

Horizontal Facility for Western Balkans and Turkey



Fighting ill-treatment and impunity and enhancing the application of the ECtHR case-law on national level “FILL”

**The right to trial within reasonable time
under Article 6 ECHR**

A practical handbook
prepared by Ivana Roagna
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How to use this handbook

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 [...]

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

One of these guarantees concerns compliance with the reasonable time requirement, intended by the Convention to counter excessively long judicial proceedings. Whilst States must organise their legal systems so as to enable their courts to guarantee the right to obtain a final decision within a reasonable time, it is a fact that the Judiciary plays a key role in preparing a case and the speedy conduct of a trial. This handbook is intended as a simple, yet comprehensive, tool, providing practical guidance to the members of the Judiciary in ensuring that the right to trial within a reasonable time is fully and properly implemented.

The handbook offers an overview of the issues stemming from the obligation to guarantee speedy proceedings, which can also affect the enjoyment of other rights guaranteed by the Convention, as well as of the standards that can be found in the case-law of the European Court of Human Rights (hereinafter ECtHR or “the Court” or “the European Court”). Its aim is to become a quick and solid reference companion, providing practical guidelines addressing the issues linked to the obligations arising from Article 6 § 1 ECHR. It does so by presenting the standards in a user-friendly manner. The handbook’s language is simple yet precise. Footnotes are used only to provide reference to the case-law cited, should the reader be interested in deepening the subjects presented. This can easily be done via the HUDOC portal of the ECtHR, available at <https://hudoc.echr.coe.int/eng> where the selection of the language also allows to review unofficial translations of the case-law in Member States’ languages.

The handbook is composed of VII sections. They explore the issues related to the reasonable time requirement under Article 6 ECHR using the typical structured approach adopted by the Court when examining cases. A list of the judgments rendered by the ECtHR against Montenegro and a bibliography complete this work.

¹ Golder v. UK, 21 February 1975, § 28 and 36.

I. The ECHR in the domestic legal framework

1. The Convention in Montenegro

The ECHR entered into force in respect of Montenegro on 3 March 2004. According to Article 9 of the Constitution, ratified and published international treaties and generally accepted rules of international law are integral part of the Montenegrin legal system. They are superior to national legislation and shall receive immediate application in case of conflict with national legislation. Although Article 9 does not specify the relation between the Constitution and the Convention according to the ECtHR, there is no doubt that in case of divergence amongst them, the Convention should have precedence.

Not only the Convention, but also the final judgments rendered against the country have pre-eminence on the national legal order. This is a consequence of the wording of Article 46 ECHR, a provision dealing with the binding force and execution of judgments. It should be borne in mind, however, that all ECtHR judgments contain general principles: these can find concrete application also in situations and countries other than those against which they are rendered. Under the Convention system, thus, States are demanded to assume a proactive approach and adapt their legislation and practice to those general principles. This means, in other words, that although the judgments of the ECtHR are not *strictu sensu* applicable *erga omnes*, States cannot ignore principles set out in the case-law of the European Court.

The Strasbourg Court began to examine cases against Montenegro in 2009, when it rendered its first judgment. Since the entry into force of the Convention in respect of Montenegro the Court delivered a total 45 judgments. Of these, 32 are related to the right to a fair trial. Of these 13 concern excessive length of proceedings and 5 non-enforcement of judicial decisions.² There have been no Grand Chamber cases yet and no established systemic or endemic issues and, consequently, no Article 46 declarations or pilot judgment procedures. Presently, 173 cases are pending before the Court.³

The **Bijelić case**⁴ is of particular importance because, as the first case decided in respect of Montenegro, it clarifies the temporal scope of Montenegro and Serbia's obligations under the Convention, following the dissolution of the State Union. The Court held that the Convention is to be deemed to be in force in respect of Montenegro continuously from the date of ratification by the State Union in March 2004 to the present time. The case also makes it clear that if the impugned proceedings were solely within the competence of the Montenegrin authorities, only Montenegro can be held responsible and Serbia cannot be called to account. It must be assumed that the reverse will apply in situations where only Serbia is responsible.

The Convention has not yet had a structural and long-lasting impact on the legal system of Montenegro. Nevertheless, it can be said that its impact has been important: certain problems and shortcomings have been identified and, following execution of the judgments of the Court, they are currently being dealt with at domestic level.

² See Annex 'List of Judgment against Montenegro'

³ The given figures reflect the situation on 1st January 2018.

⁴ *Bijelić v. Montenegro and Serbia*, no. 11890/05, 28 April 2009.

II. The scope of reasonable time requirement

2. The interpretation of the ECHR

Just as important as knowing the standards developed by the European Court, understanding the process and the interpretative mechanisms used for establishing them is crucial to their correct implementation at national level, by virtue of the principle of subsidiarity.

Before plunging into the examination of the obligations stemming from Article 6 ECHR it seems opportune to elaborate on the relevant principles of interpretation of the ECHR. In this respect, it ought to be remembered that the Convention is a living instrument, to be interpreted in the light of the present-day conditions. This has led the Court to adopt a dynamic or evolutive approach to the rights and freedoms enshrined in the ECHR, enabling it to abandon outmoded conceptions of how terms were originally understood as evidenced, for example, by the *travaux préparatoires*, and thereby to endorse significant and durable changes in the climate of public opinion in Europe.

Whilst the notion of dynamic or evolutive interpretation does not apply to Article 6 ECHR, the latter has been the object of progressive interpretation. This means that, as illustrated later in this text, the types of cases covered by the guarantees of fair trial, thus including the right to expedite proceedings, has extended over time also to disputes that, at first, were not considered to fall under the scope of application of the provision.

What follows is a short explanation of those main principles of interpretation of the ECHR that are relevant to the issue of reasonable time and functional to the proper understanding of the case-law cited. Other, equally important principles of interpretation of the ECHR, such as the fourth instance principle, the notion of strict limitations, the principles of rule of law, legality, necessity, proportionality, the nature of living instrument of the Convention and its dynamic interpretation, and the structured approach to interpretation, will not be examined as they do not apply to the provisions of Article 6 ECHR dealing with the right to a reasonably long trial.

a. Subsidiarity and the margin of appreciation

The States Parties to the Convention are obliged to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention (Article 1 ECHR), and to provide an effective remedy before a national authority for everyone who claims, arguably, that their rights under the Convention have been violated. Along the same line, Article 35 § 1 ECHR requires the exhaustion of domestic remedies as a precondition, meaning that going to Strasbourg is meant to be very much the last resort.

This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The role of the Strasbourg Court is to authoritatively interpret the Convention and act as a safeguard for individuals whose rights and freedoms are not secured at the national level.

The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention. The width of the margin of appreciation depends on the circumstances of the case and the rights and freedoms engaged. In connection with the length of proceedings this applies, for instance, to the mechanisms put in place in order to ensure that

proceedings are not dragged indefinitely. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation.

b. Principle of effectiveness

This principle, also known as teleological or purposive method of interpretation, reminds us that the Convention is a system for the protection of human rights.

The interpretation of the Convention, therefore, cannot solely be guided the rules laid down in the Vienna Convention on the Law of Treaties. This renders it of crucial importance that the Convention is interpreted in a way that renders the rights it elicits practical and effective, and not theoretical and illusory.⁵ A State cannot, therefore, escape its obligations by protecting a right in a superficial or self-defeating manner.

As a result of the teleological approach the European Court, in its interpretation of Article 6(1), has developed a number of implied rights, including: a) the right of access to a court, b) the right to (timely) implementation of judgments and c) the right to finality of court decisions.

c. Positive obligations

In certain situations, a State is obliged to take positive steps to vindicate Convention rights and ensure their actual enjoyment. The European Court has relied on Article 1 of the Convention, which requires a state to "secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention", as the jurisprudential basis for imposing a number of implied positive obligations on the States party to the Convention.

The main feature of positive obligations is that they require national authorities to take the necessary measures to safeguard a right or, more specifically, to adopt reasonable and suitable measures to protect the rights of the individual.

Whereas earlier case-law distinguished procedural from substantive positive obligations, more recent case-law reflects a new tendency whereby the Court appears systematically to base the positive obligations which it lays down, whether substantive or procedural, on a combination of the standard-setting provisions of the ECHR, including Article 1.

d. Autonomous concepts

When it comes to interpreting the extent or application of the substantive rights and freedoms under the Convention, the Court looks very much to the substance of the right protected and is not to be distracted by how contracting States choose, in their domestic law, to interpret a term or principle. At most, the domestic definition is a mere starting point. Whatever the domestic label, the Court will examine the matter in form, substance and procedure before reaching its own decision.

⁵ Artico v. Italy, 13 May 1980.

According to this principle, thus, the meaning of the terms and notions used by the Convention is determined autonomously by the ECtHR. This applies, for instance, to the notions of civil rights and obligations and criminal charge, used by Article 6 ECHR, as explained further in the text.

3. To which proceedings does the reasonable time requirement apply?

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

Theoretically (and as originally conceived), the right to proceedings within a reasonable time as guaranteed by the ECHR is not a general right applicable to all trials or to everybody involved in judicial proceedings.

As worded in the Convention, the right to a hearing within a reasonable time may be invoked in relation only to a tribunal responsible for determining – in the words of Article 6 – “civil rights and obligations” or “any criminal charge”, each of these expressions being interpreted autonomously by the ECtHR. This also means that the latter is not restricted to the interpretation given to the equivalent concepts in the national legal system involved. However, dynamic interpretation by the Court seems to be gradually changing the position regarding these two concepts.

Today in practice – although the Court has refrained from describing the situation in these terms – Article 6 can clearly apply to any judicial proceedings, apart from certain spheres ruled out by judicial doctrine as being impossible to assimilate to civil or criminal cases.

4. Autonomous concepts under the ECHR

4.1 what is the meaning of civil rights and obligations?

The concept of a civil case is interpreted very broadly. This covers “all proceedings the result of which is decisive for private rights and obligations”⁶ and encompasses the whole of what continental law defines as private law, regardless of the law governing a particular case – civil, commercial, administrative, etc. – or the authority with jurisdiction to settle the dispute – whether civil courts or criminal courts,⁷ administrative courts,⁸ constitutional courts,⁹ professional tribunals,¹⁰ or even administrative bodies.¹¹ Civil cases thus include disputes relating to the status of individuals,¹² family law,¹³ private property,¹⁴ etc.

6 König v. the Federal Republic of Germany, 28 June 1978.

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

8 Ringeisen v. Austria, 16 July 1971.

9 Ruiz-Mateos v. Spain, 23 June 1993..

10 König v. the Federal Republic of Germany, 28 June 1978, Le Compte, Van Leuven and De Meyere v. Belgium, 23 June 1981.

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

12 For example: H. v. the United Kingdom, 8 July 1987; Rasmussen v. Denmark, 28 November 1984.

13 For example, Keegan v. Ireland, 26 May 1994.

Generally speaking, the determining factor in delimiting the scope of Article 6 is whether or not the applicant's action has pecuniary implications.¹⁵ If it does, the proceedings are held to be a civil case. The sphere of proceedings relating to "civil rights and obligations" has thus expanded considerably to take in an assortment of disputes. The pecuniary nature of a dispute, for example, has made it possible to class as a civil case proceedings which, in domestic law, would come under public law. Thus, Article 6 is applicable to disputes between private individuals and a public authority – regardless of whether the latter is acting as a private individual or the depositary of public authority – if the administrative proceedings involved affect exercise of property rights, as with proceedings relating to expropriation,¹⁶ pre-emption,¹⁷ planning permission,¹⁸ a dispute over a development plan regulating building,¹⁹ land consolidation,²⁰ environmental protection,²¹ etc.

Compensation cases also fall under Article 6: damages claims (usually in the civil courts) for a road accident,²² defamation²³ or dismissal²⁴ or by way of civil-party application in the criminal courts,²⁵ or actions for damages against the state (usually through the administrative courts),²⁶ or challenges to withdrawal of a licence to serve alcoholic beverages,²⁷ etc.

The pecuniary aspect is also what makes Article 6 applicable to disputes relating to social security²⁸ and welfare assistance.²⁹ Disciplinary cases pertain to the civil sphere as well when they involve the right to practise a profession, as in disciplinary cases before professional bodies.³⁰ Article 6 is also applicable to disputes in the civil service – whether concerning established staff or staff under contract – if they have to do with recruitment, careers or termination of service and provided that the staff concerned occupy posts which do not entail "direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities".³¹ Similarly, proceedings relating to de facto management and to auditing by public accountants belong to the civil sphere.³²

14 For example, *Sporrong and Lönnroth v. Sweden*, 23 September 1982.

15 For a typical example: *Editions Périoscope v. France*, 26 March 1992.

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

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

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

19 *Sakrby v. Sweden*, 28 June 1990, §§26-30.

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

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

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

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

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

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

26 *H v. France*, 24 Oct. 1989, §47.

27 *Tre Traktor Aktiefbolag v. Sweden*, 7 July 1989, §§43-44.

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

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

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

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

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

4.1.1 Disputes not falling under the notion of civil rights and obligations

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

Tax disputes (non-criminal) fall outside the scope of Article 6 in the civil sphere since they are held to form part of “the hard core of public authority prerogatives”.³³ As the Court pointed out in an admissibility decision “Nor is it sufficient to show that a dispute is “pecuniary” in nature for it to be covered by the notion of “civil rights and obligations”. Apart from fines imposed by way of “criminal penalty”, this will be the case, in particular, where an obligation which is pecuniary in nature derives from tax legislation”.³⁴

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

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

Lastly, also outside the scope of Article 6 (though solely in matters of recruitment, careers and termination of service) are disputes concerning certain categories of public servant: those who wield authority in that they participate in the exercise of powers conferred by public law and perform duties designed to safeguard the general interests of the state within the meaning of the **Pellegrin v. France** judgment.³⁷ Members of the police, army and judiciary are examples. Article 6 was deemed not to apply, for instance, to disciplinary proceedings against a judge that led to her dismissal.³⁸ In **Vilko Eskelinen and others v. Finland**,³⁹ however, the Court clarified that in order for the respondent State to be able to rely on the applicant's status as a civil servant to exclude the application of Article 6, two conditions had to be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant was in a sector or department which participated in the exercise of power conferred by public law was not in itself decisive. In order for the exclusion to be justified, it was not enough for the State to establish that the civil servant in question participated in the exercise of public power or that there existed a “special bond of trust and loyalty” between the civil servant and the State, as employer. The State would also have to show that the subject matter of the dispute in issue was related to the exercise of State power or that it had called into question the special bond.

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

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

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

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

37 Pellegrin v. France, 8 December 1999.

38 Admissibility decision, Pitkevich v. Russia, 8 Feb. 2001.

39 Vilko Eskelinen and others v. Finland, 19.4.2007 [GC]

Thus, there could in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question

4.2 What is the meaning of “criminal charge”?

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

In the construction of the word “criminal”, the European Court has held that a State is free to designate as a criminal offence an act or omission not constituting the normal exercise of one of the rights that is protected by the Convention. However, the plenary Court has ruled that, in the converse situation, it retains jurisdiction to adjudicate on the classification by the State of an act or omission as disciplinary rather than criminal.⁴⁰

The Engel criteria

The plenary Court developed three criteria to determine if proceedings fall within scope of category of ‘criminal’:

- * The domestic classification of the offences;
 - * The nature of the charge;
- and
- * The nature and severity of the penalty.

The second and third criteria laid down in Engel are alternative and not necessarily cumulative. This does not exclude that a cumulative approach may be adopted where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge.

The classification in domestic law is a preliminary criterion which, in some cases, may be enough for it to be concluded that a criminal charge is being determined. The domestic definition, however, is only a partial indication.

The truly relevant criteria for determining whether a case is criminal are, on the one hand, the nature of the offence – that is, the contravention of a general rule whose purpose is both deterrent and punitive – and/or, on the other hand, the seriousness of the penalty incurred.

We will not here go into the details of how the Court determines whether a case is criminal; it is sufficient to say that the European Court bases its reasoning sometimes purely on the domestic classification of the offence,⁴¹ sometimes on the three above-mentioned criteria, sometimes solely on the nature of the offence⁴² or the seriousness of the penalty incurred, and sometimes on a combination

40 Engel v The Netherlands, no. 5370/72, 8 June 1976.

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

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

of several criteria none of which is decisive on its own but which, taken together, are enough make the charge a criminal one.⁴³ This question is therefore largely a matter of case-law analysis.

Deprivation of liberty (or an extension of that deprivation) is obviously a pointer to the criminal nature of an offence,⁴⁴ as are large fines and the punitive or deterrent effect of a penalty.⁴⁵ The nature of the body ordering the penalty is of no consequence; the European Court has extended the criminal sphere to encompass administrative penalties, including disciplinary and tax penalties. Thus disputes arising out of administrative penalties have been held to come within the criminal sphere if, as in Greece, such penalties are imposed for non-compliance with trade rules.⁴⁶ Most of the penalties imposed by the “independent administrative authorities” existing in French law also fall within the scope of Article 6: an example is those imposed by the authority responsible for supervising financial markets.⁴⁷ Tax penalties may bring tax law within the scope of Article 6: because of their size, for example, some tax fines are essentially deterrent and punitive in purpose.⁴⁸

Article 6 also applies to disciplinary regulations, both in the army and in prison. In *Campbell and Fell*, for example, the Court held that a loss of remission (totalling 570 days, plus a further 91 days of various penalties such as withdrawal of certain privileges, exclusion from associated work, stoppage of earnings and cellular confinement) counted as “criminal”.⁴⁹ Similarly, in the field of military discipline, it found in *Engel and others*, with regard to one of the applicants, that the threat of serious punishments involving deprivation of liberty caused the case to fall within the criminal sphere even though the applicant’s punishment had not in fact entailed such deprivation.⁵⁰ The same holds true for customs penalties,⁵¹ economic penalties,⁵² traffic penalties,⁵³ etc.

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

5. Who can claim to be a victim for the purpose of a length complaint? Who has the right to submit the claim for the length of the trial?

The fact that an applicant is acquitted does not deprive him/her of victim status for the purpose of length complaint.

However, in case of availability of domestic remedies, for the loss of victim status before the Court national authorities must have acknowledged in sufficiently clear manner the failure to observe the

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

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

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

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

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

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

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

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

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

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

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

reasonable time requirement. Redress is also required. This might take the form of a reduction of the sentence in an express and measurable manner (in criminal cases),⁵⁴ the payment of compensation of a reasonable or not manifestly inadequate amount,⁵⁵ discontinuation of proceedings together with payment of some legal costs,⁵⁶ or exemption from significant legal costs.⁵⁷

5.1 Can the level of compensation awarded by national courts affect victim status?

Whilst domestic courts examining complaints about the length of proceedings do not have to award compensation on the same basis as applicable in Strasbourg, the applicant will retain victim status if the amount is manifestly unreasonable when compared to the amount that the Court would have awarded for non-pecuniary damage.

Amounts ranging from 14 to 25% of the Court's award have been considered not acceptable.⁵⁸ A lesser amount could be considered adequate if the redress offered also had an accelerating effect on the proceedings.⁵⁹ Further undue delay, beyond 6 months, in the payment of the damages may retain victim status too.⁶⁰

54 *Eckle v. the Federal Republic of Germany*, 15 July 1982.

55 *Cataldo v. Italy*, app. no. 45656/99, 3 June 2004.

56 *Sprootte v. Germany*, app. No. 72438/01, 29 May 2006.

57 *Hansen v. Denmark*, app. No. 60227/00, 15 March 2005.

58 *Cocchiarella v. Italy and Musci v. Italy*, 29 March 2006.

59 *Scordino v. Italy*, 29 March 2006.

60 *Simaldone v. Italy* (no. 1), 29 March 2006.

III. Calculating the duration of proceedings

6. The period to be considered

When reviewing compliance with the reasonable-time requirement the Court always begins by determining the starting point (*dies a quo*) and the end (*dies ad quem*) of the period to be considered. Applicants usually complain of the total length of judicial proceedings, which may have entailed more than one tier of jurisdiction. Sometimes, however, the Court may not consider the entire course of the applicant's proceedings for the simple reason that the applicant is complaining of judicial delay only at a certain stage of the proceedings. In **Portington v. Greece**,⁶¹ for example, the Court noted that "the applicant's complaint concerns the length of the appeal proceedings before the ... Court of Appeal", and therefore held that the period to be taken into account began on "the date on which he lodged an appeal against the judgment of the trial court" and ended "when his appeal was finally heard and judgment delivered by the Court of Appeal". In this case the appeal proceedings lasted almost eight years, and "at the time of the Court's consideration of the case the applicant had lodged an appeal on points of law". A violation was thus established.

7. Application to the rule to civil proceedings

7.1 When do civil proceedings start?

In civil proceedings time normally begins to run from the moment the action was instituted before the competent court.⁶² In practical terms, the period begins when a case is referred to a court through service of process.

This may be, depending on the legal system, the date on which the writ served on the defendant is entered in the court's list of cases, or else the date of any other method of referring a case to a court laid down in domestic law (a joint application, filing in the registry, etc.).

In its **Golder judgment** cited above, however, the Court made the following point: "It is conceivable ... that in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute."⁶³ In the Court's view, conformity with the spirit of the Convention requires that the latter word should not be construed too technically and should be given a substantive rather than a formal meaning.⁶⁴

In some cases, thus, a court order or process other than those mentioned above may mark the start of the period.

61 *Portington v. Greece*, 23 September 1998.

62 *Poiss v. Austria*, § 50; *Bock v. Germany*, § 35

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

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

Examples of such instances include an order to pay,⁶⁵ confiscation of attached property,⁶⁶ a complaint with a claim for damages in criminal proceedings,⁶⁷ a request for interim measures,⁶⁸ an objection to enforcement proceedings instituted by the applicant,⁶⁹ an intervention in pending proceedings,⁷⁰ or even the appearance of the defendants before the court.⁷¹

This means that the Court can take as the starting point the date of a preliminary application to an administrative authority, especially when this is a prerequisite for commencement of proceedings.⁷² The Court had thus the occasion to accept the following as the *dies a quo*: the date of a preliminary claim for compensation sent to an administrative authority;⁷³ the date of a non-contentious claim lodged with the Prime Minister;⁷⁴ the date on which an objection was lodged by the applicant with the administrative authorities that had withdrawn his authorisation to practise medicine and run a clinic;⁷⁵ the date of a request for termination of public care of three children;⁷⁶ the date on which the applicants lodged a challenge to a decision with the authority that had issued it;⁷⁷ the date of the applicants' request for formal confirmation of an association's decision;⁷⁸ the date of an application for restitution of real estate;⁷⁹ the date of the first challenge to a Government department regarding the total amount of compensation following nationalisation of a company.⁸⁰

In the social-security field, in the context of proceedings to settle disputes concerning payment of benefits to which an applicant maintained he was entitled following an industrial accident, the Court took into consideration the dates on which the applicant had lodged his claims with the various review boards of the social security offices.⁸¹ On the other hand the mere pursuit of a friendly settlement with the administrative authority through negotiation is not enough to mark the beginning of "reasonable time".⁸²

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

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

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

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

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

70 *Varipati v. Greece*, 26 Oct. 1999, §22.

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

72 *König v. Germany*, § 98; *X v. France*, § 31; *Kress v. France* [GC], § 90.

73 In particular, the preliminary compensation claim addressed to the relevant minister by haemophiliacs infected by the AIDS virus after blood transfusions: *X v. France*, 31 Mar. 1992, §31; *Vallée v. France*, 26 Apr. 1994, §33; *Karakaya v. France*, 26 Aug. 1994, §29. For proceedings relating to award of a disability pension: *Mocie v. France*, 8 Apr. 2003, §21.

74 *Allenet de Ribemont v. France*, 10 Feb. 1995, §46.

75 *König v. the Federal Republic of Germany*, 28 June 1978, §98.

76 *Olsson v. Sweden* (No. 2), 27 Nov. 1992, §101.

77 *Erkner and Hofauer v. Austria*, 23 Apr. 1987, §64; *Wiesinger v. Austria*, 30 Oct. 1991, §51.

78 In this case the Occupational Association for Health and Mental and Social Well-being: *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §62.

79 *Schmidtov. v. Czech Republic*, 22 July 2003, §§54-55.

80 *Jorge Nina Jorge and others v. Portugal*, 19 Feb. 2004, §§31-32 (the Court held that "it was only at that point that the 'dispute' to be settled arose").

80 *Duclos v. France*, 17 Dec. 1996, §54 (application to the review board of the Health Insurance Office (CPAM) and complaint to the Benefits Payment Board of the Family Allowances Office (CAF)).

81 *Lithgow and others v. the United Kingdom*, 8 July 1986, §199.

Article 6 § 1 may also apply to proceedings which, although not wholly judicial in nature, are nonetheless closely linked to supervision by a judicial body.

In **Siegel v. France**⁸³, for example, concerning a procedure for the partition of an estate which was conducted on a non-contentious basis before two notaries, but was ordered and approved by a court, the duration of the procedure before the notaries was therefore taken into account in calculating the reasonable time.

8. Application to the rule to criminal proceedings

8.1 When do criminal proceedings start?

The period to be taken into consideration begins on the day on which a person is ‘*charged*’.

As employed in Article 6, the concept of a charge – like that of a civil dispute – has an autonomous and substantive rather than a formal meaning.⁸⁴

According to established case-law, the term charge may in general be defined “as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, 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”.⁸⁵ This means from the moment that the situation of the accused is “substantially affected”.⁸⁶

This means that the “reasonable time” may start to run prior to the case coming before the trial court,⁸⁷ for instance from the time of arrest.⁸⁸ This definition is more flexible and comprehensive than technical.⁸⁹

The following have been accepted as starting points, depending on the circumstances of the particular case: the date on which a preliminary investigation was opened; the date on which an arrest warrant⁹⁰

83 Siegel v. France, §§ 33-38.

84 Deweer v. Belgium, 27 Feb. 1980, §44.

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

86 Tychko v. Russia No. 56097/07, 11 June 2015, para 63.

87 Deweer v. Belgium § 42.

88 Wemhoff v. Germany, § 19

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

90 For example: Manzoni, Girolami, Ferraro, Triggiani v. Italy, 19 Feb. 1991, §16, §13, §15 and §15 respectively;

or search warrant⁹¹ was issued; the date of the applicant's actual arrest;⁹² the date on which he was charged (or, in other words, indicted)⁹³ or on which his parliamentary immunity was lifted;⁹⁴ the date on which judicial notification was sent or received⁹⁵ or notice of criminal proceedings was received;⁹⁶ the date on which the applicant was officially notified of the criminal proceedings against him or her;⁹⁷ the latest date on which he appointed defence counsel;⁹⁸ the date of a decision ordering the confiscation of items seized⁹⁹ or confirming the sequestration of a flat,¹⁰⁰ etc.

The Court exercises unfettered discretion in determining the point at which criminal proceedings first substantially affect the suspect's situation. In **Ipsilanti v. Greece**,¹⁰¹ the Court took as the *dies a quo* the day on which the Greek applicant was arrested at Athens airport in 1995 on her return from a lengthy stay in the United Kingdom, during which time a complaint had been lodged against her (in 1986) and an investigation carried out which had concluded with a referral to a trial court in 1990. The Court dismissed this first stage, holding that "during her stay in the United Kingdom, the applicant was not affected by the proceedings being conducted in Greece".¹⁰²

Article 6§1 also applies in application to pre-trial proceedings, as shown by the fact that the Court sometimes finds that "reasonable time" has been exceeded in cases ending in a discharge¹⁰³ or still under investigation.¹⁰⁴ Duration of investigations, however, will normally be looked in cases of alleged violations of positive procedural obligations stemming from, for example, Articles 2 and 3 ECHR.

9. When do criminal and civil proceedings end?

Regarding the end of the period to be taken into account, it is generally unnecessary to distinguish between civil and criminal proceedings.

Boddaert v. Belgium, 12 Oct. 1992, §35.

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

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

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

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

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

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

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

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

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

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

101 *Ipsilanti v. Greece*, 6 March 2003.

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

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

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

In both spheres the period considered by the Court ends, in principle, with the last decision delivered by the domestic legal system that has become final and been executed.

But what do we mean by final judgments or decisions? The reply will inevitably hinge on the various national legal systems. This may even, in certain circumstances, include a decision by the European Court if the case is still pending before domestic courts.

As the Court has specified, “the period whose reasonableness falls to be reviewed takes in the entirety of the proceedings in issue, including any appeals”.¹⁰⁵ Consequently the final domestic decision marking the end of the period may be a judgment of a court of first instance (ordinary¹⁰⁶ or administrative¹⁰⁷). It can also be a decision by an appellate court such as a court of appeal (ordinary¹⁰⁸ or administrative¹⁰⁹). The appellate authority may also be a Supreme Court. In **Kudła v. Poland**¹¹⁰ the European Court summed up its position on appellate authorities as follows: “The Court reiterates that Article 6 § 1 does not compel the States to set up courts of appeal or of cassation. Nevertheless, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before them the fundamental guarantees contained in Article 6 ... While the manner in which Article 6 is to be applied in relation to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that appellate or cassation proceedings come within the scope of Article 6 ... Accordingly, the length of such proceedings should be taken into account in order to establish whether the overall length of the proceedings was reasonable”.

Lastly, the final decision may even take the form of a decision by a Constitutional Court, for “according to the Court’s well-established case-law, proceedings in a Constitutional Court are to be taken into account for calculating the relevant period where the result of such proceedings is capable of affecting the outcome of the dispute before the ordinary courts”.¹¹¹

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

106 For example: *Humen v. Poland*, 15 Oct. 1999, §58; *Duclos v. France*, 17 Dec. 1996, §53 (for an example of applicability, in France, to social-security appeal tribunals); or *Ringeisen v. Austria*, 16 July 1971, §110; *Foti and others v. Italy*, 10 Dec. 1982, §54; *Milasi v. Italy*, 25 June 1987, §14; *Pugliese (No. 1)*, *Girolami, Ferraro, Adiletta and others v. Italy*, 19 Feb. 1991, §14, §§9 (last sentence) and 13, §§10 and 15, and §15 respectively; *Pugliese v. Italy (No. 2)* and *Caleffi v. Italy*, 24 May 1991, §16 and §14 respectively; *Borgese v. Italy*, *Monaco v. Italy*, *Lestini v. Italy*, 26 Feb. 1992, §15, §14 and §15 respectively; *G., Arena, Cormio, Golino, Taiuti, Caff. Roversi S.p.a., Barbagallo, Cifola v. Italy*, 27 Feb. 1992, §14, §15, §13, §14, §14, §15, §14 and §13 respectively; *Dobbertin v. France*, 25 Feb. 1993, §16; *Trevisan v. Italy* and *Billie v. Italy*, 26 Feb. 1993, §15 and §16 respectively; *Scopelliti v. Italy*, 23 Nov. 1993, §18; *Silva Pontes v. Portugal*, 23 Mar. 1994, §§16-19; *Yağcı and Sargin v. Turkey*, 8 June 1995, §58.

107 For example: *Scuderi v. Italy*, 24 Aug. 1993, §14; *Vallée v. France*, 26 Apr. 1994, §33; *Karakaya v. France*, 26 Aug. 1994, §29.

108 For example: *Eckle v. the Federal Republic of Germany*, 15 July 1982, §77; *Corigliano v. Italy*, 10 Dec. 1982, §36; *Unión Alimentaria Sanders S.A. v. Spain*, 7 July 1989, §30; *Brigandi, Santilli, Frau, Ficara, Triggiani v. Italy*, 19 Feb. 1991, §28, §18, §14, §15 and §15 respectively; *Diana v. Italy*, *Ridi v. Italy*, *Idrocalce S.R.L. v. Italy*, 27 Feb. 1992, §14, §14 and §15 respectively; *Ruiz-Mateos v. Spain*, 23 June 1993, §§24 and 33; *Darnell v. the United Kingdom*, 26 Oct. 1993, §21; *Raimondo v. Italy*, 22 Feb. 1994, §42; *Vendittelli v. Italy*, 18 July 1994, §21.

109 *Olsson v. Sweden (No. 2)*, 27 Nov. 1992, §101; *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§17, 27 and 62.

110 *Kudła v. Poland*, 26 October 2000 § 122.

111 *Ruiz-Mateos v. Spain*, 23 June 1993, §35. See also: *Deumeland v. the Federal Republic of Germany*, 29 May 1986, §77; *Poiss v. Austria (merits)*, 23 Apr. 1987, §52; *Wiesinger v. Austria*, 30 Oct. 1991, §52; as well as *Bock v.*

The Court has had occasion to accept the following as the end of the period to be taken into consideration:

- a) the date on which a decision was handed down: a discharge (at the earliest),¹¹² the judgment of a court of first instance in a criminal case,¹¹³ a decision by an administrative appeals tribunal,¹¹⁴ or a judgment by a supreme court's civil,¹¹⁵ criminal¹¹⁶ or administrative divisions;¹¹⁷
- b) the date on which the applicant was notified of a judgment at first instance,¹¹⁸ an appeal-court judgment¹¹⁹ or a judgment by a supreme court;¹²⁰
- c) the date on which the applicant learnt that his appeal to the Court of Cassation had been dismissed;¹²¹
- d) the date on which the judgment was filed with the registry of the court delivering it;¹²²
- e) 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,¹²³ etc.).

As a rule of thumb, the judgments marking the end of the period in this way are therefore ones that settle civil disputes or rule on the merits of criminal charges.

the Federal Republic of Germany, 29 Mar. 1989, §37; Sü.mann v. Germany, 16 Sept. 1996, §41; Pammel v. Germany and Probstmeier v. Germany, 1 July 1997, §§53-58. This issue apparently cannot arise with regard to the French Constitutional Council under the existing requirements for referring cases to that body.

112 Maj v. Italy, 19 Feb. 1991, §13.

113 Milasi v. Italy, 25 June 1987, §14.

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

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

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

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

118 Karakaya v. France, 26 Aug. 1994, §29.

119 Union Alimentaria Sanders S.A. v. Spain, 7 July 1989, §30.

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

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

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

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

However, the period can also end with any other procedural step indicating that a judgment is final. This function may be performed by decisions:

- a) that refuse a party leave to appeal
- b) that set off against a previous sentence the period spent in detention on remand¹²⁴ or subsequently combine sentences deriving from separate prosecutions;¹²⁵
- c) that terminate proceedings without settling the merits of a case (decisions that there is no case to answer,¹²⁶ striking a case off the list after friendly settlement,¹²⁷ discontinuance of proceedings because the charge against the defendant is not serious¹²⁸ or because the offence has been time-barred¹²⁹ or amnestied¹³⁰).

The Court has also taken into consideration, more unusually, the date of a specific act – payment by the debtor of the damages awarded to the creditor by a judgment against which no appeal had been lodged,¹³¹ the departure of a tenant, after a further visit by the bailiff, from a flat from which the landlord had for many years been attempting in vain to evict him¹³² etc. Equally it has disregarded certain court decisions relating to appeals that were not decisive, in its opinion, for the outcome of the dispute,¹³³ such as an application to re-open proceedings¹³⁴ or for an interpretation of a judgment.¹³⁵

10. Is execution of the final judgment relevant in calculating the duration of proceedings?

Generally speaking, the end of the period is marked by actual execution of the last final domestic decision. More specifically, two situations can arise:

- a. actual execution roughly coincides with the date on which the last domestic decision became final, or
- b. actual execution occurs after the date of the last final domestic decision.

10.1 Actual execution roughly coincides with the date on which the last domestic decision became final

The period taken into account usually ends with the occurrence of a final judgment or decision. This is what happens in the majority of the cases handled by the Court. The occurrence of the last final domestic decision that irrevocably settles the dispute then largely coincides with its actual execution. The *dies ad quem* taken by the Court is therefore the date of the final domestic decision, whatever its form and whatever the level in the judicial pyramid at which it occurs.¹³⁶

124 Ringeisen v. Austria, 16 July 1971, §110.

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

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

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

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

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

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

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

132 Scollo v. Italy, 28 Sept. 1995, §44.

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

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

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

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

10.2 Actual execution occurs after the date of the last final domestic decision

The Court has held that the period to be taken into consideration includes – in some cases – the stage of enforcing the decision on the merits.

“Execution of a judgment given by any court must ... be regarded as an integral part of the ‘trial’ for the purposes of Article 6.”¹³⁷ In the Court’s opinion, “the end of proceedings whose length is being examined under Article 6 § 1 is the moment when the right asserted actually became effective”.¹³⁸

In its **Robins v. the United Kingdom** judgment the Court stated: “Article 6 § 1 of the Convention requires that all stages of legal proceedings for the ‘determination of ... civil rights and obligations’, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time.”¹³⁹ In this case the length of legal-costs proceedings subsequent to a judgment on the merits was considered unreasonable. That period was included in the total period taken into account, which here ended on the date of the appeal court’s dismissal of the appeal against the judgment in the costs proceedings.¹⁴⁰

Excessive length in enforcement of court decisions has been at the heart of a number of judgments rendered by the European Court against Montenegro, for instance **Boucke**¹⁴¹, **Velimirović**¹⁴², **Milić v. Montenegro and Serbia**¹⁴³, **Vukelić**¹⁴⁴ and **Mijanović**¹⁴⁵ a summary of which can be found in the table in Annex I. These cases, however, referred to situations that have arisen prior to the entry into force of the new Enforcement Act in July 2011. The new law entrusted the implementation of court decisions to public enforcement officers. Since then, expeditiousness of enforcement proceedings has no longer been the object of complaints.

¹³⁷ *Hornsby v. Greece*, 19 Mar. 1997, §40.

¹³⁸ *Jarreau v. France*, 8 Apr. 2003, §27.

¹³⁹ *Robins v. the United Kingdom*, 23 Sept. 1997, §28; see also, among other examples: *Silva Pontes v. Portugal*, 23 Mar. 1994, §§33-36; *Di Pede v. Italy*, 26 Sept. 1996, §24; *Zappia v. Italy*, 26 Sept. 1996, §§20-22; *Bouilly v. France*, 7 Dec. 1997, §17; *Pinto de Oliveira v. Portugal*, 8 Mar. 2002, §26; *Mocie v. France*, 8 Apr. 2003, §21.

¹⁴⁰ *Robins v. the United Kingdom*, 23 Sept. 1997, §30.

¹⁴¹ *Bouke v. Montenegro*, 21 Feb. 2012.

¹⁴² *Velimirović v. Montenegro*, 2 Oct. 2012.

¹⁴³ *Milić v. Montenegro and Serbia*, 11 Dec. 2012.

¹⁴⁴ *Vukelić v. Montenegro*, 4 June 2013,

¹⁴⁵ *Mijanović v. Montenegro*, 17 Sept. 2013.

IV. Assessing the reasonableness of the duration of proceedings: applicable criteria

11. Introduction

Whenever the duration of the proceedings appear, at first sight excessive or inordinate, the respondent state must “give satisfactory explanations”, otherwise it will be found in breach of the reasonable-time requirement.¹⁴⁶ In such cases, there is something of a presumption against the state that the proceedings are unreasonably long, requiring that it show that it is not responsible for the time lapse.

The Court has always refused to provide a sort of reference table explaining in each case how many years had to be regarded as ‘natural’ for each stage of proceedings and how many might be acceptable.

The Court ruled that the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the a number of criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute.¹⁴⁷

As it appears, thus, the assessment is highly relative and specific to each case, with the only exception when the case has occurred in a context of repeated breaches of the reasonable-time requirement by the defendant state, reflecting organisational failure of its judicial system. For many years, in a number of European countries (for instance Italy, Poland, Greece), certain types of litigation have given rise to breaches of the right to a trial within a reasonable time so frequent, so recurrent and so tolerated by the State – as evidenced by its failure to offer a genuinely appropriate remedy – that excessively long proceedings have become almost institutionalised, an unwritten rule. In such cases, the Court confines itself to very limited scrutiny unrelated to the circumstances of the case. Indeed, when such a “practice” forms the background to a case the Court considers itself justified in applying a much more summary standard of scrutiny than usual and, in determining a breach of Article 6 § 1, the Court does not examine the specific circumstances of the case: the existence of previous judgments against the state in the same sphere and an established absence of appropriate general measures to remedy the situation are adequate evidence of non-compliance with the Convention, the case under consideration merely being a further illustration of the administrative practice in question.

12. Criteria concerning the nature of the case

12.1 Complexity of the case

The main criterion with regard to the nature of the case is its degree of complexity.¹⁴⁸

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

¹⁴⁷ Frydlender v. France [GC], 27 June 2000, §43.

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

The complexity may have to do with the facts to be established, the legal issues to be decided or the proceedings.

a. Complexity of the facts

The complexity of the facts may arise out of the following: the number and particular nature of the charges;¹⁴⁹ confusion and concealment of punishable acts with which the defendant is charged;¹⁵⁰ the highly sensitive nature of the offences charged, relating to national security;¹⁵¹ the number of defendants and witnesses;¹⁵² the need for expert opinions;¹⁵³ difficulties inherent in a land-consolidation operation affecting dozens of people and covering hundreds of hectares,¹⁵⁴ apportionment of indivisible property among several heirs¹⁵⁵ or examining a request for termination of public care of children;¹⁵⁶ difficult questions of evidence;¹⁵⁷ etc.

b. Complexity of the legal issues

This may stem, for example, from application of a recent and unclear statute;¹⁵⁸ respect for the principle of equality of arms;¹⁵⁹ questions of jurisdiction¹⁶⁰, constitutionality¹⁶¹ or town-planning law;¹⁶² or interpretation of an international treaty.¹⁶³

c. Complexity of the proceedings

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

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

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

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

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

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

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

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

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

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

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

¹⁶⁰ *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §16; *De Moor v. Belgium*, 23 June 1994, §§16, 19-20, 22, 27 and 67; *Allenet de Ribemont v. France*, 10 Feb. 1995, §§15-20 and 48-50.

¹⁶¹ *Lorenzi, Bernardini and Gritti v. Italy*, 27 Feb. 1992, §16; *De Moor v. Belgium*, 23 June 1994, §§16, 19-20, 22, 27 and 67; *Allenet de Ribemont v. France*, 10 Feb. 1995, §§15-20 and 48-50.

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

¹⁶² *Katte Klitsche de la Grange v. Italy*, 27 Oct. 1994, §55; see also *Schouten and Meldrum v. the Netherlands*, 9 Dec. 1994, §§65-66.

¹⁶³ *Beaumartin v. France*, 24 Jan. 1994, §33.

Procedural complexity may be due to the following, for example: the number of parties;¹⁶⁴ a large number of interlocutory applications filed by the parties;¹⁶⁵ a large number of defendants and witnesses;¹⁶⁶ sundry problems (such as collecting and studying a considerable amount of evidence,¹⁶⁷ tracing and hearing witnesses having changed name or address,¹⁶⁸ obtaining execution of letters rogatory at home¹⁶⁹ or abroad,¹⁷⁰ corroborating certain allegations or processing certain claims,¹⁷¹ mastering an enormous case-file¹⁷² or obtaining the file of foreign proceedings,¹⁷³ coordinating two actions concerning the same person but pending before two separate chambers of the same court¹⁷⁴ or untangling several sets of parallel proceedings¹⁷⁵); or the need to refer a case to the plenary Court of Cassation or transfer a case from one indictment division to another on grounds of public safety.¹⁷⁶

The Court sometimes confines itself to acknowledging that a case is of some complexity and referring to the summary of the facts.¹⁷⁷ It also frequently has occasion to note that a case is not complex or does not involve great or particular complexity.¹⁷⁸

If the problems are a result of the organisational complexity of national procedure and therefore objectively attributable to the state, they may count against the respondent Government (especially if the complexity increases the risk of infringement of other rights guaranteed by the Convention).¹⁷⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

178 *Corigliano v. Italy*, 10 Dec. 1982, §§57-58; *Terranova v. Italy*, 4 Dec. 1995, §23. *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 Dec. 1994, §55; *Acquaviva v. France*, 21 Nov. 1995, §§29 and 57.

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

In its **Guillemin v. France** judgment¹⁸⁰, for example, the Court found against France on account of the unreasonable length of expropriation proceedings (totalling over fourteen years and mainly due to “organisational difficulties”¹⁸¹ connected with the proceedings). The Court pointed out that “expropriation proceedings are relatively complex, in particular in that they come under the jurisdiction of both sets of courts – the administrative courts in respect of the lawfulness of expropriation measures and the ordinary courts in respect of the transfer of the property in question, the assessing of compensation and, in general, interferences with private property. Furthermore, as in the present case, an administrative court may have to rule on the lawfulness of the initial stage of the proceedings at the same time as an ordinary court has to deal with the consequences of an expropriation order whose lawfulness has been challenged in the other court. Such a situation may give rise to conflicting decisions, and this is a risk which prompt consideration of claims might help to diminish. The respondent Government could not therefore rely on the inherent complexity of expropriation proceedings to escape responsibility for their length.

12.2 What is at stake in the proceedings for the applicant?

The second criterion relating to the nature of the case is what is at stake in the proceedings for the applicant.¹⁸² This may be non-pecuniary as well as pecuniary.¹⁸³ Regarding the speed required of the authorities the Court draws a distinction between cases demanding “special or particular diligence” and those necessitating “exceptional diligence”.¹⁸⁴ The requirement of special diligence also applies to the execution phase. The Court stated that if the judgment to be enforced required the public authorities to take specific action of significant importance for the applicant (for example, because the applicant’s living conditions would be affected), a delay in enforcement of more than six months would run counter to the Convention requirement of special diligence.¹⁸⁵

12.2.1 Cases necessitating special or particular diligence

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

a. Civil status and capacity (especially affecting enjoyment of the right to respect for family life)¹⁸⁶

In **Bock v. the Federal Republic of Germany** the Court noted that for some nine years the applicant had suffered by reason of the doubts – subsequently proved unfounded – which had been cast on his mental health and thus his capacity to conduct legal proceedings and had constituted a serious encroachment on human dignity. Regard being had, it said, to the particular diligence required in cases concerning civil status and capacity, there had been a breach of Article 6 § 1 of the Convention.

180 *Guillemin v. France*, 21 February 2001.

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

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

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

184 *Sussmann v. Germany*, 16 Sept. 1996, §61.

183 *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §§59, 60 and 63; *Bock v. the Federal Republic of Germany*, 29 Mar. 1989, §42; *Santilli v. Italy*, 19 Feb. 1991, §20; *Mastrantonio, Taiuti, Caffé Roversi S.p.a., Cifola, Tumminelli v. Italy*, 27 Feb. 1992, §17, §17, §18, §16 and §17 respectively; *Scopelliti v. Italy*, 23 Nov. 1993, §24; *Yağcı and Sargin v. Turkey*, 8 June 1995, §69; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §28.

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

Regarding civil status the Court has further stated – for example, in its **Laino v. Italy**¹⁸⁷ judgment concerning custody proceedings – that what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life. In the Laino case it said: “As to the conduct of the authorities dealing with the case, the Court considers that, having regard to what was at stake for the applicant (judicial separation and determination of the arrangements for custody of the children and access rights), the domestic courts failed to act with the required by Article 6 § 1 of the Convention in such cases”.

The Court also demands that particular diligence is required in cases concerning civil status and capacity. In **Mikulić v. Croatia**¹⁸⁸ the Court was asked to assess the adequacy of the measures taken by national jurisdictions with a view to establish paternity. In view of what was at stake for the applicant in the present case, that is the applicant’s right to have her paternity established or refuted and thus to have her uncertainty as to the identity of her natural father eliminated, the Court considered that a delay of about five years (four years and two months of which fell within the Court’s jurisdiction *ratione temporis*) could not be considered acceptable. While the defendant had failed to appear for several hearings to attend all six of the appointments for a DNA test, the Court considers that it is for the State to organise its legal system and to act with the due diligences in ensuring the progress of the proceedings, so as to organise their legal systems in such a way so as to guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time..

Similar considerations apply to divorce proceedings, which, if excessively long, unquestionably affect enjoyment of the right to respect for family life, as illustrated by the **Berlin v. Luxembourg** judgment¹⁸⁹ concerning divorce proceedings lasting seventeen years.

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

Concerning road accident victims¹⁹⁰ and their right to damages within a reasonable time the Court has stated – in **Martins Moreira v. Portugal**¹⁹¹ – that they are among “those whose need is greatest precisely because of the particular gravity of their injuries”.

Concerning victims of criminal violence, “the Court considers that special diligence [is] required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he ha[s] been subjected to violence by police officers”. In that case the Court found against France because “the proceedings lasted more than seven years merely in respect of the investigation of the applicant’s criminal complaint and civil-party application”.¹⁹² Special diligence is similarly required in proceedings concerning compensation for injuries sustained as a result of police violence.¹⁹³

187 Laino v. Italy, 18 February 1999, §§48 and 49.

188 Mikulic v. Croatia, 7 Feb. 2002, §§ 44-46, Ebru and Tayfun Engin Colak v. Turkey, 30 May 2006, §75, Bock v. Germany, 29 March 1989, § 49.

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

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

191 Martins Moreira v. Portugal, 26 Oct. 1988, §59.

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

193 Krastanov v. Bulgaria, 30 Sept. 2004, §70.

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

Particular diligence is called for in employment disputes, such as disputes concerning the professional livelihood of a doctor who is contesting the withdrawal of permission to practise his profession and run a clinic.¹⁹⁴ The same applies when the applicant's professional activity is under threat because of a vital sum of money. This was the case in **Doustaly v. France**, an application concerning the proceedings brought by an architect to determine the balance of a lump sum payable under a public works contract. The sum represented a significant proportion of his professional activity: "the Court considers that special diligence was required of the courts dealing with the case, regard being had to the fact that the amount the applicant claimed was of vital significance to him and was connected with his professional activity".¹⁹⁵ Broadly speaking, this will be the case when the Court "notes that continuation of the applicant's professional activity depended in large measure on the proceedings ... and infers that, as in employment disputes, it called for expeditious decision in view of what was at stake for the person concerned".¹⁹⁶

Employment disputes, which include pensions disputes¹⁹⁷ – particularly those concerning disability pensions – are thus another factor necessitating speedier proceedings.¹⁹⁸ In its **Frydlender v. France**¹⁹⁹ the Court reiterated that an employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence.²⁰⁰

It should therefore be borne in mind that "employment disputes by their nature call generally for expeditious decision".²⁰¹ In **Zawadzki v. Poland** the Court reaffirmed its view that "proceedings relating to social issues [were] especially important for the applicant"²⁰² and therefore required greater promptness. Specific examples include proceedings to secure a compensatory pension following an industrial accident. Social-security proceedings also come within the category of proceedings relating to social issues.²⁰³ Similarly in **Novović v. Montenegro**, the Court recalled that reinstatement proceedings are of "crucial importance" to plaintiffs and, as such, have to be solved in an expeditious manner. This is

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

195 Doustaly v. France, 23 Apr. 1998, §48.

196 Garcia v. France, 26 Sept. 2000, §14.

197 Nibbio v. Italy, 26 Feb. 1992, §18.

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

199 Frydlender v. France, 27 June 2000.

200 Frydlender v. France, 27 June 2000, §45.

201 Caleffi v. Italy, 24 May 1991, §17; see also: Vocaturo v. Italy, 24 May 1991 §17; Nicolas v. France, 27 June 2006, §18; T.th v. Hungary, 30 Mar. 2004, §62; Sanglier v. France, 27 May 2003, §33.

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

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

even more so when domestic law provides that such cases must be resolved with particular urgency. The impugned procedures had lasted 17 years and 6 months, 5 years and 3 months of which fell within the jurisdiction of the ECtHR *ratione temporis*. Also having in mind that the nature of the applicant's action was not particularly complex and there was nothing in the case file which would indicate that the applicant had contributed to the length of the impugned proceedings, the Court concluded that the overall length of the proceedings failed to satisfy the reasonable time requirement.²⁰⁴

d. Defendants held in custody

As regards criminal charges the Court has held, since **Abdoella v. the Netherland**²⁰⁵ that "persons held in detention pending trial [such as Mr Abdoella] are entitled to 'special diligence' on the part of the competent authorities". Similarly, in its **Kalashnikov v. Russia** judgment the Court observed: "... throughout the proceedings the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously."²⁰⁶ Conversely, the Court has sometimes held that a certain delay was reasonable if the accused was not being held in custody²⁰⁷ or had been released.²⁰⁸

e. Other spheres

The following more miscellaneous cases may also be mentioned: disputes relating to return of a passport;²⁰⁹ proceedings concerning the installation of a telephone line in the apartment of an elderly disabled person;²¹⁰ land consolidation proceedings relating to the provisional transfer of land from one owner to another;²¹¹ a claim for return of a property to its vendors as a result of misrepresentation to the detriment of the buyers²¹² or to purchasers whom the tax authorities had dispossessed by invoking a right of pre-emption;²¹³ a dispute as to whether an injunction to pay a company a very large sum of money was well-founded;²¹⁴ and a dispute in which what was at stake socially and economically for the nation was more important than what was at stake for the individuals concerned (in the **Ruiz-Mateos case**, for example, in which former share-holders of the parent company of a large Spanish industrial and commercial group nationalised by decree in 1983 complained of the length of time taken to examine the action for restitution of their assets that they had brought in the Spanish courts, the judgment of 29 June 1993 emphasised that what was at stake in the case, not only for the applicants but also for Spanish society in general, was considerable in view of the huge social and economic

²⁰⁴ Novović v. Montenegro, 23 Oct. 2012, §§ 51-54.

²⁰⁵ Abdoella v. the Netherlands, 25 Nov. 1992, §24.

²⁰⁶ Kalashnikov v. Russia, 15 July 2002, §132, as well as, among many other examples: *Philis v. Greece* (No. 2), 27 June 1997, §35; *Portington v. Greece*, 23 Sept. 1998, §21; *Sari v. Turkey and Denmark*, 8 Nov. 2001, §72; *Djaid v. France*, 29 Sept. 1999, §33; *Debboub alias Hussein Ali v. France*, 9 Nov. 1999, §46; *Jablonski v. Poland*, 21 Dec. 2000, §102. However, it added, in its *Lavents v. Latvia* judgment of 28 Nov. 2002, that "the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the judicial authorities to carry out their tasks with proper care" (§102).

²⁰⁷ *Corigliano v. Italy*, 10 Dec. 1982, §49.

²⁰⁸ *Boddaert v. Belgium*, 12 Oct. 1992, §38; and *Gast and Copp v. Germany*, 25 Feb. 2000, §80.

²⁰⁹ *Napijalo v. Croatia*, 13 Nov. 2003, §61.

²¹⁰ *Dewicka v. Poland*, 4 Apr. 2000, §55.

²¹¹ *Erkner and Hofauer v. Austria* (merits) and *Poiss v. Austria* (merits), 23 Apr. 1987, §§69-70, and §§58 and 60 respectively; *Wiesinger v. Austria*, 30 Oct. 1991, §61.

²¹² *Lechner and Hess v. Austria*, 23 Apr. 1987, §§11-17, 57 and 59.

²¹³ *Hentrich v. France* (merits), 22 Sept. 1994, §§10-18 and 61.

²¹⁴ *De Micheli v. Italy*, 26 Feb. 1993, §§11 et 21.

implications. The large number of persons concerned - employees, shareholders and third parties - and the amount of capital involved militated in favour of a prompt resolution of the dispute).²¹⁵

12.2.2 Cases necessitating exceptional diligence

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

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

Proceedings brought by parents with regard to the placing and keeping of their children in public care or with regard to their own custody and access rights call for exceptional speed. In the Court's view such proceedings are decisive for future relations between parents and children, they have "a particular quality of irreversibility" if "the 'statutory guillotine' of adoption" by third parties is involved, and "any ... delay will result in the de facto determination of the issue submitted to the court before it has held its hearing".²¹⁶ In **Paulsen-Medalen and Svensson v. Sweden** the Court summed up its position as follows: "In cases concerning restrictions on access between a parent and a child taken into public care, the nature of the interests at stake for the applicant and the serious and irreversible consequences which the taking into care may have on his or her enjoyment of the right to respect for family life require the authorities to act with exceptional diligence in ensuring progress of the proceedings."²¹⁷

The same applies to proceedings brought by adoptive parents to enforce adoption orders. The Court holds that "the enforcement of decisions of this kind requires urgent handling as the passage of time can have irremediable consequences for relations between children and parents who do not live with them".²¹⁸

b. Persons with reduced life expectancy suffering from incurable diseases

"Exceptional diligence" is also required of national authorities with respect to compensation for haemophiliacs infected with the AIDS virus after blood transfusions: "having regard to the incurable disease from which he was suffering and his reduced life expectancy, [...] there [is] a risk that any delay might render the question to be resolved by the court devoid of purpose".²¹⁹ In such cases "the Court holds that, in the light of the applicant's state of health, what is at stake in the dispute [is] extremely important".²²⁰

Many judgments have specifically established a link between this criterion – what is at stake in the proceedings for the applicant – and the conduct of the relevant authorities, which have a basic duty to

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

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

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

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

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

220 W.Z. v. Poland, 24 Oct. 2002, §42.

expedite proceedings in proportion to the seriousness of what is at stake.²²¹ This brings us to the second category of criteria.

12.3 Criteria concerning the conduct of the parties to the proceedings

According to established case-law and the now classic wording of the Buchholz judgment, “only delays attributable to the State may justify [the Court’s] finding ... a failure to comply with the requirements of ‘reasonable time’”.²²²

Consequently, before scrutinising the conduct of the relevant national authorities, the Court will always examine that of the parties. Numerous decisions have established this criterion as a general rule in both criminal²²³ and civil proceedings but many more have applied it with reference to specific cases.

12.3.1 Conduct of the parties

In civil cases the parties to the proceedings are the plaintiff, obviously (in the great majority of cases heard by the Court this is the applicant²²⁴) but also the defendant²²⁵ and other parties, whether private²²⁶ or public.²²⁷

In criminal cases the parties are the accused, the co-defendants if any²²⁸ and the prosecuting authority (although the latter, like the public parties to civil proceedings, should really be included with the

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

222 *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §49 (last sentence); *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §24; *H. v. the United Kingdom* (merits), 8 July 1987, §71; *Martins Moreira v. Portugal*, 26 Oct. 1988, §50; *H. v. France*, 24 Oct. 1989, §55; *Vernillo v. France*,

20 Feb. 1991, §34; *Wiesinger v. Austria*, 30 Oct. 1991, §54; *Monnet v. France*, 27 Oct. 1993, §30; *Vendittelli v. Italy*, 18 July 1994, §25; *Acquaviva v. France*, 21 Nov. 1995, §61; *Ciricosta and Viola v. Italy*, 4 Dec. 1995, §28.

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

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

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

226 *H. v. the United Kingdom* (merits), 8 July 1987, §78 (“prospective” adopters).

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

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

relevant national authorities; the same applies to some administrative departments involved in proceedings without being directly implicated).²²⁹

The Court regularly points out that the applicants' behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account in determining whether or not the reasonable time referred to in Article 6 § 1 has been exceeded.²³⁰

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

There are many examples of the various ways in which parties may contribute to the length of proceedings: a) initial referral to a court which lacks jurisdiction;²³¹ b) requests for adjournment, further preliminary inquiries or extension of time-limits;²³² c) repeated changes of lawyer, or a very large number of counsel present at hearings;²³³ d) submission of evidence;²³⁴ e) fresh allegations of fact which have to be checked and which prove to be incorrect;²³⁵ f) failure to appear at a hearing²³⁶ despite, in a criminal case, an arrest warrant issued by an indictments division;²³⁷ g) a defendant who absconds;²³⁸ h) a released co-defendant who commits further offences necessitating prosecution and resulting in the shelving of proceedings pending against the applicant;²³⁹ i) delay: in filing a reply;²⁴⁰ in taking proceedings against the defendants after a finding of lack of jurisdiction and then in taking out a new writ against one of them;²⁴¹ in identifying the witnesses to be examined;²⁴² in replying to the other

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

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

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

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

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

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

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

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

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

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

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

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

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

party's pleadings²⁴³ or in a party's filing of their own submissions;²⁴⁴ in notifying the plaintiff's death and then in seeking leave to act as trustee of the estate;²⁴⁵ in replying to an offer of a compromise;²⁴⁶ in requesting that proceedings be resumed following the death of the defendant²⁴⁷ or the plaintiff's counsel;²⁴⁸ or in applying to the court to which the Court of Cassation had referred the case;²⁴⁹ j) an unsuccessful attempt at a friendly settlement;²⁵⁰ k) making numerous appeals and so creating a procedural maze (with, for example, applications for release, challenges against judges, requests for transfer of proceedings to other courts, disciplinary complaints, appeals concerning failure to act, appeals against interlocutory orders, preliminary questions of jurisdiction or criminal charges)²⁵¹; l) use of all, or almost all, available remedies and time-limits;²⁵² m) a defendant's not immediately collecting from the registry a copy of a judgment, despite its being delivered in his presence, and waiting for it to be served before appealing;²⁵³ n) delay in serving a civil judgment on the losing party,²⁵⁴ or outright failure to serve it, which, in Italy, has the effect of significantly prolonging the period for bringing an appeal or appealing on points of law;²⁵⁵ o) taking steps the point of which is obscure or which reflect obstructiveness or at the very least an uncooperative attitude (refusal to appoint a lawyer, produce evidence, sign a record or undergo a medical examination; objections to making files available for inspection or to the presence of a witness's lawyers; p) hunger strikes and self-mutilation by a prisoner,²⁵⁶ etc.²⁵⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As for delay in applying to the courts, it is not considered decisive since the Court will assess the reasonableness of the length of the proceedings as they actually took place.²⁵⁸

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

In **civil cases** the Court considers that parties may be expected to act with "due diligence"²⁵⁹ but that it is nevertheless not obliged to ascertain whether or not their conduct has been negligent, unreasonable or delaying: that conduct in itself is an objective factor for which the state cannot be held responsible.²⁶⁰

However, the domestic courts must not sit back and do nothing: even in legal systems which have established the rule that the parties control the course of civil proceedings,²⁶¹ the attitude of the parties "does not ... dispense the courts from ensuring the expeditious trial of the action as required by Article 6".²⁶² When required, the courts can react – often under their own procedural rules, to which the Court makes reference²⁶³ – by, for example, dismissing unjustified requests for adjournments or extensions of time,²⁶⁴ using their powers to expedite the proceedings²⁶⁵ or ensuring that an expert carries out his work with the necessary dispatch.²⁶⁶

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

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

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

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

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

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

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

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

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

In criminal cases this holds even truer: “Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities”;²⁶⁷ in the system of criminal procedure in force in Europe the judicial authorities are responsible for “taking every measure likely to throw light on the truth or falsehood of the charges”.²⁶⁸

Nevertheless – although the Court has perhaps occasionally overlooked this²⁶⁹ – the behaviour of the “accused” also constitutes an “objective fact” that cannot be imputed to the state even if that behaviour turns out to be blameless.²⁷⁰

In both civil and criminal cases fairness demands that the Court take account of any success encountered by the parties’ appeals²⁷¹ and any restraint that the parties may have shown by not bringing appeals.²⁷² In particular they must be given credit for any steps that they have taken to expedite proceedings, for example in challenging a decision to adjourn them, demanding that proceedings be reopened, protesting against extension of time-limits or requesting that the date of a hearing be brought forward or the case be considered more quickly.²⁷³

However, they are not obliged to take such steps “to avail [themselves] of the scope afforded by domestic law for shortening the proceedings”,²⁷⁴ especially if there is no proof that they will be effective,²⁷⁵ if they appear inadequate²⁷⁶ or if they may turn out to be counterproductive.²⁷⁷ Depending on the circumstances the Court has found that the parties’ conduct “certainly”, “doubtless”, “greatly”,

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

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

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

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

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

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

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

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

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

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

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

“to a large extent”, “up to a certain point” or “to a certain extent” contributed to delaying the proceedings,²⁷⁸ that it did not really slow them down²⁷⁹ or that it played no part in a particular case.²⁸⁰

12.4 Conduct of the relevant authorities

The fourth and final criterion established by the case-law, in both the civil sphere (since the **König judgment**)²⁸¹ and the criminal sphere (since the **Foti and others judgment**)²⁸² is the conduct of the relevant authorities. These are not only, of course, the judicial authorities (whether the investigating, trial or appeal courts, Courts of higher instances, the judges or prosecutors, and indeed the registries), but also any other public authorities (for instance legislative bodies) involved in the proceedings either as parties or in another capacity.”²⁸³

There are many examples of the various ways in which the various authorities involved in the proceedings may contribute to their length: a) delay by an administrative authority in reopening proceedings²⁸⁴ or in providing the formal confirmation of its decision required to begin contentious proceedings;²⁸⁵ b) delay, in Portugal, in delivering a preliminary decision;²⁸⁶ c) unaccustomed length of the investigation;²⁸⁷ d) delay by the public prosecutor in asking the court of cassation to designate the competent authority;²⁸⁸ e) delay in taking the first steps in the investigation or in obtaining documents from other courts;²⁸⁹ f) pro-longed failure by the investigating judge to interrogate the persons charged and arrange a confrontation between them;²⁹⁰ g) delay by the judge in charge of preparations for the trial in hearing witnesses and ordering expert opinions;²⁹¹ h) failure to simplify prosecutions by dropping or separating some of them in so far as consistent with existing law and the requirements of proper administration of justice;²⁹² i) conversely, failure to join civil cases that are nevertheless interdependent;²⁹³ j) a lengthy interval between examination of a suspect by the public prosecutor and

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

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

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

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

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

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

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

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

286 Martins Moreira v. Portugal, 26 Oct. 1988, §52.

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

288 Tomasi v. France, 27 Aug. 1992, §125.

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

290 Neumeister v. Austria, 27 June 1968, §20.

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

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

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

the delivery of a discharge;²⁹⁴ k) delay in closing an investigation, subject to later completion if necessary;²⁹⁵ l) delay in committing a defendant for trial²⁹⁶ or in summoning the defendant to appear before the new court to which the court of cassation has transferred the case at the prosecution's request;²⁹⁷ m) delay by the prosecution in requesting the court of cassation to assign the case to another trial court;²⁹⁸ n) delay in commissioning an expert opinion for the trial court;²⁹⁹ o) a defective summons of a witness;³⁰⁰ p) delay in examining necessary witnesses or securing necessary expert opinions in the context of judicial proceedings supervised by judges responsible for the preparation of cases and the speedy conduct of trials;³⁰¹ q) the taking of evidence on commission by a court from whose jurisdiction the case has been removed by the Court of Cassation;³⁰² r) absence of any investigative measures by the trial court,³⁰³ apart from a request for a document that has already been provided;³⁰⁴ s) failure to obtain an expert opinion ordered by a court of appeal;³⁰⁵ t) use of delaying tactics by the administrative authorities, intended to prevent the production of a piece of evidence of vital importance;³⁰⁶ u) delay by a trial court in ruling on the validity of an indictment or an order commissioning experts,³⁰⁷ in sending a case file to the defendant,³⁰⁸ in declining to exercise jurisdiction,³⁰⁹ in establishing that a summons is not in due form³¹⁰ or that some defendants have not been summonsed,³¹¹ in ordering partial acquittal following the entry into force of less stringent criminal legislation,³¹² in notifying an appeal to one of the parties,³¹³ or in dispelling a misunderstanding relating to a summons;³¹⁴ v) acceptance of an excessive number of pleadings;³¹⁵ w) delay by a ministry in filing pleadings³¹⁶ or by the prosecutor in filing his

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

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

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

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

298 *Ibid.*, §74.

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

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

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

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

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

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

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

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

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

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

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

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

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

312 *Yağcı and Sargin v. Turkey*, 8 June 1995, §69.

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

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

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

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

submissions or asking for the case to be referred to the combined divisions of the Court of Audit;³¹⁷ x) failure to communicate the date of a hearing to one of the parties;³¹⁸ y) delay in fixing the date of the trial, or choice of a date too far in the future;³¹⁹ z) hearings that are too numerous or too few and far between or which are adjourned *proprio motu* owing, for example, to the transfer of a lawyer;³²⁰ a') an excessive interval between two interlocutory judgments;³²¹ b') a long suspension of proceedings pending the outcome of another set of proceedings or owing to a shortage of registry staff;³²² c') a court's failure to use its powers to order the production of evidence of vital importance³²³ or to use its statutory powers to expedite proceedings in a particularly urgent case;³²⁴ d') a long period between declaring that a case is ready for decision and giving judgment³²⁵ or between the reception by an administrative court of an opinion that it has sought from the French State Council and the notification of its own judgment;³²⁶ e') delay in drawing up a judgment after it has been delivered,³²⁷ in serving it,³²⁸ or, in Italy, in filing it with the registry;³²⁹ f') inertia of the competent administrative authorities in enforcing an eviction order against a tenant;³³⁰ g') the handing-over to other courts of the original evidence in the file instead of simply photo-copies;³³¹ h') delay by a minister in filing an appeal³³² or filing his pleadings;³³³ i') delay by a registry in sending a case-file to a higher court or another division

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

318 Tumminelli v. Italy, 27 Feb. 1992, §17.

319 Neumeister v. Austria, 27 June 1968, §20; K.nig v. the Federal Republic of Germany (merits), 28 June 1978, §110; Eckle v. the Federal Republic of Germany (merits), 15 July 1982, §92; Union Alimentaria Sanders S.A. v. Spain, 7 July 1989, §36; H. v. France, 24 Oct. 1989, §56; Pugliese v. Italy (No. 1), 19 Feb. 1991, §19; Caleffi v. Italy, 24 May 1991, §17; Nibbio (§18), Borgese (§18), Biondi (§18), Monaco (§17) v. Italy, 26 Feb. 1992; Manifattura FL (§18), Steffano (§16), Vorrasi (§17), Gana (§16), Cifola (§16), Pandolfelli and Palumbo (§17), Cooperativa Parco Cuma (§18), Serrentino (§18) v. Italy, 27 Feb. 1992; Salerno v. Italy, 12 Oct. 1992, §20; Olsson v. Sweden (No. 2), 27 Nov. 1992, §103; Salesi v. Italy, 26 Feb. 1993, §24; Massa v. Italy, 24 Aug. 1993, §30; Vallée v. France, 26 Apr. 1994, §48; Karakaya v. France, 26 Aug. 1994, §44; Beaumartin v. France, 24 Jan. 1994, §33; Terranova v. Italy, 4 Dec. 1995, §22.

320 Buchholz v. the Federal Republic of Germany, 6 May 1981, §§59, 60 and 63; Bock v. the Federal Republic of Germany, 29 Mar. 1989, §42; Santilli v. Italy, 19 Feb. 1991, §20; Mastrantonio, Taiuti, Caff. Roversi S.p.a., Cifola, Tumminelli v. Italy, 27 Feb. 1992, §17, §17, §18, §16 and §17 respectively; Scopelliti v. Italy, 23 Nov. 1993, §24; Yağcı and Sargin v. Turkey, 8 June 1995, §69; Ciricosta and Viola v. Italy, 4 Dec. 1995, §28.

321 Karakaya v. France, 26 Aug. 1994, §44.

322 König v. the Federal Republic of Germany (merits), 28 June 1978, §§24 and 110; Giancarlo Lombardo v. Italy, 26 Nov. 1992, §22; Ciricosta and Viola v. Italy, 4 Dec. 1995, §28.

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

324 X v. France, 31 Mar. 1992, §§47-48; Vallée v. France, 26 Apr. 1994, §48; Karakaya v. France, 26 Aug. 1994, §43.

325 Union Alimentaria Sanders S.A. v. Spain, 7 July 1989, §36; Biondi v. Italy, 26 Feb. 1992, §18; De Moor v. Belgium, 23 June 1994, §67.

326 Vallée v. France, 26 Apr. 1994, §48.

327 B. v. Austria, 28 Mar. 1990, §52; Massa v. Italy, 24 Aug. 1993, §16.

328 Eckle v. the Federal Republic of Germany (merits), 15 July 1982, §84; Karakaya v. France, 26 Aug. 1994, §44.

329 Monaco v. Italy and Lestini v. Italy, 26 Feb. 1992, §17 and 18 respectively; Ridi (§17), Idrocalce S.R.L. (§18), Taiuti (§17), Manifattura FL (§18), Steffano (§16), Ruotolo (§17), Cappello (§17), Gana (§16), Pandolfelli and Palumbo (§17), Tusa (§17), Cooperativa Parco Cuma (§18), Serrentino (§18), Lorenzi, Bernardini and Gritti (§16) v. Italy, 27 Feb. 1992; Salerno v. Italy, 12 Oct. 1992, §20; Salesi v. Italy, 26 Feb. 1993, §24; Scuderi v. Italy, 24 Aug. 1993, §16; Katte Klitsche de la Grange v. Italy, 27 Oct. 1994, §61; Terranova v. Italy, 4 Dec. 1995, §22.

330 Scollo v. Italy, 28 Sept. 1995, §44.

331 König v. the Federal Republic of Germany (merits), 28 June 1978, §§104 and 110.

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

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

sitting in a different city;³³⁴ j') lengthy proceedings – thirteen years or so, including more than six after the Convention's entry into force – resulting in the finding that an action was statute-barred;³³⁵ k') more generally, long periods of "inactivity" or "stagnation";³³⁶ l') conversely, a certain amount of overzealousness. This happened, for instance, in the case of **Bock v. the Federal Republic of Germany**. There the competent courts spent years considering the applicant's mental capacity to take legal proceedings. The Court noted that they had displayed "not so much a lack of judicial activity as an excessive amount of activity which focused on the petitioner's mental state". Yet, "in principle, national courts have to proceed on the basis that a prospective or actual plaintiff is not suffering from mental incapacity. Should any reasonable doubt arise in this regard, they have to clarify as soon as possible the extent to which he is competent to conduct legal proceedings"; in this particular case they proved unable "to ensure a swift determination thereof".³³⁷

12.4.1 Can the delays caused by the authorities ever be justified?

In a number of cases respondent Governments have pleaded genuine problems encountered by their courts: local political unrest;³³⁸ an increase in the volume of employment litigation in Germany as a result of an economic recession;³³⁹ a growth in economic crime in that country;³⁴⁰ a backlog of cases in sundry courts (in Switzerland, Austria, Spain, France, Portugal and especially Italy); problems arising out of the return to democracy of Spain³⁴¹ and Portugal in a tense situation, made even more sensitive, in

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

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

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

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

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

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

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

341 Union Alimentaria Sanders S.A. v. Spain, 7 July 1989, §§37-41.

the latter case, by decolonisation (that is, a mass influx of settlers being repatriated), an economic crisis and a shortage of judges to provide all desirable safeguards;³⁴² etc.

Excuses as regards backlog or general administrative difficulties, however, are not accepted since States are under an obligation to organize their judicial systems in such a way that their courts can meet the Convention standards. A temporary backlog before a court, however, will not entail liability, provided that the authorities take reasonably prompt remedial action to deal with the exceptional situation.³⁴³ Where the state of affairs becomes prolonged or a matter of structural organization, provisional methods such as giving priorities, are no longer sufficient and the State cannot further postpone the adoption of effective measure.³⁴⁴ However, the obligation on States to organize judicial systems to comply with the requirements of Article 6 does not apply in the same way to a Constitutional Court, which has a role of guardian that might render it necessary to take other considerations into account, for example the importance of cases in political and social terms rather than chronological order.³⁴⁵ That factor, however, cannot always justify the dragging of proceedings, in particular when time is of some significance, as in a case relevant to Roma children's education.³⁴⁶

The Court is not indifferent to such considerations. It "is not unaware of the difficulties which sometimes delay the hearing of cases by national courts".³⁴⁷ However, it still submits compliance with the reasonable-time requirement to close scrutiny: in its opinion Article 6 § 1 shows the importance that the Convention attaches to "rendering justice without delays which might jeopardise its effectiveness and credibility".³⁴⁸ It has thus established a doctrine combining flexibility with firmness, and understanding with vigilance.

Among the remedies commonly employed to this end are creation of new posts for judges, registrars and secretaries, establishment of additional chambers, drawing up an order of priority for dealing with cases, and, if necessary, legislative reform. As already emphasised, it is not of course the Court's duty to suggest these remedies; on the other hand, it is responsible for determining whether they are effective, having regard, amongst other things, to whether the state of affairs is purely temporary or, on the contrary, a problem of organisation. In its **Buchholz v. the Federal Republic of Germany** judgment the Court acknowledged that the respondent Government had been "fully conscious of their responsibilities" and had made praiseworthy efforts to expedite the conduct of business before the labour courts,³⁴⁹ but in other cases it has been forced to draw the opposite conclusion: it has been obliged to find that a contracting state has not acted soon enough, or on a sufficient scale, to meet its obligations in the relevant field.³⁵⁰

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

343 *Buchholz v. Germany*, 6 May 1981.

344 *Zimmerman and Steiner v. Switzerland*, 13 July 1983.

345 *Sussman v. Germany*, 16 September 1996.

346 *Orsus v. Croatia*, 16 March 2010.

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

348 *Ibid.*

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

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

More generally a state cannot plead that a similar, or worse, situation obtains in this field abroad³⁵¹ or take refuge in either the shortcomings of its domestic legislation or the latter's perfectionism, as illustrated by the König judgment. The Court here emphasised that it was not its function "to express an opinion on the German system of procedure before administrative courts which ... enjoys a long tradition"; admittedly it "may appear complex on account of the number of courts and remedies, but ... the explanation for this situation is to be found in the eminently praiseworthy concern to reinforce the guarantees of individual rights. Should these efforts result in a procedural maze, it is for the State alone to draw the conclusions and, if need be, to simplify the system with a view to complying with Article 6, § 1 of the Convention."³⁵²

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

In the case of **Dobbertin v. France** the Court noted that in abolishing the National Security Court and then the Paris Military Court, the authorities had taken no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly;³⁵³ in **Vallée v. France** the Court seems to have agreed with the applicant, who had complained of the lengthy interval between the publication of Law No. 91-1406 of 31 December 1991 and the implementing decree (No. 93-906) of 12 July 1993,³⁵⁴ in **Foti and others v. Italy** it noted that one of the applicants had criticised Parliament for having delayed waiving the parliamentary immunity of a member of the Chamber of Deputies involved in the prosecution, but it declined to rule on the merits of the complaint;³⁵⁵ in **Wiesinger v. Austria** it was of the opinion that violation of Article 6 § 1 had arisen above all from "the lack of co-ordination between the various [public] authorities concerned" in land consolidation proceedings;³⁵⁶ lastly, its **Mansur v. Turkey** judgment noted, in addition to unintelligible conduct of proceedings, "a breakdown of communications between the various State departments concerned".³⁵⁷

13. A specific assessment or an overall assessment?

Between the various considerations – complexity, what is at stake and the conduct of the parties and the authorities – which do not necessarily all point the same way, there are not, of course, any watertight divisions. For example, the conduct of the parties may increase the complexity of proceedings, while the seriousness of what is at stake requires the relevant authorities to exercise special diligence, which may also concern the parties. Having considered a case using the standard criteria of complexity of proceedings, what is at stake, and conduct of the parties, the Court makes an overall assessment.³⁵⁸ Since its **Obermeier v. Austria** judgment³⁵⁹ the ECtHR has actually been in the

1990, §54; *Moreira de Azevedo v. Portugal* (merits), 23 Oct. 1990, §§73-75.

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

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

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

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

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

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

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

358 For example: *König v. the Federal Republic of Germany* (merits), 28 June 1978, §§105 and 111; *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §63; *Zimmermann and Steiner v. Switzerland*, 13 July 1983, §32; *Pretto and others v. Italy*, 8 Dec. 1983, §37; *Guincho v. Portugal*, 10 July 1984, §41; *Deumeland v. the Federal Republic of*

habit of making this “overall assessment” straight away;³⁶⁰ it continues, however, to use its customary method of specific analysis in less straightforward cases.³⁶¹

As an example, in the **Obermeier case** the applicant had instituted proceedings with a view to obtaining a judicial decision on the lawfulness of his suspension by his employer; nine years later no final judgment had been given. The Court held that “in this instance, [the particular circumstances of the case] call for a global assessment, so that the Court does not consider it necessary to consider these questions [that is, the usual criteria] in detail” and concluded “that a period of nine years without reaching a final decision exceeds a reasonable time”.³⁶²

Mere delays that “could probably have been avoided” are not enough for the Court to find a breach of Article 6 § 1; delays must be considered “sufficiently serious” for “the permissible limit” to have been over-stepped.³⁶³ On the other hand, delays which may possibly be acceptable as long as they are considered separately and in isolation may reveal a violation if viewed cumulatively and in combination.³⁶⁴

Germany, 29 May 1986, §90; Erkner and Hofauer v. Austria (merits), Poiss v. Austria (merits) and Lechner and Hess v. Austria, 23 Apr. 1987, §70, §60 and §59 respectively; Capuano, Baggetta, Milasi v. Italy, 25 June 1987, §35, §25 and §20 respectively; H. v. the United Kingdom (merits), 8 July 1987, §86; Baraona v. Portugal, 8 July 1987, §57; Martins Moreira v. Portugal, 26 Oct. 1988, §61; Bock v. the Federal Republic of Germany, 29 Mar. 1989, §49; Neves e Silva v. Portugal, 27 Apr. 1989, §46; Uni.n Alimentaria Sanders S.A. v. Spain, 7 July 1989, §42; H. v. France, 24 Oct. 1989, §59; Vernillo v. France, 20 Feb. 1991, §15; Wiesinger v. Austria, 30 Oct. 1991, §64; Kemmache v. France (Nos. 1 and 2) (merits), 27 Nov. 1991, §71; Nibbio, Borgese, Biondi, Monaco, Lestini v. Italy, 26 Feb. 1992; G., Andreucci, Arena, Cormio, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, Caff. Roversi S.p.a., Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Lorenzi-Bernardini- Gritti, Tumminelli v. Italy, 27 Feb. 1992; X. v. France, 31 Mar. 1992, §49; Ruiz-Mateos v. Spain, 23 June 1993, §53; Monnet v. France, 27 Oct. 1993, §34; Vallée v. France, 26 Apr. 1994, §49; Karakaya v. France, 26 Aug. 1994, §45; Katte Klitsche de la Grange v. Italy, 27 Oct. 1994, §62; Allenet de Ribemont v. France, 10 February 1995. 359 Obermeier v. Austria, 28 June 1990,

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

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

362 Obermeier v. Austria, 28 June 1990,

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

364 K.nig v. the Federal Republic of Germany (merits), 28 June 1978, §105; Deumeland v. the Federal Republic of

In **Ruotolo v. Italy**³⁶⁵ the Court, conducting the overall assessment, observed that several of the delays observed may have appeared normal. However, considering:

- the duration of the proceedings, viewed in itself and overall, especially if the respondent Government has provided no explanations;³⁶⁶
- recognition by the state involved that it is at fault;³⁶⁷
- the number of levels of jurisdiction to which a case has been referred;³⁶⁸
- the outcome of the proceedings, at least in the case of an out-of-court settlement³⁶⁹ or amnesty;³⁷⁰
- “the fair balance which has to be struck between the various aspects of [the] fundamental requirement” laid down in Article 6§1: “expeditious judicial proceedings” are only one element of “the more general principle of the proper administration of justice”;³⁷¹

the Court found that dismissal proceedings lasting over 12 years amounted to a violation of the Convention.

A case’s “political context”, when it has “an impact on the course of [an] investigation” triggered by a complaint combined with an application to join the proceedings as a civil party, “may justify delays in proceedings”. This, because Article 6, § 1 is intended above all to secure the interests of the defence and those of the proper administration of justice.³⁷² Conversely, the need to comply with the reasonable-time requirement may argue against “systematically holding hearings” before a supreme court³⁷³ or affect how the “objective” impartiality of a magistrate acting under an immediate-trial procedure should be determined.³⁷⁴

Some tardiness at a particular stage may be acceptable where, overall, taking into account the number of levels of jurisdiction, the time taken is not unreasonable. Thus, in criminal cases, delays during

Germany, 29 May 1986, §90; *Erkner and Hofauer v. Austria* (merits) and *Poiss v. Austria*, 23 Apr. 1987, §§69 (penultimate paragraph, last sentence) and 70, and §60 respectively; *Ruotolo v. Italy*, 27 Feb. 1992, §17.

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

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

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

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

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

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

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

372 *Acquaviva v. France*, 21 November 1995.

373 *Schuler-Zraggen v. Switzerland*, 24 June 1993.

374 *Padovani v. Italy*, 26 January 1993.

investigations might be enough, where there are identifiable lapses in any activity to disclose a violation of the Convention.³⁷⁵

V. Effects of unduly long proceedings on the enjoyments of other rights

14. Introduction

As it has already pointed out earlier in the text, the Court has identified a number of situations necessitating special or particular diligence. In some of such cases, the alleged violation of the right to a trial within reasonable time may also give rise to particular questions under other ECHR provision, since unduly long proceedings may have detrimental effects on the possibility of the victim to enjoy the rights concerned. Whilst normally the Court will look at the complaints separately, there are a number of situations in which the violation of the substantive right invoked has been also grounded on the incapacity of the authorities to react timely to the situations brought to their attention, unjustifiably dragging judicial proceedings. What follows is an illustrative presentation of the cases where the Court established such link.

It is important to underline that the situations mentioned below do not deal with the positive procedural obligations stemming from the substantive provisions cited (and that can also arise in connection with other Articles such as Article 2 ECHR). As indicated at the beginning of this text, when presenting the principles of interpretation of the ECHR, procedural obligations are those calling for the adequate, timely and proper implementation of domestic procedures (for instance, investigations) to ensure the protection of the right. They are of particular importance as, apart from the provisions of its § 1, Article 6 ECHR offers protection only to persons accused of a crime and not to civil parties/victims of a crime. The latter's rights, however, receive protection through the procedural obligations stemming from substantive provisions. Such procedural obligations, however, fall outside the scope of application of Article 6 ECHR and will therefore not be examined.

14.1 Excessive length of proceeding and Article 3 ECHR (Prohibition of torture, inhuman or degrading treatment)

In **S.Z. v. Bulgaria**,³⁷⁶ where the applicant complained on account of the shortcomings in the investigation carried out into her illegal confinement and rape of the applicant, having regard in particular to the excessive delays in the criminal proceedings and the lack of investigation into certain aspects of the offence, the Court observed that the considerable length of those proceedings was not entirely justified by their complexity. Indeed, many hearings had been adjourned without an examination of the merits of the case on the grounds that some of the accused had not been properly summoned or had failed to appear. More importantly for the purpose of this work, the Court noted that the excessive length of the proceedings had undeniably had negative repercussions on the applicant, who, clearly psychologically very vulnerable as a result of the attack, had been left in a state of uncertainty regarding the possibility of securing the trial and punishment of her assailants and had had

375 *Marpa Zeeland v. Netherlands*, 9 November 2004.

376 *S.Z. v. Bulgaria*, 3 March 2015.

to return to court repeatedly and go back over the events during the many examinations by the court. It thus found that the facts of the case disclosed, amongst others, a violation of Article 3 ECHR also because of lengthy proceedings.

14.2 Interplay between Article 6 and Article 8 ECHR (Right to respect for private and family life, home and correspondence)

The two cases presented below clearly illustrate how length of proceedings can be decisive in the enjoyment of the right to private and family life.

M. and M. v. Croatia,³⁷⁷ a case brought by a mother and her daughter, concerned a series of inter-connected proceedings involving the family, before the criminal courts (allegations of child abuse by the father), the civil courts (to decide on custody) and the social welfare authorities. In the context of the civil proceedings, the Court was particularly struck by the fact that, after four years and three months, the child had still not yet been heard in the custody proceedings and had thus not been given the chance to express her view before the courts about which parent she wants to live with. The national courts had obviously not realised that the protracted nature of those proceedings could impinge on the right to private life (which also encompasses physical and moral integrity) as they had exacerbated the plight of a traumatised child who, if for nothing else than her parents' conflicting relationship, has suffered great mental anguish, culminating in self-injuring behaviour. Even more surprising is the fact that no steps were being taken to accelerate the custody proceedings since 2014 (that is the year before the European Court rendered its judgment), when the child started exhibiting such behaviour. As for the complexity of the case, the Court observed that the forensic experts in psychology and psychiatry had found that both parents were equally (un)fit to take care of her, a view that was apparently shared by the local social welfare centre. Those experts also established that the child expressed a strong wish to live with her mother. The child, who is was A-grade pupil and whom the experts viewed as being of good or even above average intellectual capacities, was nine and a half years old at the time of the institution of the proceedings and 13 and a half at the time of the ECtHR judgment. The Court observed that it would be difficult to argue that, given her age and maturity, she was not capable of forming her own views and expressing them freely. Moreover, both of her parents lived in the same town and reversal of custody order would therefore not entail the child having to change school or otherwise be removed from her habitual social environment.

The Court therefore considered that both the mother and the child's right to respect for family life had been breached as concerned the protracted nature of the custody proceedings, in violation of Article 8.

In the case of **Manuello and Nevi v. Italy**³⁷⁸ the European Court was asked to rule on the applicants' inability to see their granddaughter, firstly because of the non-enforcement of court decisions authorising meetings and secondly on account of a court decision suspending those meetings. Whilst underling that great care had to be taken in this type of situation and that measures for the protection of the child could involve restricting contact with members of the family, the Court considered that the authorities in question had not made the necessary efforts to protect the family ties. In this connection it noted that connection that three years had elapsed before the court had ruled on the applicants' request to meet their granddaughter and that the court's decision granting them contact rights had never been enforced. Although it is not for the Court to substitute itself to the domestic authorities regarding the measures that should have been taken, the Court could not ignore the fact that the

377 M. and M. v. Croatia, 3 September 2015.

378 Manuello and Nevi v. Italy, 20 January 2015.

applicants had been unable to see their granddaughter for about twelve years and that, despite all their efforts to re-establish the family tie, no measure to that effect had been taken by the authorities. The excessive length of the proceedings, thus, was considered to amount to a violation of the applicants' right to respect for their family life under Article 8.

14.3 Excessive length of proceedings and Article 14 ECHR (Prohibition of discrimination)

Article 14 guarantees equality in "the enjoyment of [...] [the] rights and freedoms" set out in the ECHR. Article 14 is an ancillary provision that does not have a stand-alone existence. This means that an alleged violation of Article 14, will always have to be examined in conjunction with a substantive Convention right. This is what happened in the case of **Eremia and others v. Moldova**.³⁷⁹ The case concerned the applicants' complaint about the Moldovan authorities' failure to protect them from the violent and abusive behaviour of their husband and father, a police officer. In examining the complaint under Article 14 in conjunction with Article 3 of the Convention, the Court observed that Ms Eremia had been repeatedly subjected to violence from her husband whilst the authorities had been well aware of the situation. However, they had refused to treat her divorce as an urgent request. This negligent inaction, together with other circumstances (she had allegedly been pressured by the police to withdraw her criminal complaint against her husband; the social services had allegedly insulted her suggesting reconciliation, and telling her that she was nor the first nor the last woman to be beaten up by her husband; despite the husband's confession about beating up his wife, he had essentially been exempted from all responsibility following the prosecutor's decision to conditionally suspend the proceedings against him), the Court held that the authorities' failure to deal with the violence had effectively amounted to repeatedly condoning it, which reflected a discriminatory attitude towards Ms Eremia as a woman. It thus found a violation of Article 14 taken in conjunction with Article 3.

14.4 Excessive length of proceedings and Article 1 Protocol no. 1 ECHR (Protection of property)

The problem of refusal or delay by national authorities in complying with binding judgments of domestic courts is normally looked at under the angle of the context of the right to a court and or length of proceedings. However, excessive delay in the execution of a judgment can also have an impact of the enjoyment of the substantive right to property. This was the case, for instance, in **Tsirikakis v. Greece**³⁸⁰ the applicant' land was subject to expropriation to build a sewage treatment plant. He claimed that the entirety of their 60,000 m² island - rather than the 10,366 m² in the expropriation application - was used to construct, among other things, sewage works and that large quantities of sludge were produced by the plant. He complained about the length of the proceedings concerning their right to receive compensation, which has lasted more than 13 years and three months, and also of a violation of his right to peaceful enjoyment of property. The Court, in addition to finding a violation of Article 6 para 1 of the Convention for the excessive duration of the proceedings, considered that the freezing of the compensation awarded for the expropriation for about 15 years, combined with the excessive length of the judicial proceedings, placed the applicant in a situation of uncertainty, imposed on the applicant an excessive burden that broke the balance that had to be stricken between the general interest on the one hand and the individual interest to the peaceful enjoyment of possessions. The Court, then, concluded for a violation of Article 1 Protocol no. 1 to the Convention.

379 Eremia and others v. Moldova, 28 May 2013.

380 Tsirikakis v. Greece, 17 January 2002, and Hatzitakis v. Greece, 11 April 2002.

VI. Remedies for excessive length of proceedings at national level

15. Domestic legal remedies to address excessive length of proceedings

Article 13 requires a national authority to provide an individual who has an arguable claim that one of his rights under the Convention has been violated with a remedy or remedies in national law that provide effective protection of those rights. Article 13, together with the requirement for exhaustion of domestic remedies under Article 35 § 1, provide the basis for the doctrine of subsidiarity which places primary responsibility on the Contracting States to secure effective protection of Convention rights.

15.1 Remedies currently available in Montenegro

a. Request for and claim for just satisfaction

At the end of 2007, Montenegro adopted the Law on the Protection of the Right to a Trial within a Reasonable Time³⁸¹. The Law introduced two new remedies for the protection of the right to trial within a reasonable time: the request for expediting the procedure (request for review) and claim for just satisfaction.

The effectiveness of such remedies was reviewed by the ECtHR in the cases of **Vukelić** and **Vučeljić**. In **Vukelić** the ECtHR considered that the **request for review** (a motion aiming at expediting the procedure that, as a rule, is lodged with the President of the competent court) is to be considered an effective legal remedy from 4 September 2013.³⁸² Similarly, in **Vučeljić**, the Court concluded that the **claim for just satisfaction** (a legal remedy seeking compensation for the damage resulting from excessive length of proceedings and/or the publication of the judgment of the Supreme Court of Montenegro establishing a violation of the right to trial within a reasonable time) is to be regarded as an effective legal remedy as of 17 November 2016.³⁸³ (§ 30).

b. Constitutional Court complaint

The 2015 Constitutional Court Act 2015 (the Act)³⁸⁴, repealing the Constitutional Court Act 2008, entered into force on 20 March 2015. Section 68 of the Act provides that a constitutional complaint can be lodged by a physical person or legal entity, organisation, a community (*naselje*), a group of persons and other forms of organisation, which do not have a status of legal entity, if they consider that their human right or freedom guaranteed by the Constitution was violated by an individual decision, action or omission of a State body, an administrative body, a local self-Government body or a legal person exercising public authority, after all other effective legal remedies have been exhausted.

Sections 69-78 of the 2015 Act provide further details as regards the processing of constitutional complaints. In particular, section 69 provides, *inter alia*, that a constitutional complaint can be lodged within 60 days as of the day when an impugned action violating a human right or freedom ceased. Section 76 provides that if in the course of proceedings before the Constitutional Court an impugned decision ceased to be in force, and the Constitutional Court finds a violation of a human right or

³⁸¹ Official Gazette of Montenegro no. 11 of 13 December 2007.

³⁸² *Vukelić v. Montenegro*, 4 June 2013, § 85.

³⁸³ *Vučeljić v. Montenegro*, 17 Nov. 2016, § 30.

³⁸⁴ Zakon o Ustavnom sudu Crne Gore, published in the OGM no. 11/15.

freedom, it will adopt a constitutional complaint and award the appellant just satisfaction. Section 38 provides that the Constitutional Court must decide within 18 months as of the day when the proceedings before that court were initiated.

Departing from its previous assessment of the 2008 Constitutional Court Act, which was deemed to that the Constitutional appeal it foresaw could not be considered an effective domestic remedy in respect of length of proceedings, with the case of **Siništaj and others v. Montenegro**³⁸⁵ the European Court had the opportunity to assess the new legislation as of 20 March 2015. Observing that the latter explicitly provides for a possibility of lodging a constitutional appeal in respect of not only a decision but also an action or an omission, having in mind the possibility of awarding just satisfaction and in the light of the time limit set for the processing of the appeal, the **Court concluded that the constitutional appeal in Montenegro can in principle be considered an effective domestic remedy.**

c. Complaint lodged with the Ombudsperson

Under Article 81 of the Constitution of Montenegro, the Ombudsperson has been established as an autonomous and independent authority undertaking measures for the protection of human rights and freedoms. According to Article 81(1), “the protector of human rights and liberties of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and liberties”. Article 81(2), in turn, lays down that “the protector of human rights and liberties shall exercise duties on the basis of the Constitution, the law and the confirmed international agreements, observing also the principles of justice and fairness”. The Human Rights Protector is elected by the Parliament (Art. 82(14)), with the majority of the total number of its members (Art. 91(2)) and on the proposal of the President (Art. 95(5)).³⁸⁶

The Law on the Montenegrin Ombudsperson³⁸⁷ stipulates that the Ombudsperson shall autonomously and independently, based on the principles of justice and fairness, undertake measures to protect human rights and freedoms when these are violated by an act, action or omission to act by state bodies, state administration bodies, local self-Government bodies and local administration bodies, public services and other entities exercising public powers, as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and anti-discrimination measures (Article 2 paragraph 2 of the Law). The Law on Amendments to the Law on Ombudsperson, passed on 18 July 2014 and come into force early August 2014, has strengthen the independence and professionalism of the Ombudsman in line with international standards.

Under the Law, the Ombudsperson has been established as a national mechanism for the protection of persons deprived of liberty from torture and other forms of cruel, inhuman or degrading treatment or punishment (National Preventive Mechanism or NPM). In addition to competences and powers the Ombudsperson had under previous law, the Ombudsman has been also entrusted with the prevention

385 Siništaj and others v. Montenegro, nos. 1451/10, 7260/10 and 7382/10, 24 November 2015.

386 European Commission for Democracy through Law (Venice Commission) Joint Opinion on The Law On The Protector of Human Rights and Freedoms of Montenegro, Opinion No. 637/2011, ODIHR Opinion No.: NHRI-MNG/194/2011.

387 The Law was published in the Official Gazette of Montenegro 42/11, and it applies as of 23 August 2011. The Amendments to the Law were published in the Official Gazette of Montenegro 32/14, while it comes into effect as of 7 August 2014.

of torture and other forms of inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In exercising the function of the NPM, the Ombudsperson directly cooperates with the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman's responsibilities as "the national mechanism for protection against discrimination" are regulated in a separate Law on Prohibition of Discrimination adopted on 29 July 2010.³⁸⁸

According to Article 3 of the Law "the Protector can be addressed by anyone who believes that an act, action or failure to act of the authorities violated his/her rights or freedoms". In addition to party initiatives, "the Protector shall, as well, act on his/her own initiative". Chapter V of the Law includes more precise provisions on the initiation of proceedings before the Protector. If the Protector acts on his/her own initiative, the consent of the victim is required (Article 28(3)). When the victim initiates the proceeding, "the complaint may be filed through a Member of Parliament, as well as organisation dealing with human rights and freedoms". Article 46 of the Law provides that 'After the completion of the investigation procedure of the complaint or on its own initiative, the Protector shall give the final opinion. The final opinion shall contain a finding on whether, how and to what extent a violation of human rights and freedoms occurred. When the Protector finds that violation of human rights and freedoms occurred, the final opinion shall contain a recommendation as to what needs to be done in order to remedy that violation, as well as the deadline for authority to take action.'³⁸⁹

While the European Court has held that the authority referred to in Article 13 need not necessarily be a judicial authority, complaints to an ombudsman or other administrative complaints body that do not have the power to issue legally enforceable decisions generally do not constitute an effective remedy for the purposes of Article 13.

VII. Implementing the ECtHR judgments

16. Execution of ECtHR judgments

Article 41 of the Convention states that "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. This means, in the first place, that the award of just satisfaction is not an automatic consequence of a finding by the ECtHR that there has been a violation of a right guaranteed by the Convention or its Protocols. The Court will only award such satisfaction as it is considered to be "just" in the circumstances considering the particular features of the case. The Court may condemn a state to cover the pecuniary and non-pecuniary damage as well as costs and expenses incurred by the applicant.

388 European Commission, Action Plan for Montenegro 2015, Brussels, 9.12.2015 C(2015) 9050 final. 182-191. See also Council of Europe, Information Documents SG/Inf (2010)22 FINAL, 20 January 2011. Montenegro: Compliance with obligations and commitments, Fourth Secretariat Monitoring Report https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cd881#_ftnref13

389 ODIHR, Comments on The Draft Law On The Protector Of Human Rights And Freedoms Of Montenegro Opinion-Nr.: GEN- MNG/166/2010 (AT) (2010).

The State's obligation to execute judgments rendered against it by the ECtHR arises out of the responsibility assumed under Articles 1 and 46 of the Convention. This is in keeping with the scheme of international responsibility. Thus, assumption of responsibility entails three obligations: the obligation to put an end to the violation, the obligation to make reparation (to eliminate the past consequences of the act contravening international law) and, finally, the obligation to avoid similar violations. In respect of a compensatory remedy established under domestic law to redress the consequences of excessively lengthy proceedings, the time taken to make payment should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable.

In the **Scozzari and Giunta case**³⁹⁰ the Court reiterated that a judgment finding a breach "imposes on the respondent state a legal obligation not just to pay those concerned the sum awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. These three obligations are equally apparent from the resolutions of the Committee of Ministers adopted with regard to Article 46 §2 under Rule 6 (2).³⁹¹

Measures further adopted by the State to redress a violation might be individual or general. It is actually the Committee of Ministers of the Council of Europe that indirectly checks on such measures taken to comply with this obligation. This is part of its monitoring of execution of judgments, when states must specify the general measures that they have adopted or intend to adopt in order to avoid further violations. The Member States have thus established a practice whereby they not only inform the Committee of Ministers concerning payment of the just satisfaction awarded by the Court to the applicant but also specify the individual measures addressing the violation, as well as the general measures that they have taken or intend to take in order to prevent further violations.

16.1 Which are the relevant measures in cases of length of proceeding?

Relevant examples of such measures in relation to lengthy proceedings may imply a modification of the domestic legislation or a change in the domestic case-law. Often, the translation and dissemination of the Court judgment may be a sufficient measure for the execution of the judgment. A number of other actions, however, can be envisaged. For example, after the judgment against it in the **case of Martins Moreira**³⁹² Portugal reacted, explaining firstly that the local courts involved in the case "[had] been reinforced in terms of both judges and administrative staff" and secondly that at national level "the forensic medicine institutes [had] also been the subject of reform with a view to making them suitable aids to the effective administration of justice", in terms of both "personnel and resources" and "organisational reforms ... designed to enable a prompt response to be given to requests for the institutes' services"³⁹³ (this having been the main problem in the case). Even more noteworthy was Spain's reaction following the judgment against it in **Union Alimentaria Sanders SA**.³⁹⁴ Spain carried out

390 *Scozzari and Giunta v. Italy*, 13 July 2000, §249. More recently: *Scordino v. Italy* [GC], 29 March 2006, §233; Fourth Section, *Johansson v. Finland*, 6 September 2007, §64.

391 Rules adopted by the Committee of Ministers for the application of Article 46, paragraph 2, of the European Convention on Human Rights (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies).

392 *Martins Moreira v. Portugal*, 26 October 1988.

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

394 *Union Alimentaria Sanders SA v. Spain*, 7 July 1989.

a far-reaching reform in which it “completely reorganised judicial districts and redefined the territorial jurisdiction of the courts”; it also began recruiting for “1 570 new judicial posts” and decided on “the creation of a number of new courts”.³⁹⁵ Similarly – following the judgment in **J.ri and 18 other cases**³⁹⁶ – Slovakia amended its Code of Civil Procedure to expedite judicial proceedings and its Bankruptcy and Settlement Act to prevent growing delays in that sphere, as well as adopting a series of administrative measures aimed at improving the organisation and management of the courts (such as creating a new post of senior court clerk in order to relieve judges of certain administrative tasks, and increased computerisation of the courts).³⁹⁷ The United Kingdom – by way of executing the **Somjee judgment**,³⁹⁸ concerning excessively lengthy proceedings in employment cases – adopted regulatory measures giving chairs of employment tribunals greater case-management powers, introduced internal procedural changes with regard to the Employment Appeal Tribunal, and increased the number of its judges.³⁹⁹ Other countries have made do with more ad hoc measures: Switzerland, for example, following the **Zimmermann and Steiner judgment**⁴⁰⁰ reinforced the Federal Court (against which the proceedings had been brought) for a limited period with fifteen part-time substitute judges.⁴⁰¹ The general measures cited in these various examples can all be seen as meeting states’ positive obligation to organise their judicial systems in such a way that their courts can guarantee everyone the right to a final decision within a reasonable time. It should be pointed out, however, that evaluation of these general measures according to an objective standard is solely a Committee of Ministers function.

16.1 Examples of national execution of judgments related to lengthy proceedings

What follows are three examples of cases where, in the context of execution and under the supervision of the Committee of Ministers, Montenegro introduced satisfactory changes aimed at increasing the efficiency of the national proceedings.

Following the **Stakić judgement**⁴⁰² the efficiency of civil and labour proceedings increased after the introduction of legislative measures (Civil Procedure Law) in 2015, including the abolition of multiple remittal possibilities, tight procedural deadlines and alternative dispute resolution options; introduction of an acceleratory and a compensatory remedy in case of lengthy proceedings.

Measures were taken to speed up administrative proceedings in 2014 and 2016, in particular to prevent multiple remittals as a result of the **Stanka Mirković case**.⁴⁰³ As part of these measures: fast-track, ex officio, procedures for the exchange of data between public bodies; electronic communication between administrative bodies and parties to the procedures; new legislation provided that in case of the

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

396 J.ri v. Slovakia, 9 November 2000.

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

398 Somjee v. UK, 15 October 2002.

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

400 Zimmermann and Steiner v. Switzerland, 13 July 1983.

401 Committee of Ministers, Resolution DH (1983) 01.

392 Stakić v. Montenegro, 02/01/2013, Final resolution CM/ResDH(2017)38.

393 Stanka Mirković v. Montenegro, 07/06/2017, Final resolution CM/ResDH(2018)5.

administrative authority's failure to take a decision within the timeframe imparted, the request concerned will be considered as upheld.

On the basis of the **Boucke and Mijanović cases**,⁴⁰⁴ in 2011 the competence for enforcement of final judicial decisions was transferred to public enforcement officers with the goal to reduce workload in courts and increase efficiency of enforcement proceedings.

⁴⁰⁴Boucke v. Montenegro, 21/05/2012, Final resolution CM/ResDH(2016)165, and Mijanović v. Montenegro, 17/12/2013, Final resolution CM/ResDH(2016)201.

Annex I – List of judgments rendered against Montenegro on different aspects related to Article 6 ECHR

Specific aspect of Article 6 ECHR	Case details	Findings	Other violations
Article 6 § 1 ECHR			
Fairness of procedure in narrow sense	Tomić and Others v. Montenegro, 17 April 2012	Conflicting decisions by Supreme Court per se do not undermine the principle of legal certainty. Conclusion: no violation.	
Fairness of procedure in narrow sense	Barać and others v. Montenegro, 13 Dec. 2011	The final judgment against the applicants relied only on the law that the Constitutional Court had proclaimed to be unconstitutional. Conclusion: violation.	
Access to court (insolvency proceedings)	Vujović and Lipa D.O.O. v. Montenegro, 20 Feb. 2018	First case in which the Court of Appeal rejected an appeal for not having been submitted by an insolvency administrator or a lawyer authorized by him. The Court considered, that the applicants' loss of the possibility of using a remedy which they had reasonably believed to be available, amounted to a disproportionate hindrance. Conclusion: violation.	
Access to court (labour-related civil claim)	Radunović and others v. Montenegro, 25 Oct. 2016	The national courts dismissed the applicants' civil claims related to employment against the US Embassy, holding in particular	

		that the sovereign immunity defence was not inconsistent with their rights under Article 6 ECHR. Conclusion: violation.	
Access to court (property-related claim)	Garžičić v. Montenegro, 21 Sept. 2010	The Supreme Court rejected the applicant's appeal on points of law concerning a property-related claim as it considered that the court fees she had paid did not correspond to the established values of her claim Conclusion: violation	
Right to have civil claim decided by a tribunal	Brajović and Others v. Montenegro, 30 Jan. 2018	Court of Appeal never ruled on such an appeal filed by the applicants as injured parties. Conclusion: violation.	
Right to a reasoned judgment	Tripcovici v. Montenegro, 7 Nov. 2017	In rejecting the applicant's rejected the applicants' claim as submitted out of time, the High Court did not cite any provision or any relevant domestic case-law, or even any reason, in order to explain why section 108 was not applicable. Conclusion: violation.	
Length of criminal proceedings	Vujović v. Montenegro, 15 May 2018	Considering failure of appearance of applicant to two hearing, case lasted six years at three levels of jurisdiction. Conclusion: no violation.	

Length of civil proceedings (compensation claim in relation to labour dispute)	Arčon and others v. Montenegro, 3 April 2018	The case lasted five and a half years at two levels of jurisdiction. Conclusion: violation.	
Length of civil proceedings (commercial dispute)	Montemlin Šajo v. Montenegro, 20 March 2018	The case lasted five years and four months at two instances. Conclusion: violation.	
Length of civil proceedings (compensation claim in relation to nationalized property)	Novaković and others v. Montenegro, 20 March 2018	The case lasted seven years at three levels of jurisdiction. Conclusion: violation	
Length of civil proceedings (commercial dispute)	Dimitrijević v. Montenegro, 12 Dec. 2017	The case lasted more than seven years at three levels of jurisdiction. Conclusion: violation.	
Length of civil proceedings (restitution of property)	Nedić v. Montenegro, 10 Oct. 2017	The case lasted more than five years and four months at one level of jurisdiction. Conclusion: violation.	
Length of civil proceedings (labour dispute)	Vučinić v. Montenegro, 5 Sept. 2017	The case lasted more than six years and one month for three levels of jurisdiction. Conclusion: violation.	
Length of civil proceedings (compensation claim in relation to expropriation of property)	Đuković v. Montenegro, 13 June 2017	The case lasted more than twelve years for one level of jurisdiction. Conclusion: violation.	
Length of civil proceedings (property-related dispute)	Tomašević v. Montenegro, 13 June 2017	The case lasted more than twelve years at two levels of jurisdiction. Conclusion: violation.	
Length of civil proceedings (division of joint property)	Svorcan v. Montenegro, 13 June 2017	The case lasted more than twelve years and five months in three levels of jurisdiction. Conclusion: violation.	

Length of civil proceedings (property-related dispute)	Bujković v. Montenegro, March 2015	The case concerned property-related civil proceedings falling within the Court's competence <i>ratione temporis</i> for a period of more than 8 years and 11 months. The Court observed, amongst others, that repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in a given State's judicial system Conclusion: violation	
Length of civil proceedings (labour dispute)	Novović v. Montenegro, 23 Oct. 2012	The case concerned the applicant's reinstatement and compensation proceedings which had lasted 12 years and 8 months, 5 years and 3 months of which fell within the jurisdiction of the Court <i>ratione temporis</i> . Conclusion: violation.	
Length of civil proceedings (compensation claims)	Stakić v. Montenegro, 2 Oct. 2012	The applicant's request for damages due to an injury were still pending at first instance after 24 years, 8 years and 6 months of which fell within the jurisdiction of the court <i>ratione temporis</i> . Conclusion: violation.	Article 13 in conjunction with Article 6 § 1 ECHR for lack of effective domestic legal remedies.
Length of administrative proceedings (registration of fiduciary rights)	Sinex DOO v. Montenegro, 5 Sept. 2017	Case lasted twelve years and eight months. Conclusion: violation.	Article 13 in conjunction with Article 6 § 1 ECHR for lack of effective

			domestic remedies.	legal
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