which international comparison of judicial performance can be used within the context of the ECtHR standards, and suggests indicators that can be used in such comparisons, all with a view to enabling Serbia to find its own way.

Chapter 2 – The European Convention on Human Rights related Articles and the relevant case law

2.1 Overview of the concept as set out in Article 6 (1) and Article 13

The relevant provisions of the European Convention on Human Rights are:

Article 6 – "Right to a fair trial"

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

Article 13 – "Right to an effective remedy"

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

In the leading case of ***Kudła v. Poland*** in 2000[6] the ECtHR established the existence of a systemic connection between the right to a fair trial within a reasonable time in Article 6 (1) of the ECHR, and the right to an effective remedy in Article 13:

"155. If Article 13 [of the ECHR] is [...] to be interpreted as having no application to the right to a hearing within a reasonable time as safeguarded by Article 6 § 1 [of the ECHR] individuals will systematically be forced to refer to the ECtHR complaints that otherwise, and in the ECtHR's opinion more appropriately, have to be addressed in the first place within the national legal system. In the long term the effective functioning, on both the national and international level, of the scheme of human rights protection set up by the ECHR is liable to be weakened.

156. In view of the foregoing considerations, the ECtHR considers that the correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time."

The ECtHR further substantiated its position on the relationship between Article 6 (1) and Article 13 in, amongst others, the case of ***Lukenda v. Slovenia***[7]. It held as follows:

"81. The Court reiterates that in *Kudła* it decided that Article 13 of the ECHR "guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time" (see *Kudła*, cited above, § 156).

[...]

86. The Court reiterates that the standards of Article 13 require a party to the ECHR to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant ECHR complaint and to award appropriate relief, although Contracting

6 Application No. 30210/96.
7 Application 23032/02, 6 October 2005.

States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal*, cited above, pp. 1869–70, § 145).

In the present case the Government failed to establish that an administrative action, a claim in tort, a request for supervision or a constitutional appeal can be regarded as effective remedies (see paragraphs 47–65 above). For example, when an individual lodges an administrative action alleging a violation of his or her right to a trial within a reasonable time while the proceedings in question are still pending, he or she can reasonably expect the administrative court to deal with the substance of the complaint. However, if the main proceedings end before it has had time to do so, it dismisses the action. Finally, the ECtHR also concluded that the aggregate of legal remedies in the circumstances of these cases is not an effective remedy (see paragraphs 69–71 above).

Accordingly, there has been a violation of Article 13 of the ECHR."

To conclude, the legal remedy, or legal remedies, for protecting the right to a trial within a reasonable time has to be effective. This means that it can be shown that national courts can "substantially correct" in favour of the applicant their unduly long (delayed) judicial proceedings[8].

2.2 Concept of "reasonable time" according to the ECtHR – the reasoning behind benchmark cases

The "reasonable time" requirement is one of the elements within the scope of the requirements for a fair trial pursuant to Article 6, paragraph 1 of the ECHR.

In accordance with the ECHR's principle of subsidiarity, the issue of excessive length of the proceedings should be dealt with in the first place by domestic courts (*Kudla v. Poland*, GC, and judgment of 26 October 2000).

However, there is another dimension to the "reasonable time" requirement. The ECtHR considers the excessive length of the proceedings as representative of poor functioning of the judiciary. According to the ECtHR's case law, the ECHR 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 (1), including that of trial within a "reasonable time". It follows that the State shall be held responsible not only for any undue prolongation of the proceedings in a particular case within an otherwise speedy legal system, but also whenever it fails to enhance its resources (i.e. number of judges) to improve the situation of the judiciary or adjust it accordingly in order to cope with the backlog and repetitive cases. The State shall also be held responsible for all errors in the organisation of its own judiciary that contribute to undue delays in proceedings.

Complaints by states that their courts are overloaded or that they have huge numbers of cases and/or backlogs – and that this is the reason for excessively long proceedings – cannot exonerate the authorities from their responsibility for the total delay in the proceedings. The ECtHR deems that it is incumbent upon the states to organise their legal system in a manner that will enable the courts to guarantee the right of everyone to have their cases determined without any undue delay (*Zimmermann and Steiner v. Switzerland*, 1983, paras. 27–32; *Kurzac v. Poland*, 2000, paras. 30–35).

The ECtHR shall assess the length of the proceedings independently (autonomously), which means that it shall not be bound by the opinion of any of the national bodies.

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8 Mr Peter Pavlin "Elements for the Manual on the Effective Remedies for the Protection of the Right to a Trial within a Reasonable Time in the Republic of Serbia" (Elements for the Manual), Belgrade, 2014.

2.2.1 Criteria to be considered when assessing the reasonableness of length of proceedings

The reasonableness of the length of proceedings must be assessed in light of the particular circumstances of the case and having regard to the criteria laid down in the ECtHR's case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation. There are no absolute, objective time limits or exactly defined periods by which one may determine unequivocally a violation of the reasonable-time requirement or not.

1) Complexity of the case: Procedural complexity or complexity as to the merits of the case may justify delays in the proceedings. Therefore, for example, the ECtHR will take into account the fact that a case was heard before a number of courts and not at one instance only. That means that the situation will not be the same for a case that took four years to be completed before a single-instance court and one of the same duration before three court instances. Furthermore, the ECtHR will also consider whether there were grounds for presenting a large amount of evidence, whether there were many defendants involved, whether there was more than one count in the indictment or if there was a need for expert opinions and expert witnesses to be heard. The fact that some of the evidence must be presented abroad can also justify some delays in the proceedings. The ECtHR will take all such points into account as elements that may contribute to the complexity of the case, as well as the complexity of legal issues that had to be decided in national proceedings.

2) What is at stake for the applicant (i.e. type of case – employment or pension case, age of the applicant, road accident cases, especially those involving serious bodily harm and, generally speaking, cases involving death of a person, civil status and capacity of persons, bankruptcy, etc.). Therefore, in the reasoning part courts should state whether the case by its nature calls for an expeditious decision. For example, in the case *Galović v. Croatia* (decision of 5 March 2013, paras. 70–78), the ECtHR dismissed the applicant's claim as to the length of the proceeding before the Constitutional Court. It held that the length of the proceedings has in fact benefited the applicant, because the Constitutional Court had postponed the execution of her eviction from the apartment.

3) The applicant's conduct is also taken into account (i.e. whether the applicant herself/himself had contributed to delay the proceedings). A State cannot be held responsible for the periods for which the applicant alone was responsible. Applicants certainly have every right to use any procedure or remedy granted by the domestic laws and this alone cannot be regarded as an undue prolongation of the proceedings. However, if this means delaying the proceedings, this shall not be attributed to the State. For example, if the applicant refuses any cooperation with an expert witness, or if on several occasions he/she declines to take a DNA test, if he/she refuses to acknowledge the jurisdiction of a specified court, etc. it might be concluded that the applicant herself/himself contributed to the length of the proceedings.

4) Conduct of the relevant national authorities may unduly protract the proceedings: lengthy periods of inactivity, lack of any response from a court for which there is no explanation (i.e. periods in which there are no procedural actions, not only lack of a hearing but lack of any procedural actions), changes of judges, the time elapsed from remitting a case from one court to another or as to the transfer of cases between the courts, conducting a hearing, hearing of evidence (if it took too long or was unnecessary), suspension of the proceedings until another case has been finalised, lack of coordination between administrative bodies, etc.

The State is responsible for any delay in the proceedings attributable to its judicial or administrative bodies. Inactivity is seen by the ECtHR as a serious obstacle to a timely conducting of proceedings.

5) For assessing the reasonableness of the global length of the proceedings the number of court instances involved is taken into consideration, as already referred to above under 1). Each of the enumerated factors shall be assessed separately, and then their cumulative effect on the overall duration of the proceeding shall be considered.

However, the ECtHR shall often find a violation of the reasonable time requirement on the basis of one of the above-mentioned elements alone without considering the overall length of proceedings. Thus, it has frequently found violations in cases where the overall length of proceedings might have been perceived as reasonable, taking into account the number of instances involved at national level, but in which there were serious periods of inactivity before one of the instances involved. For instance, if it took four years for a case to be heard before three instances, this might be seen as reasonable. Yet, if the case was in fact pending before one instance only for three years, the ECtHR might find that this delay was sufficient to violate the reasonable time requirement of the whole proceedings.

2.2.2 Calculating the length of the proceedings

Practitioners have always been interested in knowing exactly which period was to be taken into consideration for calculating the length of the proceedings, i.e. when exactly do the proceedings begin and when they end.

Civil proceedings begin to run at the moment when a judicial procedure has been initiated (from the date of filing a complaint to the court). In any case, they last until a final decision has been issued. However, proceedings shall continue if, for example, they concern the execution of a judgment. It is not sufficient that a judgment has been adopted; what is important is that it is also executed. This means that it is necessary to make the State machinery available to those who sought to enforce their rights. Only then will the proceedings end. If, for example, the case is about the obligation to pay then the proceedings will end when the payment has been collected. For so long as the enforcement proceedings were under way, the applicant's case could not be deemed to have been determined. Article 6 (1) of the ECHR 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 (*Estima Jorge v. Portugal*, judgment of 21April 1998, paras. 34–35; *Silva Pontes v. Portugal*, judgment of 23 March 1994, para. 30).

Civil proceedings also include administrative procedures. If an administrative procedure continues before a court, then the calculation of the length of the proceedings shall also take into account the state of affairs before the administrative bodies, namely, the whole period or part of the period during which the dispute had been pending before administrative bodies (e.g. before a housing committee, after which the case may be subject to court review, in the appeal procedure). For the assessment of the total length of the proceeding, the whole period may be taken into account, and not only the length of the proceeding before the court. (*G.S. v. Austria*, judgment of 1999, para. 32).

In criminal matters the "reasonable time" referred to in Article 6 (1) begins to run as soon as a person is "charged" according to national law. This may occur on a date prior to the case coming before the trial court (see, for example, the *Deweer* judgment of 27 February 1980, para. 42), 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 (see the *Wemhoff* judgment of 27 June 1968, para. 19, the *Neumeister* judgment of the same date, para. 18, and the *Ringeisen* judgment of 16 July 1971, para. 110). "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/she has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (*Eckle v. Germany*, judgment of 15 July 1982, para. 73; *Foti v. Italy*, judgment of 10 December 1982, para. 52).

As regards the end of the "time" in criminal matters, the period governed by Article 6 (1) covers the whole of the proceedings in issue, including appeal proceedings (see the *Eckle v. Germany* judgment, paras. 76–77; the *König* judgment of 28 June 1978, para. 98).

For a case that has been terminated it is also possible to lodge an application before the ECtHR regarding **the reasonableness of the length of the proceedings**, irrespective of whether the outcome of the proceedings was in favour of or against the applicant.

A legal entity may also claim to be a victim of a violation of the reasonable time requirement and can claim compensation for non-pecuniary damage (see the *Comingersoll S.A. v. Portugal* judgment, GC, of 6 April 2004, paras. 32 and ff.).

2.2.3 Compensation pursuant to Article 41 of the ECHR

The subject matter of the trial is irrelevant with regard to the amount of the award sought by the applicant for the violation of the reasonable time requirement, since applicants mostly claim compensation for non-pecuniary damage which is awarded for the period of waiting, stress, moral or physical pain or suffering, or the feeling of uncertainty caused by the length of the proceedings.

When determining the amount to be awarded for non-pecuniary damage, the ECtHR takes into consideration the level of the national income of a particular country. It will also take into account whether at national level domestic remedies have been introduced in accordance with the requirements of the ECHR. If there is an effective domestic remedy for the length of proceedings, the Court may accept lower compensation than it would otherwise award (*Cocchiarella v. Italy*, GC, judgment of 29 March 2000, para. 69 and ff).

Pecuniary damages may also be awarded if they can be supported by evidence, i.e. if a causal link between the damages and the violation of the principle of reasonable time requirement in a trial is established. This, however, occurs very rarely.

2.3 Benchmark cases

Lukenda v. Slovenia

The sheer number of cases submitted against Slovenia concerning violations of the right to a trial within a reasonable time was the main reason why the ECtHR issued a 'quasi-pilot' judgment in the case of *Lukenda*. The problem of the excessive length of legal proceedings has plagued Slovenia for a number of years. The amendments made to the 2006 Law (see Slovenian experience below under 4.3) in accordance with the ECtHR's decisions arguably demonstrate a degree of willingness on the part of the Slovenian Government to comply with the ECtHR on this issue. However, problems remained even post the 2006 Law, which was introduced in the wake of *Lukenda*. In respect of systemic problems which have arisen in Slovenia, there is evidence of a correlation between the judgments of the Slovenian Constitutional Court and the

ECtHR. Parliament has failed to implement certain Constitutional Court judgments adequately and there have been substantial delays before laws, which have been declared unconstitutional and subsequently amended.

Pinto v. Italy

The application of the Pinto Law in Italy has been accompanied with serious difficulties. Firstly, from 2003 to 2010 the number of claims for compensation based on the Pinto Law increased from 3,500 to 53,000 per year. This led, in turn, to an extension in the length of proceedings to award compensation in these cases, despite provisions by the Law for summary proceedings. Secondly, compensations awarded by Italian courts in accordance with the Pinto Law have had a serious effect upon the State budget: by 2011, the total outstanding amount of compensations awarded approached 208 million euros, thus becoming an issue of concern for the State budget[9]. As a result, the ECtHR was obliged to intervene, identifying lack of funding as a problem prohibiting the effective application of the Pinto Law and called for the respondent State:

- to re-establish the effectiveness of the "Pinto" remedy by putting an end to delays in the payment of compensation awarded in those proceedings; and
- to make more funds available in order to guarantee compliance with "Pinto" decisions within a time-limit of six months from the date of their becoming final (*Gaglione v. Italy*, 45867/07 and 69 others, 21/12/2010).

Burdov (No. 2) – The First Pilot Judgment Against Russia

The European Court of Human Rights adopted a judgment in Burdov's first case in 2002[10] and, in the second case in 2009[11], the first 'pilot' judgment against Russia. In its judgment in 2009, the ECtHR found violations of Article 6 (the right to a fair hearing), Article 1 of Protocol No. 1 to the ECHR (the right to property) and of Article 13 (the right to an effective remedy).

Importantly, the ECtHR also stipulated in the operative provisions of its judgment that a remedy must be established to provide redress for the non-enforcement, or delayed enforcement, of domestic judgments. Furthermore, unlike previous pilot judgments, the Court laid down a specific timetable for compliance with the judgment: six months to set up the remedial system and one year within which to provide redress to all applicants in a similar situation whose cases had been lodged with the ECtHR and communicated to the Russian government before the adoption of the judgment. All other similar newly-lodged cases were to be adjourned for a period of one year.

The Court's application of the pilot judgment procedure reflected the fact that 200 judgments had already been delivered with respect to the failure of the Russian authorities to execute domestic court decisions in similar circumstances, including in relation to payment of social benefits (pensions and child allowances), compensation for damage sustained during military service and compensation for wrongful prosecution. There were a further 700 similar cases pending. Moreover, as in *Burdov (2002)*, a number of these applicants had already previously applied to the Court regarding the same violation. The Court considered this to be indicative of a "persistent structural dysfunction" and a practice incompatible with the ECHR.

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9 M. Remus Rimedi contro la violazione del diritto a una ragionevole durata del processo: lezioni della legge "Pinto" e prospettive future//Attuazione della Convenzione Europea per la Salvaguardia dei diritti dell'uomo e delle libertà fondamentali nei sistemi giudiziari nazionali: esperienza dell'Italia e della Russia. Centre Européen de Coopération Juridique; Strasbourg, 2013. P. 149.

10 Applicatioon No. 59498/00.

11 Application 33509/04.

The Russian authorities have for many years been aware of problems relating to the enforcement of final domestic judgments, and they have acknowledged the gravity of the issue. In its judgment of 7 July 2002 in the case *Burdov v. Russia* the ECtHR found that the local courts' decisions concerning the payment of the "Chernobyl allowances" were unenforced for some years and accordingly held that there have been violations of Article 6 of the ECHR and of Article 1 of Protocol no. 1 on account of the authorities' failure to take the necessary measures to comply with these decisions (§37–38). More than 200 judgments were adopted by the ECtHR between 2002 and 2009 concerning the same issue. The incoming flow of such cases was increasing at a stable pace and has more substantially increased in 2007–2008 (more than 40 % of the Chamber cases). It should be noted that, in addition to hundreds of cases from Russia, there were as many similar cases coming from certain other countries like Ukraine and Moldova. In April 2010 the new law on compensations for a violation of the right to a proceeding within reasonable time or the right for enforcement of judicial acts within reasonable time entered into force to remedy the problem (see Annex 2, available online[12]).

Gerasimov and Others v. Russia

On 10 June 2014 the ECtHR adopted a new pilot judgment against Russia concerning non-enforcement in the case of *Gerasimov and Others v. Russia*[13], finding violations of Articles 6 and 13 of the ECHR**.** The case dealt with a somewhat different problem concerning enforcement, i.e. the lack of enforcement of judgments concerning the State's obligations in kind. In the actual case, the Russian authorities failed to enforce judicial decisions ordering the provision of housing and utility services. In the Court's view, the case demonstrated that serious structural problems persisted in that regard in Russia. The Court had already delivered judgments concerning more than 150 applications of this type, and a further 600 similar applications are currently pending.

Chapter 3 – Serbian legal framework and underlying problems related to the backlog of cases

3.1 Legal regime

According to the Constitution of Serbia, all international treaties and customary international law form part of the internal legal order of Serbia. Although ratified international instruments must be in conformity with the Constitution, laws and other legislation need to be in accordance with international conventions binding upon Serbia (Article 194). While the ECHR has not been made a part of the Constitution, all the rights and freedoms from the ECHR found their place in the Constitution. Even though there is no direct constitutional or legal provision which would introduce the case law of the ECtHR into the Serbian legal space, the Constitutional Court of Serbia has been increasingly basing its decisions on the ECtHR case law, thus taking up a leadership role in the introduction of the ECtHR case law into the Serbian jurisprudence.

In order to create a mechanism as required by the ECtHR in the *Kudla v. Poland* judgment mentioned above, new legislation was introduced[14]. The idea is to cope with the impressive number of applications pending before the ECtHR, i.e. with the situation in Serbia where despite many efforts there is still a large backlog of pending cases.

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12 http://www.coe.org.rs/eng/activities_sr/?conid=3274

13 Applications Nos. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11, 60822/11.

14 See Amendments to the Law on Court Organisation - Articles 8a–8v, Official Gazette of the Republic of Serbia No. 101/2013.

The recent legislation came into force in May 2014 but experience shows that the problems have not been resolved. In practice these new provisions have raised several questions, as was highlighted in the position of the Supreme Court of Cassation and in the Manual[15] (see Annex 3 available online[16]). It will be useful to consider these experiences. As a consequence there are some doubts as to whether this new legislation can be regarded as an effective remedy. If the negative answer were true that would prove to be harmful for both Serbia and the ECtHR system.

The present Report aims at identifying the nature and size of the problem and to suggest solutions that may assist the competent legislative and judicial authorities in their complicated task.

The present situation – taking the current legislation as the starting point – is such that the procedure is considered as being one-sided, which allows for a rather simple organisation. However, in order to create a consistent application of the law, "know how" must be collected and updated regularly to provide judges with a framework to deal with the cases.

As to the first task of the court, to find if a violation took place and to what extent, the court must be able to assess the whole procedural situation, which is supposed to be sufficient to indicate to the lower court the time within which the case must be completed. As it is not entirely clear what is meant by "completion" and what kind of activities are expected, the timeframe should consequently be considered in enumeration.

In order to assess the question about the violation, a framework needs to be set up on the basis of the criteria from the ECtHR (*Frydlender v. France* of 27 June 2000). This framework could include a checklist.

Given the nature of the complaints, such a checklist could be filled out first by a judicial assistant, then submitted to the court and the court can then decide whether there is a violation or not. The first experiences with the new articles showed that many issues were not clear and that a different approach would be useful.

The question of compensation is a serious one as well. The text of the amendments (Articles 8a–8v) allows the court to determine compensation. It is our opinion that this compensation needs to be determined when a case is found to be of excessive length. It would be most practical to determine this compensation at the same time as the decision, in which the lower court is ordered to complete the case, assuming it will obey the order. In that situation, one may set the time that the case has been taken on the respective level(s) so that the times as well as the circumstances are known.

It seems beneficial to indicate here that, as far as the time itself is concerned, the compensation is determined wholly or partially depending on the length. This is to be calculated based on the time between when the case should have been completed within a reasonable time and the reality; this "excess-time" determines the ground for the compensation.

The amount of the compensation is to be decided on the basis of the existing case law of the ECtHR regarding Serbia as well as the financial and economic circumstances in the country. Bearing in mind the information available, for instance in the *Scordino* case, the methods for calculating the amounts can be considered using as a criteria that the compensation is considered to be "not unreasonable".

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15 Mr Peter Pavlin "Elements for the Manual", Belgrade, 2014.

16 http://www.coe.org.rs/eng/activities_sr/?conid=3274

The new Draft Law on the right to a trial within a reasonable time

Serbian authorities have already acknowledged that there is a need to tackle the problem differently and thus decided to solve the problem of the violation of the reasonable time by introducing comprehensive legislation, namely the new Law regulating the issue.

As to the legislative process, it would be preferable that representatives of the Serbian judiciary be consulted at an early stage, as early as possible, in order to make use of their experience in the matter and to ensure their commitment in the application of the future Law. Moreover, a broad consultation involving other representatives of the Serbian legal community is recommended, in particular the Bar Association and the academic world.

It is a must, while reflecting on a new legislation, to take into account the ECtHR case law, in particular already existing case law on Serbian cases, but also other benchmark cases related to the "reasonable time".

The new Law should be drafted in a clear and easy-to-implement manner, allowing swift and fair decision-making.

Having in mind that the new Law will introduce an additional regime for solving the violation-of-reasonable-time cases, transitional provisions ought to be drafted very carefully. It could been taken into consideration that the new legislation brings all reasonable time complaints and applications under one roof: pending cases will be treated according to the new law, taking into account the state of the procedure; and cases pending before the ECtHR can be included in such a way that the State Attorney may offer a settlement which, after acceptance, could lead to their removal from the pending list at the ECtHR.

3.2 Identification of the underlying problems in the Serbian judiciary related to the backlog: reasons why the lengthy cases are lengthy

Excessive length of proceedings is a common problem for many Council of Europe' member states. Many studies have been made and actions taken throughout Europe to address the causes of this backlog of cases, as well as to ensure appropriate remedies upon their conclusion. During the course of on-site visits, discussions were held with Serbian partners to determine the reasons for these delays specific to the Serbian State. The findings can be summarized as follows:

- Political changes;
- Economic transitional measures;
- Legislative reforms (continuous changes of the legislation; inadequate final and transitional provisions, etc.);
- Judicial reform/s;
- Reallocation of responsibilities between courts;
- Bifurcation of financial management amidst courts, High Judicial Council and Ministry of Justice (causing confusion and additional work for the courts);
- Uneven regional distribution of courts;
- Insufficient number of judges;
- Excessive court workloads;

- Continuous growing stock of cases;
- Inaction by judicial authorities (i.e. judicial inertia);
- Deficiencies in the rules of procedure (be it civil, criminal and/or administrative);
- Problems with summoning of parties to the proceedings;
- Problems with expert witnesses;
- Numerous adjournments of proceedings usually coupled with court inertia;
- Excessively long period in between hearings;
- Lack of efficiency of the previous procedures, as well as those initiated/conducted by the police, public prosecution, other state bodies, etc.;
- Inadequate enforcement rules/procedures.[17]

Tactics and strategies to tackle backlogs and delays usually target both the existing problems as well as aiming to prevent the creation of new delays. Amongst the measures used in different countries to resolve the situation are:

- Simplification of procedure/s;
- Use of alternative means of settling disputes;
- Limiting the frequency with which the rulings of lower courts may be quashed;
- Removal of non-judicial tasks from judges;
- Using single judges instead of benches in certain cases;
- Improving case-management and use of new technologies;
- Adaption of the organisation of the courts to changes in the caseload;
- Allowing certain flexibility in the transfer of cases between courts, at least on a temporary basis;
- Introducing measures to prevent abuse of procedures by parties or lawyers; and
- Instituting tools to expedite the preparation of files in advance of proceedings and to optimise the progressions of the case timeline.

As there are a great variety of measures throughout Europe designed to deal with such backlogs and excessive delays, it is necessary that any approach adopted in Serbia be fit-for-purpose and adapted to the particulars of the Serbian context. Any effort to determine a solution within Serbia should be considered with the following elements in mind:

a. Ensuring that judgments of courts in monetary cases are immediately enforceable, notwithstanding appeals; an injunction before the President of the High Court to suspend execution, should be introduced;

b. Determining that evidence in civil cases and administrative cases, collected by a court, will remain valid should the judge be replaced;

c. Establishing in all civil proceedings that it is the responsibility of the parties to obtain all documents, official or non-official, supporting their claims or defence. The State for its

17 Serbia has particularly high rate of cases experiencing prolonged delays regarding the enforcement of court rulings. In addition, there is group of cases, consisting of 1.5 million, which concern unpaid utility bills. These should be dealt with separately from the general non-enforcement issues.

part must ensure that public officials provide parties, upon their request, with all official documents, subject to the payment of fees or retributions whenever applicable.

d. Introducing a certain specialisation for different types of cases, e.g. family law cases, commercial cases (without contradiction and contradictory cases), etc. In order to observe the rules for random distribution of cases, a system can be introduced by which first incoming cases are registered, categorised according to their specialisation, and finally subjected to random distribution over the courts dealing with the respective type of cases.

e. Ensuring allocation of judges to courts in accordance with both the existing and expected workload; when necessary additional office space will be rented to accommodate the courts according to reasonable standards;

f. Allowing the High Judicial Council to transfer cases to judges and courts with lesser workloads (to be completed by the President of the court).

Keeping in mind that any solution would need to respect the independence and impartiality of Serbian courts, it would be preferable that the Serbian judiciary itself should play a predominant role in this process, with the High Judicial Council taking the lead (constitutionally possible) and the Ministry of Justice providing additional support. Their close cooperation is required.

In order to ensure tangible results, it would be preferable to task the Administrative Office of the High Judicial Council with:

- the collection of data from each of the violation of-reasonable-time cases dealt with by the regular courts from May 2014 (when the new legislative measures were introduced); and
- conducting, based on this data, in-depth analysis of the underlying causes involving all above-mentioned key institutions (judiciary, High Judicial Council and Ministry of Justice).

Only such an analysis can facilitate the successful remedying of the situation by identifying a path that is tailor-made for Serbia. Reasons for delay may be based on the systemic, structural deficiencies or linked with specific situation within certain appellations; they may be common to all types of proceedings or differ among civil, criminal and administrative proceedings; contingent upon the internal court functioning or influenced by external factors, etc. Consequently, once the root causes in the Serbian context are determined it would be possible to design an action plan with measures, responsible bodies and deadlines to solve these particulars. However, it is essential that, whatever the specifics suggested, the ECHR and the ECtHR's jurisprudence be used as the standard against which any proposed measures and their implementation are evaluated.

Chapter 4 – Comparative overview regarding different solutions in overcoming violation-of-reasonable-time situations

4.1 Russian Experience

The problem of reasonable length of proceedings in Russia is directly linked with that of unenforced judgments of Russian national courts. As emphasised by the Supreme Court of the Russian Federation in Plenary Resolution No 5 of 10 October 2003[18], "in the sense of Article 6(1) of the ECHR the period of court examination in civil cases begins from the time of the receipt of the statement of claim and ends when the court decision is enforced. Consequently, according

18 Full title of the Resolution being "On the application by ordinary courts of the universally recognized principles and norms of international law and the international treaties of the Russian Federation".

to Article 6 of the ECHR, the enforcement of the decision of the court is seen as a part of the "court examination" (p. 12 of the Plenary Resolution)".

The systemic problem required a systemic approach. The existing domestic remedies for the execution of domestic judgments and the practice of their implementation led the ECtHR to the conclusion that the remedies in question provided by national law cannot be considered as effective both in theory and in practice as required by Article 13 of the ECHR (see the ECtHR analysis in the pilot judgment *Burdov (No.2) v. Russia*[19], §26–37). The ECtHR also quoted the Address of the President of the Russian Federation to the Federal Assembly delivered on 5 November 2008, in which the President stated in particular that it was necessary to establish a mechanism for compensation of damage caused by violations of citizens' right to a trial within a reasonable time and to the full and timely implementation of courts' decisions (see §38 of the mentioned Judgment).

In a very diplomatic but firm manner the ECtHR concluded: "It appears highly unlikely in the light of the ECtHR's conclusions that such an effective remedy can be set up without changing the domestic legislation on certain specific points" (*Burdov*, §138). In this respect the ECtHR attached considerable importance to the findings of the Constitutional Court of Russia, which had invited the Parliament to set up a procedure for compensation of damage arising, *inter alia*, from excessively lengthy proceedings. The ECtHR also welcomed the legislative initiative taken by the Supreme Court in this area – the bills tabled in Parliament in September 2008 with a view to introducing remedies in respect of the violations in question: "The ECtHR notes with interest the reference to the ECHR standards as a basis for determining compensation for damage, and that the average amounts of compensation for delayed enforcement were calculated by reference to the ECtHR's case law" (*Burdov*, §139). At least the ECtHR noted that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large number of people suffering from the structural problem identified in the pilot judgment (*Burdov*, §142).

The same problem of the general measures to prevent new similar violations and further applications to the ECtHR was examined on several occasions by the Committee of Ministers of the Council of Europe. In the Memorandum prepared by the Department for the Execution of the European Court's judgments (17 October 2006), the Committee of Ministers highlighted a number of outstanding problems and proposed a number of avenues that the Russian authorities could consider in their ongoing research for a comprehensive resolution of the problem. The main avenues dealt with were:

- Improvement of budgetary, procedural and practical implementation of budget decisions;
- Ensuring effective compensation for delays (indexation, default interest, specific damages, possibility of reinforcing the obligation to pay in case of unjustified delays);
- Increased recourse to judicial remedies;
- Ensuring effective liability of civil servants for non-enforcement;
- Possible introduction of compulsory execution including seizure of State assets;
- Possible reconsideration of the bailiffs' role and increasing their efficiency.

On 30 April 2010, one year after the adoption of the *Burdov (No.*2) judgment by the ECtHR, the new Federal Law (namely the Law n. 68[20], known as "the Compensation Act") entered into force.

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19 Application No. 33509/04.

20 The full title of the Law being "On compensation by the State of damage caused by violations of the right to judicial proceedings within a reasonable time or the right to enforcement of the judgment within a reasonable time"; The Law in its abbreviated form is called "the Compensation Act".

The second law, of a more technical nature (Federal Law No. 69[21]) introduced changes in certain legal acts in connection with the adoption of the Compensation Act.

The Law of 30 April 2010 empowers the national courts of general jurisdiction to consider cases brought against the State on alleged violations of the above-mentioned rights and provides for specific rules to govern the proceedings in such cases (Section 3). The State is represented in the proceedings by the Ministry of Finance (Section 9). The national court assesses the complexity of a case, the behaviour of the parties and other actors in the proceedings, especially the acts of inaction of judicial or prosecution authorities; the court also assesses the duration of the violation and the importance of its consequences for the person affected. If the court finds a violation it makes a monetary award for damage to be determined taking account of the specific circumstances of the case, of the requirements of equity and of the ECtHR's case law (Section 2(2)). For "pedagogical" and administrative reasons the court may take a separate decision finding a breach of law by a court or a State official and order specific procedural actions to be taken.

The Council of Europe Secretary General Thorbjørn Jagland welcomed Russia's decision to compensate victims of excessively long domestic proceedings: "This positive step is the result of intensive cooperation between the Russian authorities and the Committee of Ministers over the past years in the context of the Committee's supervision of the execution of the judgments of the Strasbourg Court" (Press Release, 07.05.2010).

Some months after the ECHR's judgment in *Burdov–2* case the similar pilot-judgments were adopted: *Olaru and Others v. Moldova*, 28 July 2009, and *Yuriy Nikolaevich Ivanov v. Ukraine*, 15 October 2009.

As to the consequences of the *Burdov–2* judgment, and of the Compensation Act, accordingly to the judgment, the ECtHR adjourned the proceedings on all Burdov-type new applications lodged with the Court after the delivery of the judgment. As to the applications lodged before the delivery of the mentioned judgment the ECtHR decided to adjourn adversarial proceedings in all these cases for one year from the date on which the judgment became final with the purpose to give to the respondent state a possibility to conclude a friendly settlement with an applicant (more than 1.5 thousand friendly settlements were concluded during the first year).

In its decision on admissibility in the cases *Y. Nagovitsyn* and *M. Nalgiyev* of 24 September 2010, the ECtHR accepted that "the Compensation Act was designed, in principle, to address the issue of delayed enforcement of judgments in an effective and meaningful manner, taking account of the ECHR requirements" (§30). At the same time the ECtHR accepted the applicant's argument that the new remedy is only designed to compensate for enforcement delays but does not ensure the ultimate recovery of a judgment debt: " The ECtHR is mindful that the enforcement of the Compensation Act has not improved this situation"(§32).

However, the ECtHR recognized the effectiveness of the new domestic remedy in the context of the delay issue: "Regarding the underlying context, the ECtHR finds it significant that Russia has passed the legal reform introducing the new domestic remedy in response to the *Burdov* pilot judgment..." (§ 38).

The impact of the new remedy was evident: the part of complaints concerning the delay of proceedings and the non-enforcement of judgments decreased radically in the ECtHR – less than 17 % for the Chamber cases.

21 The full title of the Law being "On compensation by the State of damage caused by violations of the right to judicial proceedings within a reasonable time or the right to enforcement of the judgment within a reasonable time".

The other side of the coin, however, was that the Compensation Act concerned only the pecuniary obligations of the State, but not other obligations "in kind" (housing, repair services etc.), as stressed both by the Supreme Court and the Supreme Commercial Court of Russia in their common Plenary Resolution of 23 December 2010. The ECtHR reacted to this problem by adoption of another pilot judgment of 10 June 2014 – case "*Gerasimov and Others v. Russia*". All of the applicants complained that the authorities' failure to enforce the judgments in their favour within a reasonable time violated their right under Article 6 (1)) – right to a fair trial within reasonable time. Some of them also complained under Article 13 (right to an effective remedy).

In its new pilot judgment the ECtHR followed the approach elaborated in the *Burdov–2* judgment and invited the respondent State to provide a new effective remedy concerning the problem of State obligations in kind.

The most striking elements in the judgement are quoted below:

"...The Compensation Act entitles a party concerned ("an applicant") to bring a claim for compensation of the violation of his or her right to a trial within a reasonable time or of the right to enforcement within a reasonable time of a judgment establishing a debt to be recovered from the State budgets (Article 1, §1). Such compensation can only be awarded if the alleged violation took place independently of the applicant's own actions except those taken in the circumstances of force-majeure. A compensation award is not subject to the competent authorities' fault (Article 1, §3)". The latter provision is especially important since previous drafts prepared by the Supreme Court provided for the applicant's duty to prove the State authorities' fault in delays occurred which was not only difficult of accomplishment but did not comply with the ECtHR's approaches.

The scope of the new remedy application

According to Article 1 of the Compensation Act any person taking part in the proceeding and estimating that his/her right to a trial within a reasonable time has been violated (including the right to enforcement within a reasonable time) may apply for compensation. This remedy applies to all types of proceedings (civil, criminal, administrative), except constitutional ones. The new remedy not only covers judicial proceedings but also the investigation in criminal cases. The list of entitled persons includes parties to the proceeding, suspects, accused, debtors and creditors in enforcement proceedings.

One of the features of the new law is that it also applies to victims (in criminal trials), although in general Article 6 of the ECHR is not applicable to victims. The right to compensation for excessive length of a trial may be realised regardless of the stage on which the proceeding was terminated. That is, even if the case was terminated during the investigation stage, without examination on the merits, the victim may still apply for a compensation (which was confirmed by the Judgment of the Russian Constitutional Court N 14-П of 25 June 2013.)

The new remedy covers both pending and finalised or terminated proceedings. However, in pending proceedings a claim for compensation may be lodged only if such proceedings last for more than 3 years and if the applicant previously requested acceleration of proceeding. Thus, although the Russian law is entitled "The Compensations Act", it provides not only for a compensatory remedy but the preventive as well, which is equally important.

Enforcement proceedings

The *Burdov* pilot judgment dealt, first of all, with the issue of non-enforcement of judicial decisions delivered against the State and its agents (public enterprises, military units, State bodies, etc.).

The Compensation Act, aimed at the creation of a remedy against this crucial problem, does not cover the situations of non-enforcement of judgments delivered against private parties. This scope of application of the Compensation Act has been confirmed on repeated occasions by the Constitutional Court.

Procedure

Claims for compensation are examined in civil procedure which is governed by the relevant procedural codes (Civil Procedure Code and Commercial Procedure Code). A claim for compensation for excessively lengthy civil and criminal proceedings should be brought to a court of general jurisdiction, and a claim concerning commercial proceedings to a commercial court. Such claim can be also introduced as part of an application for supervisory review (*nadzor*) of final decisions.

If a delay occurred during a proceeding in commercial courts, the application for compensation is to be lodged to a commercial court of cassation instance (which are commercial courts of federal circuits, in total 10 in the Russian Federation, being courts of 3rd (cassation) instance).

A delay in a criminal or civil or administrative proceeding should be dealt with by ordinary courts of regional level or, in exceptional cases, the Supreme Court of Russia. The rules of procedure are established by the relevant procedural codes – Civil Procedure Code (Chapter 22.1) and the Commercial Procedure Code (Chapter 27.1).

Time limits for applying

A claim for compensation on account of lengthy judicial proceedings may be lodged within 6 months of the last judicial decision or, if the proceeding is still pending, prior to termination of the proceedings provided that their length exceeded three years.

Court fee

Although compensations are awarded in monetary form and may vary depending of the length of delay, the court fee to be paid by the applicant is fixed as for non-pecuniary claims, which is 200 Russian rubles for individuals (about 4 euros) and 4,000 Russian rubles for entities (about 80 euros).

Adversary character

The claim for compensation is examined in adversary proceedings, with two parties involved: the applicant and competent bodies acting on behalf of the Russian Federation (the Ministry of Finance and a body whose actions lead to the violation of reasonable time, such as the Ministry of Interior, the Ministry of Defence, etc.).

The codes provide for a simplified procedure for dismissal of applications without examination on the merits, if "the term of the proceeding or enforcement obviously does not violate the right to a trial within a reasonable time or the right to enforcement within a reasonable time".

During the examination of the claim for compensation, the judge should take into account the peculiarities of the case in which a delay supposedly occurred; the criteria used coincide with those established by the ECtHR's case law (complexity of the case, parties' conduct, efficiency of court's or other bodies' actions, total length of proceedings or non-enforcement).

Reasonable time: criteria and confusions

The criteria of "reasonableness" should be found in the case law of the ECtHR. The Compensation Act (Article 2 §2) refers to them reiterating that the amount of compensation should be determined by courts according to the applicant's claims, the circumstances of the case, and the length of the period during which the violation took place, the significance of its consequences for the applicant, the principles of reasonableness and fairness and the practice of the ECtHR.

Amount of compensation

No special table or other precise indications regarding the amount of compensation to be paid have been provided for by the courts; however, in practice the compensations awarded are comparable with those granted by the ECtHR in its practice. In this context "comparable" does not mean "equal" since some regional discount is implicitly applied by the ECtHR. Normally the payment of 50% rate of what could have been paid by the ECtHR if the case had been examined in the ECtHR is considered as adequate.

Request for acceleration of the proceedings

In pending proceedings a claim for compensation may be lodged only if the applicant previously requested acceleration of proceeding before the president of the court where the case is pending. A request for acceleration is examined by the competent president of the court individually, without holding a public hearing and notification of parties, within five days from the date of request. Following such examination, the president of the court orders to hold a hearing in prescribed time or may indicate other actions to be undertaken to accelerate the proceeding.

Enforcement of judgments on compensation

Judgments awarding compensation are subject to immediate enforcement; nevertheless they may be appealed against. Lodging such appeal, however, does not suspend the enforcement.

The term "immediate enforcement" means in this context that judgments may be enforced before their entry into force. However, the law establishes a concrete term for execution: 3 months from the date of delivery. This is most important regarding funds for payment of compensations which are provided for by the yearly budget (approximate amount which is calculated on the basis of previous years practice with indexation). This guarantees the prompt enforcement of judgments and helps to avoid an Italian situation after the adoption of "*Legge Pinto*".

Assessment of the new remedy by the ECtHR

The ECtHR found that the Compensation Act was designed, in principle, to address the issue of excessive length of domestic proceedings in an effective and meaningful manner, taking into account the ECHR requirements (*Fakhretdinov & Others v. Russia* (dec.), nos. 26716/09, 67576/09, 7698/10, §27, 23 September 2010; *Nagovitsyn and Nalgiyev v. Russia*, nos. 27451/09 and 60650/09, 23 September 2010). This means that the new remedy is to be exhausted before applying to the ECtHR on account of excessive length of judicial proceedings and non-enforcement of judgments ordering monetary payments by the State.

As a result, the share of complaints about excessively lengthy proceedings and non-enforcement decreased from 40 % to 17 % of the general number of applications lodged to the ECtHR against Russia; even of these 17 % a big part is inadmissible since the domestic remedy exists and they may be declared admissible only when the remedy fails.

Nevertheless, the new remedy has not embraced all systemic problems of the Russian legal systems as regards non-enforcement of final and binding judicial decisions, in particular those

involving the State's obligations in kind. Consequently, the ECtHR did not recognise the procedure established by the new Law as effective in such cases (see, for instance, *Kalinin and Others v. Russia*, 16967/10 et al., 17 April 2012); the problem thus remains unresolved.

In several cases the amounts awarded by the Russian courts within the framework of the new remedy were recognised as obviously insufficient (see, *mutatis mutandis*, *Lavrov v. Russia*, no. 33422/03, 17 January 2012, where the ECtHR found a violation of Article 6 due to non-enforcement, in a duration of 12 years, of a judicial act for which the domestic courts awarded circa 1200 euros).

Statistics

The number of judgments awarding compensation according to official statistics is not high in comparison with the total number of cases examined by the Russian courts. Thus, in 2013 ordinary courts examined the merits of 1,585 claims for compensation, whereas the total number of civil cases resolved was 12,900,000, criminal – 946,000, and administrative – 5,820,160. Nevertheless, it should be taken in the account that a significant number of claims for compensation are not reflected in these statistics, including those which were disallowed without examination on the merits because the reasonable time of trial obviously had not been exceeded. These figures do not appear in the official statistics.

In 2013, 207 claims for compensation were lodged in commercial courts, of which 153 were examined on the merits, with 94 judgments awarding compensation delivered (the total number of claims lodged to commercial courts in 2013 was 1,371,279).

Dealing with the core of the problem

In parallel with the implementation of the new remedy, work has been done to eliminate the problems themselves. As regards the length of proceedings, the situation is not bad in civil cases, since the Russian law provides summary proceedings for resolution of civil cases both in ordinary and commercial courts. Up to 70 % of the total numbers of cases (undisputed or small claims) are resolved by this type of procedure. Besides, some mandatory duties carried out by entities (taxes and customs duties) are recovered in extra-judicial procedure, and interested parties may only dispute such recovery before the court *post-factum*. The set of measures makes it possible for courts, in general, to comply with statutory time-limits.

In criminal proceedings the situation, however, is less optimistic. Specifically, the non-enforcement of final judgments delivered against the State represented a more crucial problem for the Russian legal system. In this area, however, some progress has been observed as well. The source of the issue was mainly in the lack of effective procedure and cooperation between different State agencies and technical shortcomings of the enforcement procedure. These shortcomings are mainly remedied as monetary payments; however, the problem remains with obligations in kind.

Conclusion

The new remedy implemented into the Russian legal system by the Compensation Act following the adoption of the pilot judgment *Burdov v. Russia* (no.2) in general proved to be an effective one, as regards redress of excessive length of proceedings and non-enforcement of monetary judgments delivered against the State. Its success was due to the concerted work of different State agencies when drafting the new law, quick and simple procedure of examination of claims for compensation and sufficient public funds provided for by the yearly budget for the purposes of compensations payment.

4.2 Croatian Experience

On 26 July 2001 the ECtHR adopted the *Horvat v. Croatia* judgment in which it held that complaints pursuant to section 59 (4) of the 1999 Croatian Constitutional Court Act cannot be regarded with a sufficient degree of certainty as an effective remedy in respect of the length of the civil proceedings in Croatia.

Following the *Horvat* judgment, on 15 March 2002 the Croatian Parliament enacted the Act on Changes of the Constitutional Court's Act. It introduced a new provision which provided, *inter alia*, that the Constitutional Court must examine a constitutional complaint even before all legal remedies have been exhausted in cases when a competent court has not decided within a reasonable time a claim concerning the applicant's rights and obligations, or a criminal charge against him.

In the *Slaviček v. Croatia* decision of 4 July 2002, the ECtHR found that this new provision had removed the obstacles that were decisive when the ECtHR found that the former Section 59 (4) did not comply with all the requirements to represent an effective remedy in respect of the length of proceedings. It thus accepted that, due to the new Section 63 of the 2002 Constitutional Court Act, there exists in Croatia an effective domestic remedy in respect of alleged unreasonable length of proceedings which must be exhausted by applicants before applying to the ECtHR.

In the *Nogolica v. Croatia* decision of 5 September 2002, the ECtHR found that the applicant had not lodged a complaint pursuant to Section 63 of the 2002 Constitutional Court's Act.

Normally, the issue as to whether domestic remedies have been exhausted shall be determined by reference to the date when the application was lodged with the ECtHR. This rule is however subject to exceptions which might be justified by the specific circumstances of each case (see *Baumann v. France*, decision of 22 May 2001, § 47). The ECtHR has found in respect of a large number of applications against Italy raising similar issues that there were special circumstances justifying a departure from the general rule (see *Brusco v. Italy*, (dec.), ECHR 2001-IX). It considered that the *Nogolica* case presented many similarities to the Italian cases and a number of elements militated in favour of an exception also in that case.

The ECtHR noted, *inter alia*, that the new remedy was introduced following both the *Kudla* and *Horvat* judgments and that it was specifically designed to address the problem of the length of proceedings. Furthermore, as was the situation with the applicant in the *Nogolica* case, practically all applications introduced to the ECtHR concerning that issue were at that time still pending before the national courts and, therefore, the new remedy at national level was open to the applicant. The ECtHR considered that the domestic remedy "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."

In light of these circumstances and recalling the subsidiary character of the ECHR machinery, the Court decided that the applicant had to firstly address the Croatian Constitutional Court with a complaint pursuant to Section 63 of the 2002 Constitutional Court's Act and rejected his application for non-exhaustion of domestic remedies.

This was a far reaching decision because applying the exception meant that all Croatian applicants whose length of proceedings cases were pending in ECtHR had first to exhaust the new remedy that was introduced at national level.

Part III. of the Law on Courts (*Zakon o sudovima*) adopted in 2005, on the protection of the right to a trial within a reasonable time, changed some features of the length of proceedings

remedy in Croatia. Instead of all the length of proceedings cases being examined by the Constitutional Court, the competence to examine the length of proceedings cases was shifted to the directly higher courts.

There were not many applications alleging a violation of the reasonable time declared admissible before the ECtHR following the exhaustion of the 2002 and 2005 domestic remedies in Croatia. They mostly concerned an allegedly lower amount of compensation awarded at national level, or a failure to effectively expedite the proceedings on the merits. Examples of how the ECtHR deals with such issues can be found in *Tomašić v. Croatia* (no. 21753/02), judgment of 19 October 2006, and the *Jakupović v. Croatia* judgment of 31 July 2007.

The most recent changes to the Croatian remedy on the protection of the right to a trial within a reasonable time entered into force in March 2013. They have considerably modified the 2002 provisions, which have been accepted by the ECtHR as an effective domestic remedy.

Part VI. of the Law on Courts of 2013 on the protection of the right to a trial within a reasonable time (paragraphs 63–70), presents the following main features[22]:

"I. (i) A party to proceedings considering that he/she was prevented for long periods from having his/her claim on his/her civil rights and obligations or of any criminal charge against him/her determined, can lodge an application for the protection of the right to a trial within a reasonable time with the court which deals with the merits of his/her claim.

(ii) The president of the court (or the vice-president, if the president himself/herself is dealing with the case) shall within 15 days require information about the case from the judge dealing with it or inspect the file himself/herself. The judge dealing with the case shall answer that request within 15 days. The president shall decide on the application within 60 days from the date of the lodging of the application.

– If the president of the court declares the application admissible he/she shall determine a time limit – in principle not longer than 6 months – within which the judge dealing with the merits of the case has to dispose of the case. The decision on admissibility is in principle not reasoned and may not be appealed.

(iii) If the judge has not disposed of the case within the prescribed time limit he/she shall present within 15 days after the expiry a written report on the reasons for not doing so to the president of the court. The president shall immediately forward that report together with his/her own opinion to the president of the directly higher court and to the Ministry of Justice.

(iv) If the president declares the application inadmissible he/she shall reject it by a decision which can be appealed within eight days from notification.

– An appeal is also open to the applicant if the president does not take any decision on the application within 60 days from its lodging.

– The appeal shall be decided by the president of the directly higher court. If the claim concerns a procedure before the Supreme Court it will be decided by a chamber of three judges of that court. The appellate body can dismiss the appeal, confirm the decision or adopt a new decision.

II. (v) In case the application has not been decided within the determined time limits, the applicant can, within a further time limit of six months, lodge a request for compensation with the directly higher court. It shall render its decision within six months.

22 Official Gazette of the Republic of Croatia No. 28/2013.

– Requests concerning proceedings pending before the High Commercial Court of the Republic of Croatia, High Administrative Court or the High Misdemeanour Court shall be decided by the Supreme Court.

(vi) When considering requests for compensation courts shall sit in a single-judge formation.

– If the compensation claim concerns proceedings pending before the Supreme Court it shall be decided by a Chamber of three judges of that court.

(vii) A time limit shall be set within which the court dealing with the merits of the case shall finalise the proceedings and award compensation to the applicant. The amount is maximised at 35,000 (kunas=approximately 5,000 euros) for one set of proceedings.

– The compensation shall be paid out from the State budget.

(vii) The decision awarding compensation can be appealed within eight days to the Supreme Court which shall decide as a chamber of three or five judges. The final decision on the compensation award is immediately forwarded to the president of the court before which the violation has occurred, the President of the Supreme Court and the Ministry of Justice.

– If the case is not decided within the prescribed time limit the president of the court shall present, within 15 days after the expiry, a written report on the reasons for not doing so to the president of the directly higher court and to the Ministry of Justice.

(viii) If an application alleging a violation of the reasonable time is pending before the ECtHR and the Government Agent before that ECtHR seeks information on the national proceedings from the competent domestic court, that court shall inform the president of the directly higher court, the president of the Supreme Court and the Ministry of Justice of that request, as well as of the reasons for the protracted length."

In view of the important changes introduced by the new Croatian remedy on the protection of the right to a trial within a reasonable time (as described above), it would seem that this Law might not easily pass a possible scrutiny by the Croatian Constitutional Court or the ECtHR if they were to be seized with the matter.

Although the 2013 Law might have been inspired by the similar Slovenian domestic remedy (see *Grzinčič v. Slovenia*, judgment of 3 May 2007) and that of Montenegro (see *Vukelić v. Montenegro*, judgment of 4 June 2013), there are also some important differences between them that raise concern as to its effectiveness. The new Croatian remedy in fact introduces two different remedies, an acceleratory and a compensatory one. Their interaction is not only complicated to understand but it also places a significant burden both on applicants who want to expedite proceedings, as well as those who claim compensation. They have to make use of several sets of repeated/additional proceedings in order to eventually be compensated for the length of the main proceedings, about which they complain. It is regrettable that Croatia, which in the *Cocchiarella v. Italy*, GC judgment of 29 March 2006, paragraph 77, was mentioned by the ECtHR as an example of good practices because it chose to usefully combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation, has changed its approach.

These remarks might be useful to the Serbian authorities in case they envisag to closely follow the current version of the Croatian provisions on the protection of the right to a trial within a reasonable time. If they intend to genuinely improve the situation of the judiciary, to cope with undue delays in judicial proceedings and also compensate those who have suffered because of protracted proceedings, the solution brought about by the current Croatian Law should not be followed. A much more clear and simple remedy for lengthy proceedings, and definitely a more effective one, was the previous Croatian solution – contained in the 2002/2005 versions – which was also accepted as such by the ECtHR. This would be a better road to follow.

4.3 Slovenian Experience

The problems with the protection of the right to a trial within a reasonable time started in the Republic of Slovenia in 1995 and were recognised as such in the period of 1996–97. The reasons for this occurrence of court backlogs in a systemic manner in Slovenia`s judiciary and for the specific non-enforcement of the protection of the right to a trial within a reasonable time were the following: the Republic of Slovenia boldly adopted a major modernisation reform of judiciary in 1994, both on the organisational level and the institutional level. The **organisational level** primarily consisted of the restructuring of the courts of first instance[23] and, in particular, the reorganisation of the former basic courts (the only courts of first instance in Slovenia, competent with general jurisdiction for all cases of first instance, irrespective of the gravity of criminal offence prosecuted or the value of the civil claim). These were divided[24] into two types of courts of first instance – the local courts (*okrajna sodišča*) and district courts (*okrožna sodišča*). The **reform at the institutional level** concerned the establishment of a permanent term of office for judges of all courts of general and specialised jurisdiction[25] in Slovenia in accordance with Article 129 of the Constitution of the Republic of Slovenia of 1991. Furthermore, the Judicial Council that existed as of 1990 was somewhat reformed in accordance with Article 131 of the Constitution of the Republic of Slovenia of 1991. The reform, which was a minor one and mostly *de facto,* meant that the Member of the Judicial Council that represented the Minister of Justice was abolished and, in accordance with the Constitution, an additional judge was elected as a Member to the Judicial Council by judges themselves.

The reorganisation of courts of first instance produced considerable confusion within the judicial system of the Republic of Slovenia and, as a direct result, contributed towards a significant increase in the backlog of court cases as of 1995[26]. It can be determined from this that the organisational reform of the judiciary was to some extent a failure, as it facilitated a violation of the rights of parties to judicial proceedings to be tried within a reasonable time.

As such, the issue of excessive length of judicial proceedings is, and has been, a systemic problem in Slovenia since 1995 (as per the judiciary and courts (organisation) reform of 1994). However, the impact of this issue extends beyond the scope of Article 6 (1), also having a detrimental effect upon the protections guaranteed by Article 13 of the ECHR (comparative protections of which are set out under Article 23 (1) and Article 25 of the Constitution of the Republic of Slovenia). Thus, although the Government of the Republic of Slovenia had previously made attempts, in conjunction with the Supreme Court, to implement the "Hercules Programme" in 2001 designed to prevent and eliminate court backlogs, the *Lukenda* Project (consisting of the Government of the Republic of Slovenia, and in particular the Ministry of Justice, in partnership with the Supreme Court of the Republic of Slovenia) represented a renewed effort in this regard. The establishment of the *Lukenda* Project in 2005 resulted from two systemic judgments of that year – the semi-pilot judgment[27] of the ECtHR in the case

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23 The then Courts Act [Zakon o sodiščih], Official Gazette of the Republic of Slovenia, No. 19/1994.

24 See also: *Evolving Justice: The Constitutional Relationship Between The Ministry Of Justice And The Judiciary And A Short Overview Of Recent Developments In The Area Of Court Management In The Republic Of Slovenia*, Skubic Zoran, International Journal For Court Administration, Seventh Issue, Volume 4, No. 1, *December 2011*, pp. 17–34, especially pp. 23–28.

25 The Constitutional Court of the Republic of Slovenia, as the highest constitutional body for protection of constitutionality and legality and human rights and fundamental freedoms, is not included in the term of "courts of general and specialised jurisdiction".

26 See: Skubic Zoran, *supra*, p. 25.

27 Designated as a quasi-pilot judgment also in: *Responding to Systemic Human Rights Violations : An Analysis of 'Pilot Judgments' of the European Court of Human Rights and Their Impact at National Level*, Leach Philip, Hardman Helen, Stephenson Svetlana, Blitz Brad K., Intersentia, June, 2010, pp. 26, 86–87.

of *Lukenda v. Slovenia*[28] and a similar decision of the Constitutional Court of the Republic of Slovenia[29].

In its judgment in the 2005 case of *Lukenda v. Slovenia,* the ECtHR in Strasbourg decided that the Republic of Slovenia doesn't have an efficient remedy for the protection of the right to a trial within a reasonable time (Articles 6 (1) and 13 of the ECHR).

Subsequent to the handing down of the judgment of the ECtHR in the case of *Lukenda v. Slovenia,* a "Draft Protection of the Right to a Trial without Undue Delay[30] Act" was prepared by the Ministry of Justice in conjunction with representatives of certain local and district courts. Those involved in the preparation had expressed interest resultant from a desire to address potential burdens that the draft Act might impose upon their court. The Supreme Court of Slovenia, in co-operation with representatives of the State Attorneys` Service, the Government of Slovenia, and the Government Service for Legislation, participated in the quick completion of the Draft Act before it was presented to the Government of the Republic of Slovenia. The Draft Act was sent to all courts within the State, and feedback was received from just under half of all recipients. The majority of comments related to the question of additional burdening of the courts, some of which were in the sphere of fairly detailed proposals for improving the Draft Act, of which only a minority of the courts had no comments. During the procedure of creating the Draft Act, the Ministry of Justice stated that the purpose of this Act was not in any sense a reduction in court backlogs as a systemic problem[31], but it is meant to aid parties to judicial proceedings when the resolution of their cases by the courts is unreasonably delayed – aiding them with acceleratory and compensatory remedies. In particular, the Ministry stated that it is aware that without additional staff and physical restructuring of certain courts, which will constitute a significant burden in the implementation of the Act, the Act will not achieve its desired positive effects and could instead result in a new "series" or "type" of court backlogs.

The Act on the Protection of the Right to a Trial without Undue Delay ("Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja"; official acronym in Slovene language: ZVPSBNO)[32] was adopted by the National Assembly of the Republic of Slovenia on 26 April 2006 and came into force on 1 January 2007. The Act[33] is a Central European type of statute[34] that regulates protection of the right to a trial without undue delay (right to a trial within a reasonable time).

The Act provides for two types of acceleratory remedies that can be filed by parties to court proceedings to the courts where their cases are being resolved. Decisions on these legal remedies are decided by the presidents of courts. Supervisory appeal (in Slovenian: "nadzorstvena pritožba") is a first instance remedy which is decided upon by the president of the court

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28 Judgment of the Eur. Ct. HR, No. 23032/02, 6 October 2005.

29 Decision of the Constitutional Court of the Republic of Slovenia, No. U-I–65/05, 22 September 2005; published in: Official Gazette of the RS, No. 92/2005.

30 The term "without undue delay" was transferred from Article 23, paragraph 1 of the Constitution of the Republic of Slovenia ("brez nepotrebnega odlašanja"), it follows the traditional term of "undue delay" from Article 14, paragraph 3, subparagraph (c) of the International Covenant on Civil and Political Rights. The terms "undue delay" and "reasonable time" have a similar meaning, but seem not to have completely the same meaning.

31 The reduction and – at the end – elimination of court backlogs is a part of the systemic Project – the Lukenda Project.

32 Official Gazette of the Republic of Slovenia, No. 49/2006. There were also amendments adopted to ZVPSBNO in 2009 and 2012, which didn`t change the system from the 2006 Act.

33 For the mistaken opinion that ZVPSBNO is modelled mainly on the legislative solutions of the Czech Republic and of the Republic of Poland, see: *Scordino in mi [Scordino and us]*, Modic Dolores, Pravna praksa, No. 22/2006 – Annex, pp. VII–VIII, mainly note No. 5.

34 See the 2007 description of Judges of the ECHR of belonging to "legal families", including Central European one(s), in: The Legal Culture of the European Court of Human Rights, Nina-Louisa Arold, Martinus Nijhoff Publishers, Leiden, 2007, p. 136.

overseeing the original case, whereas motion for a deadline (in Slovenian: "rokovni predlog") is a second instance (appellate) remedy, decided upon by a president of a superior court[35]. The Act prescribes deadlines for their decisions, criteria for decision-making and types of decisions to be decided upon by the Presidents of courts.

Criteria for decision-making (Article 4 of the ZVPSBNO) of Presidents of courts are of course transferred from the case of *Frydlender v. France*[36] and exhibit even greater scope than those established in the aforementioned case.

As to the typology of legal remedies used in the ZVPSBNO, it should be noted that:

- Supervisory appeal is a matter of court management (in Slovenian: "sodna uprava") – the General Administrative Procedure Act is applied *mutatis mutandis*;
- Motion for a deadline as an appellate remedy requires the application of a different type of proceeding. Court decisions on whether to fix a deadline in response to a motion, rulings and appeals against rulings must be made with regard to the Civil Procedure Act, the provisions of which must be applied *mutatis mutandis.* Only for other issues can the General Administrative Procedure Act be applied *mutatis mutandis* (again, but only partially, as a matter of court management).

This means that initially an administrative remedy is applied which, should the party to judicial proceedings be dissatisfied with the result of the decision on the supervisory appeal, becomes – after filing the appellate remedy of a motion for a deadline – a mixed "judicial procedural and administrative procedural" remedy.

This procedural differentiation was adopted in order to prevent the possibility of new occurrence of court backlog due to the implementation of the ZVPSBNO, as well as to facilitate the speedy resolution of claims under the ZVPSBNO. It is a part of the legislative philosophy that the ZVPSBNO should be seen and applied mostly as a sort of "*formulaire-type statute*", an example of which can be seen in the detailed provisions of Article 5 (2) on the detailed regulation of obligatory elements of the supervisory appeal and motion for a deadline.

Supervisory appeal can also be filed with the Ministry of Justice of the Republic of Slovenia which in turn forwards it to the President of the competent court (see above), and requests that the copy of the President`s decision also be sent to the Ministry of Justice. This is a part of the traditional "supervisory mechanism" attributable to the checks and balances part of the principle of separation of powers.

The ZVPSBNO also prescribes compensatory remedies, namely those for achieving just satisfaction. Legal remedies of supervisory appeal and, if necessary, a motion for a deadline, must first be exhausted. Only then may a party to court proceedings file a claim for just satisfaction at the State Attorneys` Service of the Republic of Slovenia. Remedies of just satisfaction are not limited solely to monetary compensation, but also include the possibility of a (separate or joint) written recognition of violation. Remedies also include compensation for non-pecuniary and pecuniary damage.

Limitations to the amounts of monetary compensation awardable for non-pecuniary damage (as one form of just satisfaction) are specified in the second paragraph of Article 16 of ZVPSBNO, ranging from a minimum of 300 euros to a maximum of 5,000 euros. The essential

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35 Theoretically, after the exhaustion of the remedy of a motion for a deadline, a special legal remedy - the constitutional complaint ("ustavna pritožba") - could be filed to the Constitutional Court of the Republic of Slovenia, but in practice this is not used.

36 Judgment of the Eur. Ct. H.R., No. 30979/96, 27 June 2000, para. 43. of the Judgment.

reason for specifying limits to compensation, or for the decision on their introduction, is the standpoint that the purpose of the constitutional right under the first paragraph of Article 23 of the Constitution of the Republic of Slovenia is primarily to guarantee speedy judicial proceedings (from the point of view of the parties) and so legal remedies should be designed to ensure this, rather than simply awarding monetary compensation for non-pecuniary damage. Monetary compensation, from the point of view of the values protected by Article 23 (1) of the Constitution of the Republic of Slovenia, or other types of compensation for possible violation of this right can only be secondary to ensuring the protection of the right established in this constitutional provision. Setting a cap upon monetary compensation, as prescribed for in the second paragraph of Article 16 ZVPSBNO, allows the courts greater freedom to hand down judgments, in relation to the circumstances of particular cases, which will contribute to the development of suitable case law. In relation to the maximum possible prescribed monetary compensation, the case law of courts of general jurisdiction is, *mutatis mutandis,* taken into account, namely in relation to compensation for non-pecuniary damage. The economic position of the Republic of Slovenia was and is similarly taken into account in relation to determining the maximum amount of compensation. It should also be clearly noted that all amounts of compensation paid as per just satisfaction in accordance with the ZVPSBNO are tax exempted.

Furthermore, compensation is to be paid after the original case has ended (Article 19 (1), sentence two of the ZVPSBNO), for the same reasons as stated in the previous paragraph (the main issue being the acceleration of judicial proceedings).

Therefore, Slovenia`s "model" of the ZVPSBNO mostly comes into the "family" of Polish/Slovenian solutions[37], even if Slovenia and Poland[38] developed their original legal solutions completely independently.

In the early stages of the implementation of the ZVPSBNO the ECtHR tested its provisions several times and found it to be systemically adequate at the time (see: *Grzinčič v. Slovenia*[39]and *Korenjak v. Slovenia*[40]*)*. However, even taking into account these positive assessments of the ZVPSBNO by the ECtHR, and taking into account that the State has already made use of the legislative and financial means open to them to aid the judicial power, significant additional efforts by the judiciary itself still remain necessary.

This method of redress as set out in the ZVPSBNO, as well as some of the case law surrounding it, are referred to in the "Guide to good practice to the Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings".

However, the ECtHR has recently started re-assessing the actual application of the ZVPSBNO after it has been applied by Slovenia's courts for several years. Amongst its findings is that, in the case of *Sedminek v. Slovenia*[41]*,* due to the low likelihood (as regulated by law) of participation of the parties in bankruptcy proceedings, the acceleratory remedies from the ZVPSBNO cannot

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37 For the typologies of the legislative solutions concerning the effective protection of the right to a trial within a reasonable time in Europe, see: *Constitutional Justice in Southeast Europe : Constitutional Courts in Kosovo, Serbia, Albania and Hungary between Ordinary Judiciaries and the European Court of Human Rights*, Eds.: Prof Dr Hasani Enver, Prof Dr Paczolay Péter, Riegner Michael, Nomos Verlag, Baden-Baden, 2012 - Pavlin Peter: *Where Courts Meet: The Effective Protection of the Right to Trial within Reasonable Time in Kosovo in Light of the ECHR and Comparative Experiences*, pp. 98–103.

38 See for the original Act of Poland of 2004: Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki, Dz.U, 179/04.

39 Judgment of the Eur. Ct. HR, No. 26867/02, 3 May 2007.

40 Decision of the Eur. Ct. HR, No. 463/03, 15 May 2007.

41 Judgment of the Eur. Ct. HR, No. 9842/07, 24 October 2013, paras. 63.–65. of the Judgment.

be realistically applied. Furthermore, in the case of *Jama v. Slovenia*[42] it was shown that relevant acceleratory remedies from the ZVPSBNO did not produce (any) effective results[43] in this case, as had been intended, and therefore this Judgment of the ECtHR could perhaps also be understood as a sort of systemic warning to the Slovenian judiciary to operate the provisions of the ZVSPBNO more seriously, and more proactively, in favour of parties to judicial proceedings.

However it also has to be repeated that the ZVPSBNO is not a statute (Act) of Parliament designed exclusively for the elimination of court backlogs. It is instead a statute designed for assisting parties throughout judicial proceedings, providing them with effective remedies in order to protect their right to a trial within a reasonable time, and to protect this right within the separate components of the regular judicial (courts) system.

The issue of elimination of court backlogs was dealt with under the aforementioned "Project *Lukenda*" – operational from 2005–12 – which added additional judges, court clerks, and other aid to the judiciary (changes in procedural legislation, adaptation of court buildings, and additional public funds for the judiciary). The Project ended at the end of 2012, but was partially reintroduced in July 2013 (effective as of the beginning of September 2013) with respect to employing or re-employing additional court clerks.

The current result could indicate that the judiciary is approaching its optimum capacity with regard to its efforts to eliminate court backlogs. However, it is not there yet, as court backlogs currently still exist. The same situation transpires with respect to the efficiency of acceleratory remedies in the ZVPSBNO. Significant additional efforts on the part of the judiciary are needed to facilitate the optimum implementation of the ZVPSBNO so as to meet the legitimate expectations of parties to judicial proceedings, who currently allege or assess that proceedings are being unduly delayed.

To conclude, some additional important systemic novelties were introduced in the Novella of the Courts Act of 2013, novelties that were discussed for a long time with the representatives of Slovenia`s judiciary and which they officially and publicly supported until the end of consultation process (and partially criticised later). Criticisms particularly concerned reporting (control) mechanisms as well as the balanced supervision (external monitoring) of the Ministry of Justice of the Republic of Slovenia over the work of the courts, designed to respect the independence of the judiciary while fulfilling the principle of checks and balances which forms a part of the constitutional principle of separation of powers.

42 Judgment of the Eur. Ct. HR, No. 48163/08, 19 July 2012, paras. 46.–49. of the Judgment.

43 Acceleration of judicial proceedings.

III. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

Conclusions

There is no doubt that Serbia and its judiciary are faced with considerable problems in the administration of justice. One of the main issues concerns the repeated violation of the requirements of a reasonable time period, found by both the ECtHR and the Constitutional Court of Serbia.

The above text outlines the experiences from other countries; these may be beneficial in order to determine proper legislative solutions and ensure their smooth application.

However, in addition, one needs to analyse the reasons behind this challenging situation as regards the causes of the backlogs. As has already been suggested, data should be collected from resolved cases and, based on those findings, measures for reducing the future backlog of cases designed, in which framework the Serbian judiciary could play a very important and responsible role. This may mean that legislative amendments are desirable. It would then be the position of the High Judicial Council, supported by the meeting of the presidents of the courts, to suggest amendments to that end to the legislator. The Administrative Office of the High Judicial Council is, according to law, in a position to determine the required capacity and the budget needed for the proper functioning of the judiciary. This office therefore should increasingly have the opportunity to fulfil its legal duties in this respect.

Recommendations

A. As to the existing legislation:

1. Courts – preferably the Supreme Court of Cassation – need to develop guidelines for dealing with these cases in order to establish consistency in the treatment of these cases, regarding criteria determining the elements relevant to the judgment that reasonable time has been overstepped as well as to the amounts of compensation awarded;
2. For these guidelines, the leading authority should be the case law of the ECtHR, but also including the existing case law of the Constitutional Court of Serbia.
3. When courts find that a violation took place, they need to determine a reasonable time for the lower court to complete the case; they will determine at the same time the (monetary) compensation to be paid by the State. Compensation will be awarded for the already elapsed period. If the case is not resolved within the time given by the higher court, i.e. when the acceleration did not work, the applicant can then lodge a new claim for the new period of delay.
4. It should be kept in mind that complaints that were pending on 21 May 2014 before the Constitutional Court and were transferred to the general jurisdiction courts are to be split. The complaint on reasonable time will be decided by the general jurisdiction courts. The remainder of the cases regarding other complaints about human rights violations are to be returned to the Constitutional Court for decision.
5. A comprehensive system for dealing with the enforcement of final judgments needs to be designed and introduced by the competent judicial and government authorities. The Government of the Republic of Serbia could take into consideration discontinuing very old

and small claims by (semi-) public agencies in order to contribute to reducing the existing backlog and workload into a workable size. In doing so the Government could benefit from the experience of the Russian Federation in this area (see above).

B. As to the procedure to draft new legislation:

1. Representatives of the judiciary need to be actively involved in and consulted during the process of drafting the new legislation;
2. The same goes for representatives of the Bar Association and the legal community as a whole, including law faculties;
3. Experiences relating to legislation in this area needs to be collected and evaluated (Croatia, "The former Yugoslav Republic of Macedonia", Poland, Russian Federation, Slovenia, etc.)

C. As to the content of the draft new legislation the report suggests the following starting points:

1. The new Law should determine which will be the last domestic remedy concerning complaints on violation of the reasonable time requirement, preferably (only) the Supreme Court of Cassation. Other human rights violations then need to be judged by the Constitutional Court as is the case now.
2. Cases pending with the Prosecutor's Office should be decided by the Chief Prosecutor.
3. Compensations should always be paid expeditiously; a time limit for payment has to be included in the legislation.
4. In case of resolved cases, the complaint about violation needs to be submitted within three months after the last judgment on the merits. The competent court is the court which has given the judgment; it can be appealed, preferably, to the Supreme Court of Cassation, the last domestic remedy in the issue.
5. The complaint procedure in pending cases should be a one-sided, *ex parte* procedure; the Ministry of Justice will be informed about the complaint and the request for compensation. The procedure should be as quick and uncomplicated as possible. In these procedures the possibility of settlement can be introduced and may be successful only if the settlement consists of an acknowledgment and a reasonable monetary compensation. Other solutions eventually will most probably lead to new applications to the ECtHR.
6. It should be clear that the applicant is free to refuse an offer to settle the case; in case of such a refusal, the case will be continued speedily.
7. A publicly accessible data collection system will be set up, for instance, by the Supreme Court of Cassation, on criteria including a scale for compensation, to be adjusted according to court decisions on the matter. It could include as a general indication that the compensation should possibly not be higher than the Serbian equivalent of 3,000 euros, but that circumstances of the case can make a higher compensation be determined by the competent court.
8. If a complaint for speeding up the proceedings is lodged before a court when the proceedings have already lasted too long, it should be noted that accelerating the proceedings is not seen as adequate redress. For that, the *Cocchiarella v Italy* judgment of 29 March2006[44] is of special relevance (see para.76).

44 Application No. 64886/01.

9. Only a proper monetary compensation will deprive the applicant from being a victim of the violation, according to the current case law of the ECtHR. "Just satisfaction" in the form of a publication in the Official Gazette or comparable satisfaction (a written statement) will not be considered sufficient according to the ECtHR case law.

10. Legislation will clarify that the applicant asking for compensation, is not obliged to mention a certain amount of compensation in the claim. The competent court will determine the monetary compensation in its own right.

11. In the new legislation, reference to other, existing legislation (for example "is applicable accordingly") should be avoided as much as possible, as this creates more problems than it solves. The new law in itself should be as complete as possible; reference to other legislation should be limited and should refer, if used, only to specific articles.

12. Legislation will specify that for compensation on the ground of violation of the reasonable time requirement, only this legislation is valid and no other (e.g. Tort law, Civil Code, The Law on the Constitutional Court).

13. It would be preferable for all applications, complaining about reasonable time under cases pending already before the ECtHR, to apply a system of offering settlements; the positive Russian experiences as described above, are a good indication of the direction to follow.

D. Organisation:

1. A well designed Action Plan, analysing and determining the existing backlog of cases – including the criteria to be taken into account – and planning the resolution of these cases, needs to be drawn up, preferably by the Administrative office of the High Judicial Council, in cooperation with the judges and with the support of the Ministry of Justice.

2. This plan could consider introducing (temporary) measures to ensure the relevant judges are adequately trained for resolving the pending cases. The existing Project can help in that regard.

It should never be forgotten that quality of justice and productivity are not synonyms and that the speediness of procedure is just one element of the right to a fair trial[45] that undisputedly has to be dealt with in an appropriate manner but taking care of the overall fairness of the proceedings. Proper training of judges and prosecutors on the ECHR and the Court's jurisprudence is of vital importance. Once the standards and human rights guarantees are an inherent part of the judges` and prosecutors` daily work they will significantly reduce the influx on new violation-of-reasonable-time cases pending before courts. The judiciary itself has recognised this. The research conducted under this Project on "Needs for professional education and training of judges and judicial assistants regarding the European Convention on Human Rights and the related case law" clearly demonstrated that judges had recognised the need for perfecting their knowledge on the ECHR. More than 80% of respondents consider that it is necessary for them to know more about the ECHR and the ECtHR's case law. The ultimate aim is that ECHR-based arguments become a "routine", standard part of the national rulings that will "bring human rights home". In addition, investing in additional training of judges and their assistants on human rights would be a sound investment, since the total budget required would definitely be lesser than the total sum of the budget required to pay the compensation and expenses that go with that. Attention should also be brought to the significant economic and social impact of a well-functioning judiciary.

45 See Opinion No. 6 (2004), the Consultative Council of European Judges.

IV. ANNEX 1 – Agenda of the meetings

Thursday, 5 June 2014

08:30–09:30 ***Supreme Court of Cassation***
Ms Vida Petrovic-Skero, judge
Ms Ljubica Milutinovic, judge
Venue: Nemanjina 9

10:00–11:00 ***Ministry of Justice***
Working group on length of proceedings implementation
Mr Zoran Balinovac, President of the Working group
Venue: Nemanjina 22–26

12:00–14:00 ***Judges Association of Serbia***
Ms Dragana Boljević, President
Mr Omer Hadžiomerović, member of the Strategy Implementation Commission
Ms Spomenka Zarić, member of the Judicial Academy Steering Committee
Venue: CoE premises, Spanskih boraca 3

15:00–16:00 ***USAID – Separation of Powers Programme***
Mr Brian LeDuc, Chief of Party
Mr Nikola Vojinovic, Advisor
USAID – Democracy and Governance Office
Ms Milena Jenovai, Advisor
Venue: CoE premises, Spanskih boraca 3

Friday, 6 June 2014

11:00–14:00 ***Joint meeting with judges from the Constitutional Court, Administrative Court, Appellate Court Belgrade, Appellate Court Kragujevac, Appellate Court Nis, Appellate Court Novi Sad and higher courts of the Republic of Serbia***
Venue: Aero Klub, Uzun Mirkova 4/II

15:00–16:30 ***Constitutional Court***
Ms Katarina Manojlovic-Andric, judge
Mr Bratislav Djokic, judge
Venue: Bulevar kralja Aleksandra 15

Saturday, 7 June 2014

10:00–11:30 ***Judicial Academy***
Mr Nenad Vujic, director
Venue: Terazije 41