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WORKING GROUP ON JUDICIAL TIME MANAGEMENT (CEPEJ-SATURN)

TIME REQUIREMENTS ARISING FROM ARTICLES 5 AND 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

IMPLEMENTATION MANUAL FOR CRIMINAL CASES

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1 INTRODUCTION

1.1 Purpose

Articles 5 and 6 of the European Convention on Human Rights (ECHR) protect everyone's freedom and access to fair justice. Both articles contain time requirements that shall protect the individual from delays and slow case handling. The present implementation manual focuses on the requirements in criminal cases. Timely and efficient implementation is important to avoid undue time use both in handling criminal cases and in releasing detainees from custody.

The idea underlying articles 5 and 6 of the ECHR is that criminal justice should be swift and efficient. Crimes committed should be followed by legally correct identification and punishment of the perpetrators within proper time. Quick and certain identification of perpetrators means that punishment will be measured out quickly. Innocent suspects will be relieved from suspicion. Swift disposal of criminal cases facilitates rehabilitation of the victims and help them carry on with their lives.

Long durations before guilt and punishment is decided will hamper the rehabilitation of the perpetrator, because support for a return to a law-abiding life is difficult to achieve before committed crimes have been judged and the penalty paid. Unsolved criminal cases might cause public unrest because no one is held responsible and reinforce an impression that crime is left without effective sanctions, which might encourage new crimes. The time requirements of the two articles intend to keep such dysfunctional consequences to a minimum.

A primary task of the European Commission for the Efficiency of Justice (CEPEJ) is to help member States making the provisions of ECHR effective in practice. The present implementation manual contains tools for implementing the time requirements of ECHR article 5 and 6 in criminal cases.

However, the working group on judicial time management (CEPEJ-SATURN) is not a monitoring body of the Council of Europe (CoE). We have not intended a precise registration and description of time requirement violations. Although our assumptions of possible violations of the time requirements in articles 5 and 6 constitute a background for the proposed instruments, SATURN's objective is to offer a tool for avoiding such violations, not to establish them. States can use our instruments both to correct existing practices that result in violations and as a safety mechanism for avoiding future violations.

1.2 SATURN guidelines[1]

SATURN guidelines for judicial time management also advise on time use in criminal cases. In addition to Part I of the SATURN guidelines, which contains general principles and guidelines, guidelines for legislators and policy makers, judicial administration, court administrators and judges, Part II has guidelines focusing on prosecutors. The present manual is an instrument for supplementing and implementing those guidelines.

Part II especially mentions the time requirements of ECHR article 5 and 6, and the duty of the judicial authorities to establish systems for precise monitoring of case durations according to them[2]. Part II contains a detailed list of time points important to the case handling that should be recorded and used in the monitoring of the duration of the case and to evaluate whether the time use is in accordance with the requirements of article 5 and 6. Records should for example clearly show the dates of the start of the investigation, the arrest of the suspect, the issuing of the indictment, and the announcement and delivery of the first instance decision.[3]

[1] European Commission for the Efficiency of Justice (CEPEJ) - Revised Saturn Guidelines for Judicial Time Management (3rd revision) As adopted at the 31th plenary meeting of the CEPEJ
Strasbourg, 3 and 4 December 2018.
[2] Part II B 2, B 3 and B 4.
[3] Part I C 5.

Special attention should be paid to priority cases. Among them are cases in which the suspect is in custody.[4]

SATURN guidelines point to the police, prosecution and courts as responsible both for proper time measuring,[5] and for making the information available to all actors (police, prosecutors and courts) in the judicial case handling chain for criminal cases.[6]

SATURN guidelines strongly recommend that "(E)electronic case management systems with alerts and alarms should be available to all judicial authorities involved in the time use control. All targets should be integrated into the timeline and monitored by the case management system."[7]

The purpose of our implementation manual is to show a method for making the time requirements of ECHR article 5 and 6 and the SATURN guidelines more operational in member states that at present lack sufficient systems.

1.3 Content of the manual

An implementation manual ought to produce the understanding and tools necessary for a proper application of the time requirements of ECHR articles 5 and 6. Both articles contain time requirements for different types of cases. In addition to criminal cases, article 6 addresses civil cases, even if some of its provisions according to their wording are specific for the criminal cases. Article 5 also has time requirements for incarceration due to other reasons than suspicion of crime. SATURN has decided to use a "step-by-step" approach and focuses solely on the time requirements in *criminal* cases for now. A proper application requires:

1. concise understanding of the doctrinal content of the time requirements;
2. precise registration of events that trigger start- and-endpoints of the requirements for each criminal case handled;
3. continuous monitoring of the time use in each criminal case registered, with warning procedures for durations that risk conflicting the time requirements;
4. specific insights in the different measures available when time use in a criminal case risks violating a time requirement;
5. case management systems for operating the time requirement system.

The manual is organised accordingly.

We consider criminal case handling as a continuing process with the following main stages: investigation, indictment, judgement and execution. Not all criminal cases pass all stages. Since the execution stage comes after the final conviction, the said time requirements do not apply, and we do not consider that stage in the present implementation manual.

Since jurisdictions handle criminal cases with different authorities (police, prosecution and courts) as the main responsible at different stages, each authority needs a precise understanding of their own differing tasks and responsibilities and of the integration of their tasks with the tasks of the other authorities in the chain.

The purpose with the present implementation manual is to provide the criminal justice authorities – police, prosecutors and courts – with a *diagnostic* tool that provides precise information about the status of the implementation process of the time requirements of article 5 and 6 in pending criminal cases. In this respect, our suggestions are meant to be sufficiently comprehensive and precise enough for the member states to evaluate their systems and develop them if they appear inadequate. We also provide several suggestions about *remedies* that the authorities might apply if registration instruments show deficits in case progress that might result in violations of the requirements. Several

[4] Part II B 5.
[5] Part I C 4, C 6, Part II B C 2 and 4.
[6] Part I C 6.
[7] Part II D 3

tools might be used to speed up case handling. Examples are putting the case on fast track or a priority list, reducing stand still time and queuing, appoint new experts, deny adjournments, transfer the case to another police officer, prosecutor or judge with more capacity available, or hire additional personnel, concentrate proceedings into one main hearing, remove bottlenecks, etc.

Such examples might concretize the use of the instrument, but with no intention of being a complete catalogue of remedies. We do not intend to present an exhaustive list of possible tools either for individual cases nor for systemic changes, since the variation of tools are great, and their availability differs widely between member states. Other SATURN publications contain such tools.[8] The intention now is only to present a *detection instrument* that can help in applying available tools for accelerating cases early enough during the case processing to avoiding violations.

We keep analyses and discussions to a minimum. We put our emphasis on practical methods of how to monitor for avoiding violations and reduce damage already done when violations occur.

Our main addressees are the main decision makers in criminal cases, police, prosecution, courts and prisons. However, lawmakers (ministries, politicians, parliaments) carry out important legislative functions in how they integrate the ECHR time requirements into their domestic criminal procedural system. We think that they also should consider the tools described in this handbook and see to that they are well integrated into and compatible with national criminal procedural rules. If not, they should consider legislative reforms.

Member states might already have sufficient tools in place for avoiding violations of the time requirements of ECHR. For them, the implementation manual might serve as a checklist. When national systems deviate from our recommendations, members might consider whether such discrepancies substantiate improvements.

The criminal procedures of member states vary significantly. We cannot guarantee that our tools will fit well to all jurisdictions. We intend the handbook as a living instrument and appreciate feedback on possible improvements. SATURN regularly will consider the need for updating.

1.4 Doctrinal issues

To secure efficient monitoring of time use, we need to map for each of the time requirements:

- the point in time when time counting starts;
- the point in time when counting ends; and
- the maximum length of durations compatible with the requirements.

All time requirements contain start points – date and time when time counting begins – and end points when time counting finishes. For some requirements these points can be easily and precisely fixed from standard data of the case, while the fixation of others might demand a broader, discretionary evaluation from the specific circumstances of the case. Therefore, for some requirements, the maximum durations are clear cut, while the lengths of others depend on a discretionary evaluation.

While calculation of actual time use from standard measurement points might be safely delegated to administrative personnel and/or computerized, calculations that demand discretionary evaluations of individual case data for setting the start-and-endpoints and the maximum duration allowed by the requirement, might involve the handling police officer, prosecutor or judge.

SATURN therefore suggests that all decision-making personnel in the criminal case handling chain should possess a thorough understanding of the doctrinal content of the time requirements of article

[8] See the list of guidelines, checklists, implementation guides and handbooks at SATURN's home site https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management

5 and 6. Additionally, they should have the capacity to make case handling decisions in accordance with the standards set by the wording of the two articles and the case law of the European Court of Human Rights (ECtHR).

Below we summarize the main doctrinal principles that should be kept in mind when decisions about registration and case progress are made and give some references to sources that might be used for further studies of the relevant human rights law. In particular, two documents developed by SATURN should be mentioned:

1) CEPEJ-SATURN(2020)2 *The time parameter within article 5 ECHR. Towards reasonable timeframes for judicial proceedings*. Research on the European Court of Human Rights case-law pertaining to the requirement for reasonable time of proceedings in the ambit of article 5 ECHR. *(CEPEJ-SATURN(2020)2)*[9].

2) *Calvez and Regis* (2018) Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights. 3rd edition by Nicholas Regis. CEPEJ(2018)26. (*Calvez and Regis 2018).*[10]

Both documents contain extensive analyses of the case law of ECtHR. We recommend them for a deeper understanding of the time requirements of article 5 and 6. To keep the manual as simple as possible, we only include references to the above documents and usually do not include references to the underlying ECtHR decisions.

We also remind that human rights concern *minimum* standards, not optimum durations. Nothing hinders member states from warranting people speedier criminal trials than prescribed in the time requirements of the two articles, and SATURN encourages them to be ambitious in this respect.[11]

1.5 Domestic provisions

Human rights are part of international law. Member states are obliged to secure to all individuals their human rights as prescribed in ECHR. They might use different techniques to integrate their human rights obligations into domestic law. The first one is "*incorporation"*: human rights conventions are made part of national legislation in their original language and structure and might also receive priority over national legislation in the case of conflict. The second one is "*transformation":* national legislation is adapted to human rights provisions and worded in a way that is supposed to mirror their content.

There are pros and cons of both methods. It is up to member states to choose the most appropriate method.

However, the national legislative situation should be in accordance with the interpretation of the time requirements in the case law with no ambiguity except what exists in the case law itself. National criminal procedural codes and regulations usually are extensive, complex and detailed. We therefore recommend that member states regularly examine their national provisions to see if the time regulations are up to date with the case law and that the authorities in the criminal case handling chain are familiar with them.

SATURN has established cooperation with the ECtHR, which updates us at each meeting about relevant developments in the case law. SATURN will, in its turn, inform the member states about any

[9] Available at https://cs.coe.int/team21/cepej_forums/SATURN/27th%20meeting%2C%20visioconference%2C%2018%20May%202020/3%20-%20Future%20activities%20of%20the%20CEPEJ-SATURN/c%20-%20Managing%20judicial%20time%20regulations%20for%20criminal%20cases%20in%20ECvHR%20article%205%20and%206/CEPEJ-SATURN(2020)2%20EN%20article%205%20ECHR.docx?Web=1

[10] Available at https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management .

[11] See ECHR article 53 on upholding more extensive state obligations contained in other human right instruments.

significant development in the case law relevant to the time use requirements of article 6 and 7. The next two chapters summarise their normative, substantive content, principles for measurement and responsibility for controlling the time use. We will start with the time use regulations provided within article 5 of ECHR since the time limits they contain usually expire on the timeline before the time requirements of article 6. Such ordering also seems the best way to show the interplay between the two articles.

2 TIME USE REGULATIONS OF ARTICLE 5[12]

2.1 Introduction

Article 5 of ECHR regulates the right to liberty and security of person. The provisions apply to all forms of state interventions into personal freedom whether by courts or other public authority. The implementation manual focuses on criminal cases. The main decisions are made by police, prosecution and courts. Although article 5 (1)c contains the substantive criteria for the use of detention in criminal cases, it does not itself put up any time requirements concerning durations of lawful arrests or detentions. Therefore, we include four time requirements from article 5:

- article 5 (2) on an arrested suspect's right to be informed *promptly* about "the reasons for his arrest and any charge against him".

and article 5 (3), which contains three requirements:

- everyone arrested or detained according to article 5 (1) c "shall be brought "*promptly*" before a judge or other judicial officer and
- be entitled to trial within "*reasonable time*" or to release pending trial.
- such controls of the lawfulness of an arrest or detention order are obligatory and shall be carried out automatically and repeatedly after "*a certain elapse of time*". A detainee cannot wave this right.

As mentioned above, each of the four main time uses requirements of article 5 which provides for a start point and an end point for measurement of time use, to which the standards can be applied. The case law of the ECtHR now demands the authority responsible to explicitly determine the starting point of a detention and also to set a specific time limit for its duration. Missing records might in itself constitute a violation.[13]

2.2 "Promptly"

2.2.1 "Promptly" in article 5 (2).[14]

Article 5 (2) entitles everyone arrested to *promptly* receive information about the reasons for his arrest and any charge against him. Such information should be provided in a language he understands. The provision applies to people arrested and detained as part of criminal proceedings and obliges the police, prosecution and criminal courts to fulfil it. An important idea behind the provision is to secure adversarial proceedings from the beginning of the criminal prosecution. Investigations should be balanced from the start and identify evidence that might both strengthen and weaken the case against the suspect.

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[12] See Edwin Bleichrodt "Right to liberty and security" in van Dijk, van Hof, van Rijn and Zvaak (eds.) *Theory and Practise of the European Convention on Human Rights.* Fifth edition. Intersentia 2018 pp. 439-495 for an extensive analysis of article 5. I also draw extensively upon CEPEJ-SATURN (2020)2 and (in Norwegian) Jørgen Aall: *Rettsstat og menneskerettigheter* (5. Edition) 2018 pp. 358-401.

[13] CEPEJ-SATURN(2020)2 p. 5.

[14] CEPEJ-SATURN(2020)2 p. 11.

Information of the reasons for the arrest and the charge should be provided immediately after the arrest has been carried out, usually at the place of arrest or during transportation to the police station and at latest upon arriving there before the first interrogation or placement in a detention cell take place.

How extensive and detailed the information communicated should be depends on how the investigation progresses. Obviously, the minimum is a description of the act allegedly committed and the criminal provision infringed. Information should be provided in a language that the suspect understands, and preferably in writing and should provide the suspect with the opportunity of controlling that the conditions for his arrest and custody are fulfilled. However, the police might have a legitimate interest in temporary concealing some information suited for use in coming interrogations. As soon as the relevant interrogations have been conducted. Such information should be also provided to the suspect.

If investigation was carried out for a while before the arrest, it might have produced more evidence, and more information about the charge should be given to the suspect.

Measurement of "promptly" in article 5 (2) obviously starts at the moment of arrest – or when the loss of freedom otherwise happens – and ends when information fulfilling the demands of article 5 (2) is provided.

The provision's requirements on the content of the information is dynamic. As the investigation develops, new evidence and other circumstances might appear that impacts on the suspect's need for information. "*Promptly*" also applies to such information. When discovery of evidence and other events happen after the arrest, separate measurements of time use must take place, starting when the discovery or event happened and ending when the information is given

The police and prosecution might well fulfil this obligation.

2.2.2 *"Promptly" in article 5 (3)*

"Promptly" occurs both in article 5 (2) and (3). While article 5 (2) relates to information about the charge to the suspect, article 5 (3) sets the time limit for bringing the arrested person before a judge or other judicial officer. The meaning of the word in article 5 (3) therefore is different from the use of "promptly" in article 5 (2). Its purpose is to secure fast judicial control of the use of incarceration in criminal proceedings. The judge or judicial officer must hear the individual in person and review whether or not the detention is justified. Performing such control is obligatory for the member states and independent of any request from the suspect.

ECtHR has developed strict limitations on the use of detention without such control. The police, however, is allowed some time to gather enough evidence to prove that reasonable suspicion exists that the detained has committed the crime(s) charged. The maximum time use accepted before judicial control takes place, is four days (96 hours). "Periods shorter than four days can also breach the promptness requirement if there are no special difficulties or exceptional circumstances preventing the authorities from bringing the arrested person before a judge sooner."[15]

The Human Rights Committee of the United Nations has in a communication about the similar provision in the UN Convention on Civil and Political Rights (ICCPR) article 9 (3) said that the maximum time is 48 hours (2 days).[16] The UN limit is only half of the maximum duration allowed for by ECtHR. Since all CoE member States are also members of ICCPR, they are obliged to apply the

[15] For further information, see the document prepared by the CEPEJ Secretariat for the SATURN working group - CEPEJ-SATURN (2020)2 - p. 10 – 13.

[16] UN Human Right Committee General Comment No 35 (CCPR/C/GC/35) point 33 and 34.

UN time limitation. They cannot stick to the ECtHR limit.[17] At present, member States that use between two and four days, will not violate ECHR, only ICCPR, and risk sanctions only from the UN. However, the UN practice might well produce incentives for ECtHR to harmonise the two practices by making its case law stricter through dynamic interpretation.

Measurement of "promptly" in article 5 (3) obviously starts from the time of arrest and ends when the arrested person is brought before a judge or other judicial officer, which probably means at the point in time when the custody hearing actually starts.

2.3 "Reasonable time"[18]

To secure that durations of incarcerations are kept to a minimum, courts must regularly check that custody is justified, and the justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities**.** If not, the suspect must be brought to trial or released,

The test is dynamic. The longer the detention lasts, the graver the loss of freedom becomes. While reasonable suspicion might be enough for police arrest of a day or two, longer durations demand progressively stronger reasons. Therefore, the reasons demanded for prolonged detention to be reasonable also become stricter as time goes by. As described, the first judicial decision according to article 5 (3) must be made "promptly" after the arrest. At this stage the authorities cannot confine themselves to only showing that reasonable suspicion persists. They must provide additional grounds for prolonged incarceration.[19]

Grounds that have been deemed "relevant" and "sufficient" reasons for prolongation of detention in the case law of ECtHR, includes the risk of the suspect

- absconding by considering the character of the person involved, his or her morals, assets, links with the State in which he or she is being prosecuted and the suspect's international contacts;
- making pressure bear on witnesses;
- tampering with or otherwise collude evidence;
- reoffending;
- causing public disorder; or
- needing protection.

The "reasonable" time standard applies on all time spent in confinement by the suspect due to the criminal investigation. It means that counting starts at the time of arrest. The ending point is when the detainee is released. However, if release has not happened until the end of the first instance trial, time counting ends when the first instance verdict is issued. Then the suspect must be released unless continued detention can be anchored in article 5 (1).

2.4 "A certain elapse of time"[20]

Article 5 (3) entitles a detainee to release if the trial cannot be finished within reasonable time. A distinction must be drawn between a first phase, when the existence of reasonable suspicion is a sufficient ground for detention, and the phase coming after a "*certain elapse of time*", when even a strong suspicion alone no longer suffices and other relevant reasons to detain the suspect are required. Courts must then establish whether such other grounds given by the judicial authorities continue to justify the deprivation of liberty.

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[17] See ECHR article 53 saying: «Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party» (P 17).».

[18] CEPEJ-SATURN (2020)2 pp. 18-24.

[19] *Idem*, § 102. CEPEJ-SATURN (2020)2 pp. 20-21.

[20] CEPEJ-SATURN (2020)2 pp. 20-24.

Due to the dynamic design of the "reasonable time" criterion, the demand for justifications of custody increases over time. Therefore, the case law of ECtHR obliges the courts *to decide* with adequate intervals whether continued detention still is reasonable and in accordance with article 5 (3) or whether the detainee ought to be released.

No fixed time-frame applicable to the "certain lapse of time" exists. ECtHR has not attempted to translate this concept into a fixed number of days, weeks, months or years, or into various periods depending on the seriousness of the offence.[21] Therefore, the length of the intervals for controlling whether continued detention is acceptable, depends on the discretionary evaluation of the circumstances of the case. The main point, however, is to avoid that any suspect is kept in custody without sufficient reason. ECtHR uses the wording *"*certain elapse of time*"* to indicate the flexibility of the standard for when to control whether detention still is reasonable. The maximum reasonable time until the first instance trial must be finished also constitutes the maximum time of detention.[22]

If the suspect is still kept in custody, for example awaiting appeal or transferral to a prison for serving a sentence, this additional time is not counted under "reasonable time" in article 5 (3), but probably evaluated as a deprivation of liberty that must be "lawful" according to article 5 (1) a. This article does not contain any time limitations as long as the incarceration is considered lawful. However, the article does not hinder domestic time regulations that further limit duration of imprisonment.

Measurement of actual time use under "a certain elapse of time" seems simple, although the evaluation of whether the intervals registered are acceptable might be difficult. The starting point should be the first obligatory evaluation by the judge or other judicial officer of whether detention is reasonable. The first ending point will be the starting point of the next evaluation and so on for measuring the time spans between all subsequent evaluations.

2.5. "Speedily" in article 5 (4)

Article 5 (4) comprehends all forms of loss of liberty listed in article 5, including detention in criminal cases. The article entitles everyone arrested or detained to initiate proceedings to test the lawfulness of his detention before a court. Decision shall be made "*speedily*".

ECtHR interprets the provision to allow for repeated tests depending on the duration of the detention and change in other circumstances that have justified the measure – for example that the investigation is finished and the risk of successful evidence tampering therefore has been reduced. The article therefore contains a fifth time requirement for criminal cases. Contrary to "a certain elapse of time in 5 (3), review according to 5 (4) depends on the request of the detainee. Courts are not obliged to regular checks independent of such requests. Article 5 (4) is of limited importance to suspects of crime as long as states fulfil their obligation according to article 5 (3) to repeated obligatory reviews of whether continued detentions are reasonable. Therefore, the present implementation manual excludes the time regulation in article 5 (4) from its scope.

However, long intervals between automatic periodic review may lead to a violation of article 5 § 3 and substantiate a request from the suspect for review according to article 5 (4).[23] CEPEJ-SATURN(2020)2 (pp. 25-27) thoroughly spells out the interpretation of "speedily" applicable on all sorts of detention – criminal cases included.

2.6 Responsibility for controlling time use according to article 5

As mentioned before, criminal cases are processed within a chain of judicial authorities. The police are the main institution at the investigation stage, then comes the indictment stage governed by the prosecution, the next is the court level with the first instances and then the appeal court and finally the execution stage with the prison and recovery authorities for fines. Article 5 (1) c, and (3)) mainly

[21] CEPEJ-SATURN (2020)2 p. 20
[22] CEPEJ-SATURN (2020)2 p. 18
[23] CEPEJ-SATURN (2020)2 p. 27.

concern the investigative and prosecutorial level. However, courts also have important tasks to fulfil at all stages as the prime “rule of law” responsible in the judicial system.

Article 5 contains a few guidelines about which judicial authority that should be responsible for controlling that the four time use regulations are respected, but generally it is left to states to organise their judicial systems as long as the time requirements are effective in practice. A closer study of the national judicial systems therefore seems necessary for precise information about which authorities are responsible for controlling the three time use regulations of article 5 in the member States. SATURN considers it useful to deliver guidance on such responsibilities from its experience so far and leave it to member States with differing systems to make the adjustments necessary.

“Promptly” delivery of the information prescribed in article 5 (2) to persons arrested on suspicion of having committed a crime, seems primarily a task of the police since they usually carry out the arrest. If prosecution is involved in deciding the arrest, they might also control that sufficient information has been delivered and if not, see to that it is done. We assume that such practices are common among member States. Courts might also be involved in some jurisdictions.

We also assume that bringing a suspect “promptly” before a court or other judicial officer according to article 5 (3) usually is the responsibility of the police and prosecution.

Since the police usually conduct the arrest and keep the suspect for interrogations, they already are in control of the suspect. However, the courts or other judicial officer obviously will have a duty to control that suspects and their cases are timely brought before them and must instruct the police and prosecution if not.

Timely controls that the length of detention does not violate the “reasonable time” criterion in article 5 (3) is an obvious task for the courts or other judicial officer.

The expression “judge or other officer authorised by law to exercise judicial power” is a synonym for “competent legal authority” in article 5 § 1 (c). Exercising “judicial power” is not necessarily confined to adjudicating on legal disputes. Article 5 § 3 includes public prosecution as well as judges sitting in court. However, the “officer” referred to in article 5 (3) must offer guarantees befitting the “judicial” power conferred on him by law.”[24]

However, if repeated controls are necessary, the case law of ECtHR presumes that the subsequent controls should be carried out by a “court” satisfying the criteria of “independent tribunal” of article 6 (1).

Checking whether “a certain elapse of time” is applied correctly according to article 5 (3) also seems an obligation both for the police, prosecution and for the courts or other judicial officers. We assume that asking for a new hearing within the time requirement usually is the responsibility of the police or prosecution, while scheduling the hearing within the limits is the task of the court or other judicial officer.

3 TIME REQUIREMENTS OF ARTICLE 6

3.1 Overview

ECHR article 6 contains three time requirements. Everyone charged with a criminal offence is entitled to:

- a hearing “within reasonable time” (article 6 (1))
- be “informed promptly”, in a language which he understands and in detail, of the nature and cause of the accusation against him (article 6 (3) a.)

[24] CEPEJ-SATURN (2020)2 p. 14

- have “adequate time” for the preparation of his defence (article 6 (3) b.).

According to the heading of article 6, these time regulations are part of the conditions for a fair trial. We will not discuss other conditions of article 6 in the present implementation manual, but only remind that timeliness of a criminal prosecution is a necessary, but not sufficient, condition for a trial to be fair.

3.2 “… within reasonable time”

3.2.1 Introduction

The main time use regulation in article 6 is the “within reasonable time” standard, which is well known among member States. SATURN has issued a separate report with detailed analyses of the main features of the case law of ECtHR on this standard. (*Calvez and Regis 2018*)[25] We summarise findings in the report that are important to our purpose and provide references to the report for the full analysis. As the wording of article 6 tells, the “within reasonable time” requirement applies both to trials about civil rights and obligations and to criminal charges. Accordingly, *Calvez and Regis to 2018* analyses durations both in civil and criminal trials, while we focus on the time requirement only for criminal trials.

ECtHR evaluates time use from the concrete circumstances of the case and tries to evaluate whether time has been used wisely at all stages of the proceedings. Whether or not the court establishes a violation, depends on the relative weight of a spectre of factors. Therefore, it is difficult to establish clear-cut rules for when durations might violate the reasonable time standard. The norms are guidelines more than exact rules.

However, the in-depth analysis of the case law by Calvez and Regis points to four main criteria that the ECtHR uses to determine whether time use is reasonable:

1) Case complexity
2) The conduct of the applicant
3) The behaviour of the national authorities
4) The importance of the case to the applicant. [26]

According to its SATURN’s mandate, the report also tries to extract acceptable durations in *normal* cases from the case law on these four main evaluation standards. The report finds that a time use up to *two years per instance* usually does not violate the standard. A time use that overruns the two-year limit, however, will give reasons for concern about violations. Then the ECtHR will perform a detailed evaluation of the concrete circumstances of the case from the four criteria. They might function as arguments both for and against durations of reasonable time shorter than or beyond the two years, depending on their content in the concrete case.

Calvez and Regis gives a thorough analysis of how the ECtHR weighs the different circumstances under the four criteria in criminal cases. Below, we summarise the main types of circumstances and their weight and refer to the Calvez and Regis report for details.[27]

[25] Calvez and Regis (2018) *Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights.* 3rd edition by Nicholas Regis. CEPEJ (2018)26. (*Calvez and Regis 2018).* Available at https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management.
See also Caroline Savvidis (2016) Court *delay and human rights remedies* pp. 23-32. Her analysis comprehends both civil and criminal cases.
[26] Summarized from Calvez and Regis 2018 pp. 16-28.
[27] Calvez and Regis 2018 pp. 28-29.

3.2.2 Case complexity

Case complexity might relate both to legal and factual issues. Unusual complexity usually counts for extended duration.[28] Organised crime like corporate crime, drugs, human trafficking, war crimes, genocide and crimes against humanity might serve as examples of crimes with a high share of complex cases. Cross jurisdictional elements of a crime often add to the complexity because authorities in different states become involved and translation of documents is needed for the trial.

The Court might view procedural complexity resulting in extended time use – for example due to the accumulation of accused and criminal charges in the case – with scepticism, since all member States have a duty to organise their criminal justice system in a way that does not violate the defendants' right to trial within reasonable time.

However, according to the principles of the case law, it is not enough to classify a case as belonging such categories, the unusual complexity must be present in the case in question.

3.2.3 The applicant's conduct

If the charged has contributed to extended time use by defection or other kinds of obstructing the prosecution, delay caused by such behaviour will not count in evaluating whether time use is reasonable. Although a charged has no obligation to actively cooperate and shall be considered innocent until a final conviction is passed, the Court expects a suspect to refrain from sabotaging the procedural steps necessary to secure the proper progress of the case. Extensive number of requests for adjournments from the defendant, might therefore result in prolongation of reasonable time. Also delay due to the defendant's health problems might result in prolongation, since such time use cannot be attributed to the state.

However, reasonable time includes time for responsible use of the rights of defendants. Such time use cannot be deducted to avoid violations. The standard includes time for active defence and full accept of the principle of equality of arms. States must respect a suspect's right to remain silent and to plead not guilty also when the investigation and trial become more time consuming, without prolongation of the limit. Generally, member States cannot restrict defendants' use of legitimate rights to avoid violations of the reasonable time standard or claim prolonged duration of "reasonable time" due to such behaviour. However, the Court expects the defendant to show diligence in invoking his rights.

3.2.4 Behaviour of the national authorities

The Court scrutinises the time use of the national authorities; police, prosecution and courts. Criminal cases must be handled efficient and with diligence. The Court usually appears reluctant to prolonging the reasonable time standard due to significant periods of standstill time unless they can be attributed to obstructive behaviour of the accused as described above.

Queuing, time consuming investigation and appeal system, legal and factual mistakes from the criminal prosecuting authorities, lack of capacity and other systemic features that causes extended time use, usually will not lead to prolongation of reasonable time, due to the previously mentioned principle that all member States have a duty to organise their judicial systems in a way that meets the requirements of the ECHR. If delay is caused by crises, pandemics, social unrest, lawyers' strikes and other unforeseen upheavals or catastrophes, prolongation might be acceptable provided the authorities show diligence in overcoming such hindrances.

[28] See Habran and Dalem v. Belgium judgement of 17 January 2017 as an illustrating example. Due to the extraordinary complexity of the case a duration of eight years and five months, including the investigation and the examination of the case at two levels of jurisdiction, did not violate the "reasonable time" criterion of article 6 (1).

3.2.5 The importance of the case to the applicant

The case law contains a number of case categories that demands special diligence from the authorities, meaning that the wo years' duration standard in normal cases before concern about violations arise, must be shortened. Those categories, however, mainly concern civil cases.

Several arguments favour swift justice in criminal cases as well. As mentioned previously, efficient punishment of crimes strengthen general prevention, increases public trust in the system, provides earlier reparation to victims and better opportunities for them to go on with their lives. Charged that are found not guilty will faster become relieved of the burden of defending themselves against a criminal prosecution. Offenders can start their rehabilitation earlier.

However, the case law does not indicate that reasonable time in criminal cases is shorter than in civil cases, although the Court has said that *the reasonable time standard is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate*.[29] When the suspect is kept in pre-trial detention, the prosecuting authorities must show exceptional diligence in forwarding the case as quickly as possible. As a consequence, less space exists for circumstances that might allow for prolongation of reasonable time.

The importance to the charged of criminal cases mainly depends on the seriousness of the charge and especially the type and the length size of punishment that the defendant actually risks if found guilty. Additionally, the social consequences connected to being charged depend on the type and seriousness of the crime charged. Although the presumption of innocence protects a person that denies guilt against prejudgment during the proceedings, the high evidence threshold for indicting means that the risk of conviction still is significant.

Arguably greater speed in serious cases is more important than in ordinary cases. The case law however does not give indications that reasonable time in serious cases is less than the average. The two years' time span per instance before concerns arise, is the standard here as well. Confessions usually simplify the investigation and trial, and therefore such cases also appear less prone to exceed the ordinary two year's limit, but reasonable time itself is not reduced.

3.2.6 Overall assessment

Since the assessment factors of reasonable time might point in different directions, a joint weighing is necessary. The overarching discretionary criterion is whether the time use of the proceedings in its totality appears fair. Too extensive time use at one stage might be compensated by swifter handling at other stages. However, the evaluation is done from the concrete circumstances of the case. The case law also tells that extensive standstill time showing lack of diligence at one stage might lead to violation although total time use for all stages does not seem unreasonable.

3.2.7 Start and end points[30]

"Reasonable time" counting in criminal cases starts when the investigation significantly impacts on a suspect's situation, which usually happens long before the case reaches the first instance court.

Reception of the formal charge by the suspect is just one possible starting point. Time counting, however, might start well before the prosecution authorities issue their formal indictment. ECtHR uses a functional approach by asking when the suspect appears *substantially affected* by the investigation. The underlying reasons is a suspect's legitimate need to know that an investigation is going on with him as one main suspect, and his need for the protection that article 5 and 6 provide to an accused.

[29] Stögmüller v. Austria, judgment of 10 November 1969.
[30] Calvez and Regis 2018 pp. 30-31.

Some procedural events will always trigger a need for such protection independent of whether the prosecution has issued a formal charge. Examples are provisionally charges, arrest and custody, searches, seizures and other coercive means, and also when the investigation otherwise focuses on a suspect with a significant probability that he will be charged.

Time counting ends when a final judgment on the substantive charges is issued, or proceedings are terminated by the public prosecutor.

3.2.8 Relationship to article 5 (3) "reasonable time"

As we have seen, article 5 (3) also uses the "within reasonable time" criterion. However, they relate to different issues. While the expression in article 6 relates to the total time use of the proceedings, the article 5 wording regulates time from arrest to the end of the first instance proceedings. Both durations are set discretionary.

The assumed length of the detention and the strains for the detainee, the complexity of the investigation and the seriousness of the alleged crime are important factors in determining whether the time use is reasonable according to both versions of the standard. However, the meaning of the duration of the custody might differ in the two settings.

Whilst duration of the custody is a paramount parameter in article 5 (3) because all loss of liberty should be kept to the minimum strictly necessary, article 6 evaluates it as a negative consequence of criminal prosecution that rules out any extension of the two-year standard time per instance. While the case law of article 6 does not seem to justify a shortening of reasonable time beneath the two year per instance, reasonable time in article 5 (3) might well do so. If the authorities want to keep the accused incarcerated until the first instance judgment, two years of detention might well be unreasonable. If only a shorter time period is acceptable, then the authorities must make a choice; either to conduct the trial within the time span allowed by the "reasonable time" requirement in article 5 (3) or release the accused and conduct the trial within the ordinary limit of "reasonable time" in article 6 (3).

3.3 Article 6 (3) a. and b.

3.3.1 Overview

In addition to the "within reasonable time standard" in article 6 (1) that regulates the total duration of investigation and trials, article 6 (3) a. and b. contain two shorter time requirements in criminal cases, namely for the authorities' duty to:

- inform the charged "promptly", in a language which he understands and "in detail", of the nature and cause of the accusations against him,
- provide him with "adequate time and facilities" for the preparation of his defence.

Both requirements shall secure a fair trial, especially the right in article 6 (3) c for the accused to defend himself and the principle of equality of arms in article 6 (3) d.

3.3.2 "Promptly"

The obligation to provide information appears dynamic. "Promptly" in article 6 (3) means durations that are flexible according to the level of detail demanded. At an early stage, also the police's information about the alleged crime might be limited. Legitimate reasons for withholding information for investigation purposes might also exist. As time passes and the investigation develops, the demand on more detailed information to the suspect increases. When the indictment is issued and the case submitted to court for decision, information must be comprehensive and sufficient for an effective defence according to article 6 (3) b and c. It means that both the full charge and the evidence supporting it should be made available to the defendant. Courts might assume that the

defendant receives such information at the same time as the court. However, the actual time of reception must be used.

Counting of “promptly” in article 6 (3) also starts when the suspect is substantially affected by the investigation and needs information. When the obligation to provide further information increases as the investigation develops, additional evidence should be made available as soon as it is collected. Consequently, the start points might differ, depending on when the police and prosecution receives the different pieces of information.

The endpoint cannot deviate significantly from the start point, since the start point is set according to the needs of the suspect. When a specific procedural event triggers his status as charged, minimum information should be given simultaneously, and if impossible, as soon as possible thereafter. Police and prosecution cannot keep a suspect ignorant about an ongoing investigation that substantially affects him. We are talking about hours before acceptable durations end, not days.

Since the variations in complexity and evidence needed is vast, general norms for maximum durations of “promptly” are difficult to establish. While two weeks in a case on ordinary theft, months and even a year or two might be accepted in extraordinary complex cases. Maximum durations for delivery of the prescribed information therefore must be set individually for each case according to the criteria of the case law.

Time counting stops when the charged receives the prescribed information.

The dynamic nature of the information demanded by article 6 (3) b means that different start and endpoints might appear relevant for different pieces of information, both due to when it is gathered by the police and prosecution and to changes in the content of the charge. The dynamic features mean a challenge when constructing a reliable control system.

“Promptly” occurs both in article 5 (2) and (3) and in article 6 (3) a. While article 5 (2) relates to information about the charge to the suspect, article 5 (3) concerns bringing the arrested person before a judge or other judicial officer. Although both articles 5 (2) and 6 (3) a. relate to the same kind information, they still have somewhat different interpretations. First, article 6 (3) a. comprehends everyone charged with a criminal offence independent of whether they remain in pre-trial detention. Second, article 6 (3) a. orders such information to be “in detail”, while article 5 (2) does not use similar words. We might explain the difference from the functions of the two articles. Article 5 (3) relates to the custody decision and the understanding necessary for the suspect’s defence against the custody request, while article 6 (3) a. concerns information necessary for the defence against the final indictment when the evidence supporting it becomes more extensive.

Usually more time is necessary for production of the information necessary according to article 6 (3) a. However, with repeated evaluations of whether the time in detention is reasonable, the demands on information of the charge also increase and the differences might decrease. On the other hand, when the demand on information that has to be delivered according to the interpretation of “promptly” in article 6 (3) a, also information already delivered according to article 5 (2) must be taken into consideration.

3.3.3 “Adequate time”

Article 6 (3) b. on “adequate time” to prepare his defence supplements article 6 (3) a. and the two articles must be interpreted in connection. Sufficient time for preparation is obviously important to make effective the accused’s right to defend himself in person or by defender. When suspects make use of defenders, sufficient time for the defender’s preparations should be included. This standard appears relative as well. Usually, lesser time is needed for adequate preparation in simple cases than in complex ones.

The standard is discretionary, depending on the circumstances of the case. Roughly, durations are counted in weeks, months, and even a year or more in cases where “reasonable time” is two years or more per instance, while “promptly” is counted in hours and “adequate time” in days and months.

If police and prosecution make most of the relevant information available continuously during investigation, and the remaining part is of limited importance, a shortened preparation time before the trial might be acceptable. The content of the full information and how the persecution authorities make it available, frames the duration of “adequate time”.

Some witnesses might be examined separately previous to the main hearing. The prosecuting authorities must promptly inform the charged about such events and see to that his right according to article 6 (3) d. to examine them effectively is respected. Similar to the main trial, promptly delivery of information necessary for the hearing and adequate time for preparation before the hearing must be granted. Probably significant differences exist between member States in this respect, due to variations in the way criminal proceedings are organised.

If the charge changes during the investigation and focuses on new or different evidence, an adjustment of “adequate time”, for example by postponing the main hearing, might be substantiated.

The duration of “adequate time” starts when information fulfilling the “in detail” criterion has been provided to the accused. Effective defence preparations appear difficult before the prosecution makes the precise content of the charge and the relevant evidence known to the defendant. The start point of “adequate time” probably has to be identified by counting backwards. The main parameters are when the evidence and other issues will be decided upon by the court, and the time necessary for preparing an adequate defence against the charges before the trial starts.

Duration ends at the start of the main hearing. If delivery is incomplete at the start, postponement for further and sufficient preparation must be granted – also when the maximum reasonable time might be exceeded.

3.3.4 Responsibility for controlling

The responsibility of seeing too that the time requirements of article 6 are respected, rests with the member States. All state organs have a duty within their field of competence to avoid violations of ECHR and the case law unless a state deliberately organises their internal responsibilities differently.

During criminal prosecution, cases move in a chain from one instance to another. All three time requirements of article 6 involve controlling tasks for police, prosecution and courts.

The police usually possess the data for assessing when time counting should start both for “reasonable time” and for “promptly”. They are best suited as controllers of time use at the investigation stage. When the case moves on to the indictment stage, public prosecution should take over the time control task unless the authority to prosecute also rests with the police. As a consequence, the prosecution also should know about the time use at the investigation stage, which the police controls, and carry on with the measurement according to the principles of the case law. Furthermore, when the case is terminated by police or prosecution, they should see to that the total duration is within the limits.

If the case moves on to the courts, the first instance court will have the final responsibility for controlling the total time use at the first instance level, including the investigation stage, indictment stage and the handling of the first instance court all together, and should check whether the combined time use is within the borders drawn by ECtHR. The task presupposes transfer of time use data from the preceding stages at the police and prosecution to the first instance court.

SATURN’s experiences from different jurisdiction show that systematic transfer of time use data from police and prosecution to courts does not always take place. Courts start time counting when a case arrives at the court and argue that what has happened at earlier stages is not their responsibility.

Courts might have the possibility to estimate the relevant time use before arrival from the case file but might not carry out such measurement in practice.

The attitude seems in accordance with article 6 for civil cases, but not for criminal cases. Courts still might argue that they have no powers to instruct the police and prosecution about their case handling. Both assertions might be well founded from domestic law.

To fulfil member States obligations as they appear from ECtHR's case law, courts ought to check upon the arrival of a case what the duration at the previous stages has been and make an estimate of the expected time use at the court. If the two-year limit for concern about violation already has passed or if normal case handling speed at the first instance court cannot avoid violation, the case should be put on fast track as a priority case.

If no one checks the total time use, due to such strict division of task, a risk of repeated violations of article 6 exists, even without the judicial authorities noticing. Then we are within the ambit of systemic violations, which ECtHR has said triggers the obligation of member States to organise their judicial systems in ways that do not violate the individual's human rights. If case handling at the pre-trial stages frequently consumes so much time that combined time use when at the first instance courts often leads to risks of violations, the relevant judicial authorities have an obligation to accomplish reforms to reduce time use enough to avoid violations. However, the existence of systemic defects does not relive the prosecuting authorities from their duty to do what is within in their might to reduce and prevent violations until such general reforms are in place.

4 TIME USE REGISTRATION AND REQUIREMENT CONTROL

4.1 Challenges

Controlling that actual time use is in accordance with the time requirements in article 5 and 6, presupposes that a proper registration system is in place. Real start and end points for each case should be identified and the real duration compared with the maximum durations prescribed in each of the time requirements.

However, the idea behind human rights is that everyone is entitled to fulfilment of them by the state. Therefore, precise registering of time use that might result in violations is just a starting point. Precise knowledge about violations is necessary but not sufficient for meeting the requirements. Such knowledge is ex post facto and cannot make a violation undone. However, violation is not either/or, but a matter of degree. The longer the duration exceeds maximum accepted time, the graver the violation usually becomes. So, its seriousness might be diminished also by actions to reduce remaining case handling time carried out after the maximum duration has expired.

In accordance with our analysis in chapter 2 and 3, SATURN suggests that the proper state obligation and policy goal must be *zero violations. Therefore,* a time use control system for the time requirements of article 5 and 6 should be organised with the aim of preventing violations altogether. The system must contain warnings about all cases that are off track and risk violating the requirements. Those warnings must come early enough during case processing to allow time for speeding up the case handling sufficiently to avoid violations.

Such an ambition might seem unrealistic in jurisdictions that experience overloading of the criminal justice system. CEPEJ/SATURN is aware of such challenges, and has issued "Towards European Timeframes" as a tool for gradually reducing time use also for jurisdictions that at present do not fully meet the "reasonable time" requirement of article 6 (1).[31]

[31] Downloadable from https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management

SATURN still thinks that a precise recording of all violations of the article 6 (1) requirement will better their understanding of the seize of the problem and the generating factors behind. If violations cannot be totally avoided, all steps possible to shorten the overrun therefore should be taken.

Besides, the present implementation manual does not limit its recommendations to the time requirements of article 6 (1). It aims at helping states in enforcing *all* time requirements in article 5 and 6 that apply to criminal cases. Difficulties in keeping one of the time requirements should not keep states from doing their best to respect the others, and we therefore think an efficient time use registration system for criminal cases important to all member States.

CEPEJ/SATURN does not perform monitoring tasks. We have not systematically checked how well member States fulfil the time requirements of article 5 and 6, although the case law of ECtHR might give some indications. Several states might have sufficient systems in place, and for them our suggestions might already be familiar and implemented. For them, the present implementation manual is an opportunity to check whether their systems might be improved. Also, it might well be that such comparisons show that national systems have features that SATURN should adopt. SATURN therefore appreciates feedback from the states on possible improvements.

As mentioned before, broadly a criminal case might run through five main procedural stages; investigation, prosecutorial evaluation, court handling at the first level and appeal level, and execution of sanctions. The organisation of the stages might differ to some extent between the member States. Each state therefore must adapt our advices to the peculiarities of criminal procedure of their judicial system. We still hope that the methods we suggest will be of use in most jurisdictions.

4.2 Measuring time requirements

4.2.1 Common issues

A main instrument in time control is a detailed timeline for each case. An overall (complete) timeline for criminal cases ought to show all measurement points relevant to the six time requirements of article 5 and 6 discussed previously.

Such a timeline ought to have two main components. One is to show the start points, end points and acceptable maximum duration of each requirement as prescribed in the convention and the case law of ECtHR. Another is to show the actual time use of each case. We might label them the *normative component* and the *data component*. Chapter 2 has identified the points on the timeline important to the normative evaluation of the time use. They should be included in the timeline.

The normative end point often will be common for all cases when a time requirement applies. However, due to the discretionary elements of some of the requirements, several events might also influence the length of the normative component or time use required by the provisions. If such events happen, some main information should also be recorded and evaluated. The impact on the normative end point should be calculated and adjusted and added to the timeline.

Actual end points, and consequently the durations recorded in the data component, might differ from the normative maximum both positively and negatively. A timeline that shows the data component therefore will vary in content from case to case.

We will discuss the essential time data that the timeline ought to contain for each time requirement separately. We do not intend an exhaustive listing, only a basic specification. States might want to use more detailed timelines. States might also use procedural systems that might make some of our suggestions superfluous. Still it might be useful as a checklist also for states that want to control whether their recording practises are sufficient.

4.2.2 Article 5 (2) and 5 (3) "promptly"

While article 6 (3) a concerns information during the whole proceedings, "promptly" in article 5 (2) focuses especially on information about the reasons for the arrest of a suspect. Like "promptly" in article 6 (3), the requirement is dynamic. The more information the investigation produces the more should be transmitted to the suspect.

The normative start point for time measuring is the arrest. The maximum normative duration of "promptly" in article 5 (2) is a few hours, with the normative end point occurring at latest when the arrested person is taken to the police station. All points should be put on the timeline, including the real end point when the prescribed information is given

Article 5 (2) does not only apply to the act of arresting but to the whole period of detention on remand. So the arrested person is entitled to updated information about the charge and the reasons for continued detention delivered promptly as the investigation develops. The normative and real start point of "promptly" now will be the appearance of fresh information and the normative duration shortly after the new information is produced and available to the prosecution. The real end point is the actual delivery. All real events should be put on the timeline and compared to the normative "promptly" standard.

*"*Promptly*"* in article 5 (3) applies to the time use from the arrest to the first judicial hearing of whether the conditions for continued custody still are satisfied. The normative start point is the capture of the suspect and the normative end point the start of the hearing. Measurement must be in hours. According to the case law, the maximum time allowed is 96 hours, but will probably become stricter due to the impact of the similar provision of CCPR article 14 (3) that limits the maximum time use to 48 hours, see chapter 2.2.2.

4.2.3 Article 5 (3) "reasonable time" and "certain elapse of time"

The purpose of the "reasonable time" in article 5 (3) is to keep the use of pre-trial detention to a minimum. The normative and real start point is the same as for "promptly" – namely the capture of the suspect. The end point is either the end of the first instance trial or his release. The acceptable maximum duration is discretionary as spelled out above in chapter 2.3.

The normative and real start point of "a certain elapse of time" is the first obligatory evaluation of continued detention, and the normative end point release or the start of the next evaluation, and so on until the end of the first instance trial. The acceptable normative time span between the start and end points depends on a discretionally evaluation of the criteria developed in the case law, while the real end point comes when the hearing happens.

4.2.4 Article 6 (1) "Reasonable time".

For many cases, the start point of the "reasonable time" requirement appears simple to establish. Time counting should start when the suspect is arrested, searched or charged etc. whatever event that happens first. Other cases might demand a professional, discretionary weighing of several circumstances before deciding the start point for counting reasonable time. However, to secure the preventive function of the system, and keeping in mind the overarching criterion for identifying the start point, namely that a suspect becomes substantially affected by the investigation, *all* events that might trigger its start should be recorded. The start of the investigation should also be recorded at the timeline independent of the existence of a major suspect at this point in time. Having such data at hand, makes it easier later on to independently judge the time use at all stages of the proceedings.

Time counting ends when a final judgment on the substantive charges is issued, or proceedings are otherwise terminated by the court or the prosecution. Usually recording the dates of such decision at the timeline suffices.

For the normative component of the “reasonable time” requirement, the case law of ECtHR suggests a time use of maximum 2 years per instance in ordinary cases before the question of violation arises. Obviously this date should be recorded systematically as soon as the start point has been fixed both at the first and the appellate levels.

The case law also shows that some case features might demand special diligence in keeping the maximum of two years’ duration per court instance while other circumstances might justify longer durations than two years. Such features might appear on different stages of the proceedings. They should be added to the timeline when they occur, and their effect on the duration of the “reasonable time” standard estimated.

- Unusual case complexity often can be estimated already during the investigation stage – and a preliminary evaluation of the duration of the “reasonable time” standard made.
- Prolongations caused by the conduct of the suspect and their meaning for the duration of “reasonable time” might be added to the timeline when they occur.
- Delay caused by queuing, standstill time not caused by the suspect, mistakes by the prosecuting authorities or delay due to complexities in the procedural system also should be recorded, even if they do not justify an extended duration of “reasonable time”.
- Delay caused by unforeseen crises and other upheavals also should be recorded and their impact on the duration of reasonable time estimated.
- The fact that the suspect remains in custody constitute a strong argument against any prolongation of reasonable time and their duration should be recorded at the timeline, and brought into consideration when the authorities make their overall evaluation of whether the case law makes it feasible to prolong “reasonable time”.

The analysis in chapter 3.2.5 shows that the circumstances that make it feasible to reduce the duration of “reasonable time” standard in article 6 (1) to less than two years per instance seem less practical in criminal cases than in other cases, and therefore not so important to the discretionary evaluation of the normative duration of “reasonable time”. However, optimum durations usually will be shorter, and nothing hinders member States from practicing them

4.2.5 Article 6 (3) a. “promptly” and b. “adequate time”

Like “reasonable time” the normative start point for measurement of “promptly” comes when the suspect appears substantially affected by the investigation. The normative duration of “promptly” is very short for the initial information – either simultaneously with the triggering event, or a few hours thereafter. For information mainly meant for the trial preparation of the charged, some more time for the prosecution might be allowed depending on the complexity of the case. The evaluation must be made discretionary in each case from the principle that no one should be kept in uncertainty about his fate longer than absolutely necessary. These durations also determine the normative end points for “prompt deliveries”, which should be on the timeline as well.

The real start point coincides with the normative one and the real end point when sufficient information actually is provided. The timeline should show the duration between the normative end point and actual delivery in hours, not days. States might also register the point in time when the prescribed information actually is sent to the suspect but this point in time is irrelevant to the measurement of “promptly”. Time counting must start when the authorities’ obligation to provide the information becomes operative, not when delivery actually happens.

Due to the dynamic nature of the obligation to provide information, the normative and real start points for measurement of “promptly” for *later* deliveries are when the information is gathered by the police and prosecution. The actual endpoint comes when the relevant information arrives at the accused or his lawyer. Similar to the first delivery, the real end point comes shortly after the start point. Both events should be put on the timeline. Since the overall delivery of information shall be sufficient for the defence of the suspect according to the principle of equality of arms, the recording of each

delivery should outline the content of the information with a degree of detail that makes it possible to check that all information relevant for a fair trial has been delivered.

While the other time requirements are maximum durations, the "*adequate time*" is a minimum requirement. Its main purpose is to secure the accused an effective defence and therefore includes preparation time for defenders. Nothing hinders the authorities to allow the charged more time for trial preparations. The content of the information that should be delivered, depends on the issues at the hearing in question, and might be covered by the "prompt" delivery requirement.

All deliveries of information about the charge to the suspect should be logged on the timeline.

The start point for counting of "adequate time" is when the prescribed information actually is delivered to the defence. Often the hearing dates already are known, which make it possible to evaluate whether the time span available for trial preparation is in accordance with the "adequate time" requirement. If not, an estimate should be made and put on the timeline and taken into consideration when no actual date is set.

If the time span between the delivery of the information and the (main hearing already at the delivery date appears too short to satisfy the "adequate time" requirement, the obvious option for avoiding a violation might be to adjourn the hearing. However, adjournments might mean prolonged handling time with prolonged uncertainty for the suspect and increased risks for overstepping the "reasonable time" requirement. It seems advisable for the authorities to set the date for the main hearing well in advance and also put the date for the information delivery on the timeline according to the "adequate time" requirement.

4.3 Timeline

The following timeline shows the differing normative components for all six time requirements. The timeline indicates typical events in the case handling process of criminal cases at the investigation, prosecution and court stage and their meaning for the time requirements. As said earlier, most cases do not run through all stages or contain all events. The main share of criminal cases might not reach the court stage, but end with a police- or prosecutorial decision; for example, when a crime obviously is committed, but the investigation is unable to identify a perpetrator, or the prosecution renounces on charging a suspect due to insufficient evidence.

A timeline should both show which events and stages at the normative component list that are relevant to the case in question, and to what extent the data component deviates from the normative component. We will get back to the data component in chapter 4.3.1 and 4.3.2. and focus on the normative component of the timeline for now.

We might summarize the normative points that ought to be at the timeline as follows:

4.3.1 *Pre-trial stage*

When a suspect is substantially affected by the investigation or charged, judicial authorities (police, prosecution court) should record this point in time as the start point for

- art. 6 (1) "*reasonable time"*
- art 6 (3) a. *"informed promptly"*

and as the end point for

- art 6 (3) a. "*informed promptly*" on delivery of the minimum info about the charge within hours.

When a suspect is arrested, the police or prosecution should record this point in time as the starting point for:

art 5 (2) "informed promptly" about the reasons for his arrest and the charge"

art 5 (3) "brought promptly before a judicial officer".

- art 5 (3) "trial within reasonable time"

and as the end point for

- art 5 (2) “informed promptly about the reasons for his arrest and the charge”
- art 5 (3) “brought promptly before a judicial officer” – not more than 96 hours after the arrest.

When a suspect is put into pre-trial detention, judicial authorities should record this point in time as:

- the start point of the first interval of art 5 (3) “certain elapse of time”.

Subsequent intervals start when a court finds continued detention necessary. All intervals end when detention has lasted long enough to justify another hearing or other circumstances indicate so. The expiration date of the last interval set should be recorded as the final end point of “certain elapse of time”, unless the circumstances of the case demand an earlier release.

When the indictment/final charge is issued, the judicial authorities should record the date as the

- end point for for article 6 (3) a. on the suspect’s right to be “informed promptly” and “in detail” about the charge. Evidence that becomes available to the prosecuting authorities after the indictment is issued, should be made available to the defence as fast as possible.
- first possible start point for article 6 (3) b. on “adequate time” for the charged to preparing his defense. The case specific start point must be set from the real fulfilment of “informed promptly” and “in detail”.

4.3.2 Trial stage

The normative end point for art 6 (3) “adequate time” for preparation must happen during trial preparation and before the main hearing starts, depending on the preparations necessary and the real end points for “informed promptly”. The dates for hearings must be set accordingly.

The date when the court announces and delivers its first instance decision also marks the end point of:

- art 5 (3) the last possible interval of “certain elapse of time”
- art 5 (3) “trial within reasonable time” when in detention
- art 6 (1) “trial within reasonable time” unless the decision is appealed against

If the decision is appealed, the actual end point of *article 6 (1) ”trial within reasonable time”* is prolonged until the final appeal decision is issued. If the case is sent back to the first instance for the final judgement, the extra time use probably should be added to the real time use at the appeal level in question. We might distinguish it from appeal on singular procedural issues in which the time use at the appeal court should be added to the real time use at the first instance level.

If the prosecution appeals, also time measurements according to art (6 (3) on *promptly* information about the appeal and *adequate time* for preparation must be done anew analogous to the normative points and durations at the first instance level.

The timeline also indicates a main authority for the management of the time requirements at the different stages of the case handling process. They are just indications because case management authority might be distributed differently between police, prosecution and courts in different jurisdictions. Each member State is free to organise their justice systems as long as their obligations according to ECHR and the case law become fulfilled.

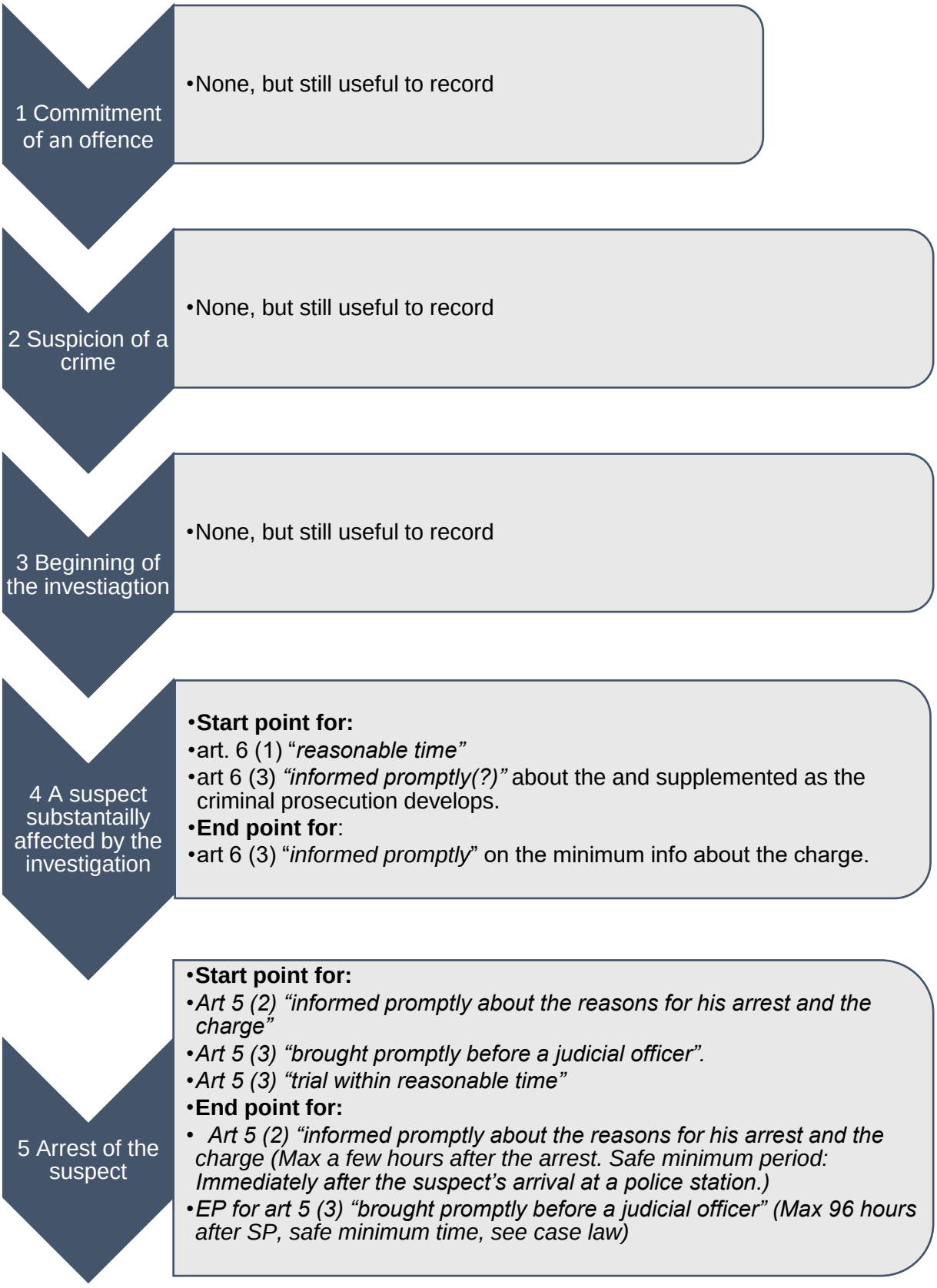
In the timeline, the normative events are listed to the left and their meaning to the time requirements to the right.

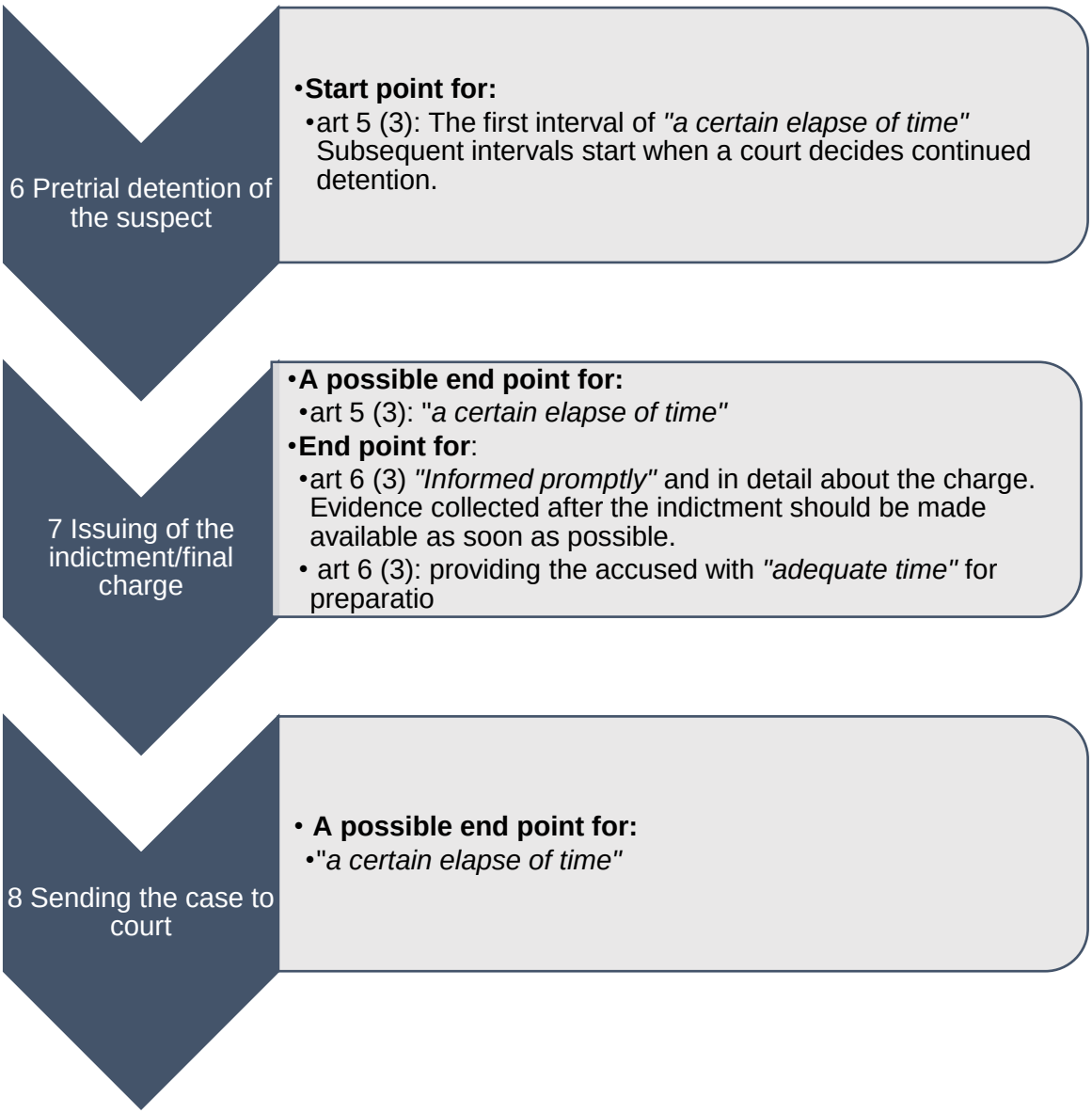
2.6.1 Graph

Below we include a timeline that shows when the normative start and endpoints for the six time happens compared to the most significant events in criminal proceedings, leaving out a few less frequent details.

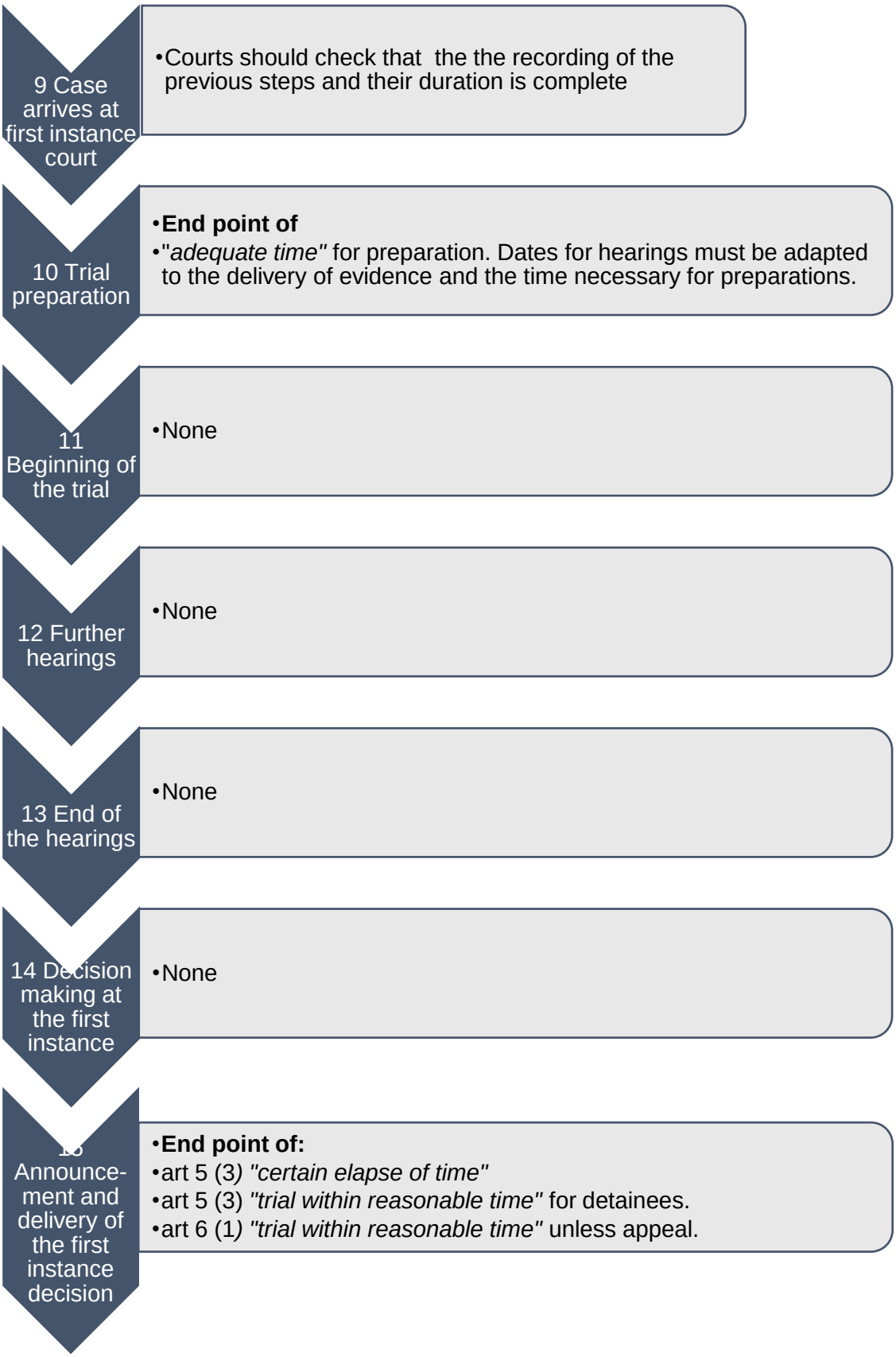
PRETRIAL STAGE

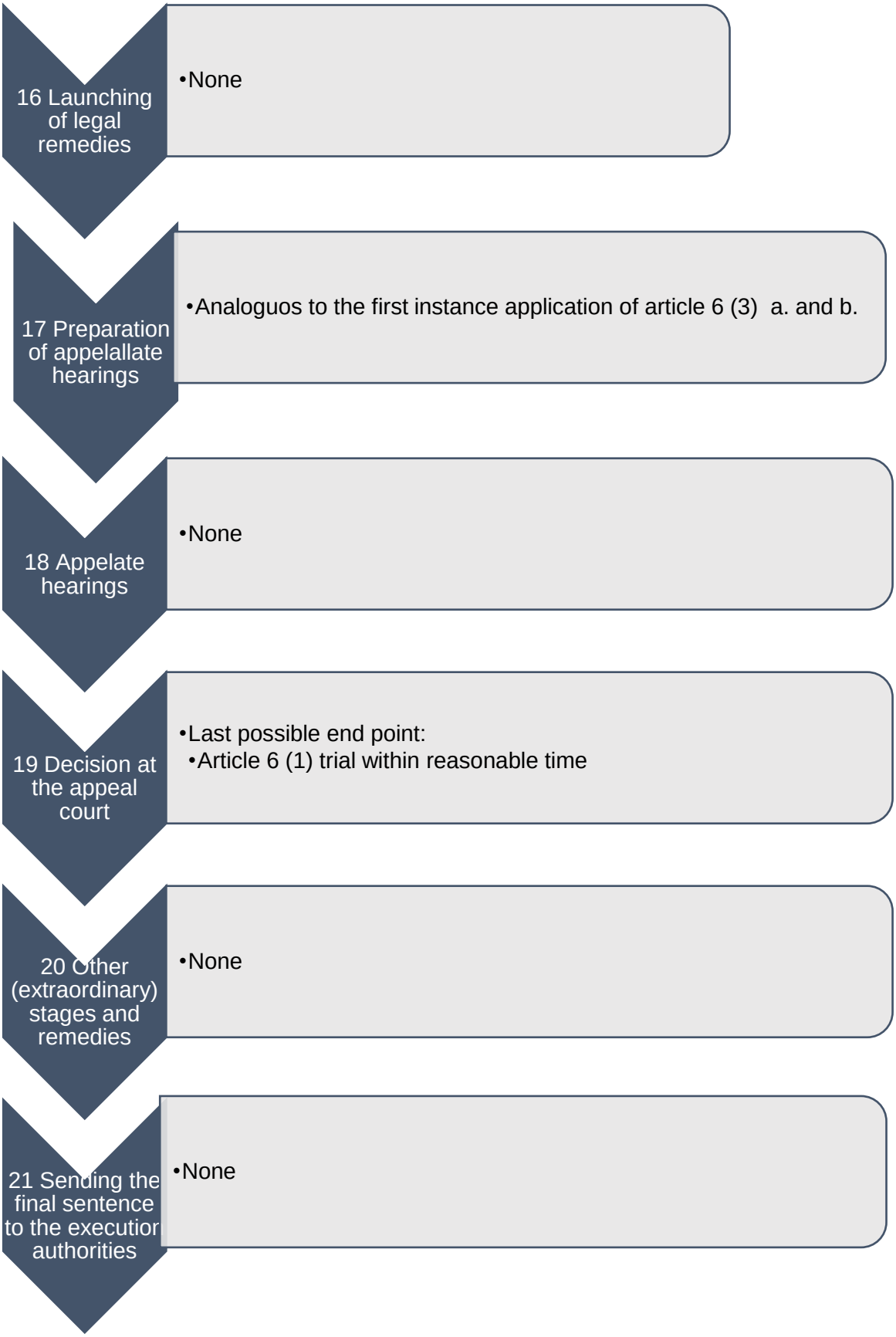
TIME MEASUREMENT POINTS IN ECHR ARTICLE 5 AND 6
Primary responsible: Police and/or prosecution




6 Pretrial detention of the suspect
•Start point for:
•art 5 (3): The first interval of "a certain elapse of time" Subsequent intervals start when a court decides continued detention.
7 Issuing of the indictment/final charge
•A possible end point for:
•art 5 (3): "a certain elapse of time"
•End point for:
•art 6 (3) "Informed promptly" and in detail about the charge. Evidence collected after the indictment should be made available as soon as possible.
• art 6 (3): providing the accused with "adequate time" for preparatio
8 Sending the case to court
• A possible end point for:
•"a certain elapse of time"

TRIAL STAGE TIME MEASUREMENT POINTS IN ECHR ARTICLE 5 AND 6.
Primary responsible: Courts.




16 Launching of legal remedies
•None
17 Preparation of appelallate hearings
•Analoguos to the first instance application of article 6 (3) a. and b.
18 Appelate hearings
•None
19 Decision at the appeal court
•Last possible end point:
•Article 6 (1) trial within reasonable time
20 Other (extraordinary) stages and remedies
•None
21 Sending the final sentence to the execution authorities
•None

2.6.2 Data component

In addition to the normative time points applicable, each case also will have a unique data component telling when the normative time points actually took place. As mentioned, not all cases pass through all normative points. In most criminal cases the police and prosecution do not ask for arrest or detention of the suspect, and the time requirements of article 5 do not need any registration at the timeline. Only the requirements applicable in the case will need registration in the data component. Real time use also should be measured on the timeline separately for each case. Real time use might then be easily compared to the normative durations for controlling whether they are in accordance with the limits of ECHR.

Several of the requirements contain discretionary elements depending on the concrete circumstances of the case. Although such elements sometimes cannot be finally considered on beforehand, preliminary discretions might be made and put on the timeline and adjusted later on in lieu of the development of the case.

5 USING INTERMEDIATE TIME TARGETS TO AVOID VIOLATIONS

5.1 Introduction

The ECtHR usually decides upon duration issues (long) after the case is finished at the national level when the real duration is known. The task of the ECtHR is to decide upon violation and reparation. Reparation, however, is not similar to prevention, although ECtHR also might voice concern about better prevention to avoid future violations by the responding state.

Member States cannot follow a similar path. National authorities cannot remain passive when a pending case might end up with a duration that violate a time requirement. Their procedural systems must possess the tools necessary to identify cases that might cause violations early enough to sufficiently correct their duration to meet the requirements. As part of a system for protecting fundamental human rights, only *a zero violation* policy will be in full accordance with ECHR. While compensation usually is best decided after the full damage is observable, the main point with a time requirement system for the member States, is to *avoid* violations and claims for compensation altogether.

Exact data about the time requirements and the real time use of each case will show whether they are violated or not. However, in cases with a time use that does not satisfy the requirements, such knowledge will be post violation. Although it might trigger measures that diminish the consequences of the violation, they constitute an insufficient measure for avoiding violations.

National systems for time control therefore must rely on *predictions* of whether the time use in each case might result in a violation. A doctrinal analysis of the time requirements therefore mainly tells which durations that might constitute violations and result in compensation but gives less guiding in finding out how states might prevent such outcomes. However, a well-developed doctrinal understanding still is a major prerequisite for an effective system of prevention and we have summarised its main content in chapter 2 and 3.

An effective prevention needs a system for identifying whether *the progress* of each case is sufficient to satisfy the requirements, and accordingly tools to speed up cases that risk violating the requirements.

In the present and next part, we will explain how to set up a preventive registration mechanism. Such predictions will often appear uncertain – especially at the start of the investigation. An overall monitoring system, using intermediate time targets, will help in estimating progress and produce incentives for police, prosecutors and courts to speed up handling of cases that lag behind.

With “intermediate time targets”, we mean a normative stipulation of durations between points set on the timeline in between the normative start and end point of a requirement as set in ECHR and the case law. While the time requirements of article 5 and 6 refer to the case handling process as a whole or to major parts, intermediate time targets is a method for splitting the normative duration into smaller parts and setting time targets for each of them that are short enough that their total duration is less than the normative requirement. The real duration might then be measured and compared to the target and used in estimates of whether the case is on track to satisfy the maximum time use allowed by the requirement.

Intermediate time targets might also be set with a safety margin – for example that no duration under article 6 (1) must exceed 18 months per instance. The length of the intervals might combine the avoidance of violations with the goal of optimum durations, which is significantly shorter than the minimum requirements of article 5 and 6.

The method can be used on a national or regional level, but also at the level of each police district, prosecutor office and court or sections of those. Yet, the method might also be used by the individual investigator, prosecutor and judge in managing their own caseload. Our sole advice is that intermediate time targets should be set in a way that fully avoids violations of the requirements, which might be demanding enough in some jurisdictions.

We know that both the criminal procedural norms and the duration of criminal cases vary significantly between the member States. We only want to describe the method and its possible use and will not forward specific recommendations on which points in time and which duration between them that each jurisdiction should use. This is for each member state to decide. Alternatives are vast and in below in 5.2 and 5.3 we give examples of intermediate time targets.

Of course, all time controlling measures have their limitations. If the investigation still goes on at the end of the two years’ period of article 6 (1) “reasonable time”, and no indictment has been issued yet, a violation might seem unavoidable, also when the main hearing is moved to an earlier date. Still, it cannot be set to a date before the evidence is complete and the indictment issued. So, an interdependence exists between the efficiency of speed up tools and when in the course of the case a tool must be applied to achieve the desired progress. The challenge is to find a balance between the efficiency of the available tools for improving case progress and the time needed to secure that they will have the desired effect and avoid violations.

The case law of ECtHR distinguishes between time use violations that appear as singular deviations from the requirements, and cases that appear as symptoms of comprehensive violations of them.

In some instances, violations of the first category might have been avoided by remedies available to the local instances in question by for example better distribution of cases between the handlers, putting the case on fast track, reminders of deadlines to experts, avoiding queuing and stand still time etc.

Violations of the second category might amount into systemic violations that need remedying from the central judicial authorities. The case law says that systemic violations oblige the member state in question to induce general reforms in the judicial system.[32] Paying compensation is not enough. Human rights entitle the suspect to a time use in accordance with the requirements and compensation is just a sign that the obligations have not been properly met.

[32] See also chap. 3.2.4 i.f.

5.2 Integration into the timeline

An exemplary list of intermediate measurement points for criminal cases might build on the listing of the SATURN guidelines[33] with some adjustments:

- commitment of the alleged offence
- suspicion of the offence from reports or police intelligence
- start of the investigation
- suspect substantially affected by the investigation
- arrest of the suspect
- the first interrogation of the suspect
- pre-trial detention
- appointment of experts
- delivery of expert testimony
- indictment/final charge[34]
- sending the case to the court or termination by the prosecutor.[35]

The timeline at court stage should contain the following steps:

- case arrival at the first instance court
- trial preparation
- beginning of the trial (first oral hearing on the merits)
- further hearings for evidence
- end of the hearings
- decision making at the first instance
- announcement and delivery of the first instance decision
- launching of legal remedies
- preparation of appellate hearings
- appellate hearings
- decision making at the appeal instances
- other stages and remedies
- sending of the final sentence to the execution authorities.

The method for setting Intermediate time targets will be similar to the measurement method described for the time requirements themselves in chapter 2 and 3. The targets and their duration will have a normative component and a data component. The data component should show the events and their real durations in the order they actually occurred.

An intermediate target must be set in accordance with the time requirement in question. If a court experiences problems in keeping the “reasonable time” requirement in article 6 (1), one strategy might be to reduce the time spent on collecting expert evidence by setting the maximum time from appointment of an expert to the receipt of the testimony to for example 45 days. If the expert exceeds the deadline, the court might complain to the expert and put pressure on him to speed up delivery. The court also will know that the risk of violation increases and must consider measures to reduce time use during later steps in the case handling process.

As can be seen, the list contains several of the normative time points of the time requirements, which means that they can be used as Intermediate time points for other time points as well as points in their own right.

Some events on the list will not occur in the singular case and might be deleted from the timeline of the case. Other events might be put at the timeline as well and used as time points for intermediate targets. The way they are ordered in the exemplary list above, might be changed by the member state.

[33] Part I C 5. Part II B 6 and Part II C 3,
[34] Part II B 6.
[35] Part II C 3.

Also for intermediate time targets start and end points might be set. Often the previous intermediate end point might be used as the start point of the next target, but other points might be viable as well.

Intermediate time points might be set at different levels in a jurisdiction. The amount and seriousness of delay might vary significantly between jurisdictions as well as internally between for example prosecutor districts or courts. Violations might be common or limited to a few extraordinary cases. The remedies available also vary between the different judicial institutions. Courts, prosecutors or the police might to some extent relocate personnel and cases, but if overburdening is severe, external resources might be necessary. However, even when some violations seem inevitable, reductions might be achieved both in durations and number of violations by identifying bottlenecks and standstill time and define intermediate targets and employing the remedies available to reduce them.

5.3 Usability

If intermediate targets are set during all parts of the full normative durations of the time requirements, it will help the police, prosecution and courts to discover cases that are off track at an early stage and produce opportunities for them to employ adequate measures to avoid violations**.**

Intermediate targets ought to be realistic to function well. They should determine time spans that are possible to fulfil for the case handler in question. If their demands on time use are too ambitious, they might lead to negligence and ignorance, and bring the tool into disrepute instead. User involvement therefore is highly commendable.

The usefulness of intermediate targets might vary between the different time requirements. The more of the total case handling duration a requirement covers, the more useful such targets might be. Some short considerations of the usefulness of each of the time requirements follow below.

Article 5 (2) "promptly" information about the reasons for arrest. The requirement demands fulfilment immediately after the capture of the suspect. Setting intermediate target on preparing the information *before* the arrest when possible, might help fulfilling the requirement.

Article 5 (3) "promptly". Intermediate targets for requesting a hearing by a judge or other judicial officer and for preparing the documents necessary, might help in avoiding violations of "promptly".

Article 5 (3) "reasonable time" and "certain elapse of time". Whether continued detention is acceptable shall be controlled regularly, which diminishes the need for intermediate targets. However, the authorities that are responsible for the use of detention (police, prosecution and prison authorities) should within short intervals consider whether release or a new hearing is appropriate. One type of reasons for renewed consideration of release is whether new evidence relevant to guilt or punishment has been produced; another the increasing negative impact on the suspect of the steadily increasing duration of the incarceration, which always counts for release. One intermediate time point for considering a renewed hearing could be every time the investigation produces significant new evidence, another when for example a set time – for example a week, a fortnight, or a month – have passed without any new important evidence appearing.

Time limitations for detention set by the court are maximum durations, but only as long as the arguments for continued detention outweighs the arguments for release. If this balance changes before previously set deadlines for renewed hearing expires, the maximum duration is shortened accordingly.

Article 6 (1) "Reasonable time". "Reasonable time" applies to almost all of the duration of criminal proceedings. The opportunities for using different intermediate targets during the duration of the requirement, seem vast.

From the start point of “substantially affected by the investigation” the police can set intermediate targets for the production of witness- and expert testimony, psychiatric examination, technical evidence, etc. and an endpoint for the investigation and final transmission to the prosecutor. The prosecutor can set time points for collection of supplementary evidence, the issuing of the final indictment and transmission of the indictment and the documents to the first instance court, the accused, his defender and the victims and their lawyers to the extent applicable. The court might set time targets and time points for requesting of further evidence, written pleas and hearings, and also for judge conferences, writing and issuing of the judgement, etc.

Article 6 (3) b. and c. Due to the short duration of “prompt” delivery, there is not much space for intermediate targets. However, as with article 5 (2), delivery of the requested information might well be prepared before the arrest, unless the discovery of the crime and the arrest happen almost simultaneously.

Article 6 (3) b. on “adequate time” for preparation of the defence will be easier to keep if the police and prosecution continuously send the defence new evidence and other documents relevant for the trial and define intermediate targets for such transmissions.

Intermediate targets might be added to the timeline. As shown, their start point might be set earlier than the start point of the requirement in question because preparations beforehand might help in keeping the requirement.

6 CASE MANAGEMENT

Management of the time requirements of article 5 and 6 might be carried out digitally and manually. For managing time use according to the time requirements and our suggestions of additional time targets in this manual, an electronic case management system seems highly preferable and recommended by the SATURN guidelines.[36] The amount of data that should be added to the timeline is significant and to lose control seems an obvious danger with a manual system. However, basic controls are possible to be also made in manual systems, in particular when electronic systems might lack features important to efficient functioning. Example is the production of necessary statistics and possibility to add time points locally to the existing national structure.

6.1 Electronic systems

Electronic case management systems should have wide flexibility for adding time points to the timeline. In addition to the national ones, systems should allow locally set time points as well – for example by the police, prosecutors, courts and prison authorities and also for the single case.

Registration should start with the crime report or the police decision to start investigation, depending on which event that happens first.

A national structure of normative start points for all six (seven) time requirements of article 5 and 6 ought to be on the common time point list and be available on the timeline for all criminal case handlers in the police, prosecution and courts and also prisons, if relevant. Normative durations that are standardised like the two years’ duration per instance of article 6 (1) before concerns about violation might arise, or 96 hours after arrest for “promptly” in article 5 (3), might also have their normative end point included. Normative durations and end points that presuppose a more detailed discretionary evaluation of the facts of the case, should be added to the individual timeline for the case in question as soon as possible. The normative start and end points in domestic legislation relevant to the time requirements of article 5 and 6 should be also put at the timeline in a similar way.

The time management systems should include a warning system that clearly tells when the endpoint of a time requirements comes close. Some systems have features that mark a case with green light when the case is on track and should not need any special attention, yellow light when the end point

[36] SATURN guidelines Part II D 3

is nearing and the need for some action should be considered and red light when the end point is passed without the necessary accomplishment of the requirement. A red light might mean that a violation of article 5 or 6 is imminent.

Similar warning systems might be used for domestic time requirements, internal requirements of the handling instance and for intermediate targets.

As discussed in 4, a case management system should contain both the normative component and the data component with data specific for each case. Normative start points and durations of the requirements will be common for most cases. Those data could be downloaded to the case specific timeline to the extent it is relevant. In some cases, the normative data might need discretionary adjustments from the facts of the case, as spelled out in chapter 2 and 3.

Real time use data and case specific targets should be registered continuously on the case specific timeline, securing that the timeline always shows the fulfilment of the time requirements of article 5 and 6 up to date.

6.2 Transfer of data within the case handling chain

The stages of the criminal persecution process are governed by different authorities. The investigations which include the use of coercive means is managed by the police although the prosecution and the courts might be involved to some degree. When investigation ends and the case is ready for the indictment, in most jurisdictions the police sends at least the more serious cases to the prosecutor. When the public prosecutor decides to charge and bring the case before the court, the case is transferred ~~a new, and now~~ to the first instance court, which becomes the third manager of the case. If appealed, the appeal court takes over, and when a final judgment ends with punishment, the execution authorities become in charge.

Some of the time requirements – for example article 6 “reasonable time” – apply to more than one stage of the proceeding. This means that the responsible case manager also changes. Transfer of time use data between the police, prosecution, courts as well as the prisons authorities are necessary for management of such requirements.

Article 5 (2) “*promptly*”. Data on the extent to which the suspect and the defender have received information about the charge and the reasons for the arrest also must be transferred. If the prosecution represents the state at the hearings, they need to know whether the prescribed information has been transmitted to the suspect according to the language requirement and to his defender. According to the case law, a suspect should have access to certain information before and during custody hearings. Similar information should be transmitted to the judge or other judicial officer conducting the hearing. They have a responsibility to see whether the suspect and his defender is sufficiently prepared for the hearing.

Article 5 (3) brought *“promptly”* before a judge. Since the police conducts the arrest, they usually have a responsibility of bringing a suspect before a judge or other juridical officer within the deadline set. If the prosecution takes over, they need time to use data necessary for controlling “promptly” and so does the judge or other officer and also the appeal court if the decision is appealed.

Article 5 (3) “a certain elapse of time”. All instances involved in the decision making of continued detention – police, prosecution and courts – should be informed and updated about the time use, and especially about the time the suspect spends in detention, included the time spans (elapse of time) between each time the court controls whether the conditions for continued detention are still fulfilled.

Article 6 (1) “reasonable time” starts during the case management of the police and might not end before the appeal court has issued its decision. Both intervening instances, prosecution and first instance court and the appellate court need access to the full-time use records of the preceding instances to make correct decisions about the total duration.

Article 6 (3) a. "prompt" information. In addition to the police itself, the succeeding managers – prosecution and the first instance court – need information about what previously has been transmitted to the suspect about the charge and the evidence supporting it and about the point in time it was done. If the police did not sufficiently fulfil the requirement, the succeeding case managers must do their best to provide the missing information as soon as possible.

Article 6 (3) b. The information demanded by article 6 (3) a. also is useful in determining the length of "*adequate time*" by the prosecution and the first instance court and later the appellate court.

Some obstacles exist:

First, the electronic case management systems of the police, prosecution and courts might not communicate relevant time use data efficiently. The challenge seems widespread among member States. Then each consecutive case manager must receive time use data manually from the preceding manager and enter them anew when the case is transferred. Being a time-consuming operation, it might mean that time use data from the previous system is not entered into the receiving authority's system. Such deficits make the prosecution and courts vulnerable to losing control over the total duration if the case, which might be especially problematic for keeping track of the time requirement of article 6 (1) "reasonable time". Obviously, securing smooth transfer of time use data throughout the whole case handing chain will help in improving the fulfilment of the time use requirements of article 5 and 6.

Second, there are challenges in keeping track of the identity of a case during the case handling chain. Both - different crimes and suspects - might be united into one case for common treatment and hearings, but also divided during the handling process. If different crimes are united into one case, the past durations of each crime might differ. When cases of different suspects are joined, they might also bring in different cases with different durations. The case management systems therefore need tools to keep suspects and crimes apart when calculating duration also when they become united during certain stages of the handling chain.

Third, the time requirements might imply different *normative* durations for different cases, also when they are handled together. Two charges united into one case might both show a very long real duration, which might overstep the two-year limit for concerns about the progress according to the "reasonable time" requirement of article 6 (1). For one of them, the long duration might be due to obstructive behaviour from the suspect, which might legitimize a longer duration of "reasonable time" than normal, while the other is due to inefficient investigation, which usually will not trigger any extension of "reasonable time and therefore might result in violation.

Fourth, even when the charged are co-defendants for the same crime, their case handling histories might differ. One of the suspects spent significant time in detention during the investigation, while the other escaped and was brought to trial at a later stage. The duration of "reasonable time" must be evaluated separately for each suspect even if the crime charged is the same for both.

The circumstances pointed out are demanding to handle also for IT – systems, but not insurmountable. Dividing each case into small units of one perpetrator, one act and – preferably – one criminal offence, might produce the flexibility necessary. The time use history of each such unit might then be recorded separately.

Real cases therefore will consist of one or more of such units, depending on its complexity. New units consisting of new perpetrators, acts and crimes might be added, or removed, from a case as it moves through the case handling chain. Still, each unit's time use history will be traceable, independent of being united with or divided from other units. Usually the structure of acts in the initial charge and later indictments might be used in identifying each unit.

The shifting content of a "case" during its processing also means challenges for case numbering. One problem connects to appeal of separate decisions on procedural issues during the handling in

a court – for example whether an expert testimony should be ordered or not. Practices exists in some member States that the case receives a new case number in the appeal court, and also when it is returned to the original court for further handling. Time measurement then starts with the issuing of the new case number, and the time use history of the case handling before the appeal is lost in the system unless anyone makes a connection especially for the case in question. Of course, the systems should assign one unique and permanent case number to each unit for the whole case handling chain. Other temporary numbers for parts of the process might be added when needed.

6.3 Statistics

If time use registration systems have statistical tools integrated, they also contain an important tool in detecting how common time use violations are. Such systems might also tell about general features of case that violates the time requirement like the length of violation, sort of crime, characteristics of the defendants affected by the violations, the instances at the police, prosecution and courts involved, the parts of the case handling process affected and development trends of violations. Such information obviously is important to the planning and implementation of reforms.

Statistics showing the real durations of the intermediate steps and their variation is also an important remedy. It should be used in analyses of existing bottlenecks and stand still time as well as in estimating the efficiency of the available remedies, which might be helpful in planning which one to use, and also in determining the normative intermediate durations that ought to be set.

6.4 Manual systems

The complexity of proper management of the time requirements of article 5 and 6 constitutes our main reason for recommending the use of electronic case management systems with features as described above. However, case management systems vary significantly among member States. Some still do case management mainly manually and some of the electronic systems in use might lack one or more of the features described.

It seems inevitable that manual registration of time use will have significant deficits compared to the highly differentiated demands of the requirements. However, when adequate electronic case management systems are unavailable, manual systems might be helpful in avoiding many violations by focusing on the most important points of the timeline and see whether those data are properly transferred between the managing instances in the case handling chain.

Such data ought to be on a manual timeline available at the top of the manual file. Anyone who opens it will easily observe when the normative start points of the requirements happened, and quickly be able to calculate the time left until the different normative end points. Such information will help in deciding whether usual progress will be sufficient to avoid violations or whether special actions are necessary.

Special actions might be to move the case forward on the waiting line, use fast tracking, deny adjournments, (re) schedule hearings and speed up the writing of the judgment. The case might also be put under surveillance by checking case progress at suitable intervals and estimate if more remedies are required.

In principle, most time points suggested in this implementation manual might be manually measured. However, due to limitations on the capacity available, we suggest the following list of the most important measure points as basis for priorities:

- the commitment of the offence
- the start of the investigations
- the arrest of the suspect
- the use of pre-trial detention
- suspect otherwise substantially affected by the investigation
- indictment/final charge

- sending the case to the court or termination by the prosecutor.[37]
- case arrival at the first instance court
- start of trial preparation
- beginning of the trial (first oral hearing on the merits)
- end of the hearings
- decision making at the first instance
- announcement and delivery of the first instance decision
- launching of legal remedies
- preparation of appellate hearings
- appellate hearings
- decision making at the appeal instances
- other stages and remedies
- sending the final sentence to the execution authorities.[38]

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[37] Part II C 3.
[38] Part I C 5.