

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

“Improving the Protection of the European Human Rights standards by the
Constitutional Court of Kosovo*”

REASONABLE TIME OF PROCEEDINGS:

COMPILATION OF CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Prepared by Maria Filatova, 2019

*All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation’s Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Contents

I. GENERAL OVERVIEW.....	3
1. What is to be understood for ‘reasonable time of proceedings’?	3
2. When and where does the reasonable time standard apply?	8
3. Who can claim to be a victim of a reasonable time violation?	9
II. WHAT PERIOD IS CONSIDERED FOR THE PURPOSES OF REASONABLE TIME ASSESSMENT?	9
1. Civil proceedings.....	9
2. Criminal proceedings	16
III. APPLICABLE CRITERIA FOR ASSESSMENT OF REASONABLE LENGTH OF PROCEEDINGS	23
1. Introduction.....	23
2. Criteria concerning the nature of the case.....	23
3. Total length of proceedings. Overall assessment of the case	47

WHAT IS THE PURPOSE OF THIS COMPILATION?

This compilation is aimed at ensuring an easier application of the reasonable time standard. It aims to explain this fundamental procedural guarantee and how to use it. It also aims to identify factors that impact the duration of legal proceedings and describe some of the mechanisms preventing litigation delays, including those resulting from the fraudulent conduct of individuals involved in the case and other persons.

The compilation may be useful for lawyers dealing with human rights protection in judicial proceedings.

The questions to be answered when the length of proceedings is considered are grouped into the following blocks:

- **the period considered for the purposes of the reasonable time assessment**
- **criteria applied for the assessment of the length of the proceedings**
- **effect of lengthy proceedings on other rights**

I. GENERAL OVERVIEW

1. What is to be understood for ‘reasonable time of proceedings’?

European Convention on Human Rights (the “Convention”)¹

Article 6 – “Right to a fair trial”

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

¹ The official title of this document is the “Convention on Human Rights and Fundamental Freedoms” dated 4 November 1950. However, the title “European Convention on Human Rights” is commonly used for practical reasons to distinguish it from other similar documents, such as the American Convention on Human Rights dated 22 November 1969.

would prejudice the interests of justice. [...]”

Article 13 – “Right to an effective remedy”

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

Reasonable time of proceedings is one of the most important procedural guarantees of the rights to a fair trial enshrined in Article 6 § 1 of the Convention.

As it is mentioned in the Report of the European Commission on the Efficiency of Justice, «It seems necessary for judicial systems to be given a new objective: the processing of each case within an optimum and foreseeable timeframe»².

Excessive duration is a major problem in most member States³. It remains one of the most frequent violations of Article 6 § 1 of the Convention⁴.

A number of COE documents focus on the issue of compliance with the reasonable time standard and possible legal remedies against it, for example:

- European Commission for the Efficiency of Justice (CEPEJ): Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights(CEPEJ(2018)26)
- Venice Commission REPORT ON THE EFFECTIVENESS OF NATIONAL REMEDIES IN RESPECT OF EXCESSIVE LENGTH OF PROCEEDINGS of 2007

Balance of values

The reasonable time concept reflects an optimal balance between the length and quality of the examination of a case.

² A new objective for judicial systems: the processing of each case within an optimum and foreseeable time; CEPEJ(2004)19REV2, p. 3.

³ Ibid.

⁴ According to the CEPEJ Report of 2018, failure to comply with the reasonable time standard was 2nd out of 24 causes of violation of the Convention in 2012 and 2013, and fell to 5th position in 2014, 2015 and 2016.

A comprehensive and full examination by a court of the case circumstances in compliance with the procedural rights of the parties always required a lot of time.

To ensure the balance above, the reasonable time concept is based on an individual approach to the case. This approach shall be based on such *criteria* as:

- **case complexity**
- **conduct of the parties**
- **actions of the court in question and other government authorities involved in the process**
- **importance of the case for the plaintiff**

As the European Court of Human Rights (hereinafter - the ECtHR or the Court) reiterated in the Case of Kurzac v. Poland (No. 31382/96):

“the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court’s case-law, in particular, the complexity of the case, the conduct of the applicant and that of the relevant authorities, and the importance of what was at stake for the applicant in the litigation”⁵

These criteria have been worked out in the case-law of the Court and are analysed in detail in the Section II below.

Reasonable Time and the Efficiency of Judicial Organisation

There is another dimension to the “reasonable time” requirement. The ECtHR considers the excessive length of the proceedings as representative of poor functioning of the judiciary.

According to the ECtHR’s case-law in Zimmermann and Steiner v Switzerland (No.

⁵ Para. 30, Kurzac v. Poland

8737/79):

“the Convention places a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 § 1 (art. 61) including that of trial within a “reasonable time””

The State shall be held responsible not only for any undue delay of the proceedings. Its duty is as well to improve the situation of the judiciary or adjust it accordingly in order to cope with the backlog and repetitive cases. The State shall also be held responsible for all errors in the organisation of its own judiciary that contribute to undue delays in proceedings.

“Complaints by states about the backlogs of their courts as a reason for excessively long proceedings cannot exonerate the authorities from their responsibility for the total delay in the proceedings”⁶

In accordance with the ECHR’s principle of subsidiarity, the issue of excessive length of the proceedings should be dealt with in the first place by domestic courts.

In Kudla v. Poland (No. 30210/96) the ECtHR established the existence of a systemic connection between the right to a fair trial within a reasonable time in Article 6 § 1 of the ECHR, and the right to an effective remedy in Article 13:

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

156. In view of the foregoing considerations, the ECtHR considers that the correct interpretation of Article 13 is that that provision guarantees an effective

⁶ Application of Reasonable time standard in Serbia, p.17. Available online at: <https://rm.coe.int/16806f0e8c>

remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time.”

This ECtHR’s position on the relationship between Article 6 § 1 and Article 13 was further substantiated in other cases:

Lukenda v. Slovenia (No. 23032/02)

*“86. The Court reiterates that the standards of Article 13 require a party to the ECHR to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant ECHR complaint and to award appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal*, cited above, pp. 1869–70, § 145).*

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

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

Two types of remedies are possible against a violation of the reasonable time standard: preventive ones and/or compensatory ones. The mechanisms which are limited to compensation are normally too weak and insufficient to deal with the core of the problem. Ideally, a combination of both types of remedies is wished for, thus permitting to find a solution for the fundamental problem of excessive delays.⁷

To conclude, the legal remedy that protects the right to a trial within a reasonable

⁷ See the Recommendation Rec(2004)6 of the Committee of Ministers to member States on the improvement of domestic remedies (adopted on 12 May 2004).

time has to be effective. This means that national courts can “substantially correct” in favour of the applicant their unduly long judicial proceeding

2. When and where does the reasonable time standard apply?

According to Article 6 § 1 of the Convention, the right to a hearing within a reasonable time may be invoked in relation of the determination of a person’s civil rights and obligations or of any criminal charge against him or her in a judicial proceeding.

However, the scope of Article 6(1) is much larger.

Thus, the ECtHR uses the term “*criminal charges*” in the general sense, including:

- accusation of committing disciplinary offenses

Engel and others v. the Netherlands (Nos. 5100/71 et al.), §§84–85

- customs cases

Salabiaku v. France (No. 10519/83), §24

- tax cases

Bendenoun v. France (No. 12547/86), §47

- administrative offenses

Ozturk v. Germany (No. 8544/79), §§46–56

Moreover, due the extensive interpretation by the ECtHR, the guarantees of Article 6 of the Convention also extend to:

- administrative proceedings

Bentham v. the Netherlands, (No. 8848/80), §36

- constitutional proceedings

Ruiz-Mateos v. Spain, (No. 12952/87), §§31–32

- legal relations in the area of investigative activities

Vanyan v. Russia, (No. 53203/99), §§43–50

Khudobin v. Russia, (No. 59696/00), §129

To sum up, the reasonable time standard is applied in most proceedings.

3. Who can claim to be a victim of a reasonable time violation?

According to Article 6 § 1 it may be:

- the parties to civil proceedings (including claimants, defendants and third parties)
- the accused person in criminal proceedings (with possible variations such as suspects and sentenced persons).

States may also enlarge the application of this guarantee in their legal orders. Thus, in some countries victims in criminal proceedings may also benefit from the remedy against the reasonable time violation although Article 6 § 1 of the Convention does not formally cover the rights of the victims in criminal cases⁸.

II. WHAT PERIOD IS CONSIDERED FOR THE PURPOSES OF REASONABLE TIME ASSESSMENT?

The Court usually assesses the total length of judicial proceedings, which may have entailed more than one tier of jurisdiction.

It may be possible, however, that the applicant complains of judicial delay only at a certain stage of the proceedings. In Portington v. Greece,⁹ the applicant's complaint concerns the length of the appeal proceedings before the Court of Appeal which lasted almost eight years. A violation of Article 6 § 1 was established.

Two points are important for the Court: 1) beginning of the time period, or *dies a quo*; and 2) expiration of the time period, or *dies ad quem*. These points may differ for the purposes of civil and criminal proceedings.

1. Civil proceedings

(i) Beginning of the period, or dies a quo

⁸ In Russia victims in criminal proceedings may also claim compensation for violation of reasonable time guarantee.

⁹ Portington v. Greece (109/1997/893/1105). Para. 20

Generally, the time of proceedings is calculated from the moment a complaint or claim is filed with a court.

Portington v. Greece application (Nos. 109/1997/893/1105), §20

The starting point of the proceedings may be the date of addressing a case to a domestic court in any form provided in by applicable law.

However, this rule should not be understood too technically:

Golder v. the United Kingdom, (No. 4451/70), §32

“It is conceivable ... that in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute.”¹⁰

Special case: a preliminary (pre-trial) stage can be taken into account in “civil” cases to which the government authorities are a party. When the law stipulates that legal recourse shall be used in order to settle in advance a dispute through administrative means, the total time of the proceedings is calculated from the day when the appeal was filed with the government authority to settle the dispute.

Siermiński v. Poland (No. 53339/09), § 65

In such cases, the starting point of the proceedings is recognized to be:

- when a plaintiff provided objections to the administrative agency cancelling a license

König v. Germany (No. 6232/73), § 98

X v. France (No. 18020/91), § 31

Kress v. France (No. 39594/98), § 90

- when plaintiffs provided objections to the agency that made a decision regarding expropriation

Erkner and Hofauer v. Austria (No. 9616/81), § 64

¹⁰ Although the judgment itself did not regard the violation of the reasonable time this point had been emphasized by the Court.

- the date on which the social security agency received a preliminary application

Mocie v. France (No. 46096/99), § 21

- the date of a request for termination of public care of three children¹¹

Olsson v. Sweden (No. 2) (No. 13441/87), §101

- the date on which the applicants lodged a challenge to a decision with the authority that had issued it

Erkner and Hofauer v. Austria (No. 9616/81), §64

Wiesinger v. Austria (No. 11796/85), §51

- the date on which a claim was lodged with non-judicial boards of social security

Lithgow and others v. the United Kingdom (Nos. 9006/80 et al.), §199

Special case: when criminal proceedings contain a civil lawsuit that was not considered in the criminal proceedings and the plaintiff appealed to a civil court, the starting point is determined by the date of the civil lawsuit in the criminal proceedings.

Besides, in some cases, a different court procedure or document may mark the commencement of the period:

- a request for interim measures

Cesarini v. Italy (No. 11892/85), §16

- an order to pay

Pugliese v. Italy (No. 2), (No. 11671/85), §16

Tumminelli v. Italy (No. 13362/87), §14

- a complaint with a claim for damages in criminal proceedings

Casciaroli v. Italy (No. 1973/86), §16
Tomasi v. France (No. 11973/86), §124
Acquaviva v. France (No. 19248/91), §50

- an intervention in pending proceedings¹²
- confiscation of attached property¹³
- an objection to enforcement proceedings instituted by the applicant¹⁴
- the appearance of the defendants before the court¹⁵

(ii) End of period, or dies ad quem

Determination of the end of the period for the purposes of reasonable time assessment has even more differences in civil and criminal proceedings.

Generally, the time of proceedings ends on the day when a decision settling a dispute is made, which is the moment when the final judicial act in the case takes effect.

Blake v. the United Kingdom (No. 68890/01), §40

Final judgments or decisions vary from system to system and may include:

- a judgment of a court of first instance: ordinary (general jurisdiction)

Humen v. Poland (No. 26614/95), §58

Duclos v. France (No. 20940/92 et al.), §53

Ringeisen v. Austria (No. 2614/65), §110

Foti and others v. Italy (No. 7604/76 et al.), §54

Milasi v. Italy (No. 10527/83), §14

Pugliese v. Italy (No. 2), (No. 11671/85), §16

Caleffi v. Italy (No. 11890/85), §14

Pugliese (n1) v Italy (No. 11840/85), §§9 and 13

Scuderi v. Italy (No. 12986/87), §14

¹² Varipati v. Greece, 26 Oct. 1999, §22

¹³ Raimondo v. Italy, 22 Feb. 1994, §42

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

¹⁵ Capuano v. Italy, 25 June 1987, §22

Girolami v. Italy (No. 13324/87), §14

Ferraro v. Italy (No. 13440/87), §§10 and 15

Adiletta and others v. Italy (No. 13978/88 et al.), §15

Borgese v. Italy (No. 12870/87), §15

Monaco v. Italy (No. 12923/87), §14

Lestini v. Italy (No. 12859/87), §15

Dobbertin v. France (No. 13089/87), §16

Trevisan v. Italy and Billi v. Italy (No. 13688/88), §§ 15-16

Scopelliti v. Italy (No. 15511/89), §18

Silva Pontes v. Portugal (No. 14940/89), §§16-19

Yağcı and Sargin v. Turkey (Nos. 16419/90 and 16426/90), §58

➤ or administrative¹⁶

Vallée v. France (No. 22121/93), §33

Karakaya v. France (No. 22800/93), §29

➤ a decision by an appellate court such as a court of appeal:

ordinary

Eckle v. the Federal Republic of Germany (No. 8130/78), §77

Corigliano v. Italy (No. 8304/78), §36

Unión Alimentaria Sanders S.A. v. Spain (No. 11681/85), §30

Ruiz-Mateos v. Spain, 12952/87 (No. 12952/87), §§24, 33

Darnell v. the United Kingdom (No. 15058/89), §21

Raimondo v. Italy (No. 12954/87), §42

Vendittelli v. Italy (No. 12954/87), §21

¹⁶ Scuderi v. Italy, 24 Aug. 1993, §14

administrative

Olsson v. Sweden (No. 2), (No. 13441/87), §21

Schouten and Meldrum v. the Netherlands (Nos. 19005/91, 19006/91), §§17, 27 and 62

- a decision, an order to terminate proceedings in the case
- an order to dismiss a claim
- a ruling (order) of a court of appeal, cassation or supervision that considered or settled the case
- in some cases - a decision by a Constitutional Court¹⁷

Ruiz-Mateos v. Spain (No. 12952/87), §35

Deumeland v. the Federal Republic of Germany (No. 9384/81), §77

Poiss v. Austria (merits) (No. 9816/82), §52

Wiesinger v. Austria (No. 11796/85), §52

Bock v. the Federal Republic of Germany (No. 11118/84), §37

The length of proceedings in appellate instances counts for the purposes of reasonable time:

“[...] While the manner in which Article 6 is to be applied in relation to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that appellate or cassation proceedings come within the scope of Article 6 ... Accordingly, the length of such proceedings should be taken into account in order to establish whether the overall length of the proceedings was reasonable”.

Kudła v. Poland (No. 30210/96), §122

Besides, the following dates were taken into consideration as the end of the period in the ECtHR's case-law:

¹⁷Proceedings in a Constitutional Court are to be taken into account for calculating the relevant period where the result of such proceedings is capable of affecting the outcome of the dispute before the ordinary courts.

- the date on which the applicant was notified of:
 - a first instance court judgment
 - Karakaya v. France (No. 22800/93), §29
 - an appeal-court judgment
 - Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §30
 - a judgment by a supreme court
 - Lechner and Hess v. Austria (No. 9316/81), §36 (Supreme Court of Austria)
 - Moreira de Azevedo v. Portugal (No. 11296/84), §70 (Supreme Court of Portugal)
 - H. v. France (No. 10073/82) (French Conseil d'État)
- the date on which the judgment was filed with the registry of the court delivering it;
 - Brigandì v. Italy (No. 11460/85) and Santilli v. Italy (No. 11634/85), §28 and §18 respectively (Court of Appeal)
 - Pretto and others v. Italy, (No. 7984/77), §30; Vocaturo v. Italy (No. 11891/85), §10 (Court of Cassation)
- the expiry of the statutory time-limit for the parties (for example, to lodge an appeal) or to resume the proceedings before the trial court when they have been referred back after a judgment has been set aside;
 - Lorenzi, Bernardini and Gritti v. Italy (No. 13301/87), §§9 and 13

If a court decides to consider the plaintiff's claims separately, then the end of civil proceedings is determined to be the moment at which all the claims have been considered.

Makarova v. Russia (No. 23554/03), § 35

Silva Pontes v. Portugal (No. 14940/89), §33

(iii) The execution stage of proceedings

“Execution of a judgment given by any court must ... be regarded as an integral

part of the ‘trial’ for the purposes of Article 6”.

Hornsby v. Greece (No. 18357/91), §40

Therefore, the **execution stage** may be included in the total time of the proceedings.

Besides, the execution stage was included in the general length of proceedings for the calculation of the period in cases where:

- an obligation to indemnify damage is decided during the main proceedings and a specific amount of indemnification and certain other important “debt parameters” are defined at the execution stage

Di Pede v. Italy (No. 15797/89), §§24, 18

- there was a prolonged refusal on the part of the defendants to execute a decision on the demolition of property in a dispute between private individuals

Yerkimbayev v. Russia (No. 34104/04), §31

2. Criminal proceedings

The concept of criminal charge as used by Article 6 § 1 of the Convention - as well as that of a civil dispute – has an autonomous and substantive meaning rather than a formal one

Deweere v. Belgium (No. 6903/75), §44

The ECHR uses the term “criminal charges” in the general sense, including:

- accusation of committing disciplinary offenses

Engel and others v. the Netherlands (Nos. 5100/71 et al.), §§ 84–85

- customs cases

Salabiaku v. France (No. 10519/83), §24

- tax cases

¹⁸ A case on illegal building construction.

Bendenoun v. France (No. 12547/86), §47

- administrative offenses

Ozturk v. Germany (No. 8544/79), §§ 46–56

And, thus, the notion of criminal charge is more flexible and large than in its literal meaning.

Neumeister v. Austria (No. 1936/63), §18

Adolf v. Austria (No. 8269/78), §30

Engel and others v. the Netherlands (Nos. 5100/71 et al.), §81

König v Germany (No. 6232/73), §88

Eckle v. Germany (No. 8130/78), §73

Deweert v. Belgium (No. 6903/75), §§42 and 44

Foti and others v. Italy (Nos. 7604/76 et al.), §52

Corigliano v. Italy (No. 8304/78), §34

Imbrioscia v. Switzerland (No. 13972/88), §36

(i) Beginning of period, or dies a quo

For the defendant, the starting point of the time of criminal proceedings is the beginning of the criminal prosecution. This moment can begin at the moment of:

- statement of charges

Neumeister v. Austria (No. 1936/63), §18

- initiation of a criminal case or the moment when an individual learned about a criminal case initiated against him/her

Eckle v. Germany (No. 8130/78), §73

- arrest

Wemhoff v. Germany (No.2122/64), § 19

- beginning of the preliminary investigation
 - Ringeisen v. Austria (No. 2614/65), § 110
- issue of an arrest warrant
 - Manzoni v. Italy (No. 11804/85), § 16
 - Ferraro v. Italy (No. 13440/87), § 15
 - Triggiani v. Italy (No. 13509/88), § 15
- issue of a search warrant
 - Eckle v. the Federal Republic of Germany (No. 8130/78), §75
 - Coeme and others v. Belgium (Nos. 32492/96 et al.), §133
 - Stratégies and Communications and Dumoulin v. Belgium (No. 37370/97), §42
- date of receipt of judicial notification
 - Pugliese v. Italy (No. 1) (No. 11840/85), §14
- date of receipt of notice of criminal proceedings
 - Adiletta and others v. Italy (Nos. 13978/88 et al.), §15
- latest date on which the applicant appointed defence counsel
 - Mori v. Italy (No. 13552/88), §14
 - Hozee v. the Netherlands (Nos. 21961/93), §45

If a criminal case was originally initiated due to a crime committed by an **unidentified individual**, the reasonable time of criminal proceedings is calculated for the accused as soon as the criminal procedural status of suspect or accused is established.

According to established case-law, the term ‘charge’ may in general be defined as follows.

“[...]as the official notification given to an individual by the competent authority of an allegation that she or he has committed a criminal offence”, but “it may in some instances take the form of other measures which carry the implication

of such an allegation and which likewise substantially affect the situation of the suspect”

Foti and others v. Italy (Nos. 7604/76 et al.), §52

Corigliano v. Italy (No. 8304/78), §34

The test of whether the suspect’s situation has been “substantially affected” was first used by the Commission and then taken up by the Court – initially in reference to the Commission – for example in:

Deweert v. Belgium (No. 6903/75), §46

Pantea v. Romania (No. 5050/02), §257

Kangasluoma v. Finland (No. 48339/99), §26

Slimane-Kaid v. France (No. 2) (No. 48943/99), §25

Pedersen and Baadsgaard v. Denmark (No. 49017/99), §44

For an example of a suspect’s situation being specifically affected, although in a relatively limited way:

Merit v. Ukraine (No. 66561/01), §§9 and 70

The Court remains flexible in the determination of the moment at which the applicant’s situation was «substantially affected» by the institution of the criminal proceedings. In one case criminal proceedings against the applicant had been instituted long before her actual arrest, while she stayed in the United Kingdom, whereas she was arrested upon her arrival to Greece. The Court indicated:

“during her stay in the United Kingdom, the applicant was not affected by the proceedings being conducted in Greece”

Ipsilanti v. Greece (No. 56599/00), § 31

NB!

The calculation of a reasonable time in criminal proceedings may begin even before a person subject to criminal prosecution acquires procedural status as a suspect or accused.

NB!

Interrogation of an individual as a witness is not the starting point for calculating a reasonable time in criminal proceedings if his/her rights and lawful interests are not affected.

For the purposes of criminal proceedings, therefore, reasonable time may start (and regularly starts) before the opening of the court trial.

In criminal proceedings the guarantees of Article 6 § 1 also cover re-trial stage, even if the trial in court did not begin

➤ in case of termination of prosecution and discharge

Angelucci v. Italy (No. 12666/87), §13; Colacioppo v. Italy (No. 13593/88), §13

➤ in cases still under investigation

Viezzer v. Italy (No. 12598/86), §§15-17; Tumminelli v. Italy (No. 13362/87), §18

However, the excessive length of investigation is mainly regarded under the angle of Articles 2 and 3 of the Convention, Article 6 § 1 appearing as a supplementary tool.

(ii) End of period, or the dies ad quem

For a criminally prosecuted individual, the end point with respect to calculating the time of expiration is the moment when criminal prosecution is terminated, or a sentence is announced. This is normally the time when a sentence takes effect.

Dankevich v. Ukraine (No. 40679/98)

Sonnleitner v. Austria, (No. 34813/97)

Fischer v. Austria, 6 May 2003 (No. 16922/90)

In criminal - as well as in civil ones - the period to be taken into account generally ends with the final judicial act (decision) in the case. The final act is the one that rules on the merits of criminal charges. It may be a sentence, a ruling to terminate the criminal case, etc.

Besides, expiration of the time of criminal proceedings is defined by the degree to which it affects the rights and lawful interests of the parties involved in such criminal proceedings.

In several cases, the applicants do not have wait for the end of criminal proceedings to file a complaint about a violation of the right to trial within a reasonable time, particularly in cases of:

- excessive length of proceedings
- multiple cancellations and multiple forwarding of the case to new trials

NB!

Cancellation by a higher court of decisions passed by a lower court does not make the duration excessive. The problem arises when the decisions of lower courts are cancelled for the same reasons more than twice or for different reasons more than three times with the case being forwarded several times to a lower court for hearing.

Kozyak v. Russia (No. 25224/04), §§ 34–35

Svetlana Orlova v. Russia (No. 4487/04), § 47

The end point may also be the date on which the applicant learnt that his appeal to the Court of Cassation had been dismissed

Alimena v. Italy (No. 11910/85), §15

(iii) Other stages of criminal proceedings

a. Time intervals taken into account to determine the total duration

Guarantees of a reasonable time extend to the pre-trial phase. For this reason, unreasonable delays should be avoided by investigative agencies as well

Naimdzhon Yakubov v. Russia (No. 40288/06), § 85

NB!

It is not uncommon for violations of reasonable time to be caused by unresonable delays taking place at the pre-trial phase, even if there were no further delays at the phase of court hearings.

For example:

- unreasonable periods of inaction by the tax service investigating cases of tax offenses

Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands (No. 46300/99), §§ 61–62

- the successive replacement of four investigative judges (this is the main cause of delays in investigating customs offense cases)

Weil v. France (No. 49843/99), § 40

Any flaws in the quality of an investigation can subsequently lead to violations of the right to judicial proceedings within a reasonable time. Thus, in one of its decisions the ECHR stated that the court was unable to start examining the case due to defects revealed in the conducted investigation and had to return the case materials to the prosecutors four times

Buzhinayev v. Russia (No. 17679/03), § 47

b. Time intervals excluded from the total length

Time intervals between the final judicial act and the date of extraordinary procedures are normally not included in the total length of the judicial procedure

Barantseva v. Russia (No. 22721/04), § 48

When considering such situations, the ECHR emphasizes the following factors:

- complaints filed with a higher court within a relatively short time period (for example, six months)
- the right of the party involved in the case to submit an appeal
- when the grounds for submitting an appeal are similar to the grounds for submitting a cassation appeal
- instances when an appeal is filed with a court that has a wide range of powers, which, in particular, allows the appealed decision to be cancelled and the case forwarded for re-consideration or a new decision to be made on the case
- when the appeal of the concerned party is considered by this court and a reasonable answer was given in a relevant judicial act

III. APPLICABLE CRITERIA FOR ASSESSMENT OF REASONABLE LENGTH OF PROCEEDINGS

1. Introduction

The ECtHR has elaborated criteria for assessment of the length of proceedings. Each of them has received a detailed interpretation in the Court's case-law.

NB!

These criteria include:

- complexity of the case
- conduct of the applicant and of the relevant authorities
- what was at stake for the applicant in the dispute

Frydlender v. France [GC], (No. 30979/96), §43

The assessment of the length of proceedings for the purposes of reasonable time is highly individual and is based on circumstances of a particular case. The same length of proceedings may be deemed as reasonable in one case and unreasonable in another.

The Court uses different standard of scrutiny in cases involving a structural problem of unreasonable delays in some national systems (Italy, Poland, Serbia). If the problem is structural and persistent, the Courts applies a lower standard of proof, not going into detailed scrutiny, especially when the absence of effective domestic remedies against violations had been established in the previous case-law of the Court.

2. Criteria concerning the nature of the case

(i) Complexity of the case

This is the main criterion with regard to the nature of the case.

König v. the Federal Republic of Germany (merits) (No. 6232/73), §99

Buchholz v. the Federal Republic of Germany (No. 7759/77), §49

Eckle v. the Federal Republic of Germany (merits) (No. 8130/78), §80

Foti and others v. Italy (merits) (Nos. 7604/76 et al.), Corigliano v. Italy (No. 8304/78), §56 and §37 respectively.

Zimmermann and Steiner v. Switzerland (No. 8737/79), §24

“Complexity” from its different perspectives is disclosed in specific examples of the case-law. A case is considered complicated due to a number of material and procedural factors. The case may be complex due to:

- facts and/or legal issues to be resolved
- procedural matters

a. Complexity of the facts

The factual complexity of a case is caused by various circumstances:

- number and particular nature of the charges

Arap Yalgin and others v. Turkey (No: 33370/96), §27

- presence of foreign citizens, if the case materials need to be translated
- difficulties associated with calling and transporting foreign participants to carry out investigative, judicial and procedural action

Petr Korolev v. Russia (No. 38112/04), § 60

- highly sensitive nature of the offences charged, relating to national security

Dobbertin v. France (No. 13089/87), §42

- advanced age and health condition of the accused

Konashevskaya and Others v. Russia (No. 3009/07), § 54

- need for expert opinions

Ilowiecki v. Poland (No. 27504/95), §87

Billi v. Italy (No. 15118/89), §19

Scopelliti v. Italy (No. 15511/89), §23

Francesco Lombardo v. Italy (No. 11519/85), §22

- labour intensity of the examinations

Sutyagin v. Russia (No. 30024/02), § 152

Salikova v. Russia (No. 25270/06), § 55

- complexity of the examinations

Scopelliti v. Italy (No. 15511/89), §23

- difficult issues of proof-taking

Allenet de Ribemont v. France (No. 15175/89), §§48-50

- need to record and verify different versions of events

Vladimir Romanov v. Russia (No. 41461/02), § 86

- time limitation of investigated events

Kolchinayev v. Russia (No. 28961/03), § 20

- facts of legal importance that took place a long time ago and which need to be established

Sablon v. Belgium (No. 36445/97), § 94

- number and nature of investigative actions conducted in the case

Alekhin v. Russia (No.10638/08), § 163

- large number of evidence

Humen v. Poland [Grand Chamber], (No. 26614/95), § 63

- difficult questions of evidence

Allenet de Ribemont v. France (No. 15175/89), §§48-50

- need to establish the whereabouts of witnesses

König v. Germany (No. 6232/73), § 102

b. Complexity of legal issues

The legal complexity of a case can be caused by the following circumstances:

- in criminal cases, certain categories of crimes are to be clarified and are subject to complex regulations, in terms of their structure and content, in the area of finance and foreign economic, customs and several other activities

- the need to interpret an international agreement
 - Beaumartin v. France (No. 15287/89), § 33
- application of a recent and unclear statute
 - Pretto and others v. Italy (No. 7984/77), §32
- questions of jurisdiction
 - De Moor v. Belgium (No. 16997/90), §§16, 19-20, 22, 27 & 67
 - Alenet de Ribemont v. France (No. 15175/89), §§15-20 and 48-50
- interpretation of an international treaty
 - Beaumartin v. France (No. 15287/89), § 33
- the existence of gaps and collisions in the law of substance and procedure.

By recognizing that a case is complex or relatively complex, the ECtHR assumes that proceedings in the case can last longer than normal without violating the “reasonable time” principle.

Lemesle v. France (dec.) (No. 42461/98)

However, even in cases qualified as complex, the excessive total length of proceedings can be viewed as a violation of the requirement to examine a case “within a reasonable time.”

Pafitis and Others v. Greece (No. 20323/92), § 93

For this reason, the relation of the case complexity and its total duration is to be evaluated in each specific case.

c. Procedural complexity

Procedural complexity may be due to the following:

- the number of parties
 - H. v. the United Kingdom (merits), (No. 9580/81), §72
 - Manieri v Italy (No. 12053/86), and Cardarelli v. Italy (No. 12148/86), §18 and §17 respectively
 - Billi v. Italy, (No. 15118/89), §19

- the number of defendants and witnesses
 - Bejer v. Poland (No. 38328/97), §49
 - Milasi v. Italy (No. 10527/83), §16
 - Golino v. Italy (No. 12172/86), §17
- a large number of interlocutory applications filed by the parties;
- corroborating certain allegations or processing certain claims
 - Buchholz v. the Federal Republic of Germany (No. 7759/77), §55
 - Lechner and Hess v. Austria (No. 9316/81), §43
- obtaining materials from a foreign court
 - Manzoni v. Italy (No. 11804/85), §18

First and foremost, proceedings in the case should be evaluated in terms of how timely the necessary procedural actions were.

The complexity of a case does not mean that the court does not need to take all possible measures to avoid periods of inaction or delays, for which the state can be subsequently responsible.

The Court sometimes confines itself to acknowledging that a case is of some complexity and referring to the summary of the facts.

X. v. France (No. 18020/91), §36

Salesi v. Italy 13023/87), §18

Vallée v. France (No. 22121/93), § 38

It also frequently has occasion to note that a case is not complex or does not involve great or particular complexity.

Stran Greek Refineries and Stratis Andreadis v. Greece (No. 13427/87), §55

Acquaviva v. France (No. 19248/91), §§29 and 57

(ii) Conduct of the parties to proceedings

NB!

According to a basic principle of the Court's case-law, only delays attributable to the State are regarded as a failure to comply with the requirements of reasonable time.

Buchholz v. the Federal Republic of Germany (No. 7759/77), §49

Zimmermann and Steiner v. Switzerland (No.8737/79), §24

H v. the United Kingdom (merits) (No. 9580/81), §71

Martins Moreira v. Portugal (No. 11371/85), §50

H. v. France (No. 10073/82), §55

However, delays in case proceedings may often as well be caused by the conduct of the parties and, in particular, the conduct of the defence in criminal proceedings. That is why before scrutinising the conduct of the relevant national authorities, the Court will always examine that of the parties.

Examples how parties may be contribute to the length of proceedings:

- wrong choice of a competent court at the beginning of proceedings

Beaumartin v. France (No. 15287/89), §§12-13 and 33

Allenet de Ribemont v. France (No. 15175/89), §53

- requests for adjournment, further preliminary inquiries or extension of time-limits

Buchholz v. Germany (No. 7759/77), §§56-57

Eckle v. Germany (merits) (No. 8130/78), §90

Pretto and others v. Italy (No. 7984/77), §33

Allenet de Ribemont v. France (No. 15175/89), §§52 and 53

Paccione v. Italy (No. 16753/90), §20

Acquaviva v. France (No. 19248/91), §61

- abusing the right to appeal against procedural actions, decisions, etc.
- frequent requests to postpone a court session due to the absence of lawyers

Sergey Denisov and Others v. Russia (Nos. 1985/05 et al.), § 138, and others

- frequent substitutions of lawyers

Klamecki v. Poland (No. 25415/94), § 93

- excessive number and inadequate justification of requests to postpone sessions due to health conditions and for other reasons

Lazariu v. Romania (No. 31973/03), § 149

- defendant's behaviour in the courtroom

Sergey Denisov and Others v. Russia (Nos. 1985/05 et al.), §139

- changes in the strategy of the defence at an advanced stage of the case examination leading to the need to interrogate new witnesses and examine new evidence

Barfuss v. the Czech Republic (No. 35848/97), § 81

- accused absconds from the investigators and the court (the ECHR stated that the "period of time when the plaintiff was on the run must not be counted")

Girolami v. Italy (No. 13324/87), § 13

- failure to appear at a hearing

Lechner and Hess v. Austria (No. 9316/81), §47

Arena (No. 13261/87), Cormio (No. 13130/87), Idrocalce S.R.L (No. 12088/86), Gana v. Italy (No. 13024/87), §17, §16, §18 and §18 respectively

Acquaviva v. France (No. 19248/91), §61

- delay in filing a reply

Manifattura FL v. Italy (No. 12407/86), §18

- delay in identifying the witnesses to be examined

Idrocalce S.R.L. v. Italy (No. 12088/86), §18

The following principles have been established by the Court to evaluate the parties' conduct and its impact to the overall length of proceedings:

NB!

The parties may fully use the possibilities provided by national laws to protect their interests.

Moiseyev v. Russia (No. 62936/00), § 192

- the applicants' behaviour constitutes an objective fact which cannot be attributed to the respondent State

Wiesinger v. Austria (No. 11796/85), §57

Pretto and others v. (No. Italy, 7984/77), §33

Deumeland v. the Federal Republic of Germany (No. 9384/81), §35

Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §35

H. v. France 10073/82, §55

Pretto and others v. Italy (No. 7984/77), §34

Erkner and Hofauer v. Austria (No. 9616/81), Poiss v. Austria (No. 9816/82) and Lechner and Hess v. Austria (No. 9316/81), §68

- Article 6 of the Convention does not require the defence to collaborate with judicial and other authorities

Komarova v. Russia (No. 19126/02), § 50

- public officials in charge of criminal proceedings must be diligent when proceeding with a criminal case and must not limit the rights and lawful interests of individuals involved in criminal proceedings

Panchenko v. Russia (No. 45100/98), § 134

- Komarova v. Russia (No. 19126/02), § 51-53

- judicial authorities are responsible for "taking every measure likely to throw light on the truth or falsehood of the charges"

Neumeister v. Austria (No. 1936/63), §21

In other words, the need to respect the reasonable time of proceedings cannot justify restricting the rights of parties to proceedings as stipulated by Article 6 of the Convention (for example, a right to procedural equality of the parties to proceedings; the accused individual's right to have a witness for prosecution interrogated).

NB!

In criminal proceedings, inaction on the part of the plaintiff does not release the state from its obligation to respect the reasonable time of criminal proceedings.

Karasev v. Russia (No. 30251/03), § 31

“[C]laimants must demonstrate diligence in procedural actions relevant to them in national litigation, forbear from dilatory tactics and use all the means provided by national laws to accelerate proceedings.”

Kupriny v. Russia (No. 24827/06), § 42

At the same time, the suspect and the accused cannot be forced to collaborate actively with the authorities.

Smirnova v. Russia (Nos. 46133/99 and 48183/99), § 74

Belashev v. Russia (No. 28617/03), § 72

Shenoyev v. Russia (No. 2563/06), § 65

The main criterion will still be the honesty of individuals participating in proceedings in the fulfillment of their procedural duties.

The ECHR found no violation of Article 6 because the plaintiff contributed in many ways to the delays in proceedings due to his dishonest behavior (in particular, multiple failures to attend court hearings, requests to postpone hearings and failure to supply evidence)

Lammi v. Finland (No. 53835/00), § 33

J.R. v. Belgium (No. 56367/09), §§ 61–64

NB!

Assignment of liability for certain delays in proceedings to the defendant does not mean that the state (the defendant) is released from liability for violating the reasonable time of proceedings.

However, even if the defendant is found guilty of delaying proceedings, this will have no fundamental importance due to the excessive total length of proceedings.

It is necessary to analyse the court's actions, namely the measures taken to encourage the parties to the proceedings to actively fulfill their procedural duties.

The domestic courts must not stay indifferent towards parties' abuse of procedural rights and persistent delays in proceedings: the attitude of the parties does not dispense the courts from ensuring the expeditious trial of the action as required by Article 6

Guincho v. Portugal (No. 8990/80), §32

Buchholz v. Germany (No. 7759/77), §50

Capuano v. Italy (No. 9381/81), §§24-25

Baraona v. Portugal (No. 10092/82), §48

Martins Moreira v. Portugal (No. 11371/85), §46

Neves e Silva v. Portugal (No. 11213/84), §43

Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §§34- 35

Vernillo v. France (No. 11889/85), §30

Scopelliti v. Italy (No. 15511/89), §25

Ciricosta and Viola v. Italy (No. 19753/92), §30

The courts' failure to take measures with respect to the parties to criminal proceedings whose actions or inaction delay the process, can constitute grounds for recognizing the defendant state liable for delays in proceedings

Sidorenko v. Russia (No. 4459/03), § 34

(iii) Conduct of the administrative and judicial authorities

a. Factors related to the organization of the judicial system

NB!

According to the Convention, the signatory states have a general positive obligation to organize the judicial system so as to prevent any violation of the reasonable time for examining cases.

Pelissier and Sassi v. France (No. 25444/94), § 74

For this reason, the following factors can never be used to justify any excessive length of proceedings:

- excessively heavy workloads of the courts that are of both a temporary and, moreover, structural nature

Muti v. Italy (No. 14146/88), § 15

- administrative or organizational difficulties

Komracheva v. Russia (No. 53084/99)

- long periods of court notices of the time and venue of a court hearing
- improper quality of inquiry and preliminary investigations
- difficulties in forming panels of juries
- the absence of lawyers appointed to participate in criminal proceedings without reasonable excuses
- inadequate level of enforcing judges' orders to force the parties to attend court sessions
- unavailability of the appropriate communications in the system of the criminal justice authorities (delays in transferring the criminal case materials from one body to another one)

Pishchalnikov v. Russia (No. 7025/04), §51

Rakhmonov v. Russia (No. 50031/11), §60

- lack of appropriate premises for the circumstances;
- impossibility of delivering defendants to court in a timely manner due to the unavailability of motor vehicles, etc.

Goroshchenya v. Russia (No. 38711/03), § 101

- long periods of forensic examinations

Rysev v. Russia (No. 924/03), § 33

- inefficient organization of distribution of criminal cases among judges (replacing judges that have fallen ill or taken leave, which thus entails the process being initiated anew)

Yeliseyev v. Russia (No. 12098/04), § 21

Volodina v. Russia [Committee] (No. 41261/17), § 60

- long periods of uncertainty with regard to the jurisdiction and cognisance of a given dispute

Baburin v. Russia (No. 55520/00), § 42

There are situations, however, in which a State will not be held responsible for the delays caused by authorities' actions or periods of inactivity. Thus, a temporary backlog before a court, will not entail liability, provided that the authorities take reasonably prompt remedial action to deal with the exceptional situation.

Bucholz v. Germany (No. 7759/77), § 61

At the same time, where the problem becomes a structural one, provisional methods such as giving priorities, are no longer sufficient and the State cannot further postpone the adoption of effective measure.

Zimmermann and Steiner v. Switzerland (No. 8737/79), 13 July 1983

The criteria of length of proceedings assessment are applied both with flexibility and perseverance.

H v. France (No. 10073/82), §58

Moreira de Azevedo v. Portugal (merits) (No. 11296/84), §74

Vernillo v. France (No. 11889/85), §38

b. Conduct of the administrative authorities

There are various ways in which the official authorities may contribute to the length of the proceedings:

- delay by an administrative authority in reopening proceedings
Poiss v. Austria (merits) (No. 9816/82), §59
- delay by an administrative authority in providing the formal confirmation of its decision required to begin contentious proceedings
Schouten and Meldrum v. the Netherlands (Nos. 19005/91 and 19006/91), §§64-69
- excessive length of the investigation
Ferraro v. Italy (No. 13440/87), §17
Tusa v. Italy (No. 13299/87), §17
Cooperativa Parco Cuma v. Italy (No. 12145/86), §18
- delay in closing an investigation, subject to later completion if necessary
Neumeister v. Austria (No. 1936/63), §20
- use of delaying tactics by the administrative authorities, intended to prevent the production of a piece of evidence of vital importance
Allenet de Ribemont v. France (No. 15175/89), §56

Shortcomings in investigative actions that affect the time of proceedings can include:

- The lack of sufficient reasons for refusing to initiate a criminal case must be considered as a particularly serious investigation defect
Polonskiy v. Russia (No. 30033/05), § 122
Lyapin v. Russia (No. 46956/09), § 137

NB!

The right to a reasonable time of criminal proceedings is considered observed even if such proceedings take a long time, provided that the actions of the authorities to investigate and solve the given criminal case and observe the reasonable time of criminal proceedings are proved to be timely, diligent and adequate.

This implies:

- the timely and diligent¹⁹ performance of investigative and procedural actions and their adequacy

Nikiforov v. Russia (No. 42837/04), §48

- timely procedural decisions
- timely and diligent drafting of procedural documents and their delivery to the concerned parties
- timely recognition that evidence is inadmissible

The requirements of timeliness, diligence and adequacy can be met through:

- immediate performance of required actions after the authorities are informed about a crime
- the national authorities' obligation to act on their own initiative as soon as they learn about what has happened

Bazorkina v. Russia (No. 69481/01), § 117

A.A. v. Russia (No. 49097/08), § 88

Shanin v. Russia (No. 24460/04), § 68

Davitidze v. Russia (No. 8810/05), § 108

Guluyeva and Others v. Russia (No. 1675/07), § 81

The State should take any and all available and reasonable measures to obtain evidence and establish the factual circumstances of a case

Vladimir Romanov v. Russia (No. 41461/02), § 86

c. Conduct of judicial authorities

The actions of the court and other authorities are perhaps the main criterion for evaluating reasonable time of proceedings. Violation of the reasonable time

¹⁹ Diligence must mean seriousness of efforts made to find out what happened.

guarantee can be established only if there are delays caused by the competent governmental agencies.

This criterion is established in both the civil sphere (since the König judgment)

König v. the Federal Republic of Germany (merits) (No. 6232/73), §99

and the criminal sphere (since the Foti and others judgment).

Foti and others v. Italy (merits) (Nos. 7604/76 et al.), §56

Mansur v. Turkey (No. 16026/90), §61

There are various ways how the courts' actions or inactivity may contribute to the excessive length of the proceedings:

- delay in hearing witnesses and ordering expert opinions

Golino v. Italy (No. 12172/86), §17

Caffé Roversi S.P.A. v. Italy (No. 12825/87), §18

Cooperativa Parco Cuma v. Italy (No. 12145/86), §18

- delay in committing a defendant for trial

Frau v. Italy (No. 12147/86), §16

Casciaroli v. Italy (No. 11973/86), §18

- delay in commissioning an expert opinion for the trial court

Francesco Lombardi v. Italy (No. 43039/98)

Muti v. Italy (No. 14146/88), §17

- a defective summons of a witness

Tumminelli v. Italy (No. 13362/87), §17

- absence of any investigative measures by the trial court

G. v. Italy (No. 12787/87), §17

Barbagallo v. Italy (No. 13132/87), §16

- failure to obtain an expert opinion ordered by a court of appeal

Bock v. the Federal Republic of Germany (No. 11118/84), §44

- delay in declining to exercise jurisdiction

Barbagallo v. Italy (No. 13132/87), §17

Pandolfelli and Palumbo v. Italy (No. 13218/87), §17

Allenet de Ribemont v. France (No. 15175/89), §56

- delay in establishing that a summons is not in due form

Barbagallo v. Italy (No. 13132/87), §17

- delay in ordering partial acquittal following the entry into force of less stringent criminal legislation

Yağcı and Sargin v. Turkey (Nos. 16419/90 and 16426/90), §69

- delay in dispelling a misunderstanding relating to a summons

Cifola v. Italy (No. 13216/87), §16

- acceptance of an excessive number of pleadings

König v. the Federal Republic of Germany (merits) (No. 6232/73), §104

- hearings that are too numerous or too few and far between

Buchholz v. the Federal Republic of Germany (No. 7759/77), §§59, 60 and 63

Bock v. the Federal Republic of Germany (No. 11118/84), §42

Santilli v. Italy (No. 11634/85), §20

- an excessive interval between two interlocutory judgments

Karakaya v. France (No. 22800/93), §44

- a court's failure to use its powers to order the production of evidence of vital importance

Allenet de Ribemont v. France (No. 15175/89), §56

- a court's failure to use its statutory powers to expedite proceedings in a particularly urgent case

X v. France (No. 18020/91) §§47-48

Vallée v. France (No. 22121/93), §48

Karakaya v. France (No. 22800/93), §44

- a long period between declaring that a case is ready for decision and giving judgment

Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §36

Biondi v. Italy (No. 12871/87), §18

- delay in drawing up a judgment after it has been delivered

B. v. Austria (No. 11968/86), §52

Massa v. Italy (No. 14399/88), §16

- delay in filing a judgment with the registry when required by national legislation

Monaco v. Italy (No. 12923/87), §17

Lestini v. Italy (No. 12859/87), §18

- late release of a motivated resolution and its delivery to the parties by a judge (for example, 11 months in one case)

Rash v. Russia (No. 28954/02), § 25

- late release of court session records, which thus hinders the ability of the parties to study and familiarize themselves with them

Rednikov v. Russia (No. 18072/04), § 30

- delay by a registry in sending a case-file to a higher court or another division sitting in a different city

Foti and others v. Italy (merits) (Nos. 7604/76 et al.), §75

Corigliano v. Italy (No. 8304/78), §49

Lechner and Hess v. Austria (No. 9316/81), §§55-56

Martins Moreira v. Portugal (No. 11371/85), §52

Casciaroli v. Italy (No. 11973/86), §18

Abdoella v. the Netherlands (No. 12728/87), §§23-25

- more generally, long periods of “inactivity” or “stagnation”

Foti and others v. Italy (merits) (Nos. 7604/76 et al.), §68

Corigliano v. Italy (No. 8304/78), §47

Zimmermann and Steiner v. Switzerland (No. 8737/79), §§27 and 32

Guincho v. Portugal (No. 8990/80), §§35-36

Deumeland v. the Federal Republic of Germany (No. 9384/81), §§81, 82, 84, 87 and 88

Poiss v. Austria (merits) (No. 9816/82), §59

Lechner and Hess v. Austria (No. 9316/81), §§54, 56, 57 and 59

Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §36

The ECtHR emphasized, on several occasions, the problem of ensuring the presence of the parties to proceedings and the failure of national courts to take measures to discipline the parties to proceedings in order to make sure that the required procedural actions take place in due time.

For example:

- the court sessions were postponed eight times due to the defendant failing to attend, and the process lasted for seven months

Sokolov v. Russia (No. 3734/02), § 40

- a prosecution witness failed to attend the court session five times, so the case hearing was postponed on several occasions

Sukhov v. Russia (No. 32805/03), § 35

- delay in establishing that some defendants have not been summoned

Cooperativa Parco Cuma v. Italy (No. 12145/86), §18

- delay in sending a case file to the defendant

Allenet de Ribemont v. France (No. 15175/89), §56

- delay in notifying an appeal to one of the parties
 - Serrentino v. Italy (No. 12295/86), §18
- failure to communicate the date of a hearing to one of the parties
 - Neumeister v. Austria (No. 1936/63), §20
 - König v. the Federal Republic of Germany (merits) (No. 6232/73), §110
 - Eckle v. the Federal Republic of Germany (merits) (No. 8130/78), §92
 - Union Alimentaria Sanders S.A. v. Spain (No. 11681/85), §36
 - H. v. France (No. 10073/82), §56
 - Pugliese v. Italy (No. 1) (No. 11840/85), §19
 - Caleffi v. Italy, (No. 11890/85), §17
- delay in serving a judgment
 - Eckle v. the Federal Republic of Germany (merits) (No. 8130/78), §84
 - Karakaya v. France (No. 22800/93), §44

NB!

Most violations are normally associated with the judicial authorities failing to take – or inadequately taking – measures to discipline the parties and, therefore, ensure a reasonable time of proceedings.

Certain actions of the court will not always lead to the non-observance of a reasonable time, even if they can increase the length of proceedings.

For example, the suspension of criminal proceedings before the end of parallel proceedings in another case, the outcome of which will have a pre-judicial effect, may be justified and the ECtHR may deduct the period of suspension from the total length of the proceedings.

However, it is entirely possible that such a suspension may be deemed unjustified and considered a delay under the circumstances of a specific case. And the defendant state can be responsible.

Plaksin v. Russia (No. 14949/02), § 41

Other examples of the absence of violation are:

- integration of several criminal cases

Wejrup v. Denmark (dec.) (No. 49126/99)

- suspension of proceedings in cases where the judicial authorities of the defendant state are to wait for other countries to execute an international investigative or judicial order

Włoch v. Poland (No. 27785/95), §§ 149–150

3. What is at stake in the proceedings for the applicant?

Another important criterion of evaluation is the significance of the proceeding outcome for the applicant («What is at stake for the applicant?»).

Buchholz v. the Federal Republic of Germany (No. 7759/77), §49

This may be non-pecuniary as well as pecuniary.

Vallée v. France (No. 22121/93), §49

Karakaya v. France (No. 22800/93), §45

The criterion was used for the first time in “*König v. Germany.*” The development of this criterion in further practice led to the emergence of a special category of cases requiring urgent consideration.

Article 6 § 1 requires the authorities to exercise special or particular diligence²⁰ in the following fields:

- family disputes

Bock v. the Federal Republic of Germany (No. 11118/84), § 48

Voleský v. the Czech Republic (No. 63627/00), § 106

Laino v. Italy (No. 33158/96), § 21

²⁰ Frederic Edel. The length of civil and criminal proceedings in the case-law of the European Court of Human Rights. – Council of Europe Publishing, 2007.

- establishment of paternity
 - Mikulic v. Croatia (No. 53176/99), §§ 44-46
 - Ebru and Tayfun Engin Colak v. Turkey (No. 60176/00), §75
 - Bock v. Germany (No. 11118/84), § 49
- civil status and capacity (especially affecting enjoyment of the right to respect for family life)
 - Bock v. the Federal Republic of Germany (No. 11118/84), §§48-49
 - Taiuti v. Italy (No. 12238/86), §18
 - Maciariello v. Italy (No. 12284/86), §18
 - Gana v. Italy (No. 13024/87), §17
- victims of road accidents (as regards damages)
 - Martins Moreira v. Portugal (No. 11371/85), §59
 - Serrentino v. Italy (No. 12295/86), §19
 - Silva Pontes v. Portugal (No. 14940/89), §39
- victims of criminal violence
 - Caloc v. France (No. 33951/96), §§120 and 119
- victims of police violence
 - Krastanov v. Bulgaria (No. 50222/99), §70
- Employment and social security cases
 - Doustaly v. France (No. 26256/95), § 48
 - Frydlender v. France (No. 30979/96), § 45
 - Zawadzki v. Poland (No. 34158/96), § 75
 - Caleffi v. Italy (No. 11890/85), §17
- withdrawal of permission to practice medical profession and run a clinic
 - König v. the Federal Republic of Germany (merits) (No. 6232/73), §111

- pension disputes

Nibbio v. Italy (No. 12854/87), §18

As regards criminal proceedings:

- defendants held in custody

Abdoella v. the Netherlands (No. 12728/87), §24

Kalashnikov v. Russia (No. 47095/99), §132

Philis v. Greece (No. 2) (No. 19773/92), §35

Portington v. Greece (No. 28523/95), §21

Sari v. Turkey and Denmark (No. 21889/93), §72

Djaid v. France (No. 38687/97), §33

Debboub alias Hussein Ali v. France (No. 37786/97), §46

Jablonski v. Poland (No. 33492/96), §102

Particular diligence is necessary in the following spheres²¹:

- restriction of parental authority, cases on adoption of children

Paulsen-Medalen and Svensson v. Sweden (No. 16817/90), § 41

- placing and keeping children in public care (because of potentially serious and irreversible consequences for the parent-child relationship)

Johansen v. Norway (No. 17383/90), §88

Schaal v. Luxembourg (No. 51773/99), §35 (criminal case)

E.O. and V.P. v. Slovakia (Nos. 56193/00 and 57581/00), §85

H. v. the United Kingdom (merits) (No. 9580/81), §85

²¹Frederic Edel. The length of civil and criminal proceedings in the case-law of the European Court of Human Rights. – Council of Europe Publishing, 2007.

Olsson v. Sweden (No. 2), (No. 13441/87), §103

Hokkanen v. Finland (No. 19823/92), §72²²

- persons with reduced life expectancy suffering from incurable diseases.

Matrena Polupanova v. Russia (No. 21447/04)

Angelova v. Russia (No. 33820/04), § 48

X v. France (No. 18020/91), §§44 and 47

Vallée v. France (No. 22121/93), §§47 and 49

Karakaya v. France (No. 22800/93), §§43 and 45

A. and others v. Denmark (No. 20826/92), §78

K.T. v. France, 19 Mar. 2002, §14

Beaumer v. France (No. 65323/01), §30

Tougher requirements above were applied in the following types of cases:

- a. Compensation for damage to health, and also when the parties risk not living long enough to see the end of proceedings due to their health**

Case	Time	Subject of proceedings in national courts	ECHR conclusion
1. X. v.	2 years	Compensation for harm to the health (HIV transmission during blood transfusion)	Violation
2. Pailot v. France (1998)	1 year and 10 months	Implementation of an amicable settlement agreement, under which compensation was to be paid to the victim, who contracted HIV as a result of a blood transfusion	Violation

²² In the last two examples, however, the particular circumstances of the case – relative shortness of the proceedings, complexity of the case, etc. – led the Court to find that there had been no violation.

3.	Krastanov v. Bulgaria (2004)	4 years	Compensation for damage health caused by police officers	Violation
----	------------------------------	---------	--	-----------

b. Family disputes over children, deprivation of parental rights and removal of a child

	Case	Time	Subject of proceedings in national courts	ECHR conclusion
1.	Hokkanen v. Finland (1994)	1 year and 5 months	Determining where the child would live	No violation
2.	Paulsen-Medalen and Svensson v. Sweden (1998)	3 years and 3 months	Mother's right to see and talk to her children in foster care	Violation
3.	Cunha Martins Da Silva Couto v. Portugal (2015)	2 years and 11 months	Father's right to see and talk to her children in foster care	Violation

c. Marital status cases, legal capacity deprivation or restoration

	Case	Time	Subject of proceedings in national courts	ECHR conclusion
1.	Laino v. Italy (DP, 1999)	8 years and 2 months	Divorce proceedings	Violation
	Mikulic v. Croatia (2002)	4 years and 2 months	Filiation	Violation
3.	V.K. v. Croatia (2012)	5 years and 8 months	Paternity dispute	Violation

In the course of time, the criterion of special/particular diligence began to be used in criminal cases.

NB!

The main factor of special urgency of a criminal case is the detention of the defendant waiting for a sentence to be conferred.

Cases initiated by prisoners, whose imprisonment conditions violate Article 3 of the Convention, are even more urgent.

Veliyev v. Russia (No. 24202/05), § 178

In certain cases, the ECtHR analysed the economic aspect as a factor that may or may not cause a criminal case to be especially urgent, in particular the impact of the plaintiff's criminal prosecution on the ability to continue economic activities.

Intiba v. Turkey (No. 42585/98), § 52

3. Total length of proceedings. Overall assessment of the case

The various criteria of reasonable time assessment - namely complexity, what is at stake, the conduct of the parties and the authorities – may be closely interrelated. In this case the Court may make an overall assessment.

Konig v. the Federal Republic of Germany (merits) (No. 6232/73), §§105 and 111

Buchholz v. the Federal Republic of Germany (No. 7759/77), §63

Zimmermann and Steiner v. Switzerland (No. 8737/79), §32

Pretto and others v. Italy (No. 7984/77), §37

Guincho v. Portugal (No. 8990/80), §41

Thus, the conduct of the parties may increase the complexity of proceedings, and the importance of the outcome for the applicant requires the relevant authorities to exercise special diligence.

In some cases, several of the delays observed may have appeared normal. However, the Court, conducting the overall assessment, found violations taking into account:

- duration of the proceedings, viewed in itself and overall (especially if the respondent Government has provided no explanations)

Obermeier v. Austria (No. 11761/85), §72

Editions Periscope v. France (No. 11760/85), §44

Messina v. Italy (No. 13803/88), §28

Darnell v. the United Kingdom (No. 15058/89), §21

Allenet de Ribemont v. France (No. 15175/89), §57

- recognition by the state involved that it is at fault

Darnell v. the United Kingdom (No. 15058/89), §20

- outcome of the proceedings, at least in the case of an out-of-court settlement

Cormio v. Italy (No. 13130/87), §§16-17

- amnesty

Vendittelli v. Italy (No. 14804/89), §29

Another additional criterion sometimes includes the number of court instances or, to be more exact, the ratio of the total length of proceedings in the case to the number of court instances they were examined by

Cesarini v. Italy (No. 11892/85), §20 (three levels)

Salerno v. Italy (No. 11955/86), §21 (three levels)

Abdoella v. the Netherlands (No. 12728/87), §22 (five levels)

Olsson v. Sweden (No. 2) (No. 13441/87), §§105 and 106 (three levels)

Raimondo v. Italy (No. 12954/87), §44 (two levels)

Vendittelli v. Italy (No. 14804/89), §29

Hokkanen v. Finland (No. 19823/92), §72 (three levels)

In principle, a year per court instance can be viewed as a reasonable time

Obasa v. the United Kingdom (No. 50034/99), § 35 (civil proceedings)

Hutchison Reid v. the United Kingdom (No. 50272/99), § 79 (criminal proceedings)

even a year-and-a-half can be

Satakunnan Markkinaporssi Oy and Satamedia Oy v. Finland (No. 931/13), § 88

Sometimes, according to the results of a consistent analysis of each of the four criteria described above, it is impossible to conclude whether a reasonable time of proceedings was observed in a specific case. In this case, an additional criterion can be applied, namely the global evaluation of the total length of proceedings in the case given all the examined criteria.

Obermeier v. Austria (No. 11761/85), § 72

Manzoni v. Italy (No. 11804/85), § 18

Laghouati and Others v. Luxembourg (No. 33747/02), § 33 (civil proceedings)

Romanova v. Russia (No. 23215/02), § 143

Velichko v. Russia (No. 19664/07), § 105 (criminal proceedings)

Maintaining a balance between the timely solution of the case and the interests of justice can be an important principle of the global evaluation.

Meshcheryakov v. Russia (No. 24564/04), § 44 (civil proceedings)

Boddaert v. Belgium (No. 12919/87), § 39 (criminal proceedings)

The question remains about approximate periods that can be a reference point for domestic court whether the length of proceedings is in a «red zone».

The studies on the length of proceedings by the CEPEJ on the basis of the ECtHR's case-law reveal the following guidelines relating to length of proceedings:

- The total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases has generally been regarded as reasonable.

When proceedings lasted more than two years, the Court examines the case with scrutiny to determine whether there are any objective reasons, such as the complexity of the case, and whether the national authorities have shown due diligence in the process.

NB!

In complex cases, the Court may allow longer time, but pays special attention to periods of inactivity which are clearly excessive. The longer time allowed is however rarely more than five years and almost never more than eight years of total duration.

In the so-called priority cases in which a particular issue is at stake, the court may depart from the general approach, and find a violation even if the case lasted less than two years by level of jurisdiction. This will be the case, for example

- where the applicant's state of health is a critical issue
- where the delay could have irreparable consequences for the applicant

The only cases in which the Court did not find a violation in spite of manifestly excessive length of proceedings were cases in which the applicant's behaviour had been a major factor.²³

It should be reiterated, however, that particular length of proceedings should be assessed on individual basis, and the information above is rather a hand for national judges in addition to other criteria.

The examples of particular cases where the ECtHR found and did not find a violation of reasonable time standard are set in Annex 1 below.

General comments to Annex 1:

- when proceedings are short (up to three years in length), the percentage of recorded cases of "a reasonable time" not being observed is quite low, except for "cases of special urgency"
- in "boundary cases" (when the total length of proceedings lasts from three to five years), a conclusion on non-observance strongly depends on the circumstance of each specific case
- in cases with a formally long total length of proceedings (five years and more), the most likely outcome is the non-observance of a reasonable

²³ European Commission for the Efficiency of Justice (CEPEJ): Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights(CEPEJ(2018)26)//<https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

time, but there are exceptions here too.

ANNEX 1: Examples of the length of proceedings

A. No violations

I. Criminal cases, long time period (> 5 years)

	Case	Year	Time	Crime	Key factor
1.	Boddaert v. Belgium	1992	6 years and 2 months	Murder	Balance between prompt and proper justice administration maintained
2.	Hozee v. the Netherlands	1998	8 years and 5 months	Tax evasion	Case complexity (facts)
3.	I. A. v. France	1998	6 years and 9 months	Murder	Case complexity (facts), behaviour of the accused
4.	Van Pelt v. France	1998	8 years and 8 months	International drug trafficking	Case complexity, international investigative instructions
5.	Wloch v. Poland	2000	6 years	International child trafficking	Case complexity, international investigative instructions
6.	C. P. and others v. France	2000	7 years and 10 months	Fraud	Case complexity

7.	Beck v. Norway	2001	7 years and 7 months	Fraud	Case complexity, recording of the length of proceedings in awarding punishment
8.	Debbasch v. France	2002	7 years and 11 months	Forgery of documents, abuse of trust	Case complexity, behaviour of the accused
9.	Wejrup v. Denmark	2002	7 years and 9 months	Fraud	Particular case complexity
10.	Klamecki v. Poland	2002	6 years and 1 month	Fraud	Case complexity, behaviour of the accused
11.	Pedersen and Pedersen v. Denmark	2004	8 years and 3 months; 7 years and 3 months	Violation of environment protection regulations	Behaviour of the accused and their lawyers
12.	Intiba v. Turkey	2005	7 years and 11 months	Fraud	Case complexity
13.	Lammi v. Finland	2005	7 years and 10 months	Embezzlement	Dilatory practices by the defendant

14.	M.A.T. v. Turkey	2006	7 years	Bribery	Case complexity, behaviour of the defendant
15.	Pêcheur v. Luxembourg	2007	7 years and 9 months	Attempted murder	Relative case complexity
16.	Petr Korolev v. Russia	2010	5 years and 4 months	Manipulation of foreign judgments	Relative case complexity, behaviour of the accused
17.	Sergey Timofeyev v. Russia	2010	5 years and 4 months	Attempted rape	Reasonable investigation suspension
18.	Borodin v. Russia	2012	5 years and 3 years	Murder	Relative case complexity, behaviour of the accused
19.	Dementjeva v. Latvia	2012	8 years and 5 months	Fraud	Behaviour of the defendant
20.	Larionovs and Tess v. Latvia	2014	6 years and 4 months; 4 years and 1 month	Crimes against humanity	Case complexity
21.	Lazariu v. Romania	2014	7 years and 10 months	Fraud, calumny	Behaviour of the accused

22.	Kurganovs v. Latvia	2015	7 years	Abuse of power, possession of drugs	Total criteria (global evaluation)
23.	Yaikov v. Russia	2015	5 years and 3 months	Murder	Case complexity, health condition of the accused
24.	Sergey Denisov and others v. Russia	2016	7 years and 9 months	Criminal gang organization	Case complexity, no unreasonable delays by government agencies
25.	Habran and Dalem v. Belgium	2017	8 years and 5 months	Robbery	Exclusive case complexity

II.

II. Civil cases, long time period (> 6 years)

	Case	Year	Time	Crime	Key factor
1.	Vernillo v. France	1991	7 years and 6 months	Dispute between private individuals over the termination of an apartment purchase and sale agreement	Behaviour of the parties
2.	Monnet v. France	1993	7 years and 1 months	Divorce	Behaviour of the plaintiff
3.	Katte Klitsche de la Grange v. Italy	1994	8 years	Claim of damages against the local authorities in charge of urbanization	Legal and factual case complexity
4.	Ciricosta and Viola v. Italy	1995	15 years	Dispute between private individuals over the construction works on adjacent land plots	Behaviour of the parties
5.	Phocas v. France	1996	8 years and 5 months	Compensation for the seizure of property for public purposes	Behaviour of the plaintiff

6.	Lemesle v. France	2001	8 years and 2 months	Liability of a private clinic for low quality services causing disability	Case complexity, behaviour of the plaintiff and his representatives
7.	Stoidis v. Greece	2001	6 years and 1 months	Dismissal	Behaviour of the parties
8.	Calvelli and Ciglio v. Italy	2002	6 years and 3 months	Civil plaintiffs in criminal proceedings, medical error case	Case complexity
9.	Mangualde Pinto v. France	2002	6 years and 2 months	Dismissal	Behaviour of the parties
10.	Koua Poirrez v. France	2003	7 years and 7 months	Assignment of disability benefits	Case complexity, outcome importance
11.	Martial Lemoine v. France	2003	7 years and 8 months	Housing dispute between private individuals	Behaviour of the parties
12.	Borderie v. France	2003	7 years and 9 months	Divorce	Behaviour of the parties

13.	Liadis v. Greece	2004	14 years and 9 months	Lawsuit against a state-owned company seeking indemnification of property damage	Behaviour of the plaintiff
14.	Denis v. France	2004	7 years and 4 months	Dismissal and reinstatement	Behaviour of the plaintiff
15.	Patrianakos v. Greece	2004	14 years and 10 months	Lawsuit against a state-owned company seeking indemnification of property damage	Behaviour of the parties
16.	Rousakou v. Greece	2005	16 years	Indemnification of property damage	Behaviour of the plaintiff
17.	Krasuski v. Poland	2005	6 years and 5 months	Indemnification of property damage	Case complexity, number of court instances
18.	Glykantzi v. Greece	2005	6 years and 9 months	Recovery of outstanding salaries from a state-owned clinic	Behaviour of the plaintiff
19.	Rylski v. Poland	2006	8 years and 3 months	Divorce	Case complexity, behaviour of the plaintiff

20.	Bekir-Ousta and others v. Greece	2007	10 years	Registration of a non-profit organization	Case complexity, behaviour of the plaintiffs
21.	Ancel v. Turkey	2009	8 years and 4 months	Determining a child's place of residence	Behaviour of the plaintiff
22.	Gromzig v. Germany	2010	12 years and 7 months	Recovery of expropriated property	Case complexity, behaviour of the plaintiff
23.	Tyukov v. Russia	2013	6 years and 7 months	Dispute between private individuals over real estate property	Case complexity, behaviour of the plaintiff
24.	Pereira da Silva versus Portugal	2016	12 years and 2 months	Lawsuit by a retired judge seeking recovery of travel costs	Behaviour of the plaintiff
25.	Evropaïkai Daikopai-European Holidays A.E. v. Greece	2016	19 years and 3 months	Legal entity (debtor) bankruptcy	Behaviour of the plaintiff (crediting company)