EUROPEAN COMMISSION
FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights

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Executive summary of the report

I. Terms of reference

The purpose of the report was to establish whether the case law of the ECHR could be used to draw some general conclusions with regard to the length of proceedings in Europe. The issues that had to be analysed were:

1. What conclusions with respect to the length of proceedings for particular types of cases (minimum/maximum timeframes) could be drawn from the cases in which ECHR found violations of the right to a trial within a reasonable time, or found that there was no violation;

2. What categories of cases were established in the case law of the ECHR; and

3. What are the forms of delays established in the ECHR case law and their causes?

II. Structure of the report

The report is structured in two parts. In the first part, it **establishes criteria for assessing the reasonableness of the length** of proceedings and establishes **rules for calculation of the length of proceedings** in Court's case law. In the second part, the report **presents stages of proceedings where delays occurred**, identifies **causes of delay for various types of proceedings** and presents an overview of **domestic remedies to reduce the length of proceedings.** In the appendices to the report is the **statistical data on the ECHR's assessment of reasonable length of cases by country (App. I); an analysis of the priority cases** that were identified by the Court (**App. II);** and a **comprehensive** of **complex cases** in which violation was/was not found (App. III) and **normal cases (non complex)** (App. IV).

III. Main findings of the report

1. The Court has established the following **criteria for assessing whether the duration of proceedings was reasonable**:

– *Complexity of the case* (complex cases need longer time to be completed, but complexity as such is not always sufficient to justify the length of proceedings);

– *The applicant's conduct* (this is the only criterion that led the Court to conclude that Art. 6. was not violated even if the length of proceedings was manifestly excessive)
– *The conduct of the competent authorities* (if the authorities have taken prompt and appropriate remedial action to manage the temporary unpredictable overload of the courts, the longer processing time of some cases may be justified)
– *What is at stake for the applicant* (some cases need to be expedited; **such "priority cases"** include:
  - labour disputes involving dismissals, recovery of wages and the restraint of trade;
  - compensation for victims of accidents;
  - cases in which applicant is serving prison sentence;
  - police violence cases;
  - cases where applicant's health is critical;
  - cases of applicants of advanced age;
  - cases related to family life and relations of children and parents;
  - cases with applicants of limited physical state and capacity.

In addition to individual criteria, the Court also makes *an overall assessment of the circumstances of the case*. It may establish that 'reasonable time' is exceeded, if in such a global assessment, the Court finds that total time is excessive, or if it finds long periods of inactivity by competent authorities.

2. In its case law, the Court has defined methods to calculate length of proceedings. The **starting point of the calculation** is different in civil, criminal and administrative cases. In civil cases it is normally the date on which the case was referred to the court; in criminal cases, the starting day may also be the date on which the suspect was arrested or charged, or that on which the preliminary investigation began. In administrative cases, it is the date on which the applicant first refers the matter to the administrative authorities. The **end of the period** assessed by the court is in criminal cases the date on which the final judgment is given on the substantive charge or the decision by the prosecution or the court to terminate proceedings. In civil cases, the end date is when the decision becomes final, but the court also takes into consideration the length of enforcement and other implementation procedures that is viewed as the integral part of the proceedings.

3. The **causes of delay** are sorted into those common to all types of proceedings and those specific to certain type of proceedings:

Type of proceedings	Stage of proceedings	Origins of delay
All proceedings	Before proceedings start	Territorial distribution of court jurisdiction; transfer of judges; insufficient number of judges; systematic use of multi-member tribunals (benches); backlog of cases; complete inactivity by judicial authorities; systematic short-comings in procedural rules;
	From initiation to the closure of hearings	Failure to summon parties or witnesses; unlawful summons; late entry into force of legislation; disputes about the jurisdiction between administrative and judicial authorities; late transmission of the case file to the appeal court; delays imputable to barristers, solicitors, local and other authorities; judicial inertia in conduct of the case; involvement of expert witnesses; frequent adjournment of hearings; excessive intervals between hearings; excessive delay before the hearing.
	After hearings	Excessive lapse of time between making of the judgment and its notification to the court registry or parties;
Civil proceedings		Failure to use the courts' discretionary power; absence or inadequacy of rules of civil procedure;
Criminal proceedings		Structural problems relating to organisation of prosecution service; decisions to join or not to join criminal cases; failure of witnesses to attend hearings; dependence of civil proceedings on the outcome of criminal proceedings;
Administrative proceedings		Delays attributable to non-judicial authorities.

4. The report also contains an overview of existing **national remedies** established to react to unreasonable length of proceedings. It also identifies whether particular remedies were regarded as effective by the ECHR or not.

5. In the report, many judgments given by the ECHR are examined in order to establish **standards and rules on the length of proceedings**. In particular whether there could be some indication of the maximum/minimum length of particular types of cases that were regarded as reasonable or unreasonable by the court. Although the expert has established that the Court was reluctant to establish clear-cut rules, arguing that every case must be considered separately, the analysis and comparison of the large

number of cases may provide a **useful indication** of the approach of the Court. The following was established:

– The total duration of up to t**wo years in normal (non-complex) cases was generally regarded as reasonable**. When proceedings have lasted **more than two years**, the Court examines the case closely to determine **whether the national authorities have shown due diligence** in the process;
– In **priority cases**, the court may depart from the general approach, and **find violation even if the case lasted less than two years**;
– In **complex cases**, the Court may allow longer time, but pays special attention to **periods of inactivity** which are clearly excessive. The longer time allowed is however rarely more than five years and almost never more than eight years of total duration;
– The only cases in which the Court **did not find violation in spite of manifestly excessive duration of proceedings** were the cases in which **the applicant's behaviour had contributed to the delay**.

6. The following is a brief **overview of the types of cases analysed with respect to the length of proceedings**:

Violation of the reasonable time (Art. 6) – summary

Type of case	Issues	Length	Decision
Criminal cases	Diverse	More than 5 y.	Violation
Civil cases	Priority cases	More than 2 y. (min: 1y10m)	Violation
Civil cases	Complex cases	More than 8 y.	Violation
Administrative	Priority	More than 2 y.	Violation
Administrative	Regular, complex	More than 5 y.	Violation

Non-violation of the reasonable time (Art. 6) – examples

Type of case	Issues	Length	Decision
Criminal cases	Normal cases	3y6m (total in 3 instances); 4y3m (total in 3 levels. + investigation)	No violation
Criminal cases	Complex	8y5m (investigation and 3 levels)	No violation
Civil cases	Simple cases	1y10m in first instance; 1y8m on appeal; 1y9m Court of Cassation	No violation
Civil cases	Priority cases (labour)	1y7m in first instance (labour); 1y9m on appeal; 1y9m Court of Cassation	No violation

The values from the above table only relate to the analysed cases and cannot be taken as a fixed rule. Future cases which will be considered in the light of their particular circumstances, according to the established criteria of the Court. Still, they may be useful for the purposes of general assessment and analysis.

Foreword

This study aims to have a concrete knowledge of the cases addressed by the European Court of Human Rights to judge the conformity of timeframes of judicial proceedings with the requirement of Article 6 para. 1 of the European Convention of Human Rights.

It has been designed so that policy makers and judicial practitioners in the member states of the Council of Europe can use this specific information to orient the reform of the normative frameworks and the administrative and judicial practices towards optimum and foreseeable timeframes of judicial proceedings, in line with the CEPEJ Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframes".[1]

The study was initiated by the CEPEJ Task Force on timeframes of judicial proceedings (CEPEJ-TF-DEL) which entrusted Ms Françoise Calvez (Judge, France) to prepare a preliminary report. The CEPEJ-TF-DEL was chaired by Mr Alan UZELAC (Ph.D. Professor at the Faculty of Law, University of Zagreb, Croatia) and composed of Mr Jon Johnson (Professor in Law, Dean, Faculty of law, University of Oslo, Norway), Ms Janny Kranenburg (Vice-President, Court of Appeal of s'Hertogenbosch, Sector Civil Law Sec, The Netherlands), Mr John Stacey (Head of Civil & Family Procedure Branch, Her Majesty's Courts Service, London, United Kingdom), Mr Gabor Szeplaki-Nagy (Judge, Head of the Private Office of the President of the Supreme Court, Director of the Human Rights Office of the Supreme Court, Budapest, Hungary), Mr Michael Vrontakis (Vice-President of the State Council, Greece) and Ms Jana Wurstova (Czech Bar Association, Prague, Czech Republic). Mr Klaus Decker also participated in the Task Force as an observer in respect of the World Bank, and Mr Jean-Jacques Kuster as an Observer in respect of the European Union of Rechtspfleger and Court clerks.

The CEPEJ wishes to express its warm thanks to the scientific expert and the members of the CEPEJ-TF-DEL. It also thanks for their support and availability the Registry of the European Court of Human Rights, the Department of the Execution of Court Judgments and the Secretariat of the Steering Committee for Human Rights (CDDH), as well as Ms Jenny Monnin (student at the University Paris II) for her research work.

The Report was adopted by the CEPEJ at its 8th plenary meeting (December 2006).

1. See document CEPEJ(2004)19.

Table of contents

Article 6.1 of the European Convention on Human Rights of 4 November 1950 reads:

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

This key provision of the Convention has led to several cases before the Court regarding the concept of a fair hearing or trial. In terms of volume, the majority of cases have concerned the right to have cases heard within a reasonable time. This applies to criminal as well as civil cases, since Article 6.1 also refers to "*any criminal charge*".

Court judgments finding violations of Article 5§3 or of Article 6§1 may appear to be based on the same grounds, but there are certain differences: firstly, Article 5§3 is concerned with the arrest and situation of persons remained in custody[2] and secondly it calls for special diligence, as the Court made clear in its *Stögmüller* judgment of 10 November 1969: "*there is no confusion between the stipulation in Article 5 (3) (art. 5-3) and that contained in Article 6 (1) (art. 6-1). The latter provision applies to all parties to court proceedings and its aim is to protect them against excessive procedural delays; in criminal matters, especially, it is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate. Article 5 (3) (art. 5-3), for its part, refers only to persons charged and detained. It implies that there must be special diligence in the conduct of the prosecution of the cases concerning such persons. Already in this respect the reasonable time mentioned in this provision may be distinguished from that provided for in Article 6 (art. 6).*"

However, although this emphasis on the need for diligence in the conduct of cases may seem to be a recent phenomenon, it has a far longer legal history.

For example, as far back as the early fourteenth century, a simplified procedure was introduced into canon law so that certain categories of cases could be dealt with more rapidly (see CH. Van Rhee, *in The Law's Delay*).

2. However, the European Court applies Article 6§1 to the investigation stage of criminal proceedings.

Nor has common law been spared, witness the works of Dickens, particularly the Pickwick Papers where the author is highly critical of the length on certain proceedings in England.[3] Much more recently, the Civil Justice Council, chaired by Lord Woolf, has published its report "*Access to Justice"* (July 1996), which makes various proposals for expediting civil proceedings in the United Kingdom.

The old adages in French (*justice rétive, justice fautive*) and English ("*justice delayed is justice denied"*) neatly summarise the reasons why the European Court is so insistent on the need to avoid delays.

In international law, the 1948 Universal Declaration of Human Rights embodies the notion of a fair trial or hearing but makes no explicit reference to a "reasonable time". Article 10 reads: "*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him*."

However the reference to equality is not unconnected to the notion of "reasonable time", given that excessive delays are a major source of inequality, for example between those who can afford, psychologically as well as financially, to await the outcome of a case and may even seek to delay it, and those for whom any deferral of a hearing has unbearable financial or human consequences. In such cases, the lapse of time may itself become the source of further injustice.

Article 6§1 of the European Convention therefore introduced the notion of time into the twentieth century court proceedings as well as a new concern for the prompt administration of justice. The European Court and Commission have since translated this concept into case law through an impressive collection of decisions and judgments, whose number grew exponentially in the 1990s.

The idea reappeared in Article 14§3 of the International Covenant on Civil and Political Rights of 19 December 1966, which grants anyone facing a criminal charge the right "*to be tried without undue delay*". This ground may be relied on by any individual since the entry into force of the optional protocol of 17 August 1994, which authorises the Human Rights Committee to examine individual communications.

The issue has also arisen in Community law. The Court of Justice of the European Communities includes the Human Rights Convention in its body of law, as it explicitly stated in its *Kremzow* v Republic of Austria judgment, case C-299/95: "*It should first be noted that, as the Court has consistently held (see, in particular, Opinion 2/94 [1996] ECR I-1759, paragraph 33),*

3. C.H. Van Rhee, "The laws delay: an introduction", in: "The law's delay: essays in undue delay in civil litigation", Intersentia, 2004.

fundamental rights form an integral part of the general principles of Community law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. Convention has special significance in that respect. As the Court has also held, it follows that measures are not acceptable in the Community which are incompatible with observance of the human rights thus recognized and guaranteed (see, in particular, Case C-260/89 ERT [1991] ECR I-2925, paragraph 41)".

In the *Baustahlgewebe v. Commission* judgment of 17 December 1998, the Court of Justice considered the application of Article 6§1 of the European Convention to proceedings in the Court of First Instance and scrupulously applied all the criteria relating to "reasonable time" identified by the European Court of Human Rights.

The principle also appears in Community legislation. Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters introduces a servicing system based on the notion of a reasonable period.

The right to have one's case heard within a reasonable time is therefore now embodied in international and European law and is gradually being incorporated into contracting parties' domestic law.

The term does not appear in the new French Code of Civil Procedure but is expressly stipulated in the Presumption of Innocence Act of 15 June 2000, which incorporates it into the first article of the Code of Criminal Procedure and in various subsequent provisions.

It also appears in Italian law,[4] where the right to a fair trial has been given constitutional force, and in the 1978 Spanish constitution, Article 24.2 of which grants the right to a trial or hearing within a reasonable time and which also makes this a fundamental right via the "recurso di amparo". Similarly, since 1 January 2002, Article 127 of the Slovakian constitution has granted individuals and legal persons the right to challenge violations of fundamental rights, on the basis of which the Constitutional Court has handed down judgments concerning the length of proceedings.

Most national legal systems now lay down deadlines for completing certain legal and judicial procedures.

Admittedly, the right to a fair trial or hearing and to have the case heard within a reasonable time does not fall into the category of rights from which states can never seek exemption, even in exceptional circumstances.

4. Article 111 of the Italian Constitution.

Article 15 of the European Convention authorises states to derogate from their convention obligations "*in time of war or other public emergency threatening the life of the nation*", though this does not apply to Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment) and 7 (no punishment without law).

Other than in the case of these so-called intangible rights,[5] contracting parties do have a right of derogation.

Parties may also, in theory, waive their rights, so long as such waivers meet the conditions laid down by the European Court. Whether they are explicit or tacit, waivers must be certain and freely given, and the party concerned must be informed of the nature and extent of the rights that he or she has chosen to waive. In the *Deweer* case, concerning the right to be heard by a court, one aspect of the right to a fair hearing, the Court held that "*in an area concerning the public order (*ordre public*) of the member States of the Council of Europe, any measure or decision alleged to be in breach of Article 6 (art. 6) calls for particularly careful review*" (*Deweer v. Belgium* judgment of 27 February 1980).

As certain commentators have noted, although it is possible to waive certain elements of the right to a fair hearing others aspects are such an integral part of this notion that in their absence it would no longer apply.[6]

In a number of resolutions, the Council of Europe's Committee of Ministers has stated that *"excessive delays in the administration of justice constitute an important danger, in particular for respect for the rule of law"*.

There is always a risk that justice will be denied when proceedings drag on. As time passes, certain legitimate interests may be adversely affected, evidence disappears and new evidence has to be adduced, procedural manoeuvres are allowed or even encouraged, witnesses disperse and lose credibility and further costs are incurred, which parties of good faith may sometimes be unable to bear.

However, time is also essential for proper inquiries to be conducted, all the questions of law elucidated and relations between the parties settled and for the court to arrive at a reasoned conclusion. Reasonable time is thus a sensitive issue.

As we shall see, the Court has adopted a pragmatic approach to the question. Generally speaking, it tries to establish whether time has been used

5. F. Sudre, "la dimension internationale and européenne des libertés and droits fondamentaux", in: Libertés and droits fondamentaux, edited by R. Cabrillac, M-A Frison-Roche and T. Revet, Dalloz, 2004, p. 33 to 51.
6. J-C Soyer and Mr de Salvia article 6, in "Convention européenne des droits de l'homme commentaire article par article" edited by L-E Pettiti, Economica p. 244

wisely in all the stages of the relevant procedure and identifies periods of inactivity, which it criticises if they do not appear justified.

Before going on to the substance of this report reference should be made to the CEPEJ's terms of reference. The report is required to assess the issue of length of proceedings in the Council of Europe's member states on the basis of the case law of the European Court of Human Rights, with particular reference to the most recent cases. It is stated: there are two main issues that would have to be studied. One regards the length of proceedings that was regarded reasonable or unreasonable (in general and for particular types of cases), and the other regards the analysis of the main causes for the delays (in cases where the length was found to be unreasonable.

The author has examined a large number of judgments and decisions of the Court, and decisions of the former Commission.

The main source has been the Court's *HUDOC* site, which was consulted by entering Article 6§1 and the words "*délai raisonnable*" ("reasonable time").

A table is appended[7] setting out the number of cases thus identified on which judgments were handed down between 1985 and 8 October 2005, including friendly settlements. The number is only indicative, given the possible margin of error in the use of the search engine. Nevertheless, it does appear to be statistically reasonably accurate. This table also give the number of inhabitants per country and the dates of ratification and of recognition of the right of individual petition for each contracting state.

In the case of states with more than 100 findings of violations, all the judgments of the last five years were considered systematically. This concerned France, Greece, Italy, Poland, Portugal and Turkey. We have also examined the most significant prior decisions relating to countries indicated to us by the CEPEJ secretariat, and other officials of the Court Registry and the Committee of Ministers.

It soon became clear that recent judgments throw little light on the causes of delays because the Court now offers a very succinct statement of its reasoning. Because of the large volume of length of proceedings cases, the Court merely refers to the criteria laid down in its established case law, other than for pedagogical reasons in the case of new member states or when the particular circumstances of the case call for more detailed explanations. It was therefore necessary to refer to much earlier judgments of the former and new Court and decisions of the Commission in order to identify the criteria determined and applied by the Court.

7. Appendix 1

It should be emphasised from the outset that the statistics must be interpreted with considerable caution, as they cannot by themselves reflect the reality in each country. There are states for which the Court has found relatively few cases of excessive length of proceedings, but it cannot necessarily be concluded that their courts are particularly diligent.

In some cases problems may arise at an earlier stage and concern access to the courts. Citizens may make only limited use of the courts because of the costs incurred, or because alternative remedies are encouraged or are more effective. Equally, in some countries there may be little awareness of the right to apply to the European Court of Human Rights whereas others will have legal practices specialising in this type of application, leading to a very significant number of cases and a proportionally higher number of adverse judgments.

Moreover, very rapid proceedings do not always translate into good justice. Certain expedited procedures where speed takes priority over the rights of the defence may be detrimental to the quality of justice. The European Court has always held that the principle of good administration of justice goes well beyond the notion of reasonable time[8] and may justify resort to lengthier but fairer proceedings.

The terms of reference also require the expert to establish whether, on the basis of a considerable volume of cases, the Court has laid down rules on maximum lengths of proceedings that could be considered reasonable for particular categories of cases or, on the other hand, on minimum lengths of proceedings from which the Court might conclude that there had been a violation of the right to a fair hearing in a reasonable time.

Here a few comments should be made on the methodology used in the report.

As much as thirty years ago, and following an internal debate on the subject, the Court refused to give states any legal rulings whatever on what might be considered a standard length of proceedings. It has remained faithful to its practical approach and its commitment to weighing up all its established criteria according to the circumstances of each case, and has never laid down precise rules on, for example, how much time a court should give to a divorce case to avoid the threat of sanction from Strasbourg. The position has not changed since the 1998 reform.

At the most, it appears that 2 years per level of court is the limit beyond which suspicions may arise and the Court will give particular attention to the circumstances of the case. When it finds that a significant period of time

8. In the Intiba v. Turkey judgment of 24 May 2005, § 54, the Court stated that although Article 6 of the Convention required proceedings to be conducted with due speed, it also embodied the more general principle of good administration of justice (judgment in French only). See also *Boddaer v. Belgium* judgment of 12 October 1992.

appears to have elapsed it generally uses a form of wording such as that the Court has noted that the court of appeal only handed down its judgment more than 7 years and 3 months after the applicants brought their case before it, and that such a lapse of time would at first sight seem unreasonable for a single tier of court and therefore calls for close examination under Article 6§1 of the Convention.[9] Or alternatively, "*that more than seven years have already elapsed since the laying of charges without any determination of them having yet been made in a judgment convicting or acquitting the accused, certainly indicates an exceptionally long period which in most cases should be considered as exceeding the reasonable time laid down in Article 6§1".*[10]

In order to provide the Committee with relevant material, the author has prepared a number of tables of types of cases showing certain common features that make it possible to compare the length of proceedings and the Court's verdict.

They include:

– **a table of "priority" cases**, in terms of what is at stake for the applicant. From the standpoint of a president of a court these could be categorised as "priority" cases. In terms of managing the flow of cases, these particular examples should be dealt with more expeditiously than others in which the time factor is less important for the outcome. (Appendix 2)
– **two tables of complex cases, involving findings of violations and non-violation respectively** (Appendix 3). These are cases recognised as difficult by the Court and for which it can accept more lengthy proceedings so long as they are not open to criticism on other grounds, such as the conduct of the applicant or of the authorities.

At the request of the members of the Task Force, the final report has been supplemented, **with a table of non-complex cases** allowing comparison of durations of proceedings of a routine nature (Appendix 4)

These two sets of tables, involving on the one hand a requirement by the Court for greater expedition and on the other an acknowledgement that the difficulty of the case justifies a certain amount of delay, offer a range of cases showing how length of proceedings can vary.

The report is in two parts:

– the first considers the criteria established by the European Court of Human Rights for determining whether a reasonable time has elapsed;
– the second is concerned with the reasons for delays, as they emerge from Court judgments, Commission decisions and Committee of Ministers

9. M*arien v. Belgium* judgment of 3 November 2005 (French only)
10. *Neumeister v. Austria* judgment, 1968

resolutions, and offers an initial overview of lengths of proceedings in tabular form.

It is supplemented by appendices detailed above.

First part
The criteria of the Court for determining "reasonable time",within the meaning of Article 6.1 of the European Convention on Human Rights

Introductory note: The exhaustion of domestic remedies

The Convention is intended to complement national arrangements for protecting human rights. As the Court stated in the *Handyside* judgment of 7 December 1976: "*the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights".* Because of its subsidiary character, Article 35 of the Convention makes it obligatory to exhaust domestic remedies.

The Court applies this provision with certain flexibility by requiring applicants to exhaust all remedies in domestic law that can reasonably be expected of them but not to try remedies that have no chance of success.

Applicants must also have relied on the alleged violation of the European Convention on Human Rights, at least in substance, in the domestic courts.

With regard to the reasonable lapse of time condition, the subsidiary nature of the system for protecting human rights was strengthened by the *Kudla v. Poland* judgment of 26 October 2000. In a reversal of its case law, the Court ruled that Article 13 of the Convention[11] now provided a right to a remedy that was quite distinct from the Article 6 protection against violations of the reasonable time requirement.

Hitherto, the Court had had to consider Article 6§1 as a *lex specialis* in relation to Article 13, and it did not consider claims of a violation of the latter if it had already found a violation of Article 6§1.

However, "*the growing frequency with which violations in this regard are being found has recently led the Court to draw attention to 'the important danger' that exists for the rule of law within national legal orders when*

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

'excessive delays in the administration of justice' occur in respect of which litigants have no domestic remedy".

The Court noted that the purpose of Article 35§1, which it informs us has close affinities with Article 13, is to afford contracting states the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Referring to the preparatory work on the European Convention on Human Rights, it went on: "*The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court".*[12]

In this crucial judgment, the Court therefore invites contracting states to establish domestic procedures that offer citizens an effective remedy, in law and in practice, against excessively lengthy proceedings, whether or not the remedy is a judicial one.

In its *Mifsud v. France* decision of 11 September 2002, the Court looked in more detail at two options: preventive and compensatory remedies. According to the Court, the fact that this purely compensatory remedy was unable to expedite proceedings currently under way was not critical. Domestic remedies that citizens could use to challenge the length of proceedings were "effective", as understood by Article 13, when they were capable of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that had already occurred (judgment in French only).

Article 13 therefore offers one option, namely that remedies are "effective" if they can force the court concerned to reach an earlier decision or award the party adequate compensation for delays already incurred (*Kudla* judgment, §159). According to the Court, given the close links between Articles 13 and 35§1 (see also (*Kudla* judgment, §152), the same criteria of effectiveness necessarily apply to domestic remedies within the meaning of the latter.

The Court therefore now gives states two alternatives in domestic law, either to offer applicants compensation for detriment caused by excessive delays or to make it possible, at the applicant's request, to expedite the proceedings. Both options are used by contracting states, as will be seen in the second part of the report.

12. Kudla judgment § 152.

However, remedies must be readily available and adequate. According to *Bindels*, these remedies must be sufficiently certain, theoretically and in practice, if they are to be effective and accessible.[13]

States are always required to demonstrate to the Court the effectiveness of their remedies. By showing that their legislation or practice has changed, countries can persuade the European Court to modify its position.

To take the Portuguese example, when it ruled that the *Paulino Tomas* v. *Portugal* case of 27 March 2003 was inadmissible, the Court considered, for the first time, that the legislative-decree of 21 November 1967 on the state's extra-contractual liability was an effective means of challenging the length of proceedings. Hitherto, the Commission had consistently rejected arguments based on this decree (see *Gama da Costa v. Portugal* decision of 5 March 1990), because there was no case law to show that such actions were likely to succeed. However, following the supreme administrative court's change of practice on the 15 October 1998 in its *Pires Neno* judgment, the Committee found that, as of October 1999, this remedy had acquired sufficient legal certainty for its use for the purposes of Article 35(1) of the Convention to be possible and necessary.

In another Portuguese case, in the criminal domain, the Court held that applying for an order to expedite the proceedings under Articles 108 and 109 of the Code of Criminal Procedure was a precondition of any application to it and a remedy that had to be exhausted (*Moreira Barbosa* admissibility decision of 29 April 2004).[14] It found that in this case the applicant had exercised this right unsuccessfully and that he was not obliged to bring a second action on extra-contractual liability under the 1967 legislative-decree, whose purpose was practically the same. It therefore dismissed the government's argument that domestic remedies had not been exhausted.[15]

In France, since the *Giummarra v. France* decision of 12 June 2001 and the aforementioned *Mifsud* decision, Article L. 781-1 of the Judicial Organisation Code has been an obligatory remedy for anyone wishing to complain of excessive lengthy proceedings in the courts. Since 21 September 1999, any applications to the European Court that have failed to use this prior domestic remedy have been declared inadmissible.[16]

13. R. Bindels, "L'influence du droit d'être jugé dans un délai raisonnable prévu par l'article 6§1 de la Convention européenne des droits de l'homme sur l'administration de la justice civile belge", in Annales de Droit de Louvain, vol 62. 2002, No. 3-4 p. 349 to 428.
14. See also the *Tomé Mota v. Portuga*l decision, No. 32082/96.
15. See also *I.S v. Slovakia* of 4 April 2000, §31.
16. It is the same before administrative courts: see *Broca and Texier-Micault v. France* of 21 October 2003.

I. Established criteria for assessing time elapsed

The Court generally uses the following wording: "*the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case law, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities*".

Since the *Neumeister* judgment of 27 June 1968, these three criteria have been applied consistently by the Court to both criminal and civil cases. The *König* judgment of 28 June 1978 added a further criterion, namely what is at stake for the applicant.

For each application these criteria are examined and the Court makes an overall evaluation.

The number of proceedings for a case is, also, an element which the Court will take into account. The *Martial Lemoine judgment v. France* of 29 April 2003 which concerned a dispute over co-ownership of property lasting 7 years, 8 months and 26 days for proceedings in four tiers of court. The proceedings lasted 1 year and 10 months at first instance, 1 year and almost 8 months on appeal, one year and nine months at the cassation stage and slightly more than 2 years in the second appeal court. The Court reached the following conclusion *"... Although an overall duration of more than seven years and eight months is a fairly lengthy period, the Court considers that the time lapses attributable to the authorities cannot be deemed unreasonable, in view of the circumstances of the case as a whole and in the light of its case law.*"(§ 33 – unofficial translation)

A. The complexity of the case

This may involve legal factors, such as a change in legislation, the transformation to a market economy, the interaction between administrative and judicial procedures (for example, the dismissal of disabled workers in Austria and France), the need to await the outcome of a criminal trial before civil proceedings could be terminated (*Djangozov v. Bulgaria* judgment of 8 July 2004), the joining of several cases, the need to reconcile the interests of individuals with those of the community and the presence of several accused.

It may also involve factual elements, so that the need to hear numerous witnesses and the difficulty of locating witnesses (*Mitev v. Bulgaria* judgment of 22 December 2004) have to be taken into account, as does the time needed to reconstruct events or assemble evidence (*Akcakale v. Turkey* judgment of 25 May 2004), or, on the other hand, the absence of any witnesses in a criminal case (Commission, *Jean-Claude Boddaert v. Belgium*, 17 April 1991).

Other complicating factors are the use of specialist expertise or the need to translate documents or call on an interpreter (in the *Sari v. Turkey and Denmark* judgment of 8 November 2001, which concerned a case of homicide committed in Denmark by the applicant, a Turkish national, the Court drew attention to the factual delays arising from the need to translate the proceedings into two languages).

Certain cases are complex for both factual and legal reasons, such as the need to know, more than 20 years on, whether the applicant was in a state of bankruptcy on 14 September 1971 and, if not, what his assets were in that year.[17]

The Court also seems to treat certain cases as complex by their very nature. Examples include land consolidation, compulsory purchase, fraud cases and international financial offences.

In the *Wiesinger v. Austria* case of 30 October 1991, for example, which concerned a land consolidation scheme, the Court recognised "*as did all the participants in the Strasbourg proceedings, that land consolidation is by its nature a complex process, affecting the interests of both individuals and the community as a whole*" (the issue had already been raised in the *Erkner and Hofauer* case).

In the *Wejrup v. Denmark* decision of 7 March 2002 concerning a fraud case, the Court referred to the complexity of the case, which concerned the activities of the finance director of a holding company of a group of over fifty companies throughout the world and required an examination of these companies' accounts over a 5-year period. It noted that "*the scale and complexity of a criminal case concerning fraud, which often is compounded further by the involvement of several suspects, may justify an extensive length of the proceedings*".

In the *C.P. and others v. France* (18 October 2000) and *Hozee v. Netherlands* (22 May 1998) judgments, the Court found that Article 6§1 had not been violated. Yet in the former case, the proceedings had lasted 7 years, 9 months and 26 days.

In the Hozee case, the Court stated that the preliminary judicial investigation of 4 years and 7 months appeared "*to have lasted a disturbingly long period of time*".

It examined this procedural stage in detail and drew attention to the complexity of the task of unravelling a network of interlocking companies and accounts which had been created in such a way as to make it as difficult as possible for the authorities to detect fraudulent tax and social-security practices.

17. *Sablon v. Belgium* judgment of 10 April 2001 (French only).

It also noted that the authorities had to take evidence from a substantial number of witnesses and collect and examine a very significant volume of materials, and that the undoubted scale and complexity of the investigation were further compounded by the involvement of other suspects in the fraud. It concluded that there had not been any period of inertia and that the length of the investigation had not been unreasonable.

In a case concerning the constitutionality of a tax on electricity, the Court noted that the case was a complex one because the Constitutional Court had to solicit the observations of a number of authorities (*Klein v. Germany* judgment of 27 July 2000).

However, the complexity of a case is not always sufficient to justify the length of proceedings. Other criteria come into play and the Court makes an overall assessment in the light of all the various criteria concerned.

B. The applicant's conduct

This criterion presents a particularity: it is the only criteria which can involve a report of a non violation, while at the same time the time there is obviously an excessive lengthy procedure and so in addition, no notable inactivity is ascribable with the national jurisdictions. If it is the essential cause of the delay, there will be no violation of the Article 6§1.

In a decision of admissibility, on the civil matter,[18] the Commission recalled *"that what is required as a part of a civil procedure is a 'normal diligence' and that only ascribable slowness in the State can lead to the conclusion of a "reasonable delay"*. In the species, it showed the non violation of Article 6.1, estimating that the non diligent behaviour of the applicant was largely responsible for the, "first of all unreasonable" duration, that is to say more than 10 years for a procedure of divorce.

The Court has held, in a criminal case, that "... *Article 6 (art. 6) did not require the applicants actively to co-operate with the judicial authorities*" (*Eckle v. Federal republic of Germany* judgment of 15 July 1982 § 82).[19]

Like the Commission, the Court considers "*that the person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings. He is under no duty to take action which is not apt for that purpose*" (*Union Alimentaria Sanders SA* judgment of 7 July 1989). Nevertheless, "*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*

18. Final decision of admissibility, *Hervouet C. France*, of July 2 1997.
19. *Corigliano v. Italy*, 10 December 1982, §42.

not the reasonable time referred to in Article 6 para. 1 ... has been exceeded" (*Wiesinger* v. *Austria* judgment of 30 October 1991, § 57).[20]

In criminal cases, the Court always deducts any time when the applicant was evading justice. In the aforementioned *Sari v. Turkey and Denmark* case, the Court stated that the period of 2 years, 4 months and 6 days between 23 February 1990, the date he absconded, and 29 June 1992, the date of his arrest in Istanbul, was solely the responsibility of the applicant, who thereby effectively evaded justice of his own free will (judgment in French only). The Court emphasised that the obligation to appear in court was an essential element of the judicial process, other than in cases of *force majeure* or where there was a legitimate excuse, and that it was out of the question for the applicant to benefit from his decision to abscond from justice.

The Court has also taken account of the fact that an applicant delayed proceedings by failing to give the authorities his address (*Mitev v. Bulgaria* judgment of 22 December 2004)

However, it excludes any delays that could be considered to result from *force majeure*. For example, an applicant's repeated admissions to hospital in the course of proceedings owing to his poor health could not be deemed his responsibility (*Lavents v. Latvia* judgment of 28 February 2003).

Applicants are only held to be responsible for delays when they have manifestly shown bad faith.

In a very long (15 years) Italian civil case, the Court agreed with the Commission that the two applicants had never taken steps to secure a more rapid examination of their case and had even made repeated requests for adjournments (at least 17), and therefore shared responsibility for the delays in proceedings. It concluded that there had been no violation of Article 6§1.[21] The Court makes a clear distinction between different types of applicant conduct. Applicants are totally free not to reactivate proceedings or resume them in other courts, according to the principles governing the organisation of proceedings and the responsibility of the parties laid down in national regulations governing civil proceedings, and the courts have no leeway in this respect.

The situation is different in the case of applicant apathy in the course of the proceedings. Courts must ensure that they run smoothly, for example, by acting attentively when asked to agree to a request for adjournment, hear witnesses or monitor the deadlines established for the preparation of an expert's report.[22]

20. Cited in *Versini v. France*, 10 July 2001.
21. *Ciricosta and Viola v. Italy* judgment of 4 December 1995.
22. *Patrianakos v. Greece* judgment of 15 July 2004.

However, applications cannot be criticised for using all the remedies open to them. In the *Guerreiro v. Portugal* judgment of 31 January 2002, the Court argued that "*applicants cannot be blamed for making full use of the remedies available to them under domestic law*" (*Erkner and Hofauer v. Austria* judgment of 23 April 1987, § 68). In this case, although some of the applicant's appeals had been dismissed, the one lodged on 13 March 1990 had been partially successful.

The Court examines closely delays that might be caused by applicants' conduct. In the *Proszak v. Poland* judgment of 16 December 1997, the Court identified a series of groundless challenges, failures to attend hearings, only partly justified on medical grounds, poor co-ordination between the applicant and her counsel and her refusal to attend a third psychiatric examination as being critical for the delays in the proceedings and found that Article 6§1 had not been violated.

In another Polish case, the main cause of the procedural delays was the conduct of the applicant and his co-accused in the criminal proceedings, as a result of which the Court concluded that the 6 years and 1 month that the aggravated fraud proceedings had lasted was not unreasonable. The Court criticised the applicant's repeated failure to attend hearings on unjustified medical grounds and his failures to attend medical examination ordered by the court to establish whether he could participate in the proceedings.[23]

In a case, where the proceedings lasted 7 years and 2 months in two tiers of court, no violation was found; the Court explained its analysis as follows: "*the applicant failed to show the diligence required of a party to proceedings governed by the rule that control of the course of civil proceedings rests with the parties, since he submitted several imprecise or unfounded procedural requests. As for the national courts, they cannot be held responsible for the fairly lengthy delays, making it possible to regard the overall length of the proceedings as excessive*." (§ 209 – unofficial translation).[24]

C. The conduct of the competent authorities

According to the Court, the conduct of the competent authorities can, of itself, result in a violation of the reasonable time requirement.

1. National authorities' arguments accepted by the Court

The European Court accepts that certain circumstances leading to an exceptional overload of the courts may absolve the state of responsibility.

For example, in the *Foti and others v. Italy* judgment of 10 December 1982, before reviewing separately each set of proceedings in issue, the Court

23. *Klamecki v. Poland* judgment of 28 March 2002.
24. *Dosta v. Czech Republic* judgment of 25 May 2004.

noted "*the extent of the troubles that occurred in Reggio Calabria from 1970 until 1973 [which] ... had two important implications for the present case. Firstly, they engendered an unusual political and social climate, and one in which the courts could legitimately fear, in the event of precipitate convictions or severe sentences, a recrudescence of tension and even a recurrence of the disorders. Secondly, the troubles were not without effects on the workings of criminal justice. Such effects were felt mostly in the Reggio Regional Court, but the courts in Potenza, to which cases had been transferred, were also confronted with an exceptional backlog of business."* It concluded that "*these circumstances must be borne in mind and, in particular, normal lapses of time stemming from the transfer of the cases are not to be regarded as unjustified."*

In the *Buchholz* case,[25] the Court took account of the national authorities' efforts to deal with the significant increase in the workload of the labour courts of appeal resulting from the economic recession and the backlog of cases that resulted, particularly in the Hamburg court. The number of judicial posts was increased in 1974, when the number of cases started to rise. It also noted that the Hamburg court managed to deal with more cases in 1976 and 1977 than in 1974 and 1975, while the average length of proceedings fell, and that a sixth chamber was established in 1976, to which more than half the cases pending before another chamber were reallocated. Finally, to expedite the cases coming before the labour courts, the Government put forward a proposal for legislative reform which was adopted by the parliamentary assemblies in 1979.

Despite the fact that what was at stake was important for the applicant and that the employment case in question lasted 4 years, 9 months and 16 days before three levels of courts, the Court concluded after a detailed examination of all the procedural stages and measures that in view of the circumstances of the case, in particular the defence strategy, which helped to delay the proceedings, there had been no violation of Article 6§1.

This reasoning was confirmed in the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, in which the Court stated that "*a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind*".

Among the reasons recognised by the Court as excusing national authorities from responsibility for excessively lengthy proceedings are a number of specific factors such as ones connected with requests for international judicial assistance in criminal cases. In the *Neumeister v. Austria* judgment of 27 June 1968, it stated that "*it is, for example, not possible to hold the*

25. *Buchholz v. Germany* judgment of 6 May 1981.

Austrian judicial authorities responsible for the difficulties they encountered abroad in obtaining the execution of their numerous letters rogatory".

Neither are the authorities held responsible for the effects of lawyers' strikes, unless they fail to specify precisely their impact.[26] States must also do whatever they can to reduce any resultant delay (*Papageorgiou v. Greece* judgment of 22 October 1997).

2. National authorities' arguments rejected by the Court

When states claim that a court is facing an exceptional backlog of cases, the Court generally states that "*Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that they can meet the requirements of that provision*", particularly with regard to the reasonable time condition. The requirement still applies, even if the delays are caused by the structure of the national judicial system.[27]

Contracting states can choose what steps to take to adjust their judicial systems to meet the reasonable time requirement, but when the authorities fail to take adequate measures states have to accept responsibility, because it is established case law that the chronic overload of cases before one court does not provide a valid justification for the length of the proceedings (see, among others, the *Dumont v. Belgium* judgments of 28 April 2005 – French only).

Moreover, "*it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations"*.

This principle has been applied to proceedings before supreme courts, as in the *Vergos v. Greece* case of 24 June 2004, where proceedings before the Supreme Administrative Court had lasted 4 years and 11 months, and the *Paummel v. Germany* case of 1 July 1997, where proceedings before the federal Constitutional Court alone had lasted 5 years and nearly 3 months.

It also applies where several levels of courts are concerned. In such cases, states are responsible under Article 6§1 for any periods of inactivity, whether they are the consequence of courts' chronically excessive workload or a manifest shortage of judicial personnel.

The time taken to investigate cases is often the reason for excessively long criminal proceedings. In a uncomplicated case that had led to two sets of criminal proceedings lasting respectively 4 years and 4 years and 3 months

26. *Savvidou v. Greece* judgment of 1 August 2000.
27. *Hadjidjanis v. Greece* judgment of 28 April 2005, French only.

the Court found a violation of Article 6§1.[28] The authorities maintained that it had been difficult to locate witnesses but the Court did not accept this argument, particularly as the judgments of the criminal court had been handed down *in absentia*. In particular, it found that 3 years to investigate the complaint, to which the applicant had been joined as a civil party, was excessive in view of the financial implications for him.

In a criminal case in which the applicant had been prosecuted for aggravated slander after criticising the conduct of two judges, the Court found that there had been a violation of Article 6§1. Regarding the overall length of the case, which lasted 6 years, it commented that "*this would, at first sight, appear to be a considerable lapse of time for a case of this kind*". Having examined each stage of the proceedings the Court ruled that the investigation stage, in which there had been two unexplained periods of inactivity of fourteen and thirteen months, had been excessively long for a non-complex case.[29]

In civil cases, the Court considers that subject to the individual circumstances of each case and notwithstanding parties' responsibility for the conduct of proceedings, states must organise their legal systems in such a way that their courts can guarantee compliance with Article 6§1, and in particular ensure that proceedings are conducted expeditiously. Moreover, the courts retain their responsibility for securing compliance with the reasonable time requirements of Article 6§1, particularly by using their powers to counter any delaying tactics by one or other parties to the proceedings, as the Court stated in a case where the government had argued that the defendant's conduct was the main reason for delays in paternity proceedings (*Costa Ribeiro v. Portugal* judgment of 30 April 2003, French only).

It is clear from the Court's case law regarding France and Germany that even if the case in question is of an accusatory nature and very dependent on the parties' taking the initiative (as is the case in these two countries), the courts must still use all their powers of enforcement to ensure that proceedings are conducted at the pace warranted by the nature of the case and the circumstances of the parties, set deadlines for them that meet the requirements of Article 6§1 and if necessary penalise any failure to abide by these decisions.

The Court does not accept the argument that applicants have not been adversely affected by delays. For example, in the *Jorge Nina Jorge and others v. Portugal* judgment of 19 February 2004 (French only), the Government claimed that the extension of the judicial stage of the proceedings had not caused detriment to the applicants as they had already received the compensation in question. The Court found that a violation of the

28. *Dachar v. France* judgment of 10 October 2000.
29. *Corigliano v. Italy* judgment of 10 December 1982.

Convention was possible even if there had been no detriment, which had in any case by no means been established.

This point, which could be affected by the entry into force of Protocol No.14, will be considered again later.

The former Commission also ruled that making provision in domestic law for extensions of the time limits set for the state prosecutor to present his conclusions did not absolve the state from its responsibilities and it could still find the resulting delays excessive (Commission, *Macedo v. Portugal* of 6 November 1989, French only).

In the *Desrues v. France* judgment of 21 July 2005 (French only), the Government maintained that publication of a decree on 10 January 1992 setting out the rules and criteria for classifying and assessing psychiatric disorders arising from military action had led to an influx of requests for associated military invalidity pensions, resulting in delays in dealing with such cases. The European Court simply replied that delays in the domestic courts resulting from an influx of applications following a change in the regulations were not acceptable as a defence.

Similarly, a reform of Turkey's judicial system transferring jurisdiction for certain cases from military to civil courts might have contributed to delays[30] but with reference to the principles cited earlier in the *Zimmermann and Steiner* case the Court stated that "*Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time*" (*Sahiner v. Turkey* judgment of 25 September 2001).

A procedural adjournment may be necessary, particularly when a section of the supreme court has to make a ruling, but such rulings must lead to a final settlement, with no further relinquishment of jurisdiction (*Hadjidjanis v. Greece* judgment of 28 April 2005).

Occasionally, in addition to a backlog in certain courts, delays may be caused by a higher court's wish to hear certain similar cases together. The European Court considers such an approach potentially acceptable in the interests of the proper administration of justice but it must not lead to excessive length of proceedings.

The *Hentrich v. France* judgment of 22 September 1994 offers an illustration. In this case, "*the length of the proceedings in the Court of Cassation was attributable primarily to that court's wish to hear together four cases that raised similar issues – an approach which is understandable but which, under Article 6 (art. 6) of the Convention, cannot justify substantial delay*".

30. Eight years and eleven months, in two tiers of courts, since recognition of the right of individual application.

The case had lasted 4 years on appeal, owing to a backlog in the court, and 2 years in the Court of Cassation. Altogether, the proceedings had lasted 7 years and 3 months in three tiers of courts, a period the European Court deemed to be unreasonable in view of what was at stake for the applicant, who had been deprived of her assets because the tax authorities had exercised their right of pre-emption.[31]

As has been shown, the Court takes account of the implications of cases for applicants. What types of proceedings does the Court consider to be sufficiently important for that purpose?

D. What is at stake for the applicant

It is possible to identify from Court judgments situations that it considers to require greater expedition, but no real hierarchy emerges from which the requisite degree of diligence can be deduced. What is at stake therefore has to be determined according to the facts of the case.

"Priority" cases include:

– **Labour/employment disputes**, involving dismissals, recovery of wages or the exercise of the applicant's occupation, where the Court considers that the court concerned must show particular diligence.

In a case over a contract between an independent architect and a local authority, the applicant's main client, the Court considered 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 (*Doustaly v. France* judgment of 23 April 1998).

In the *Lechelle v. France* judgment of 8 June 2004 (French only), the Court confirmed that cases concerning employment disputes covered matters of critical importance for individuals' work situation and had to be settled with particular expedition. With reference to the *Obermeier v. Austria* (28 June 1990), *Buchholz v. Germany* (6 May 1981) and *X v. France* (31 March 1992) judgments, the Court said that the case had been concerned with the applicant's dismissal proceedings and that the issues at stake called for exceptional diligence from the domestic courts.

The Court has recently reiterated its position concerning employment cases.[32]

– **Cases on compensation for accident victims**: when the accidental death of a family member deprives the applicants of their principal means

31. The right of tax pre-emption has since been abolished.
32. *Hüseyin Ertürk v. Turkey* judgment of 22 September 2005, §32 (French only).

of financial support, the latter have a major personal interest in securing a rapid court decision on the award of compensation.[33]

In a case where the applicant had sought compensation for a car accident, the Court noted that "*after a car accident the applicant became partly disabled, and what was at stake for him was a considerable amount mainly intended to compensate his disablement and loss of working capacity. Under these circumstances the Court finds that special expedition was called for*".[34]

– the Court also considers that **the length of an applicant's prison term** requires a certain diligence.

In the *Soto Sanchez v. Spain* judgment of 25 November 2003 (French only), the Court said that the case was of particular significance to the applicant because the sentence of 4 years and 2 months' imprisonment initially handed down by the *Audiencia Nacional* had been increased to 9 years by the Supreme Court and he had been serving this sentence when he appealed to the Constitutional Court. The Court found that the length of proceedings – 5 years, 5 months and 18 days in the Constitutional Court alone – was unreasonable

The Court has stated that in criminal cases, the right to be heard within a reasonable time "*is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate*"(*Stögmüller v. Austria* judgment of 10 November 1969).

In the *Caloc v. France* judgment of 20 July 2000, the Court held that "*special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers*".

– **Cases of police violence**

In a Bulgarian case concerning unlawful police violence and state liability for damages arising from such conduct, the Court stated that "*as regards the importance of what was at stake for the applicant, the Court observes that his action concerned payment for grave injuries sustained as a result of police violence. In such cases special diligence is required of the judicial authorities"* (*Krastanov* v. *Bulgaria* judgment of 30 September 2004).

In cases where delays could deprive the decision of any value, the Court requires the authorities to display not just a certain diligence but exceptional expedition.

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33. *Mehmet Ozel and other v. Turkey* judgment of 26 April 2005, § 38 (French only), see also the following judgments: *Hatun Güven and others v. Turkey* of 8 February 2005, *Meryem Güven and others v. Turkey* of 22 February 2005, and the judgments on *Obermeier v. Austria* of 28 June 1990, §72, and *Karakaya v. France* of 26 August 1994, §30.
34. *Kurt Nielsen v. Denmark* judgment of 15 February 2000.

– The same applies to **applicants' state of health, let alone their life**.

This applied to cases before the French administrative courts concerning state liability for and the award of damages to haemophiliacs contaminated by the HIV virus during blood transfusions.

For example, exceptional diligence was called for in the particularly tragic *X v. France* case of 31 March 1992, in which the applicant, a haemophiliac who had undergone blood transfusions, died of AIDS while his case was before the European Court. Like the Commission, the Court took the view that "*what was at stake in the contested proceedings was of crucial importance for the applicant, having regard to the incurable disease from which he was suffering and his reduced life expectancy*."

In a similar case, the Court stated that "*what was at stake in the proceedings in issue was of crucial importance to the applicant, who has been HIV-positive from birth. .... In short, exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with"* (*Henra v. France* judgment of 29 April 1998).[35]

What is at stake must be critical if the Court is to find a violation. It has drawn a distinction between applicants who are HIV infected, who are entitled to exceptional diligence, and those who are dependents or parents of AIDS victims, to whom a lesser degree of diligence applies. In a single case with several applicants (*A and others v. Denmark* of 8 February 1996, in which the applicants' conduct contributed significantly to the length of proceedings) the former group were found to be victims of a breach of Article 6§1 but not the latter.

– **The advanced age of applicants** may also require the rapid conduct of the proceedings.
– **In child custody or parental authority** cases, the Court is sensitive to the need **to maintain family links and ensure that parent-child relationships** are not damaged by the passage of time. It generally emphasises the need for custody cases to be dealt with speedily (as in the Hokkanen v. Finland judgment of 23 September 1994, in which the Court found that the 18 months of proceedings were not in breach of Article 6§1).
– Finally the same principle applies to issues **relating to individuals' physical state and capacity**.

A detailed list of cases in which the Court has been more demanding about the length of proceedings appears at the end of this report.[36]

35. But see also the judgements *X v. France* of 31-03-1992, Vallée v. France of 26-04-1994, *Karaya v. France* of 26-08-1994, *Paillot v. France* of 22-04-1998, *F.E v. France* of 30-10-1998, *Kritt v. France* of 19 March 2002, *Beaumer v. France* of 8 June 2004.
36. Appendix 2.

This notion of what is at stake in a case must be set alongside, though not confused with, the new condition laid down in Protocol No 14, which requires applicants to show that delays in their cases have caused them significant disadvantages.

Article 12 of the Protocol states: "*Paragraph 3 of Article 35 of the Convention shall be amended to read as follows: The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that : …. b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal*."

It will be necessary to see how the Court applies this new ground of inadmissibility, which enables it to dismiss length of proceedings cases in which applicants are unable to show that they have suffered significant disadvantage.

The Protocol does not define "significant disadvantage" so the Court itself will have to carry out this task. However, applicants will undoubtedly be asked to supply information in support of their claims that has not so far been required, on such matters as their financial situation and the impact of any delays on their legal, personal and financial position.

One ground that might arise in connection with a potential application for compensation could be that of loss of opportunity.[37]

Over the two years that follow the Protocol's entry into force, many outstanding points will be gradually clarified by the chambers of the Court and the Grand Chamber, the only bodies empowered to apply the new admissibility criterion (Article 20§2 of the Protocol), after which single judges and committees of three judges will also be able to use it.

The Protocol was opened for signature by Council of Europe member states on 13 May 2004. On 3 June 2005, it had been ratified by Armenia, Denmark, Georgia, Ireland, Malta, Norway and the United Kingdom.[38]

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37. In the *Lechner and Hess v. Austria* judgment of 23 April 1987, the Court observed that "the applicants did suffer, on account of the consequences of the length of the proceedings, some loss of real opportunities which justifies an award of just satisfaction in the present case".
38. In October 2006 the following states have also ratified it: Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia, Luxembourg, Monaco, Netherlands, Poland, Portugal, San Marino, Spain, Switzerland, Turkey and Ukraine.

E. Overall assessment of the circumstances of the case

Finally, and above all when the very length of the proceedings makes it difficult to judge them reasonable, the Court can make an overall, or global, assessment of the circumstances of the case.

This applies particularly when a case has been dealt with by a single tier of courts (especially when a supreme court rules in first and final instance).[39] This offers sufficient grounds for a finding of excessive length of proceedings, if otherwise warranted.

This is clearly illustrated by the *Obermeier v. Austria* judgment of 28 June 1990, in which the Court stated: "*The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case, the parties' conduct, and so on. The Court notes, however, that its case law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment so that the Court does not consider it necessary to consider these questions in detail."* After considering the circumstances of the case, particularly in terms of what was at stake and its complexity, the Court concluded that *"the fact remains, however, that a period of nine years without reaching a final decision exceeds a reasonable time. There has therefore been a violation of Article 6 § 1 (art. 6-1) on this point too."*

In a compulsory purchase case that led to three sets of proceedings, two of which were pending and which involved, respectively, two and three tiers of jurisdiction, the Court found that the delays in proceedings lasting more than 17 years were largely attributable to the conduct of the authorities and of the courts concerned (*Nastou v. Greece* judgment of 16 January 2003, French only).

In the *Comingersoll SA v. Portugal* judgment of 6 April 2000, the Court thought that the circumstances of the case had to be assessed as a whole, and that "*a period of seventeen years and five months for a final decision that has yet to be delivered in proceedings issued on the basis of an authority to execute – which by their very nature need to be dealt with expeditiously – cannot be said to have been reasonable*".

In connection with a number of legal disputes between an applicant and the social security authorities, the Court applied its normal criteria to the circumstances of the case and concluded that a total duration of more than 14 years for this type of case was sufficient by itself to make it incompatible with the reasonable time requirement in Article 6§1 of the Convention (*J-M F. v. France* judgment of 1 June 2004, French only).

39. The many such cases include the *Assymomitis v. Greece* judgment of 14 October 2004.

II. Calculating the length of proceedings and the factors influencing the calculation

A. The starting point

The starting point of proceedings is sometimes disputed by the parties and may be difficult to determine in the circumstances. For example, in the *Darnell v. United Kingdom* judgment of 26 October 2003, in which the circumstances called for an overall assessment, the Court did not consider it necessary to rule on the disputed starting date and stated that even if it were to adopt the Government's position "*the lapse of time of nearly nine years until the Employment Appeal Tribunal gave its reserved judgment ... cannot, in the circumstances of the present case, be regarded as 'reasonable'*."

When negotiations take place between the parties on the level of compensation payable before the case comes before the courts, the Court takes no account of their duration. It considers that they are not covered by Article 6§1 since none of the negotiators can impose a settlement on the others and the discussions may be terminated at any time (*Lithgow and others v. United Kingdom* judgment of 8 July 1986).

The starting point of proceedings is quite specific in criminal cases. Close examination of Article 6§1 shows that the notion of a criminal charge may include stages of the procedure that do not necessarily and automatically come within the scope of the criminal prosecution.

According to the Court's case law, the starting date is not automatically that on which an individual was brought before the courts. It may be prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened.

In the first length of proceedings case referred to the Court, the Commission initially took as the starting point the date on which the applicant was first questioned by the investigating judge (21 January 1960) and not, for example, that of the indictment (17 March 1964). The Court adopted a middle path by taking as the starting point 23 February 1961: the date on which the investigating judge decided to open an investigation of the applicant.

According to the Court, "*charge*", for the purposes of Article 6§1, may be defined as "*the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence*", a

definition that may encompass other measures implying such an allegation that also have a substantial effect on the suspect's situation.[40]

If the reasonable time requirement begins when a person is "charged", that is when he is substantially affected by the situation. The relevant date was not the one on which fiscal penalties were imposed on the applicant's companies – and not on himself so there was no reason for him to suppose he was under investigation in his personal capacity – but the one on which he was questioned for first time as a suspect, and thus became substantially affected.

In its *Hozee v. Netherlands* judgment of 22 May 1998, the Court noted that "*even if a fiscal penalty or tax surcharge may in certain circumstances be considered a criminal charge within the meaning of Article 6 § 1 of the Convention (see the Bendenoun v. France judgment of 24 February 1994, Series A no. 284, p. 20, § 47), the penalty in the instant case was imposed by the tax authorities at the end of 1981 on the applicant's companies and not on him personally. There was nothing to suggest that the applicant at that stage was himself suspected of fraud, the offence with which he was eventually charged. Moreover, the imposition of a fiscal penalty under section 21 of the General Act on State Taxes does not give rise to criminal proceedings in the absence of elements which would justify the intervention of the FIOD [the tax authorities] (paragraphs 23, 32, 33 and 41 above)".*

In the *Lopez Sole y Martin de Vargas v. Spain* judgment of 28 October 2003, the Court accepted the 8 June 1985 specifying: "The same day, the instruction judge ordered a searching in the applicant's permanent address, who was carried out the following day and had important effects on the situation of the applicant"(§ 25)

When national legislation authorises victims to bring a separate civil action for damages, for example following a traffic accident, the criminal proceedings may then simply result in the criminal conviction of the perpetrator of the accident, with no possibility of compensation for the victim.

In such cases, the Court considers that bringing a civil action amounts to a waiver of the applicant's civil rights in the criminal proceedings, even if the civil action has been brought because of delays in the criminal case. The criminal proceedings are then no longer concerned with the determination of the applicant's civil rights and obligations or of any criminal charge against him and an application that is solely related to the length of the criminal proceedings becomes incompatible *ratione materia* with the Convention (final decision on admissibility, *Garimpo v. Portugal* of 10 June 2004 – French only).

40. See the *Eckle v Federal Republic* of Germany judgment of 15 July 1982 and the *Reinhardt and Slimane-Kaïd v. France* judgment of 31 March 1998.

In a case concerning economic and financial crime, the Court took as the starting point the date on which the authorities seized the cheque the applicant wished to cash (*Nuvoli v. Italy* judgment of 16 August 2002).

In a case of forgery and fraud, the starting point was taken to be that on which searches were carried out at the first applicant's head office and the second applicant's home, and not the earlier one when the crown prosecutor formally announced that the second applicant was suspected of forgery and fraud (*Stratégies et Communications and Dumoulin v. Belgium* judgment of 15 July 2002 – French only).

In a fraud case, the Court did not accept the authorities' contention that the starting date should be that of the applicants' first appearance before the investigating judge. Instead it opted for the earlier date when the police had first questioned the applicants and one of them had made a confession. This was when the applicants had realised that inquiries were being carried out into their activities and the second applicant had even admitted the allegations. It was therefore a measure that had substantially affected those concerned (*Martins and Garcia Alves v. Portugal* judgment of 16 November 2000 – French only).

Article 71 of the Portuguese Code of Criminal Procedure authorises the victims of criminal offences and, in certain circumstances, their immediate families, to actively intervene as "*assistentes*" in criminal proceedings, that is as assistants to the public prosecutor.

In the *Moreira de Azevedo v. Portugal* judgment of 23 October 1990 (French only), the Court found that the applicants' civil rights and obligations only came into play when they intervened as "*assistentes*", that is on 1 February 1993. At that point, they demonstrated that they were interested in securing not only the criminal conviction of the accused but also pecuniary compensation for damage suffered. This was therefore the date on which the period to be taken into consideration started. The Government's contention that at this point the applicants had not yet requested the speeding-up of the procedure, in order to exhaust domestic remedies in accordance with Article 35§1 of the Convention, changed nothing. The applicants had probably made this request when they considered that the length of the proceedings had exceeded the reasonable limit.

In civil cases, the starting date normally coincides with the date when the case was referred to the competent court, but other starting points linked to specific types of cases may be identified.

In a case in which the applicants' company was first placed in judicial administration and then declared insolvent, the Court calculated the length of proceedings from the date on which the wages of the applicants, who had not been paid for several months, were recognised by the Portuguese court

as claims on the company, rather than that of the declaration of claims as part of the subsequent insolvency proceedings, as the authorities proposed (*Oliviera Modesto and others v. Portugal* judgment of 8 June 2000 – French only).

The Court takes a pragmatic approach to the date on which a decision is reached or handed down. For example, if judgment is delivered on day x but the text is only lodged with the registry on day x+20, the Court recognises the latter date as the date of judgment (see, among others, the *Ridi v. Italy* judgment of 11 May 1990, and *Ceteroni v. Italy* judgment of 21 October 1996)

Specific lengths of proceedings may occur in administrative cases. In the *Marschner v. France* judgment of 28 September 2004, contrary to the government's position, the Court ruled that the proceedings had started when the applicant first referred the matter, as he was required to, to the relevant minister, rather than when he subsequently appealed to the administrative court against the minister's decision to refuse his request.[41] This was also the case in the *König v. Germany* judgment of 28 June 1978, where the applicant had been unable to have the lawfulness and expediency of the impugned administrative acts examined in preliminary proceedings (*Vorverfahren*) before the administrative authority.

Since its *Golder v. United Kingdom* judgment of 21 February 1975, the Court has held that this could apply to any administrative authority, such as a district social council (*Olsson v. Sweden* judgment of 27 November 1992).

In an expropriation case in which the administrative and judicial courts had simultaneous jurisdiction, the Court took the entirety of the proceedings into account, on the grounds that although the applicant had launched certain proceedings after her application to the Commission, they should still be considered by the Court because the second set of proceedings, which was still pending, was intended to secure compensation for the applicant for the illegal expropriation of her property by the public authorities (*Guillemin v. France* judgment of 21 February 1997).

Generally speaking, the starting point occurs when a case is referred to a court of first instance, but it may also be the time of referral to a supreme court, since the latter frequently hear cases in first and final instance.

Other specific starting points may include particular procedural measures such as orders to pay in France and Italy, requests for interlocutory measures, objections to an enforcement measure or the defendant's personal appearance in oral proceedings.

41. See also the *Jorge Nina Jorge and others v. Portugal* judgment of 19 February 2004.

Another feature common to all countries is that there is a clearly established case law concerning the Court's temporal jurisdiction and how this affects its assessment of the length of proceedings. When determining the starting date of proceedings, the Court may not include any period prior to the state's recognition of the right of individual petition – which may be quite distinct from the date of accession to the Convention – even if in practice the relevant proceedings started before that date. In such cases, the Court makes it clear that in assessing the reasonableness of the time that elapsed after the official starting date, account must be taken of the state of proceedings when the defending state accepted the right of individual petition.

For example, in the *Kanoun* judgment of 3 October 2000 (French only), where the relevant proceedings had started in 1975, the Court was only able to take account of the period since 2 October 1981, the date of French recognition of the right of individual petition. However, citing the *Foti v. Italy* judgment of 10 December 1982, it stressed the need to take account of the state of proceedings on that date.

This is established case law. In the *Proszak v. Poland* judgment of 16 December 1997, the starting point was 1 May 1993, when Poland's recognition of the right of individual petition for the purposes of Article 25 of the Convention took effect, even though the original application to the Polish court had been on 25 October 1990.

In its *Marciano Gama Da Costa v. Portugal* decision of 5 March 1990 (French only), the Commission first noted that it itself had no temporal jurisdiction to consider the length of proceedings prior to 9 November 1978, when the defending government ratified the Convention and recognised the right of individual petition. Nevertheless, in accordance with its established case law on the subject, it had to take account of the state of the proceedings on that date.

In the *Zana v. Turkey* judgment of 25 November 1997, although the proceedings in question seemed relatively brief (1 year and 6 months), the Court found a breach of Article 6§1 and took account of the fact that by the date of deposit of Turkey's declaration the proceedings had already lasted 2 years and 5 months.[42]

The Court did not accept a government's argument that even facts subsequent to recognition of its compulsory jurisdiction were excluded from its scope where they were merely extensions of an already existing situation, which it had no authority to consider.[43]

42. In this case, the Court also took account of what was at stake for the applicant.
43. *Yagci and Sargin v. Turkey* judgment of 8 June 1995.

A table is appended[44] showing the date of accession to the Convention of each contracting state, and the date of recognition of the right of individual petition if this is different. Since Protocol No. 11 came into force on 1 November 1998, it has not been possible to accede to the Convention without recognising the right of individual petition.

This is of particular relevance when determining how far back one can go in examining the case law relating to particular states, particularly those that have most recently ratified the Convention.

Finally, certain periods are not taken into account when calculating the length of proceedings for consideration by the Court. This applies to issues referred by one of the courts concerned to the Court of Justice of the European Communities for a preliminary ruling (*Koua Poirrez v. France* judgment of 30 September 2003 and *Pafitis and others v. Greece* judgment of 26 February 1998).

B. The end of the period concerned

In criminal cases, the period ends when final judgment is handed down on the substantive charges. This generally takes the form of an acquittal or conviction with no further right of appeal, but may also be a prosecution decision to terminate proceedings or a decision by the court that the case is time-barred.[45]

However, in the *Stoianova and Nedelcu v. Romania* judgment of 4 August 2005 (French only), the Court ruled that the applicant's discharge could not count as a final domestic decision because the Romanian Code of Criminal Procedure authorised the prosecution service to quash the discharge order and reopen criminal inquiries without any specified time limit.

In civil proceedings, the period ends when the decision becomes *res judicata*, but in complex cases, such as ones concerned with expropriation, the Court considers proceedings in their entirety. In the *Guillemin v. France* judgment of 21 February 1997, it agreed with the Commission that "*the period whose reasonableness falls to be reviewed takes in the entirety of the proceedings, right up to the decision which disposes of the dispute ('contestation') (see, mutatis mutandis, the Guincho v. Portugal judgment of 10 July 1984, Series A no. 81, p. 13, para. 29, and the Erkner and Hofauer v. Austria judgment of 23 April 1987, Series A no. 117, p. 62, para. 65). In the instant case, resolving the dispute, which could have been amicably settled, entailed bringing two sets of proceedings: the first in the administrative courts, which alone have jurisdiction to assess whether the public interest of an expropriation is lawful, and the second, conducted in both the*

44. Appendix 1.
45. *Mori v. Italy* judgment of 19 February 1991.

administrative and the ordinary courts simultaneously, to secure compensation for the applicant for the illegal expropriation of her property by the public authorities. The latter proceedings are still pending. The length of time to be considered accordingly exceeds fourteen years already (19 November 1982-22 January 1997).”

In cases concerning civil liability, the final date is that of the decision setting the level of damages to be paid, rather than the one establishing the principle of liability.[46]

In the *Silva Pontes* case,[47] the Court stated clearly that “*if the national law of a State makes provision for proceedings consisting of two stages – one when the court rules on the existence of an obligation to pay and another when it fixes the amount owed – it is reasonable to consider that, for the purposes of Article 6 para. 1 (art. 6-1), a civil right is not ‘determined’ until the amount has been decided. The determination of a right entails deciding not only on the existence of that right, but also on its scope or the manner in which it may be exercised (see, among other authorities, the Pudas v. Sweden judgment of 27 October 1987, Series A No. 125-A, p. 14, para. 31), which would evidently include the calculation of the amount due.”* However the Court may decide that the first stage of the proceedings has itself exceeded the reasonable time.

In principle, the period concerned covers all the proceedings, including those spent on appeal.

In the case of references to constitutional courts, the Court has to decide whether they have influenced the outcome of the proceedings in question. If this is the case, their deliberations are included in the length of proceedings.

For example, in the *Deumeland v. Germany* judgment of 29 May 1986, the Court ruled in connection with the German Constitutional Court that “*although it had no jurisdiction to rule on the merits, its decision was capable of affecting the outcome of the claim*”, and found a violation of Article 6§1.

The Court considers that time elapsed that is attributable to administrative authorities is also attributable to the state, even if these authorities are distinct from the central authorities. This applies, for example, to local authorities, as in the *Kurt Nielsen v. Denmark* judgment of 15 February 2000, in which the Court stated that “*the Contracting Parties are, however, also responsible for delays attributable to public-law organs, like municipal authorities, which – although they are not organs of the State – perform official duties assigned to them by law”.* Also of relevance is the *H. v. United Kingdom* judgment concerning the dilatory conduct of a local county council

46. *Guincho v. Portugal* judgment of 10 July 1984.
47. *Sylva Pontes v. Portugal* judgment of 23 March 1984.

committee responsible for the supervision and care of under-age children.

In calculating time elapsed, the Court may also include any implementation procedure. The execution of a judgement, of some courts, must be regarded as forming an integral part of the "proceeding" within the meaning of Article 6 (see, in particular, *Hornsby v. Greece*, judgement of March 19, 1997, § 40 and following). In the duration of civil procedures, the Court underlined "that the execution is the second phase of the procedure and that the asserted right finds its effective realization only at the moment of execution".[48]

In the *Pinto de Oliveira v. Portugal* judgment of 8 March 2001 (French only), it found that the proceedings to be taken into consideration started on 11 May 1993, when the matter was referred to the Mangualde court, and were still under way at the time of judgment, because the uncompleted execution proceedings that had subsequently been initiated had to be taken into account in deciding whether the length of proceedings was reasonable.

In an Italian case, the Court refused to express a view on whether under Italian law enforcement proceedings were autonomous, adding that "*it is with reference to the Convention and not on the basis of national law that the Court must decide whether, and if so when, the right asserted by ... [the applicants] actually became effective*".[49] In this dispute, the Court considered that that the enforcement proceedings must be regarded as the second stage of the initial proceedings, which had not been completed as the judge responsible for enforcement proceedings had not yet ruled.

The authorities' failure to implement a final decision within a reasonable time may also result in a violation of Article 6§1.

This is particularly the case when the obligation to implement a decision devolves on an administrative authority, as in a number of recent judgments: *Metaxas v. Greece* of 27 May 2004, *Timofeyev v. Russia* of 23 October 2003, *Prodan v. Moldova* of 18 May 2004 and *Romashov* v. *Ukraine* of 27 July 2004. In the *Metaxas* case (judgment in French only), the Court found that in violation of Article 6§1 the national authorities had failed to comply within a reasonable time with a judgment of the Audit Court, which had been handed down on 13 April 2000 but only implemented on 19 September 2001, thus depriving it of all useful effect.

Similarly, in the *SARL IZA* and *Makrakhidze v. Georgia* judgment of 27 September 2005, the Court stated that "b*y failing for over four years to ensure the execution of the binding judgment of 14 May 2001, the Georgian*

48. Judgement grande chambre, Scordino, 29 March 2006, § 197.
49. *Zappia v. Italy* judgment of 26 September 1996.

authorities have deprived the provisions of Article 6 § 1 of the Convention of all useful effect".

Like the Commission previously, the Court takes account of extraordinary appeals. In its admissibility decision of 14 January 1998 in the *Z.C. v. Poland* case (French only), the Commission noted that the Supreme Court had twice accepted extraordinary appeals from the applicant and quashed decisions of the courts of first instance for manifest errors of law. Power to authorise such appeals was vested in the State Prosecutor and the Minster of Justice. The Supreme Court, which considered such appeals, had the power to invalidate, quash or confirm lower courts' decisions. Its examination was therefore decisive for the applicant's civil rights and obligations, within the meaning of Article 6§1 of the Convention, so all the appeals, including extraordinary ones, had to be taken into account when calculating the length of the proceedings.

It often happens that contested proceedings are still pending when an application is made to the European Court, but like the Commission it may find that the reasonable time requirement has been exceeded well before the end of the proceedings, in which case the exhaustion of domestic remedies requirement will not be applied.[50]

The Court's oversight may extend to subsidiary proceedings. In the *Robins v. United Kingdom* judgment of 23 September 1997, which concerned an application for costs under the domestic Legal Aid Act, the Court found that "*the costs proceedings, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as part of a 'determination of ... civil rights and obligations'*". It referred to a number of previous judgments, including *Silva Pontes v. Portugal* of 23 March 1994, *Di Pede* v. Italy and *Zappia* v. Italy of 26 September 1996 and *Hornsby v. Greece* of 19 March 1997.

Sometimes, a trial has not even been completed. In the *Grauslys v. Lithuania* judgment of 10 October 2000, the commercial director of a private company was suspected of fraud and the prosecution authorities launched proceedings. The case lasted 5 years without judgment ever being handed down at first instance.

The greater the impact of any delay on the outcome of proceedings, the more severely the Court judges the case. An example is when the application of a time limit prevents an applicant from obtaining a decision on the merits of the case. In the *Textile Traders Limited v. Portugal* judgment of 27 February 2003 (French only), the Court found it particularly striking that the prosecution authorities had had to rule on applications for the setting aside of several procedural measures because they had not been notified

50. *Corigliano v. Italy* judgment of 10 December 1982.

to the applicant company. The criminal proceedings were finally terminated because the time limit had been exceeded, thus preventing the company from obtaining a decision on the application it had made in the proceedings.

Finally, even greater diligence is required when the proceedings seek to establish the state's liability for violation of the reasonable time requirement. The *Vaney v. France* judgment of 30 November 2004 (French only) concerns an action to establish whether the state was responsible for, and if so should be penalised for, the excessive length of previous judicial proceedings. It concluded that the proceedings lasting 2 years and 7 months before the court of appeal and 2 years and nearly 4 months before the Court of Cassation had exceeded the reasonable time requirement.

Second part: reasons for delays and their remedies: finding reasonable period

The second part of the report is concerned:

1. **The reasons for delays** as they emerge, explicitly or implicitly, from Court judgments, Court and Commission admissibility decisions and material supplied by the Execution of Court Judgments Department.

The Department notes that Court judgments are becoming less and less explicit about the reasons for delays and that it is necessary to seek clarification on the relevant impediments and difficulties from the national authorities concerned. Committee of Ministers resolutions are interesting in this regard because they provide valuable information on the reforms carried out, which make it possible to identify, retrospectively, the one-off and more structural problems they are designed to remedy.

There are three main causes of delay:

– ones external to the legal and judicial systems properly speaking, which relate to a political or economic context;

– ones that are common to all types of proceedings;

– ones that apply to a particular category of proceedings, depending on whether they are civil, criminal or administrative.

2. **The main reforms** introduced in domestic systems following adverse Court judgments and domestic remedies for seeking redress for detriment suffered as a result of excessively lengthy proceedings or for expediting proceedings.

3. **The times considered to be reasonable** the excessive and "pathological" delays having been abundantly described, it is appropriate to examine, to finish, and after having pointed out the main trends of the Court, some cases of delay considered to be reasonable. Other cases are in a more detailed manner described in the tables appearing as annexes 3 and 4 of the report.

I. Reasons for delays

A. External reasons for delays

• *Origin of delays: major political events*

The taking into account of the political events by the Court differs according to whether the cases are received by the ordinary courts or in front of the constitutional court of the State in question: this distinction was formalized in the judgement *Süssmann v. Germany* and the posterior cases.

Surrounding the reunification of Germany in 1990. the country was, for several years, the subject of violation judgments as a result of the backlog of cases in the Constitutional Court, overwhelmed with major issues connected to reunification

Many of these were concerned with compensation for the victims of expropriation between 1945 and 1949 in the Soviet occupied zone of Germany following the agrarian reform or after 1949 in the former GDR.

The Court recently examined one of these cases from the length of proceedings standpoint, and found the application inadmissible.[51] It referred to its *Süssmann* case law of a few years earlier, which recognised the special role of constitutional courts in democratic states.

In the *Süssmann v. Germany* judgment of 16 September 1996,[52] the Court stated (§§55-57): "*Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms.*"

In this case, which concerned a dispute over the level of a supplementary retirement pension that affected many civil servants, the Court had to strike a balance between the reasonable time requirement and the more general principle of the proper administration of justice, which in this case justified the grouping together of twenty-four cases and the Constitutional Court's giving priority to a series of other urgent cases linked to German reunification and affecting the employment contracts of 300 000 civil servants from the former GDR. It concluded that there had been no violation of the Convention.[53]

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51. *Von Maltzan and others, Von Zitzewitz and others, Man Ferrostaal and Alfred Töpfer Stiftung v. Germany* decision of 2 March 2005.
52. See also the inadmissibility decisions, *Scwengel v. Germany* of 2 March 2000 and *Kuna v. Germany* of 10 April 2001.
53. In a case brought before the Constitutional Court as a result of individual appeals rather than a reference from another court.

Another important case concerned the constitutionality of legal provisions introduced when the former East German social and retirement insurance system was integrated into that of the Federal Republic, and in particular how supplementary retirement pensions should be treated. In several inadmissibility decisions,[54] the Court found that the time taken to conduct proceedings before the Constitutional Court was not excessive, given their complexity and in line with its Süssmann case law.

The case *Trikovic v. Slovenia*[55] refers to the situation new States born of dismantlement of the former Yugoslavia: the applicant, Slovenian of origin Serb supported that its request concerning its military pension before the constitutional Court had been judged too slowly (of a duration of 2 years and 7 months). However the Court does not retain the violation of the reasonable duration of procedure before the constitutional Court of Slovenia: stressing that the file of the applicant was the first of a long series of disputes of an extreme complexity, formed by the military personnel of ex-Yugoslavia, it recognizes that this situation implied for the Court an examination in detail of the case.

Contrary, when the delays are the fact of ordinary courts, and in spite of a context of a general and disturbed policy, the Court shows itself more demanding towards the State concerned recalling him its conventional engagement in accordance with the Article 6§1.

With its return to democracy in 1978, Spain experienced considerable judicial problems. In the *Union Alimentaria Sanders SA* judgment, the Court expressed its awareness that "*Spain had to overcome serious difficulties during the restoration of democracy. It duly appreciates the efforts made by the Spanish authorities to improve public access to the courts and to overhaul the country's judicial system. It reiterates, however, that in ratifying the Convention, Spain undertook to organise its judicial system in such a way as to ensure that it satisfied the requirements of Article 6 para. 1 [of the Convention]"*.

Case law examples

The *Süssman* case law was confirmed by the Court in the *Gast and Popp v. Germany* judgment of 25 February 2000, which stated that "*while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice.*"

It reaffirmed the point in connection with the Portuguese Constitutional Court in the *Rosa Marques and others v. Portugal* judgment of 25 July 2002 (French only), in which it accepted the government's contention that the

54. *Kuna v. Germany* decision of 10 April 2001, *Schwengel v. Germany* decision of 2 March 2000
55. Judgment of 12 June 2001.

reasonable time requirement could not be interpreted in the same way for an ordinary and a constitutional court, given the latter's role as guardian of the constitution and the priority it had to give to certain cases that were socially and politically more important. Nevertheless, it found a violation of Article 6§1, since the case had concerned expropriation proceedings of no particular complexity that had lasted 8 years and 2 months in four separate levels of courts.

Concerning trial and appeal courts of Portugal, this country had faced the same difficulties a few years earlier, as the Court acknowledged in similar terms: "*It (the Court) cannot overlook that the restoration of democracy as from April 1974 led Portugal to carry out an overhaul of its judicial system in troubled circumstances which were without equivalent in most of the other European countries and which were rendered more difficult by the process of decolonisation as well as by the economic crisis ....)*"[56] Nevertheless, the Court found in this case that Portugal was in breach of its Convention obligation to ensure that cases were heard within a reasonable time.

Major reforms

Spain undertook significant reforms of its national judicial system under the organic laws of 10 January 1980 establishing a judicial services commission and 1 July 1985 on the judicial system. In Barcelona four new courts of first instance started operating in September 1981 and new judicial districts were established.

• *Origin of delays: the transition from a planned to a market economy*

The political and economic upheavals in certain contracting states led to major changes in the organisation of their court systems.

The Court's case law concerning states that have signed the Convention since the fall of the Berlin wall reveals a link between problems of length of proceedings and the changes in the political and economic systems of eastern Europe. The transition from planned to market economy has led to changes in citizens' relationship to the law and proceedings and judges' training, reforms in the law of procedure and a reallocation of responsibilities between courts, which in turn have resulted in delays.

New constitutional principles of an independent judicial system and the separation of powers have gradually been established. These changes have led to delays in proceedings, as has the Court's own case law, which has forced several of these countries to reform their civil and criminal procedure.

56. *Guincho v. Portugal* judgment of 10 July 1984.

Case law examples

The Czech Republic introduced judicial reforms in the years after 2000. In the *Zouhar v. Czech Republic* judgment of 11 October 2005 (French only), the Court acknowledged that the regional court had had to refer the matter on a number of occasions to other national authorities for the purposes of the proceedings before it and that the national judicial system had been reorganised while the case was under way.

In the *Podbielski* judgment of 30 October 1998, the Court acknowledged this problem with regard to Poland, in connection with an applicant still awaiting a final decision. It noted that "*the delay in the delivery of a final decision on the applicant's action has been caused to a large extent by the legislative changes resulting from the requirements of the transition from a state-controlled to a free-market system and by the complexity of the procedures which surrounded the litigation and which prevented an expeditious decision on the applicant's claim. The Court recalls in this respect that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time ..... Therefore the delay in the proceedings must be mainly attributed to the national authorities*"(§38).

B. Delays common to all types of proceedings

1. Delays originating the procedure

- *Origin of delays: geographical problems*

The uneven distribution of courts within countries emerges frequently as a problem from the Court's judgments, which refer to excessive caseloads resulting from a geographical organisation that has failed to respond to demographic and economic changes.

Case law examples

The problems caused by the excessive workloads of certain courts are described in some detail in the *Union Alimentaria Sanders SA v. Spain* judgment of 7 July 1989: lower courts overflowing (each of the Barcelona courts of first instance had to deal with an average of 1 800 cases), a 62% increase between 1981 and 1984 in the volume of cases dealt with by the Barcelona court of appeal and so on. The same story occurs in many of the contracting states at different points of their legal history. In the Spanish case, despite the measures taken by the state the Court found that 5 years and 2 months of proceedings before two levels of courts was excessive.

National reforms

Following various findings of length of proceedings violations, the Italian authorities informed the Committee of Ministers that certain reforms had been introduced. *"Act No. 30 of 1 February 1989 (which entered into force the same year), concerning the courts of first instance (preture), redefines the territorial jurisdiction of these courts which is henceforth not limited to the department. This enactment has made it possible to abolish some 273 courts of first instance which had low workloads and to redistribute the magistrates and the auxiliary personnel among the courts with heavy workloads."*[57] In Hungary, the Supreme Court's workload has declined significantly following a reform of the judicial system in 2002. This transferred that court's appeal functions to five appeal courts established in 2003 and 2004.[58]

- *Origin of delays: transfer of the judges, their shortage number*

Delay is caused by the resignation of the judge hearing the case, delayed or non-replacement and the problem of recruiting judges.

This issue is linked to how judges are recruited and managed.

The problem has occurred in many contracting states at different periods and is often combined with other difficulties affecting the functioning of courts, such as inadequate support staff. The Court regularly points out that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. If the measures taken are not sufficient to improve the situation, it holds the national authorities responsible.

Shortage of judges sometimes impedes the application of procedural measures that would otherwise help to avoid delays. In the *Guincho* case, it emerged that under Articles 159 and 167 of the Portuguese Code of Civil Procedure applicable at the time the judge could submit a request for service of a writ, after which the registry had two days to submit it to the relevant court and the latter then had to order the writ to be dispatched for service within five days (§11). In this case, however, the judge who issued the request for the writ in early December was transferred and was replaced by a colleague who reissued the request on 18 January and various subsequent occasions, but did not obtain it until 18 June, that is six months on.

57. Resolution ResDH (95) 82 concerning the *Zanghi v. Italy* case.
58. *Timar and others v. Hungary*, Annotated Agenda of the 922nd meeting of the Committee of Ministers, April 2005, CM/Del/OJ/(2005) 922, vol I.

Case law examples

One of many such cases concerned civil proceedings challenging an encumbrance,[59] in which the judge in charge was transferred and the case remained dormant until he was replaced nearly seventeen months later.

More recent examples include a number of Belgian cases, in particular the *Willekens v. Belgium* judgment of 24 April 2003 and the *Dumont v. Belgium* judgment of 28 April 2005. In the latter (French only), the Court found that the sole cause of the delays before the courts of first instance of the Brussels appeal court was shortage of judicial personnel, which in turn resulted from recruitment difficulties linked to the legal requirement for judges to be bilingual in French and Dutch.

• *Origin of delays: time actually spent by judges on extra-judicial activities*

Certain Italian and other cases suggest that judges' participation in statutory extra-judicial activities, such as chairing crime prevention committees, election monitoring and so on, considerably reduces the time they can spend at hearings and handing down judgments. Statistics on judicial staffing levels may therefore be misleading regarding the effective time spent to judge.

Case law example

There were many other reasons for delays in the *Capuano* case, but the Court also noted that "*the hearing was postponed to 24 January 1978, but did not take place until 31 January, because of a further adjournment due to municipal elections".*

National reforms:

In Slovakia, the 2003 legislation on court officials that came into force on 1 January 2004 introduced the post of principal court registrar to enable administrative staff to perform various tasks that do not require the involvement of judges.

• *Origin of delays: the systematic use of benches of judges at first instance*

The use of benches of judges, the collegial principle, in conjunction with inefficient management of judicial manpower, may be a source of delays. If a member of a bench is absent or unavailable or has been transferred, hearings may be postponed. The case law of the Court gives pictures of this kind of delay in civil courts as well as in criminal courts. Moreover, although benches are considered to be a guarantee of impartiality and a

59. Judgment of 27 February 1992: violation for proceedings lasting 11 years and 11 months before two levels of courts in a relatively complex case.

high standard of justice, using them even for minor cases and disputes over small sums calls for a significant number of judges.

Case law examples in civil matters:

The *Bento da Mota v. Portugal* judgment of 28 June 2001 is an example. In a minor civil liability case, two hearings were deferred because of the absence of a judge of the lower court. There were further delays for other reasons and more than 3 years were lost after an expert report had been submitted.

The collegial principle had been judged to be a cause of delays in Italy.

National reforms:

In Italy, there were reforms in 1995, introducing justices of the peace, and 1999, establishing single judge courts. The jurisdiction of single judge courts of first instance was also considerably increased. France set up in 2002,[60] the establishment of *juges de proximité*, judges from the civil society for dealing with small claims.

Case law examples in criminal matters:

This applies to criminal courts in certain contracting states where a professional chair of the bench sits alongside two non-professional judges.[61]

National reforms:

The single judge in criminal matters has been established in several contracting states for small claims. Already established in France for petty offences in district courts, he is, by law 95-125 of 8 February 1995 introduced in criminal courts for some offences like those of the highway code.[62]

- *Origin of delays: backlogs of cases*

A backlog in a court's caseload is not in itself a matter for criticism if it is temporary. If it continues, however, the Court is likely to hold the national authorities responsible for failing to take the necessary action to resolve the situation. Thus, in the aforementioned *Guincho* case, the steps taken by the authorities to deal with the foreseeable increase in cases were judged to be too little and too late.

60. Loi d'orientation et de programmation pour la justice du 9 septembre 2002.
61. *Ilijkov c. Bulgaria*, judgment 26 July 2001.
62. See also p.43 of the report for accelerated criminal proceedings.

Reform suggested by the Court

This raises the associated problem of how to deal with the rising volume of cases coming before a court and what priority to give to new and existing ones.

The Court has offered certain guidelines in the previously mentioned *Union Alimentaria Sanders SA* case: "*In such circumstances it is legitimate as a temporary expedient to decide on a particular order in which cases will be dealt with, based on their urgency and importance. The urgency of a case, however, increases with time; consequently, if the critical situation persists, such expedients are shown to be insufficient and the State must take other, more effective action to comply with the requirements of Article 6 para.* 1".

- *Origin of delays: complete inaction by the judicial authorities*

Unless the national authorities can offer an explanation,[63] the Court always finds inactivity, in the form of absence of any procedural measures over a given period, unacceptable. In a Portuguese case (French only), the Court was unable to accept a period of total inactivity lasting 4 years and 11 months between the conciliation attempt and the preparatory decision.[64]

Case law examples

The *Piron v. France* case,[65] revealed numerous periods of inactivity in an agricultural land consolidation case in which the allocation of parcels was challenged by the applicants. These occurred in the *Department* land reorganisation and consolidation committee, which handed down its decision 6.5 years after the administrative court judgment, and in the administrative courts themselves, particularly the *Conseil d'Etat*, which gave judgment 4 years after the case was referred to it.

In a Greek criminal case[66] lasting nearly 8 years that went to appeal, the Court noted several periods of inactivity attributable to the national authorities. "*The Court notes that there were several periods of inactivity in the appeal proceedings before the Salonika Criminal Court of Appeal. After the applicant had filed an appeal on 18 February 1988 the case lay dormant for over 1 year and 7 months until it was listed for the first hearing on 6 October 1989. Furthermore, after 6 October 1989, the case was relisted on four occasions: 19 April 1991, 8 February 1993, 5 December 1994 and 12 February 1996*."

63. Such as the need to await the response to a request for international judicial assistance.
64. *Rego Chaves Fernandes v. Portugal* judgment of 21 March 2002; See also *Condé v. Portugal* judgment of 23 March 2000.
65. *Piron v. France* judgment of 14 November 2000 (French only).
66. *Portington v. Greece* judgment of 23 September 1998.

In the *Lavents v. Latvia* judgment (French only), the Court criticised the period of 10 years and 28 days that elapsed between the standing down of one set of judges and the case's resumption before a new bench.

In the *Santilli* judgment of 19 February 1991, the Court found that proceedings lasting nearly 6 years and 9 months violated Article 6§1 and criticised the lower court, which "*allowed periods to elapse that were too long and was totally inactive for nearly two years (23 June 1982-20 June 1984).*"

The case *Delic v. Croatia*[67] reveals dysfunctions of this type on the occasion of several civil disputes initiated by the applicant against various defendants. The Court underlines periods of inertia in each authority: 2 years and 10 months for one, 2.5 years for the other, more than 1 year for a third, 1 year and 6 months for the fourth.

• *Origin of delays: court inactivity and the rules of evidence*

Inactivity, whether absolute or relative (for example, when audiences are spaced too far apart), often has consequences for the need to provide evidence. Parties may need to constantly update factual or financial information necessary to progress their case.

Case law example

The *Kubiznakova v. Czech Republic* judgment of 21 June 2005 (French only) is a particularly good example. The case concerned the exercise of parental authority prior to a divorce, and the slow pace of the proceedings meant that the parties were repeatedly forced to update the information on their incomes, which in turn led to challenges from the other party.

• *Origin of the delay: systemic deficiencies in the rules of procedure*

The Court sometimes identified causes of delay intrinsically related to the national legislation and implying major reforms. This situation is characteristic of certain States of the East like Poland, Slovenia, Croatia, Ukraine, Hungary, Bulgaria where the procedural rules allowed the ceaseless re-examination of the same cases: in the judgement *Wierciszewska v. Poland*, of 25 November 2003, the European Court underlines this dysfunction in these terms: "*The delay was caused mainly by the re-examination of the case. Although the Court is not in a position to analyse the juridical quality of the case law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system".*[68]

67. Judgment of 27 June 2002.
68. Also following judgments : *Pavlyulynets c. Ukraine* judgment of 6 September 2005, *Carstea & Grecu c. Romania*, 15 June 2006, *Ferlic c. Slovenia*, 6 April 2006, (§ 46).

Jurisprudential illustrations:

Judgement *Horvat v. Croatia* of 26 July 2001; or *Preloznik and other* v. *Slovak Republic*.

Implementation of national reforms:

The measurements taken by the States concerned to cure it appear in a public document: "List of Measurements of general character adopted in order to prevent new violations of the European Convention of the Human rights. Measurements communicated to the Committee of Ministers during his control of the execution of the judgements and the decisions under the terms of Convention (Application of old Articles 32 and 54 and Article 46)" updated at May 2006.[69]

Thus, in Croatia, the reform of the rules of civil procedure in 2003, related in particular to this problem.[70]

- *Origin of delays: Difficulties arising from the existence of administrative and judicial courts*

Two sets of courts exist in a number of countries – Greece, France, Belgium and Austria for example – and are an integral part of their judicial cultures.

This may sometimes lead to delays. If proceedings are under way simultaneously in both systems applicants may be unsure about which courts have jurisdiction or there may be a stay of proceedings.

Case law example

The *Nouhaud v. France* judgment (French only) offers a clear illustration of the problems caused by this sort of arrangement, in connection with a compulsory admission to psychiatric hospital, which comes within the scope of both the administrative court (lawfulness of the prefectoral order) and the regional judicial court (appropriateness of the detention order). This overlapping jurisdiction led to a stay of proceedings in the judicial court pending a decision of the administrative court, where proceedings lasted 3.5 years in the *Conseil d'Etat* alone, a time that the Court considered to be excessive.

69. Available on ECHR website: http://www.ehcr.coe.int/ehcr.
70. See A. Uzelac study, "Accelerating civil proceedings in Croatia – a history of attempts to improve the efficiency of civil litigation" in: C-H. Van Rhee, "The law's delay: essays in undue delay in civil litigation", Intersentia, 2004.

In the *Obermeir* case,[71] the interaction between administrative and judicial proceedings relating to the dismissal of disabled persons was the main cause of delays.

2. Delays occurring at the beginning and during the procedure

- *Origin of the delay: the granting or the late refusal of a request for legal aid*

In order to ensure the respect of the rights of defence, the request for legal aid which allows the designation of a lawyer and sometimes conditions the continuation of the authority by the applicant concerned, often delays the fixing of the first court session.

Jurisprudential illustration:

In the case *Mangulade Pinto v. France* of April 9, 2002, the CEDH criticized the length of the proceeding of a seven months period between on 17 April 1997, date of the request for legal aid formed by the applicant in order to prepare the appeal in cassation, and on 26 November 1997, date on which the office of legal aid refused its application.

- *Origin of delays: failure to summon parties, witnesses or defendants or unlawful summons*

This is usually a problem connected with court registries when they have the monopoly of summons, but also to maladjusted rules of procedures.

Case law example

In the *Djangozov v. Bulgaria* judgment of 8 July 2004, the Court noted that that two hearings had been adjourned because the defendants had not been properly summoned (§39).

The Court subscribes to the argument of the applicant according to whom the court failed in its obligation to ensure the appearance of the witnesses in the *Volf* case,[72] which led to repeated adjournments of the court sessions;

National reforms:

In Croatia, the 2003 reform of civil proceedings has modified the rules relating to such summonses to avoid delays.(Articles 66-79 of the Act of 14 July 2003)[73]

71. *Obermeir v. Austria* judgment of 28 June 1990.
72. *Volf v. Czech Republic* judgment of 6 September 2005.
73. Resolution ResDH(2005)60 concerning the judgments of the European Court of Human Rights in the case of Horvat and 9 other cases against Croatia.

In Sweden, in order to improve the delivery of the convocations to the court sessions, the national authorities called upon the private companies, whose services are remunerated only if the convocations are delivered successfully.[74]

- *Origin of the delay: the time of designation of an instructing judge*

This type of delay is more serious when a case proceeds in front of several successive authorities and when designations are, with each stage, the occasion of an additional delay.

Jurisprudential illustration:

The judgement *Martial Lemoine v. France* of 29 April 2003 relates to a dispute of the joint ownership which, for four tiers of courts, lasted 7 years and 8 months; being the activity of the courts, the European judges appoint only one period for which they raise an unjustified and exclusively ascribable delay in their eyes with the internal authorities: the eight month deadline during which the Supreme court of appeal was too long in appointing an legal adviser.

- *Origin of delays: late entry into force of essential implementing regulations*

The Court has criticised such delays, which can seriously disadvantage parties to proceedings. An obligation for administrative authorities to issue the necessary implementing regulations for the enforcement of laws within a "reasonable time" could be proposed.[75]

Case law examples:

In the *Vallée v. France* judgment of 26 April 1994, where exceptional diligence was required in view of the state of health of the applicants, who were HIV infected, 1.5 year elapsed between publication of the Act of 31 December 1991 providing for compensation for victims of contaminated blood transfusions and that of the implementing decree of 12 July 1993

- *Origin of delays: late transmission of the case file by the lower court to the court of appeal*

This problem reflects malfunctioning both in the organisation of court registries and in the transmission of files.

74. The report of the Task Force "Time management of justice systems: a Northern Europe study" (CEPEJ(2006)14).

75. In France an executive authority which fails to introduce implementing regulations may be fined by the administrative courts until it takes the necessary steps, but such coercive fines are imposed only in cases where the introduction of regulations has already been delayed (Conseil d'Etat judgment of 28 July 2000, Association France. Nature Environnement).

Case law examples:

The *Martins Moreira v. Portugal* judgment offers a civil law illustration: "*after the applicant had lodged an appeal on 13 October 1982, the registry of the Evora court waited until 23 June 1983 to transmit the file to the registry of the appeal court. In the intervening period, it merely verified that various pleadings were included in the file and drew up a statement of the costs and expenses relating to the first instance proceedings*".

Such delays can also affect criminal proceedings and appeals on points of law, as shown by the *Bunkate v. Netherlands* judgment of 26 May 1993, in which the Court criticised the fifteen and a half months that elapsed between the applicant's appeal on points of law and the arrival of his case file in the Supreme Court (§22).

- *Origin of the delay: the behaviour of the other actors of the lawsuit:*

- ***lawyers*****:** it can be a question of a strike of the lawyers causing a delay in fixing the schedule for court sessions, as in the *Calvelli* case and *Ciglio v. Italy* of January 17, 2002:[76] the State must limit the effects on the functioning of the courts. The defect of diligence of a lawyer in his role of representation of one of the parties causes also delay, as in the case *Intiba v. Turkey* of 24 May 2005 when the Court observes that the applicant and his lawyers largely contributed to the prolongation of the procedure. (nearly 1 year of delay is ascribable to them). Sometimes, the applicant by challenging several lawyers successively, takes part in the delay: judgement *Klamecki v. Poland* of 28 March 2002.

- ***Notaries:***[77] In this case, the Paris interdepartmental chamber of the notaries appointed a new notary on October 3, 1996, that is to say nearly 5 years after the judgement of 17 December 1991. "As for the absence of diligence of this notary, it was in particular underlined by the revivals of the receiver" underlines the CEDH (§ 41 and 42).

- ***non official public bodies*****:** The municipalities (the Council of a County in the judgement *H v. the United Kingdom* of July 8, 1987), or other public organisations as the municipal social services (social office of Helsinki)[78] engage the responsibility for the State if they do not act with necessary diligence when they are asked for an opinion or intervene within the framework of legal procedures. But it returns to the courts concerned to respect the appropriate delays.

76. See also, *Papageorgiou v. Greece* judgment of 22 October 1997 (7 months strike).
77. *Dumas v. France* judgment of 23 September 2003.
78. *Nuutinen v. Finland* judgmet of 27 June 2000: §§114 & 118.

Jurisprudential illustration:

The behaviour of the social security is in question in the case *Robins v. the United Kingdom* of 23 September 1987: "the Court recalls moreover than, when they ask opinions other authorities, the courts remain responsible for the respect of the deadlines".

- *Origin of delays: reform of the legislation during the proceedings*

Reform of civil or criminal procedure when cases are already under way can lead to jurisdiction being transferred from one court to another, with time then being needed to transmit files and procedural documentation and appoint new judges, who must then familiarise themselves with the relevant cases before arranging hearings.

Case law examples:

The *Krastanov v. Bulgaria* judgment of 30 September 2004 offers a good illustration. As the Supreme Court of Cassation no longer had jurisdiction following the reform of the civil procedure code, the Supreme Court forwarded the appeals to a newly created court of appeal. On 28 October 1997 the case was referred to the Supreme Court, the new civil procedure code came into force on 1 April 1998 and appeals were then referred to the new appeals courts, proceedings resumed in the new appeals court on 9 July 1998 and hearings took place between October 1998 and April 1999, culminating in an appeal court judgment on 5 May 1999, that is 1 year and 7 months after the original referral to the Supreme Court.

In an Italian case,[79] the procedure governing labour court disputes was introduced while the case was under way. This gave jurisdiction to the magistrate's court at first instance and the district court on appeal, but did not apply to current cases. However, the new legislation resulted in an almost four-year suspension of the proceedings before the first investigating judge.

- *Origin of delays: provisions in rules of civil or criminal procedure that can be used to impede or delay proceedings, with no safeguards*

It has been possible for parties to use certain provisions of civil or criminal procedure to delay proceedings, as in the case of the former Italian system in which proceedings were automatically suspended when a party challenged a civil court's jurisdiction and which allowed parties in criminal cases to present fresh evidence throughout the proceedings, with no system of time limits.

79. *Vocaturo v. Italy* judgment of 24 May 1991.

National reforms:

In France, following a report in 2004 to the Minister of Justice,[80] a decree No 2055-1078 of 28 December 2005 relating to the civil procedure,[81] certain procedures of execution and the procedure of renaming envisages in Article 23, a "fixed timetable" is issued by the judge, in agreement with lawyers of the parties, and in these terms: "The timetable comprises the foreseeable number and the date of the exchanges of conclusions, the closing date, that of the debates and, notwithstanding the first and second subparagraphs of Article 450, that of the pronounced decision. (…) The time allowed in the timetable cannot be extended that in the event of serious and duly justified cause".

As underlines it Mrs Professor Fricero, "the determination of a timetable becomes the guard of the reasonable time of the lawsuit, in close co-operation with the litigants[82]"

• *Origin of delays: problems relating to expert witnesses*

The delays related to the intervention of one or more experts in the procedure are very common in the civil, criminal and administrative proceedings and correspond to various situations:

• *Origin of delays: delays in appointing experts owing to judicial inertia*

Although in Denmark parties may propose the appointment of experts, under the Administration of Justice Act courts are not obliged to agree to them. In the aforementioned *A. and others v. Denmark* judgment, the Court criticised the Danish court for allowing the parties to negotiate for almost two years on who should be appointed as experts and what questions to ask, without ever intervening (§80).

• *Origin of delays: experts who fail to comply with their mandate*

Such situations create difficulties and delays and lead to requests for second opinions. The Court has constantly to emphasise that although experts have full autonomy in drawing up their reports, they are still subject to the supervision of the court, which must ensure that expert appraisals are properly conducted.

Case law example:

In the *Versini v. France* judgment of 10 July 2001 (French only), the Court found that the expert had exceeded his terms of reference, which were

80. Report of Jean-Claude Magendie: "Célérité et qualité de la justice: la gestion de temps dans le procès", La Documentation française, 205 p.
81. See J.O. of 29 December 2005.
82. *"Procédure civile chronique",* Nathalie Fricero, Pierre Julien, in *Dalloz*, No. 8 p. 546.

simply to assess the damage suffered. This had led to the applicant's requesting second opinions, thus prolonging the proceedings.

- *Origin of delays: the time granted by the court to the expert may not be extended to an exaggerated degree*

The judge must make respect the times of handing-over of the expert report, the European Court does not cease repeating it.

Case law example:

In the *Pena v. Portugal* judgment of 18 December 2003 (French only), the Court pointed out that the expert's appraisal formed part of the judicial proceedings under the supervision of the court, which retained responsibility for the expeditious conduct of the case. This related to a case in which a state scientific laboratory had been required to submit its report within 60 days, that is on 19 November 1996, but had not done so until 15 May 2000, after the civil court had granted numerous extensions.[83]

In a Greek case, the court of appeal ordered an expert report on 15 February 1994, but only appointed the expert on 16 September 1994. After a hearing on 21 March 1995, it decided to re-examine the case and recall the expert for further explanations, but the hearing only took place on 8 April 1997. Judgment was handed down on 28 July 1997, but not published until 22 May 1998.[84]

The *Capuano* case, concerning an easement, is another good example of problems arising from expert reports. On 14 March 1978 the court gave its appointed expert sixty days to submit his report but after numerous delays this only appeared on 5 July 1979, to be followed immediately by a request from one of the parties for a private expert report.

- *Origin of delays: failure to penalise experts for lack of diligence*

Moreover, it is the passive role of the judges which is criticized by the European Court. The Court underlines "that the expert works within the framework of a judicial body controlled by a judge on whom fall the setting of a timetable and a rapid court proceeding".[85]

Case law example:

An extract from the *Zappia v. Italy* judgment of 29 August 1996 (23 years of proceedings in a simple and still pending case of contractual liability and execution of judgment) illustrates the sequence of adjournments that can occur in length of proceedings cases: "*On 27 March 1985, after an adjourn-*

83. See also: *Molin Insaat v. Turkey* judgment of 11 January 2005.
84. *Tsirikakis v. Greece* judgment of 17 January 2002.
85. *Zappia v. Italy* judgment of 26 September 1996, §25.

ment ordered by the court of its own motion, the judge appointed an expert, who was sworn in on 25 September 1985. The hearings listed for 26 February and 25 June 1986 had to be adjourned, as the expert had not filed his report within the sixty days he had been given. The hearing set down for 26 November 1986 could not take place because the judge had been transferred." As the Court noted, "*an expert works in the context of judicial proceedings supervised by a judge, who remains responsible for the preparation and the speedy conduct of the trial*".

In another case, the Court had this to say about a court's lack of initiative: "*The Court observes that the two reminders to the expert issued by the judge preparing the case for trial – the first of which, moreover, came more than five months after expiry of the one-month limit given on 4 July 1980 .... did not have the desired effect and that the expert should therefore have been replaced." Di Pede v. Italy* judgment of 26 September 1996 (civil procedure).

The Court stigmatizes the behaviour with the court in a case where the applicant successfully requested new opinions of an expert: it underlines "*the domestic court did not have to grant additional expert opinion every time the applicant had requested it; the court itself has the authority to decide how to conduct the proceedings, and in particular, which evidence to take" (§ 30).*[86] The Court estimates that the delay taken during the period between 20 November 2001 and 7 May 2003 concerns the shared responsibility for the applicant and the court.

- *Origin of delays: difficulties in obtaining medical reports (criminal procedure)*

These are cases in which forensic medical establishments that are normally responsible for carrying out medical examinations in legal proceedings are unable to supply an expert within the time laid down (*Martins Moreira v. Portugal* judgment of 26 October 1988)

National reforms:

Reforms were brought to the forensic medicine institutes to make of them auxiliaries adapted to an effective administration of justice. Following the Order in Council No. 169/83 of 30 April 1983 and ministerial decree No 316/87 of 16 April 1987, they were equipped with essential human and material resources. Moreover, pursuing to the Order in Council No. 387-C/87 of 29 December 1987, the reforms were carried out on the level of the

86. Arrêt *Sundov c. Croatie*, du 13 avril 2006.

organization of the institutes in order to make them ready to answer quickly the requests which are presented to them.[87]

- *Origin of delays: numerous adjournments of hearings, either of the court's own motion or at the parties' request, and excessive intervals between hearings*

Such delays reflect civil courts' failure to control the proceedings.

Case law examples:

In the *Baraona* judgment,[88] the Court said although domestic legislation allowed state counsel to seek an extension of time the state might still be held responsible for any resultant delays.

In the *Vaz Da Silva Girao v. Portugal* judgment of 21 March 2002 (§12) (French only) the Court found adjournment of hearings. In the *Martins Moreira v. Portugal* judgment of 26 October 1988, the Court noted that although Article 264 of the Portuguese Code of Civil Procedure made parties responsible for taking the initiative with regard to the progress of proceedings, Article 266 required courts to take all appropriate steps to remove obstacles to the rapid conduct of cases. It also drew attention to Article 68 of the Road Traffic Code, which required the applicant's case to be heard under the summary procedure, which in turn involved a reduction in certain time limits.

In a dispute between the applicant and a health insurance office, the Court criticised the court of appeal for not hearing the case sooner: "*in the Rouen Court of Appeal, the case was adjourned to a second hearing that was held nearly eleven months after the first .... although, whatever the reason for this adjournment, none of the evidence in the case file justified such a delay*".[89]

In the *A. and others v. Denmark* judgment of 8 February 1996, the Court stated that "*the applicants contributed significantly to the length of the proceedings. It is also mindful of the fact that the proceedings in issue were not inquisitorial but were subject to the principle that it was for the parties to take the initiative with regard to their progress*". However, it also criticised the High Court, before which the case had already been pending for approximately 2 years, for granting all of the parties' numerous requests for adjournments, "*hardly ever using its powers to require them to specify their claims, clarify their arguments, adduce relevant evidence or decide on who*

87. Source: List of General measures adopted to prevent new violations of the European Convention on Human Rights. Stock-taking of measures reported to the Committee of Ministers in its control of the execution of judgments and decisions under the Convention (updated May 2006, p. 155).
88. *Baraona v. Portugal* judgment of 8 July 1987.
89. *Duclos v. France* judgment of 17 December 1996.

should be appointed as experts"(§80). Yet in Denmark, it is for the court to decide when to close the preliminary oral or written stage of the proceedings, intended to establish the facts and the legal issues of the case, to ensure that the case is elucidated in the best possible way and to identify the subject-matter of the dispute. Once the preparation of the case has been completed the parties may not make new submissions or adduce new evidence unless they satisfy certain restrictive conditions.

In a recent case, the Court regretted that "more than 2 years between the second and third hearings held by the municipal court".[90]

Adjournments of hearings were held to be even more detrimental in a case where a procedural objection that had been presented 3 years earlier was finally accepted by the court, thus nullifying all the preceding stages of the proceedings (*Ferreira Alves v. Portugal* (No. 2) judgment of 4 December 2003).

- *Origin of delays: judicial errors of law*

"*An error of law made by a judge can lead to an appeal and thus extend the length of proceedings. If this in itself were to give rise to a violation of the right to a hearing 'within a reasonable time',*[91] *that would be tantamount to acknowledging that there is a right to court decisions free of error."* The Court is not totally convinced by this argument and considers that an error imputable to a court might justify a violation finding, but only in combination with other factors.

3. Delays occurring after the procedure

- *Origin of delays: excessive lapse of time between the handing down of judgment and its notification to the court registry or to the parties*

In certain countries, several months may elapse between the handing down of judgment and its notification to the party responsible for executing it. The problem often lies in the court registry or the inadequacy of its information technology facilities, while sometimes judgments are not notified because of a shortage of court officials.

Close attention therefore needs to be paid to the role of such court official in considering the causes of delays.

90. *Volesky v. Czech Republic* judgment of 29 June 2004, §105.
91. *Bock v. Germany* judgment, 23 March 1989.

Case law example:

"*Finally, it is difficult to understand why the judgment was not notified in writing to the parties until two months after its delivery*" (*Buchholz v. Germany* judgment of 6 May 1981).

National reforms:

In France, "contracts of objectives" have been agreed in certain pilot appeal courts (some administrative appeal courts). In exchange for additional staff and other resources, they undertake to make significant reductions in the time taken to hand down and implement judgments.[92]

In Austria, information technology is being introduced to manage the flow of cases and monitor their progress.[93]

C. Causes of delay by types of proceedings

1. Civil proceedings

Courts' failure to use the powers or discretion granted by the rules of procedure

- *Origin of delays: Judicial inertia in producing evidence*

These are cases where the civil courts are insufficiently active when the rules of procedure allow them to be.

Case law example:

In the aforementioned *Kubiznakova* judgment (French only), the Court accepted the applicant's argument that the reason she had had to present evidence, often repeatedly, was because the court had failed in its obligation to secure evidence of its own motion, as it was required to do in this type of case.

92. Resolution ResDH(2005)63 of 18 July 2005 concerning the judgments of the European Court of Human Rights in 58 cases against France (see Appendix to this Resolution) with respect to excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before the administrative courts.
93. Final Resolution ResDH (2004) 77 on the *G.S v. Austria* case.

- *Origin of delays: Failure of courts to check that summonses to appear are properly drawn up, when the code of civil procedure places this responsibility on them.*

Case law examples:

The *Capuano v. Italy* judgment of 11 November 1994 offers one of many examples. Reference may also be made to the *Serrentino v. Italy* judgment of 27 February 1992, §18 and, *mutatis mutandis*, the *Cifola* judgment of 27 February 1992, § 16.

- *Origin of delays: Cases where civil procedure prevents the examination of new grounds on appeal*

The fact that civil procedure prevents the examination of new grounds on appeal, which means that lower courts must show special vigilance, cannot justify excessive length of proceedings at first instance.

Case law example:

In the *Lechner and Hess* case,[94] the Government relied on the fact that civil proceedings in Austria were founded on the principle that new matters could not be raised on appeal (*Neuerungsverbot*) to justify granting the trial court extra time to reach a decision, since the higher court was restricted to reviewing the impugned decision on the basis of the material before the court below. The judgment stated: "*Without minimising the relevance of this factor, the Court does not believe it to be of such weight as to absolve the lower court from having to comply with the requirements of Article 6 para. 1 (art. 6-1) regarding the conduct and expeditiousness of trial."*

- *Origin of delays: Civil procedure does not allow courts to rectify parties' failure to conduct proceedings at a reasonable rate*

In connection with accusatorial proceedings, the Court often states that although under the civil proceedings code in question it is for the parties to take the initiative with regard to progress, this does not absolve the courts from ensuring compliance with the requirement of Article 6 concerning reasonable time

Case law examples:

The above comment occurs in the following judgments: *Capuano v. Italy* of 25 June 1987, §§ 24 and 25 , *Martins Moreira v. Portugal* of 26 October 1988, § 46, *Vernillo v. France* of 20 February 1991, and *Proszak v. Poland* of 16 December 1997.

94. *Lechner and Hess v. Austria* judgment of 23 April 1987.

More recently, in the *Tsirikakis v. Greece* judgment of 17 January 2002 (French only),[95] the Court found that even though the proceedings were governed by the initiative of the parties principle, the reasonable time requirement also required courts to scrutinise the conduct of the proceedings and exercise great care in granting adjournments or requests to hear witnesses and ensuring that necessary expert reports were submitted on time.

It has emerged from several cases that domestic law does not give courts power to intervene to expedite proceedings. According to the *Füterrer v. Croatia* judgment of 20 December 2001, "*the Government point out that in the civil proceedings the courts are limited in their activity as they may not take procedural steps on their own initiative but mostly according to the requests of the parties."*

In certain cases, the Court implicitly invites national authorities to amend their legislation to offer courts the necessary powers to order recalcitrant parties to expedite proceedings. "*As to the Government's contention that the first-instance court was impeded in progressing with the proceedings because the defendant did not comply with the court's orders to attend the hearings and the DNA tests, the Court reiterates that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time*".[96]

For this reason, it is advisable to note, the Danish practice of the schedule for the court sessions: this practice appeared obviously effective in several cases submitted to the Court which did not note any idle period in the litigations and allowed him to show a non violation.

Case law examples:

The *Ciricosta and Viola v. Italy* judgment of 4 December 1995 (§30) noted that the "*principio dispositivo*", to which civil proceedings in Italy were subject, made the parties responsible for taking the initiative with regard to the progress of the proceedings. It criticised the parties' abuse of this facility and added that it did not dispense the courts from ensuring compliance with the requirements of Article 6.

National reforms:

Certain states that use the inquisitorial approach have reformed their civil procedures after Court findings of excessive length of proceedings. For example, in legislation that came into force on 1 January 2002, Slovakia replaced the inquisitorial with the accusatory principle. The burden of proof

95. Violation of Article 6§1 for proceedings lasting thirteen years and three months in a complex case of expropriation with an appeal on points of law still pending (three levels of court).
96. *Mitkulic v. Croatia* judgment of 7 February 2002.

now lies exclusively with the parties, who in principle can only adduce evidence and facts at first instance.[97]

The 1990 reform of Italian civil procedure, modified in 1995, aimed to improve the conduct of proceedings by introducing a system of time-limits, which required parties to present their evidence at the second hearing, and a new judicial body, in the form of justices of the peace, to enable full judges to concentrate on more important cases.

In 1973, the Italian authorities introduced a reform establishing a special procedure for employment and labour disputes, for which the Court requires particular diligence, while in 1990 it approved emergency measures to expedite the conduct of proceedings of this sort (see, most recently the *Lestini v. Italy* judgment of 26 February 1992, § 18).

Croatia reformed its civil procedure in legislation of 14 July 2003, which replaced inquisitorial with adversarial proceedings in civil cases. As a result, only the parties to the proceedings are required to establish the facts, and then only at first instance. It is therefore no longer possible to have court decisions quashed and cases referred back for re-examination because courts have failed to establish certain facts on their own initiative (Articles 7 and 195). New pecuniary penalties were planned for the parts which misuse their procedural laws and thus cause unjustified delays in the procedures (Articles 4, 56 and 84).[98] Moreover, the possibility for the representative of the public prosecution of asking for the revision of final decisions of the court within the framework of an extraordinary procedure was repealed by Article 239 of the law of 14 July 2003.[99]

The Hungarian system has also changed. Judges are no longer required to instruct the parties about their rights; measures designed to delay proceedings may now be sanctioned; since 1995, evidence has had to be presented at the same time as requests; deadlines may only be extended once by the courts and never by more than 45 days; and alternative means of settling disputes, such as mediation and arbitration, have been introduced.

In his report "*Access to Justice",*[100] Lord Woolf has criticised the often excessive length of civil proceedings in the United Kingdom and their disorganised

97. Source: List of General measures adopted to prevent new violations of the European Convention on Human Rights. Stock-taking of measures reported to the Committee of Ministers in its control of the execution of judgments and decisions under the Convention (Application of former Articles 32 and 54 and of Article 46).
98. Resolution ResDH(2005)60 concerning the judgments of the European Court of Human Rights in the case of Horvat and 9 other cases against Croatia (see appendix I) adopted on 18 July 2005.
99. Resolution ResDH(2005)60 idem.
100. Access To Justice – Interim Report to the Lord Chancellor on the civil justice system in England and Wales, June 1995.

nature. The overriding objectives of the 1999 reform of civil procedure that followed his report's proposals included the more rapid resolution of cases.

2. Criminal proceedings

- *Origin of delays: structural problems relating to the organisation of the prosecution service*

In certain cases, such organisational problems lead to an accumulation of delays and procedural errors.

Case law example:

In the *Mitev v. Bulgaria* judgment of 22 December 2004, the Court criticised the numerous referrals of the case back to the investigation stage over 2 years to correct procedural errors.

- *Origin of delays: periods of the investigation stage where little or no progress is made in the proceedings or in inquiries*

The Court criticises inactivity, even in the investigation phase.

One of the problems is that of dormant cases, because no regular checks are carried out to identify cases no longer being dealt with actively by investigating judges.

Case law examples:

In the *Nuvoli v. Italy* judgment of 16 May 2002 (French only), the Court found that more than 1 year and 5 months elapsed after the search of the applicant's premises before an application was made to bring the case to court.

In the *Mutimura v. France* judgment of 8 June 2004 (French only), the Court acknowledged that the case was slightly complex but still criticised the dilatory nature of the investigation and the fact that international requests for judicial assistance were issued more than 5 years after the state prosecutor's initial indictment. It found that there had been a violation of Article 6§1 in a case whose investigation had lasted 9 years and was still under way when the Court delivered its judgment. The case concerned criminal complaints alleging that a Rwandan clergyman residing in France had taken part in acts of genocide in Rwanda

National reforms:

Several countries have introduced deadlines to expedite criminal proceedings.The new Italian code of criminal procedure that came into force on

24 October 1989 established deadlines for prosecutors or investigating judges and provided for more rapid criminal proceedings. Direct judgments are used for cases where the offender was apprehended in the act and immediate judgments where the prosecuting authorities consider the evidence to be irrefutable.

Similarly, on 28 April 2003 Spain introduced rapid criminal proceedings with limited deadlines for various stages: 72 hours each for the judicial police inquiries and for the duty investigating judge to investigate the case and start the oral proceedings, with the prosecuting authorities presenting their indictment as soon as the oral stage has started. The aim is to secure a verdict no later than one and a half months after the suspect's arrest, particularly in cases, such as marital violence and burglary, with a high social impact.

In Germany, accelerated proceedings are used for cases carrying a sentence of no more than one year's imprisonment. Hearings must take place no more than six weeks after the prosecuting authorities have requested the relevant court to order the accelerated procedure.

Since its 1998 reform of the criminal procedure code, Portugal has operated an abridged procedure similar to the accelerated one in Germany.

In France, 75% of cases, compared with 45% ten years ago, are subject to rapid referral to the criminal court, either by the investigating judge or by direct summons, without a preliminary investigation. These developments have helped to expedite proceedings, with 75% of persons concerned now appearing before the courts within a period of two days to four months.[101]

- *Origin of delays: too long a period before or between hearings*

The state is responsible for delays in hearing cases once the investigations are complete.

Case law examples:

In the Mattoccia case,[102] 3 years and 7 months elapsed between the applicant's committal for trial and the first hearing before the trial court.

The Court also criticised the fact that more than a year passed between the lodging of the appeal and the first hearing in the appeal court in the *Hamanov v. Bulgaria* and *Belchev v. Bulgaria* judgments of 8 April 2004.

On the other hand, in a Polish case that lasted 5 years and 8 months, the Court's non-violation finding can be explained not only by the complexity of

101. Information report No. 17 of the French Senate of 12 October 2005 on accelerated criminal proceedings by Senator François Zocchetto, and Survey of comparative legislation No 146-May 2005- accelerated criminal proceedings – See website: http://www.senat.fr.
102. *Mattocia v. Italy* judgment of 25 July 2000.

this international drug smuggling case but also by the numerous steps taken by the court to expedite proceedings.[103]

In particular, it noted the court's refusal to grant a motion lodged by one of the accused at the first hearing to have the case returned to the prosecution to allow investigations to be completed, the decision to separate consideration of the applicant's case from that of two absent co-accused and several refusals of requests by the applicant that would have extended the proceedings. Although several hearings were adjourned, these were imputable to the accused or to absent witnesses. None could be imputed to the court's failure to expedite the proceedings.[104]

- *Origin of delays: whether or not to join criminal cases*

The Court sometimes has to rule on courts' decisions on whether to join related cases, particularly complex criminal cases with several co-accuseds. It has to decide whether such decisions are consistent with the reasonable time requirement, while also bearing in mind the importance of the proper administration of justice, which may require an alternative approach.

Case law examples:

In the *Wejrup v. Denmark* decision 7 March 2002,[105] which concerned international fraud and misleading accounting, the applicant maintained that the proceedings were unnecessarily prolonged due to the consolidation of his trial with that of the co-accused, and that various considerations did not concern him. However, the Court approved the prosecution's decision to join the cases against the defendants, the aim being to reduce court costs, and described it as "undoubtedly appropriate".

However, it has to strike a balance between separating proceedings in the interests of speed and the proper administration of justice. In the case of *Absandze v. Georgia* of 15 October 2002 (inadmissibility decision – French only), the Court made it clear that separating the applicant's case from that of the other accused would have probably expedited the proceedings but that there was nothing to indicate that such a separation would have been compatible with the proper administration of justice.[106]

103. *Van Pelt v. France* judgment, 23 May 2000.
104. *Salapa v. Poland* judgment of 19 December 2002.
105. See also: *Salapa v. Poland* judgment of 19 December 2002 (for a separation of proceedings), *Absandze v. Georgia* of 15 October 2002 (inadmissibility decision – French only), the Court made it clear that separating the applicant's case from that of the other accused would have probably expedited the proceedings but that there was nothing to indicate that such a separation would have been compatible with the proper administration of justice. However, examining the case *a posteriori,* it has a sight of the case which the national judges didn't have at the time they took their decision.
106. See also the *Neumeister v. Austria* judgment, idem, §21.

- *Origin of delays: Failure of witnesses to attend hearings, causing repeated adjournments*

Regarding the importance of evidences in criminal proceedings, delays linked to failure of witnesses or their repeated failures is source of worrying delay.

When national criminal codes authorise courts to fine witnesses who have been duly summoned and then fail to attend without good cause, or even to have them brought in by the police, the Court criticises courts that fail to use these powers to expedite proceedings.

Case law examples:

In the *Iłowiecki v. Poland* judgment of 4 October 2001, concerning international criminal fraud, the Court criticised the adjournment of hearings over a period of a year because witnesses were not present. The proceedings had lasted 7 years, 10 months and 7 days and were still pending when the Court ruled. Of this period, 2 years and 10 months were imputable to the authorities, which were in violation of Article 6§1.

Reference should also be made to the *Trzaska v. Poland* judgment of 11 July 2000, § 90, and the *Kusmierek v. Poland* judgment of 21 December 2004, in which the Court found Poland to be in breach of the Convention in a defamation case that had lasted 9 years and 6 months (of which only 8 years and four months came within the Court's temporal jurisdiction). In the *Kuibichev v. Bulgaria* judgment of 30 September 2004, the Court raises the issue of the ascribable delays to the Bulgarian courts, in particular those holding with the absence of the witnesses and the insufficiency of the measurements taken by the authorities to ensure itself of their presence at the court session.

- *Origin of delays: effects of delays in criminal proceedings on civil proceedings*

When criminal proceedings drag on, this can also prevent or hinder progress in the civil courts.

Case law examples:

In the *Motta* judgment of 12 February 1991, where a civil dispute between a doctor and the social security authorities led to criminal proceedings against the applicant for fraud, the Court found that the criminal proceedings had been too slow and added that "*the civil proceedings were prevented from pursuing their course by the slowness of the criminal proceedings*".

The *Djangozov v. Bulgaria* judgment of 8 July 2004 offers a more recent illustration.

3. Administrative proceedings

• *Origin of delays: delays attributable to non-judicial authorities*

Delays caused by the conduct of ministers or their representatives or public health establishments, in cases that must first be referred to the relevant authorities, are imputable to the contracting state. In the *Schouten and Meldrum v. Netherlands* case of 9 December 1994, the applicant had had to wait twenty months for a decision from a professional association before he could lodge an appeal.

Case law examples:

The French cases concerning haemophiliacs contaminated by the HIV virus during blood transfusions offer a good illustration of this problem. In the *Vallée* case of 12 December 1989, the applicant submitted a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection, in accordance with Article R.102 of the Administrative Courts and Administrative Courts of Appeal Code. On 30 March 1990, shortly before the expiry of the statutory four-month time-limit, the Director-General for Health rejected the applicant's claim. In the more recent *Kritt* case,[107] the Court criticised the Paris public hospitals authority (AP-HP), stating that when a public law institution was party to proceedings, delays resulting from its conduct were imputable to the "authorities" as defined in established case law. This had therefore been the case with the delays imputable to the AP-HP. Rather than explicitly rejecting the applicants' preliminary claim, the AP-HP had remained silent, which meant that they had had to wait four months before they could apply to the administrative court. The AP-HP had also taken six months to submit its observations to the administrative court. The Court also criticised the administrative court's conduct. It had waited until 16 February 1999 before issuing directions to the AP-HP, and the court-appointed expert had taken eleven months to produce his report.

In a Spanish case, the Court observed that the *Audiencia Nacional* had had to ask the authorities several times to send the relevant files, thus showing a lack of diligence on the latter's part. It had only supplied the documentation 4 years and 6 months after the first request.[108]

In the *Clinique Mozart SARL* case,[109] the tax authorities were deemed to be responsible for a 2 year and 9 month' delay in the proceedings because of the late submission of their defence pleadings.

National reforms:

107. *Kritt v. France* judgment of 19 March 2002 (French only).
108. *Alberto Sanchez v. Spain* judgment of 16 November. 2004.
109. *Clinique Mozart SARL v. France* judgment of 8 June 2004.

In disputes concerning social security contributions where a professional association does not reach a decision in a reasonable time or refuses to do so, the Netherlands general administrative code that came into force on 1 January 1994 authorises citizens to lodge an immediate appeal directly with the court.

II. Domestic remedies to reduce length of proceedings and overview of relevant proceedings[110]

A. Directives of the European Court

At its 114th session in May 2004, the Council of Europe adopted a Declaration on "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels".

At the Committee of Ministers' request, the Steering Committee for Human Rights (CDDH) is looking at ways of implementing the Committee's recommendations, including the one on improving domestic remedies, via its Committee of Experts for the Improvement of Procedures for the Protection of Human Rights.[111]Measures to reduce length of proceedings are an important aspect of this activity.

When it was drawing up Recommendation Rec (2004) 6, the CDDH asked national authorities for examples of good practices designed to improve domestic remedies.

Following the aforementioned *Kudla* judgment, several states have introduced arrangements to enable citizens who have suffered excessively lengthy proceedings or who are still awaiting completion of a particular stage to have their case expedited. It is gradually becoming clear that the alternative offered by the European Court of Human Rights itself has a number of disadvantages. By allowing countries to choose between compensation for damage suffered from over-lengthy proceedings and the possibility of expediting proceedings, the Court has created the possibility of new remedies.

Indeed, like the application of the *Pinto* law already expressed, the damages granted to the plaintiff, to fulfil the requirements of the European Court, made this remedy "extreme attractive"[112] and currently generate an overload of the Italian Courts of Appeal, without a prevention of unreasonable timeframes in the future.

110. For a study of this question, see Venice Commission, European Commission for Democracy through law "Preliminary Draft Report on National Remedies in respect of excessive length of proceedings", 4 March 2005.
111. Recommendation (2004) 6 of the Committee of Ministers of 12 May 2004.
112. Fourth information report CM/Inf/DH (2005) 31 of 6 June 2005.

In the important judgement *Scordino v. Italy,*[113] the CEDH refers to work of the CEPEJ: "In its framework programme (CEPEJ (2004) 19 Rev 2 § 7) the CEPEJ noticed that "the devices limited to a compensation have a too weak inciting effect on the States to lead them to modify their functioning and bring only one repair a posteriori in the event of a proven violation instead of finding a solution for lengthy court proceedings".

It continues in these terms: "When a legal system is failing in this respect, a remedy making it possible to accelerate the procedure in order to prevent an excessive duration constitutes the most effective solution. Such remedy introduces an undeniable advantage compared to a remedy only focussing on the payment of a financial compensation because it also avoids having to note successive violations for the same procedure and, like a remedy of financial compensation, is not limited to act only a posteriori, such as that envisaged by the Italian law for example".

B. Existing domestic remedies: summary[114]

A number of interesting domestic remedies are currently available.

In Austria, Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*) offers a remedy that the Court recently described as "effective" in the *Holzinger* judgment of 30 January 2001. New provisions were introduced in March 2004 into the criminal procedure code, granting accused persons the right to have their proceedings terminated within a reasonable time.

In Belgium, the Act of 30 June 2000 introduced a new Article 21.*c* into the code of criminal procedure authorising courts to convict persons with a simple declaration of guilt (that is, with no further penalty) or impose a sentence below the statutory minimum, if the proceedings have lasted beyond a reasonable time.[115]

The Czech Republic has instituted reforms following the *Hartman* judgment of 10 July 2003, in which the European Court found that appeals to the Constitutional Court, which enabled individuals to challenge any final decision of another body, be it administrative or judicial, were not effective. Act No. 192/2003 has added a provision to Act No. 6/2002 on courts and judges under which, from 1 July 2004, it has been possible to seek a remedy for excessive delays in judicial proceedings by applying for a deadline to be set for completion of a particular procedural stage or formality. This procedure is similar to the one in Austria described earlier.

113. Judgment of the Great Chamber of 29 March 2006.
114. For a study of this question, see Venice Commission, European Commission for Democracy through law "Preliminary Draft Report on National Remedies in respect of excessive length of proceedings", 4 March 2005.
115. Source: website Conseil d'Etat: http://reflex.raadvst-consetat.be/reflex/index.reflex?page=chrono.

Under Article 21 of the Finnish constitution, "Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice."

The code of criminal procedure also provides for a special selection procedure aimed at reducing the total length of proceedings in criminal and civil cases. Article 6.3 of the criminal code allows courts to reduce sentences when a particularly long period has elapsed since the offence was committed and when the normal penalty would have an unreasonable or exceptionally detrimental effect.

In Italy, the so-called *Pinto* Act, No. 89 of 24 March 2001, allows persons who have suffered detriment as a result of excessively lengthy proceedings to obtain just satisfaction. This remedy was considered to be effective in the *Brusco* case,[116] a pilot decision in which the European Court of Human Rights invited the applicants who had referred the case on the grounds of reasonable time to withdraw it or otherwise face the risk of an inadmissibility decision by a committee of judges.

In the subsequent *Scordino* case,[117] the Court found that excessively lengthy proceedings did not necessarily entitle those concerned to be granted adequate compensation by the Italian courts in accordance with the Court's criteria. Appeals to the Court of Cassation were not an effective remedy.

The case was referred to the Grand Chamber of the Court, which took its decision on 29 March 2006.

The judges of Strasbourg note that "by adopting the Pinto law, Italy brought a remedy purely focussing on financial compensation in the event of a violation of the principle of reasonable time".

The Court takes good note of the reversal of decisions of the Italian Court of cassation intervened on 27 November 2003 and greets the efforts authorized by this jurisdiction to conform to European jurisprudence by indicating to the Italian courts that the compensation for the damage related to the excessive duration of a procedure should not move away from the amounts fixed by the European Court.

From 26 July 2004, it considered that the Pinto law constituted an effective remedy and that he must be required applicants for purposes of Article 35 § 1 of Convention.

The CEDH, with the request express of the Slovak, Czech and Polish authorities, clarified its jurisprudence as regards the useful remedy, being

116. Decision of 6 September 2001.
117. Decision of 27 March 2003 and judgment of 29 July 2004.

the repair of an excessive length of proceedings indicates: “One cannot indeed exclude that the excessive slowness of the remedy does not affect the adequate character of it (*Paulino Tomas v. Portugal* (Dec.), No. 58698/00, *Belinger* v. Slovenia, (Dec.), n° 42320/98, 2 October 2001 and, mutatis-mutandis, *Öneryıldız v. Turkey*, n° 48939/99, § 156)”. It estimates *“completely possible which the applicable rules of procedure are not exactly the same ones as those which apply to ordinary actions in repair and which the rules as regards costs of proceedings can be different and thus make it possible the plaintiff not to support excessive loads when its action is founded”*.

It accepts that a State which obtained different remedies – preventive solutions and compensation schemes – whose judgements, in conformity with the legal tradition and the standard of living of the country are justified, and usually carried out with celerity, *“grants sums which, while being lower than those fixed by the Court, are not unreasonable (Dubjakovav. v. Slovakia (Dec.), n° 67299/1 October 2004). However, when the requirements enumerated above all were not respected by the internal remedy, it is possible that the amount from which the litigant will be able to be still claimed ‘victim’ is higher. “*(§206)

Article 24 of the Spanish Constitution grants everyone the right to a public trial or hearing with no unjustified delays.

The *recurso di amparo* before the Constitutional Court offers plaintiffs two remedies for unreasonably lengthy proceedings, in which the pending proceedings are immediately set in train, either by an order to cease the period of inactivity or by setting aside the decision that is unjustifiably prolonging the proceedings.

Sections 292 ff of the Judicature Act authorises individuals, once proceedings are over, to apply to the Ministry of Justice for compensation for judicial malfunctioning.

According to the relevant case law (*Gonzalez Marín v. Spain* (dec.) no 39521/98, ECHR 1999-VII), unreasonable lengthy proceedings constitute a malfunctioning of the judicial system. The minister’s decision is liable to appeal to the administrative courts. The Court has also ruled on the effectiveness of the remedies in Sections 292 ff of the Judicature Act in connection with excessively lengthy proceedings in the Constitutional Court, in its admissibility decision of 28 January 2003 in the *Caldas Ramirez de Arellano* case.

In Croatia, following the judgment of the European Court in the above mentioned Horvat case, the constitutional law on the constitutional Court of 1999 was amended. New Article 63, into force since 15 March 2002, is read as follows:

"1. The constitutional Court must examine a constitutional remedy even as all the legal remedies were not exhausted whenever a court of competent jurisdiction did not rule within a reasonable time on the rights and obligations of a person or on the cogency of penal a matter charge directed against it (...)

2. If the constitutional Court retains the constitutional remedy (...) envisaged by paragraph 1 of this article, it fixes the time in which a competent court of jurisdiction must rule on the bottom of the case (...)

3. In the decision returned under the terms of paragraph 2 of this article, the constitutional Court fixes the adequate amount of repair to be granted for the violation of the constitutional laws noted (...) the amount of repair must be paid on the budget of the State within three month from the date on which the part presented a request for payment.

The European Court noted on many occasions that this new provision constituted an effective remedy with regard to the excessive duration of legal procedures (see the *Radoš* case and others against Croatia (07/11/2002) and the decisions on the admissibility in the *Slaviček* case (decision of the 04/07/2002), *Nogolica* case (decision of the 05/09/2002), *Plaftak* and others (decision of the 03/10/2002), *Jeftić* case (decision of the 03/10/2002) and *Sahini* case (decision of the 11/10/2002)). The effectiveness of this new remedy was confirmed thereafter by the decisions of the constitutional Court and in particular through the direct effect granted to the judgments of the European Court in interpretation of the Croatian right. Under the terms of Article 140 of the Croatian Constitution, the European Convention of the Human rights, ratified by Croatia on 17 October 1997, forms part of the internal legal order and its provisions take precedence over the provisions of the national legislation.

Following the legislative reform of 2002 above mentioned the judgments of the European Court were seen recognizing as a direct effect in the event of excessive duration of the legal procedures, including procedures of execution. The constitutional Court thus noted several violations of the right of the plaintiffs under the terms of Article 29, paragraph 1, of the Constitution because of the excessive duration of the legal procedures. Consequently, it ordered with the courts concerned to return a decision within certain times and granted damages for the delays which had already taken place.[118]

The Slovakian constitution was amended with effect from 1 January 2002 to enable individuals and legal persons to challenge violations of their right to be heard or tried within a reasonable time. The Constitutional Court has

118. *Source*: General measures adopted to prevent new violations of the European Convention on Human Rights. Stock-taking of measures reported to the Committee of Ministers in its control of the execution of judgments and decisions under the Convention, May 2006, p. 39 & 40.

also been empowered to order relevant authorities to settle cases immediately and to grant adequate financial compensation for excessively lengthy proceedings (Article 127, amended in 2002). The European Court has already noted on a number of occasions in connection with the Constitutional Court's practice that this new arrangement is an effective remedy for the purposes of Article 13 of the Convention (see the admissibility decisions in the *Hody* (06/05/2003), *Paška (*03/12/2002) and *Andrášik* and others (22/10/2002) cases).[119]

In Germany the right to be tried or heard within a reasonable time is guaranteed by the Basic Law, and complaints of violations of this right can be brought before the Federal Constitutional Court, which is solely empowered to ask the court concerned to expedite or settle the proceedings. The Federal Constitutional Court is not competent to impose time-limits on lower courts or to order other measures to speed up proceedings, nor is it able to award compensation.

A bill to introduce a new remedy against inaction was tabled in advance of the parliamentary elections of 18 September 2005. According to the government, this will make it possible to reduce the Federal Constitutional Court's case-load, since complaints will henceforth be lodged with the court dealing with the case or, should that court refuse to take steps to expedite the proceedings, an appellate court.

The European Court held that "the Government, in opting for a preventive remedy, have taken the approach most in keeping with the spirit of the protection system set up by the Convention, since the new remedy will deal with the root cause of the length-of-proceedings problem and appears more likely to offer litigants adequate protection than compensatory remedies, which merely allow action to be taken *a posteriori*."[120]

III. The research of the reasonable time

From a reading and detailed analysis of numerous European Court of Human Rights judgments and Committee of Ministers resolutions, the following tendencies are apparent.

A. The main tendencies of the European Court regarding reasonable time:

The procedural phases of a case deemed to comply with the requirement of reasonable time generally last **less than 2 years.**

119. See Resolution ResDH(2005)67 of 18 July 2005 concerning the judgments of the European Court of Human Rights in the case of Jóri and 18 other cases against the Slovak Republic.
120. Grand Chamber judgment in the case of *Sürmeli v. Germany*, 8 June 2006, § 138.

When this period lasts longer than 2 years but goes uncriticised by the European Court, it is nearly always the applicant's behaviour that is to blame and the delay is at least partly down to their inactivity or bad faith.[121] In 23 complex cases where there were rulings that no rights had been violated, it is striking to note that in twelve cases – over half – **the applicant's conduct is criticised by the Court** as having contributed to the delay. The finding of no violation is explained by the inappropriate conduct of the applicant.

Even if the applicant does not act with the required diligence, the Court always considers how the courts have responded: if the courts cannot be found at fault for any particular failure to act and if the case involves proceedings in which the parties bear responsibility in the conducting of the process, the parties will be held entirely to blame for the delays due to their failings and inappropriate demands and it will be ruled that there has been no violation, even if the length of proceedings seems excessive in objective terms.

For any proceedings lasting longer than 2 years, the ECHR examines the case in detail to check the diligence of both national authorities and the parties in the light of the case's complexity; for proceedings short of the two-year mark, the Court does not carry out this detailed examination.

What is at stake for the applicant in the dispute is a major criterion for assessment and may prompt the European Court to reconsider its usual practice of considering a period of less than 2 years as acceptable for any court instance.[122]

It may also be a reason for a court to prioritise this type of case in its schedule of hearings.[123] Given the backlogs in the courts, the European Court seeks to reconcile the concern with reasonable time with that of proper administration of justice; when considering the treatment to be given to pending cases, it therefore invites courts with a backlog to call cases by order of importance and no longer only on a first come first served basis; it implicitly suggests taking account of what is at stake for the applicant in the dispute.[124] Prioritising certain categories of cases has already been successfully tried by the courts of States in northern Europe.[125]

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121. Aforementioned *Dosta v. Czech Republic* judgment, 25 May 2004: an interesting judgment in this connection as several sets of civil procedures were lodged by the same applicant in simple cases examined by the ECHR.

122 *Le Bechennec v. France* judgment of 28 March 2006.

123. See in this connection the CEPEJ Framework Programme "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe" of 11 June 2004, Line of Action 10: "defining priorities in case management", p. 15.

124. *Union Alimentaria Sanders SA v. Spain* judgment of 7 July 1989.

125. See CEPEJ report "Time management of justice systems: a Northern Europe study"(CEPEJ(2006)14).

In complicated cases, the Court, bearing the complexity of the case in mind, focuses only on the lengths of proceedings that are manifestly excessive and demands precise explanations regarding these "abnormal" durations if it is to rule that there has been no violation.[126] But it is distinctly less strict in simple cases.

B. A few illustrations of "reasonable time":

1. Simple civil cases:

For a civil case involving a dispute over co-ownership a total duration of 5 years and 3 months for three levels of instance breaking down as follows:

– 1 year and 10 months at first instance
– 1 year and 8 months on appeal
– 1 year and 9 months on cassation, is judged to be reasonable (*Martin Lemoine v. France* judgment, 29 April 2003).

For a labour dispute: classified by the European Court as a priority case

The case is judged within a reasonable time, if dealt with:

– at first instance for 1 year and 7 months
– on appeal for 1 year and 9 months
– on cassation for 1 year and 9 months. (*Guichon v. France* judgment, 21 March 2000).

The conduct of the parties in this case was the focal point of criticism from the Court, which emphasised the delays both in the applicant's request for referral to the industrial relations tribunal and in his appeal, as well as the delay in the lodging of the parties' conclusions before the Court of cassation. **Deduction of the delays attributable to the parties gives: 1 year and 1 month before the industrial relations tribunal and eleven months before the Court of cassation.**

For another case involving a labour dispute, judged in 6 years and 3 months for four court instances (labour tribunal at 1st instance, labour appeal court, supreme court and constitutional court), the Court held that the following durations were reasonable:

– 1 year and 6 months before the first instance judge, with regular hearings

126. "the investigating judge concluded the preliminary judicial investigation […] four years and seven months after the applicant was first questioned as a suspect. This would appear to be a disturbingly long period of time.[…]. In the circumstances, it is particularly necessary for the length of this period to be convincingly justified."(§ 51) *Hozee v. Netherlands* judgment of 22 May 1998 (no violation in a complex criminal case).

– 4 months on cassation
– appeal lasting 1 year and 9 months.

But it attributed a delay of four months before the first judges to the applicant owing to their unjustified absence at a hearing. (*Antolic v. Slovenia* of 1 June 2006)

And while a similar type of labour dispute was judged more swiftly at 1st instance (5 months) and on appeal (1 year and 5 months), the Court tolerated a longer duration (of 2 years and 2 months) before the court of cassation (while considering the period rather long): **its overall assessment of the case remained positive** (*Gergouil v. France* judgment, 21 March 2000).

2. Simple criminal cases:

For a banking fraud offence: a total duration of 3 years and 6 months for 3 instances breaking down as follows:
– 6 months of investigation
– 1 year and 2 months at 1st instance
– 11 months on appeal
– 1 year and 5 months on cassation.

was judged reasonable (*Kuibichev v. Bulgaria* judgment, 30 September 2004).

For offences involving illegal demonstrations and use of explosives causing death: a total duration of 5 years and 11 months for 4 instances breaking down as follows:
– 1 year and 8 months before the State Security Court
– 1 year and 7 months before the Court of cassation
– 1 year and 2 months before the Security Court ruling on referral
– 11 months before the Court of cassation.

was judged reasonable (*Soner Önder v. Turkey* judgment of 12 July 2005)

3. Complex cases

For a criminal case involving fraud and conspiracy: a total duration of 8 years and 5 months breaking down as follows:

Preparatory investigation of 4 years and 7 months: duration justified by the number of witnesses to be heard and documents to be examined.

Judgment by three court instances lasting 3 years and 10 months (*Hozee v. Netherlands* judgment, 22 May 1998) **was judged reasonable**.

For a criminal case involving negligent homicide: proceedings lasting 6 years and 3 months for four court instances could not be considered unreasonable; (*Calvelli and Ciglio* v. *Italy* judgment of 17 January 2002).

In the complex cases where a violation has been found, of the forty one cases judged between 1987 and 2004 and set out in appendix 3, a distinction should be drawn between the criminal cases and the others.[127]

Regarding the nineteen criminal procedures:

– durations all of more than 5 years of proceedings for one to two court instances, with one exception: 2 years for one court instance.
– six cases were still pending at the date of the ECHR judgment.
– in seven cases, it was the inquiry and investigation phase that was criticised.
– in four cases, the Court criticised the excessive intervals between hearings before the court of judgment or between first instance judgment and the first appeal hearing.

Regarding the eleven civil procedures:

– durations ranging from 2 years and 3 months for the shortest and 19 years for the longest;
– in five cases something was at stake for the applicant, therefore requiring special diligence in the eyes of the European Court;
– in the shorter cases there is a requirement of special diligence linked to what is at stake for the applicant in the dispute.

In the complex cases where no violation has been found, among the twenty three cases studied, there are:

– 16 criminal procedures
– 6 civil procedures
– 1 administrative procedure.

In these disputes, it is striking that **in twelve cases – over half – the applicant's conduct is criticised by the Court** as having contributed to the delay.

In the criminal cases, the longest duration is 8 years and 8 months for three court instances, in a French case involving international drug trafficking (*Van Pelt v. France* judgment of 23 May 2000): the Court noted that the 3 years of proceedings before the investigating judge had been punctuated by numerous investigative measures, and that the courts of judgment had taken decisions swiftly. The conduct of the applicant was not criticised.

127. The remainder being procedures both before the ordinary court and the administrative court, as well as one procedure before a constitutional court.

In the civil cases, the longest duration was 6 years in a pending case: the Court found that the applicant had lodged one action after another, some of which had proved pointless and further complicated a case already considered “highly complex”. On the other hand, no period of inactivity could be attributed to the authorities.

Conclusion

In its "short survey of cases examined in 2004", the Court noted that "a*s in previous years, a large percentage of the judgments delivered by the Court concerned exclusively or primarily the excessive length of court proceedings. The number of these judgments was virtually identical to that for the previous year (increasing from 235 to 248), as was the figure shown as a percentage of all judgments (increasing from 33.43% to 34.49%)."*

Addressing a conference to mark the fiftieth anniversary of the Convention, Mr Luzius Wildhaber, President of the European Court since the 1998 reform, described the challenges facing the European human rights protection machinery. In the coming years, he told his audience, the success of the Convention system would be judged according to three criteria: the length of proceedings before the Court, the standard of its judgments and the effectiveness with which those judgments were implemented. He called for contracting states to give that system their total support, which was essential if the Convention machinery was to be successful.

The length of judicial proceedings remains a major concern, not only for domestic courts everywhere but also and above all for the European Court.

In the 2005 report, the Court registered 219 judgments concerning the length of civil or administrative proceedings and 55 judgments concerning criminal proceedings. On a total of 1105 judgments, the reasonable time cases represent around a quarter of the decisions taken.[128]

The Court's judgments and decisions show that there is a clear need for a "culture of expedition or dispatch", which is not necessarily synonymous with speed but signifies above all a commitment to proper judicial time management.

This aim implies to mobilise all the parties to the trial, first of all the courts, and inside them, magistrates, clerks and administrative staff. Information technology offers now interesting tools facilitating the follow-up of proceedings and allowing a better watch of delays. Proposals are made for mobilising the different parties.[129] The "Best practice project" in Denmark should

128. Annual report of the ECHR available on the website http://www.ehcr.coe.int/ehcr.

129. One of the selected applications for the Crystal scales of justice award in 2006 intented to reduce the length of proceedings: the first Instance court of Torino (Italie) "Programme Strasbourg"First experience of case management in Italy to combat backlogs and speed up the treatment of civil proceedings.

be mentioned, intending to increase the capacity of courts, while assuring constant quality of the judicial service.[130]

All those involved in the process need to be mobilised, starting with the courts, including judges, court registrars and administrative staff. But achieving this objective also requires the involvement of other legal professions such as lawyers, notaries, bailiffs and court appointed experts, all of whom have a contribution to make in their respective spheres.

Courts also function in co-operation with an increasing number of other institutions. The required “diligence” must concern all national authorities and the officials working for them, whether they are responsible for drafting defence submissions on behalf of governments or for responding to requests for out-of-court settlements. Other decentralised or devolved public bodies are equally concerned, when they become parties to certain proceedings concerned with guardianship or statutory care, for example, or are consulted by the courts in proceedings relating to social services or social security matters.

Finally, we need to pay attention to ordinary citizens themselves, when they are parties to proceedings. When their negligent conduct is not in bad faith, it is often the result of lack of information on their rights and obligations. Such information should itself be supplied with diligence, and dilatory conduct must be answered with court orders and penalties prescribed by law, as the Court has consistently advocated.

If this worry for the information of the public is written in the rules of the functioning of courts, delaying behaviours, cause of extension of proceedings and bonus for dishonesty, would be easier to sanction, as recommended by the European Court of Human Rights.

130. See the aforementionned CEPEJ report report “Time management of justice systems: a Northern Europe study”(CEPEJ(2006)14).

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Appendix 1

Statistics of cases of the Court in the field of reasonable period since the acceptance of the individual petition by each state at 19 October 2006[131]

The 1st figure corresponds to the total number of judgments of the Court, 2nd to violation judgments only and 3rd to the judgments eventually given in 2005.

State	Number* of judgments at 19/10/2006	Ratification	Individual petition	Inhabitants
Albania	1 (1)	02/10/1996	02/10/1996	3.08
Andorra	0	22/01/1996	22/01/1996	0.07
Armenia	0	26/04/2002	26/04/2002	3.00
Austria	62 (50) [10]	03/09/1958	03/09/1958	8.10
Azerbaijan	0	15/04/2002	15/04/2002	8.30
Belgium	44 (34) [8]	14/06/1955	05/07/1955	10.37
Bosnia and Herzegovina	0	12/07/2002	12/07/2002	3.80
Bulgaria	44 (40) [3]	07/09/1992	07/09/1992	7.97
Cyprus	20 (22)	06/10/1962	01/01/1989	0.92
Croatia	45 (40) [11]	05/11/1997	05/11/1997	4.43
Czech Republic	75 (68) [17)	18/03/1992	18/03/1992	10.20
Denmark	16 (3) [2]	13/04/1953	13/04/1953	5.38
Estonia	2 (1)	16/04/1996	16/04/1996	1.40
Finland	23 (17) [6]	10/05/1990	10/05/1990	5.23
France	305 (255) [12)	03/05/1974	02/10/1981	60.00
Georgia	2 (2)	20/05/1999	20/05/1999	4.40
Germany	38 (30) [5]	03/09/1953	05/07/1955	82.44
Greece	204 (185) [89)	28/11/1974	20/11/1985	11.01
Hungary	76 (71) [15]	05/11/1992	05/11/1992	10.10

131. Sources: Hudocdatabase on http://www.echr.coe.int/echr annuel report of the ECHR 2005, p. 22.

State	Number* of judgments at 19/10/2006	Ratification	Individual petition	Inhabitants
Iceland	0	29/06/1953	29/03/1955	29.00
Ireland	4 (4) [1]	25/02/1953	25/02/1953	4.04
Italy	1258 (1012)	26/10/1955	01/08/1973	57.32
Latvia	6 (5)	27/06/1997	27/06/1997	2.35
Liechtenstein	1 (1)	08/09/1982	08/09/1982	0.03
Lithuania	9 (7) [1]	20/06/1995	20/06/1995	3.45
Luxembourg	9 (8) [1]	03/09/1953	28/04/1958	0.44
Malta	3 (3)	23/01/1967	01/05/1987	0.40
Moldova	6 (6)	12/09/1997	12/09/97	4.30
Netherlands	14 (9) [1]	31/08/1954	28/06/1960	16.19
Norway	2 (0)	15/01/1952	10/12/1955	4.50
Poland	237 (185) [18]	19/01/1993	01/05/1993	38.70
Portugal	122 (65) (2]	09/11/1978	09/11/1978	10.80
Romania	20 (16) [3]	20/06/1994	20/06/1994	21.70
Russian Federation	84 (77) [10]	05/05/1998	05/05/98	144.90
San Marino	2 (0)	22/03/1989	22/03/1989	28.75
Serbia and Montenegro	0	03/03/2004	03/03/2004	10.66
Slovakia	88 (75) [23]	18/03/1992	18/03/1992	5.40
Slovenia	168 (160) [1]	28/06/1994	28/06/1994	1.98
Spain	8 (8)	04/10/1979	01/07/1981	43.00
Sweden	14 (5) [1]	04/02/1952	04/02/1952	8.97
Switzerland	7 (4) [1]	28/11/1974	28/11/1974	7.41
Former Yugoslav Republic of Macedonia	8 (7) [2]	10/04/1997	10/04/1997	2.02
Turkey	201 (128) [23]	18/05/1954	28/01/1987	72.80
Ukraine *	174 (174) [5)	11/09/1997	11/09/1997	47.70
United Kingdom	26 (22) [3]	03/09/1953	14/01/1966	58.83

∗ Most of Ukrainian cases concern failure of enforcement or delay in performance and are not counted under reasonable time but under enforcement.

Appendix 2

"Priority" cases for which the European court of human rights requires particular diligence by the authorities (29/10/05)

Although the Court's precise wording may vary, ranging from "exceptional expedition" (HIV case) to a certain diligence" (mental capacity of a plaintiff), the Court does not operate any real gradation with regard to the types of cases concerned. Its view is that they all require the courts to show particular vigilance about the length of proceedings. The value of this table is that it shows what was at stake for the applicants in the cases concerned.

Applicant's state of health:

French cases concerning haemophiliacs contaminated by the HIV virus during blood transfusions

• ECHR judgments: *X v. France* of 31 March 1992, *Vallée v. France* of 26 April 1994, *Pailot v. France* of 22 April 1998: "*Like the Commission, the Court considers that what was at stake in the proceedings complained of was of crucial importance to the applicant in view of the disease from which he is suffering. .... exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with ....*" (Pailot, §68).

Exercise of parental authority and custody of children:

- *H v. United Kingdom* judgment of 8 July 1987: in this child care case, the Court stated that not only were the proceedings "*decisive for [the mother's] future relations with her own child, but they had a particular quality of irreversibility, involving as they did what the High Court graphically described as the 'statutory guillotine' of adoption .... In cases of this kind the authorities are under a duty to exercise exceptional diligence*"(violation).
- *Johansen v. Norway* judgment of 7 August 1996 **(non-violation)**: "*in view of what was at stake for the applicant and the irreversible and definitive character of the measures concerned, the competent national authorities were required by Article 6 para. 1 .... to act with exceptional diligence in ensuring the progress of the proceedings*".
- *EP v. Italy* judgment of 16 November 1999, violation: child custody proceedings, that lasted seven years.
- *Nuutinen v. Finland* judgment of 27 June 2000.

- *Tetourova v. Czech Republic* judgment of 27 September 2005 (French only): delays in particular parts of proceedings can only be tolerated if the total length of the proceedings is not excessive. Non-violation for three and a half years of proceedings. The conduct of the defendant (the applicant's husband) helped to delay the proceedings and was an objective element that could not be imputed to the state.
- *Jahnova v. Czech Republic* judgment of 19 October 2004: a length of 3 years and 5 months still pending, while the mother is separated from her child since 1997, is declared.

Concession of alimony:

This is the case when the decision determines the completion of a divorce proceedings: *Kubiznakova v. Czech Republic* of 21 June 2005: violation for a duration of 6 years and 4 months and two level of proceedings having taken a decision three times each.

The age of the applicant:

- *Sussmann v. Germany* judgment of 16 September 1996 concerning a case relating to the calculation of a supplementary retirement pension
- *Styranowski v. Poland* judgment of 30 October 1998: the Court took account of the age of the applicant, a retired judge, in compensation proceedings following a reduction of the applicant's pension.

Dismissal proceedings – employment cases:

- *Ruotolo v. Italy* judgment of 27 February 1992, decision of violation for proceedings which lasted 11 years and 7 months, for three court levels, followed by a review of the case decided by the Court of Cassation: excessive length of the deliberation at the appeal level (7.5 months).
- Inadmissibility decision of the Commission *Labate v. Italy* of 14 January 1998 (French only): The Commission found that Italy had shown the degree of diligence required in labour law cases by introducing in 1990 special measures to expedite proceedings.
- *Frydlende*r *v. France* judgment of 27 June 2000 concerning administrative proceedings in an employment dispute between a government department and a contractual employee (applicability of Article 6§1 to this type of case and violation for proceedings lasting 9 years and 8 months, including six before the *Conseil d'Etat* on points of law). "*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*".

- *Mianowicz v. Germany* judgment of 18 October 2001 (French only): According to the Court, particular diligence was required in employment disputes, which had to be settled with particular expedition since they concerned issues that were crucial to individuals' occupational situation – violation (12 years and 10 months).

- *Garcia v. France* judgment of 14 November 2000 (French only): The Court noted that the continuation of the applicant's employment had depended in large measure on the proceedings in question and concluded that, as in employment disputes, what was at stake for the applicant had called for a rapid decision. The case had concerned an application to set aside a prefect's implicit refusal to grant the applicant, a bar owner, an extension to his opening hours.

- *Oliviera Modesto and others v. Portugal* judgment of 8 June 2000 (French only): the Court pointed out that in cases concerning employees' entitlement to their salaries or to allowances forming part of their earnings, particular attention must be given to the point at which the reasonable time requirement in Article 6§1 could be considered to have been breached. See also *Fernandes Cascao v. Portugal* judgment of 1 February 2001 and *Farinha Martins v. Portugal* judgment of 10 July 2003.

Length of prison sentence served by the applicant:

- *Soto Sanchez v. Spain* judgment of 25 November 2003 (§ 41 – French only): violation for a period of 5 years, 5 months and 18 days before the Constitutional Court.

- *Motsnik v. Estonia* judgment of 29 April 2003; in a non complex sexual offence case the Court stated that there was no violation of Article 6§1 considering the length of the proceedings at three levels of jurisdiction during the period under consideration 2 years and 7 month, the competence *ratione temporis* considering only the period after April 1996. For the applicant, taken into custody in February 1998, the case presented a special stake for exceptional speed from the national authorities.

Individuals' civil status and capacity:

– action to establish paternity:

- *Costa Ribeiro v. Portugal* judgment of 30 April 2003 (French only). The Court said that cases concerning individuals' civil status and capacity required special diligence. The court in question had had a duty to proceed with particular diligence because what was at stake for the applicants, particularly the second applicant, was the right to a name and to the establishment of paternity.

– *applicants' mental capacity to bring legal proceedings*:

- *Bock v. Germany* judgment of 23 March 1989. The case required "swift determination" (§47). The Court concluded "*regard being had to the particular diligence required in cases concerning civil status and capacity, there has accordingly been a breach of Article 6 para. 1 .... of the Convention*", concerning divorce proceedings lasting 9 years, coupled with the issue of the application's admissibility (the applicant's capacity to bring legal proceedings).

Investigation of complaints of assault by law enforcement officials:

- *Caloc v. France* judgment of 20 July 2000: "*special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers*".
- In a Bulgarian case concerning unlawful police violence and state liability for damages arising from such conduct, the Court stated that "*as regards the importance of what was at stake for the applicant, the Court observes that his action concerned payment for grave injuries sustained as a result of police violence. In such cases special diligence is required of the judicial authorities"* (*Krastanov v. Bulgaria* judgment of 30 September 2004, § 70).

Applicant's limited income and difficult financial situation, resulting from embezzlement by the defendants

- In the *Dachar v. France* judgment of 10 October 2000, concerning criminal charges with an application for damages, in which two sets of proceedings lasted respectively 4 years and 4 years and 3 months before two tiers of courts, the Court considered that in view of what had been at stake for the applicant, the case should have been dealt with proper diligence.

Application based on an authority to execute:

- *Comingersoll SA v. Portugal* judgment of 6 April 2000: "*a final decision that has yet to be delivered in proceedings issued on the basis of an authority to execute – which by their very nature need to be dealt with expeditiously*" (§ 23). Violation for a case lasting 17 years and 6 months.
- See also *Frotal-Aluguer de Equipamentos SA v. Portugal* judgment of 4 December 2003, which lasted nearly nine years (from November 1994 and still pending at time of judgment – inactivity since March 2000 imputable to the applicant) – violation.

Appendix 3 – Complex cases – violation of Article 6 § 1

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Ilijkov v. Bulgaria, 2 July 2001	Several co-accused who had fraudulently obtained tax rebates	Excessively long intervals between hearings Judicial authorities authorised adjournments without sufficient justification Absence of judges who were not replaced	Criminal	5 years
Nikolova v. Bulgaria, 25 March 1999	Several co-accused Criminal activities over a three year period	The complexity of the case insufficient to explain the length of the proceedings Reform of the code of criminal procedure cannot justify the delays Lack of progress of investigations despite instructions from the prosecuting authorities	Criminal	5 years for one level of courts
Mitev v. Bulgaria, 22 December 2004	Numerous witnesses Use of experts Difficult to locate witnesses	Insufficient efforts by the authorities to ensure that one of the accused had legal representation Excessively long investigation period (more than five years)	Criminal	6 years, 7 months for two levels of courts

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Hamanov v. Bulgaria, 8 April 2004	Several persons suspected Numerous financial offences	Court of appeal first hearing more than a year after the judgment at first instance was quashed Case pending since 5 June 2000, including a challenge to the admissibility of the appeal lodged with the court of cassation	Criminal	7 years, 1 month (case still pending on the date of judgment)
Belchev v. Bulgaria, 8 April 2004	Several persons suspected Numerous financial offences	Court of appeal first hearing more than a year after the judgment at first instance was quashed Case pending since 5 June 2000, including a challenge to the admissibility of the appeal lodged with the court of cassation	Criminal	(case still pending on the date of judgment)
Sahiner v. Turkey, 25 September 2001	Large number of accused and of charges	Excessive time taken to hand down judgments Change of legislation *but* states must organise their judicial systems appropriately	Criminal	6 years, 2 months (real length 15 years)
Mitap v. Turkey, 21 February 1996	Nature of the charges against the applicants (terrorist activities) 627 criminal offences 726 accused	Long periods of inactivity (three years for the martial law court to draft the reasons for the judgment) and the government offered no information to justify such a long period	Criminal	6 years (real length 15 years)

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Demirel v. Turkey, 28 April 2003	Case heard with that of four other co-accused for membership of the PKK	The preliminary inquiries should have been conducted more rapidly It had taken a long time to hear witnesses	Criminal	7 years, 7 months
Iwanczuk v. Poland 15 November 2001	Inherent complexity of this type of case (forgery and use of counterfeit documents)	Change in the court's composition Hearings restarted from the beginning, after 71 had already taken place	Criminal	8½ years (real length: 10½ years, case still pending)
Ilowiecki v. Poland, 4 October 2001	Numerous international bank transactions Need to call in several experts	Total of two years and ten months for which the government supplied no explanation	Criminal	7 years, 10 months (case still pending)
Grauslys v. Lithuania, 10 October 2000	Fraud case	Authorities' repeated failures to question the victims	Criminal	5 years (case still pending)

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Kalashnikov v. Russia, 15 July 2002	Financial offences, involving a considerable volume of evidence and the need to question numerous witnesses	Even though the applicant helped to prolong the proceedings, Article 6§1 does not require defendants to co-operate with the authorities The applicant was kept in custody, which required the courts to show particular diligence and administer justice expeditiously	Criminal	2 years (real length: 5 years, 1 month) for one level of courts
Lavents v. Latvia, 28 February 2003	Very large scale financial crime Several co-accused Exceptional volume of evidence Scale of the investigation	The delays were imputable to the courts (see the joint communiqué from the prime minister and the justice minister acknowledging their responsibility)	Criminal	6 years, 7 months (real length: 7 years, 8 months)
Stratégies et communications and Dumoulin v. Belgium 15 July 2002	Complex investigation, because of the circumstances of the case (45 boxes of case files)	The Court considered that six years just for the investigation stage of the proceedings, which had not yet even been completed, could not be considered reasonable	Criminal	6 years

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Boddaert v. Belgium (Commission), 17 April 1991	No witness to the murder The applicant and his co-accused each claimed the other was responsible	Total suspension of the investigation for three years, a period imputable to the authorities	Criminal	6 years, 2 months
Metzger v. Germany, 31 May 2001	Issues relating to criminal law and the environment Water pollution Need for expert testimony Numerous witnesses	The investigation made no progress for fifteen months between the lodging of the police report and the laying of charges Unjustified delays in the trial courts, particularly between the laying of charges and the regional court's decision not to allow the trial to open, and between the decision to suspend proceedings and the appointment of an expert by the regional court Two years and three months' delay resulting from the federal court of justice quashing the regional court's judgment on procedural grounds, because it had not received this judgment within the legally prescribed period	Criminal	more than 9 years
Nuvoli v. Italy, 16 August 2002	Economic and financial crime (seizure of a banking instrument on the instructions of the prosecuting authorities)	The authorities were held responsible for overall delays lasting about three years and four months	Criminal	5 years, 10 months for one level of courts

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Ouattara v. France, 2 August 2005	Complexity increased by the fact that the person against whom the applicant had lodged a complaint, with an application for damages, could not be extradited	Investigation still under way, more than eleven years after the applicant had lodged his complaint Several periods of inactivity imputable to the authorities	Criminal	11 years, 6 months (investigation still under way)
Dobbertin v. France, 25 February 1993	Real difficulties arising from the highly sensitive nature of the offences charged, which related to national security (communication with agents of a foreign power, the German Democratic Republic)	Authorities took no steps to ensure that the cases still pending, including the applicant's, were dealt with swiftly Ordinary courts were slow to resolve the issue of the validity of the indictment (nine months) and to quash the order commissioning experts (two years)	Criminal	12 years, 10 months for three levels of courts
H. v. United Kingdom 8 July 1987	Numerous parties: the applicant, her husband, the prospective adopters, the official solicitor and the local county council Difficult to assess such a large body of evidence	In the pre-High Court phase the county council (and thus the state) was responsible for the delays The mother's future relations with her child were at stake, creating a duty to exercise exceptional diligence	Civil	2 years, 7 months

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Müller v. Switzerland, 5 November 2002	Novel and fundamental issues of compensation for expropriation on account of noise nuisance	Excessively lengthy proceedings prior to the proceedings before the Federal Court (*Süssmann* case deemed inapplicable, as concerning the "unique political context of German reunification")	Civil	11 years, 6 months
Nuutinen v. Finland, 27 June 2000	Not a complex case at the outset but became so at the enforcement stage, with the continuous reassessment of the child's best interests	Time elapsed between the initial application and the first hearing and between the latter and the main proceedings What was at stake in the case (essential for custody cases to be dealt with speedily)	Civil	5 years, 5 months
T. v. Austria, *1*4 November 2000	Bank's claim and applicant's counterclaim were both extended in the course of the proceedings	Delays imputable to the applicant, who often changed counsel, were much less significant than those imputable to the authorities (altogether four years and three months imputable to the district court)	Civil	8 ½ years for one level of courts
Wiesinger v. Austria, 24 September 1991	Case concerned land consolidation, by its nature a complex process, affecting the interests of both individuals and the community as a whole Legally complex	Adoption of an amendment to the zoning plan by the municipal council Difficulties stemming from a lack of coordination between the municipal and the agricultural authorities in finalising their schemes	Civil	more than 9 years

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Bayrak v. Germany, 20 December 2001	Complexity caused by the case's foreign links (the dispute came under Turkish rather than German law) Complexity of the resulting legal issues, such as German courts' geographical jurisdiction	Six different courts were involved in the case: considered individually the time they took was not unreasonable but the overall length of proceedings, which was imputable to the authorities, was unreasonable	Civil	more than 8 years
Mianowicz v. Germany, 18 October 2001	Case relating to the dismissal of a disabled person, whose complexity was linked to the protection against dismissal legislation and that on severely disabled persons	Main delays caused by the delays in the Munich employment court of appeal, where there were two inactive periods Particular diligence is required in employment disputes, which have to be settled with particular dispatch since they concern issues that are crucial to individuals' occupational situation	Civil	12 years, 10 months for two levels of courts
H.T. v. Germany, 11 October 2001	The Constitutional Court was asked to rule on the constitutionality of certain aspects of the reform of the survivors' pension system	Delays imputable to the social court Particular diligence was required in view of what was at stake	Civil	nearly 12 years

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Klein v. Germany, 27 July 2000	Fairly complex case, as shown by the length of and reasons for the judgment of the Constitutional Court, which had solicited the observations of various authorities	The chronic backlog of cases in the Constitutional Court could not justify the length of proceedings Important issues at stake for many German citizens	Civil	9 years, 8 months
K. v. Italy, 20 July 2004	Action to secure execution of a maintenance order (Polish decision ordering Italian father to pay maintenance to his illegitimate daughter at the Polish mother's request)	The Italian authorities waited too long before starting the various proceedings	Civil	8 ½ years
Obermeier v. Austria, 28 June 1990	Interaction between administrative and civil proceedings in connection with the dismissal of disabled persons Numerous courts involved	"The fact remains, however, that a period of nine years without reaching a final decision exceeds a reasonable time"	Adm + Civil (dismissal)	more than 9 years
F.E v. France, 30 October 1998	Reference to plenary Court of Cassation indicated that the case was somewhat complex	The Court of Cassation had already given several rulings on legal issue raised Exceptional expedition called for	Civil (HIV)	2 years, 3 months

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Kanoun v. France, 3 October 2000	Nature of the asset to be shared between the ex-spouses Their inability to agree before a lawyer, necessitating numerous referrals to court	The authorities failed to show the necessary dispatch in arranging the settlement, following the divorce in 1974, for example the Court of Cassation was open to criticism	Civil	19 years
Satonnet v. France, 2 August 2000	The applicant's status as a dismissed contractual employee, which meant that both the judicial and administrative courts had to rule on the case	The complexity of the case and the applicant's conduct were not sufficient justification for the total length of the proceedings Several periods of inactivity imputable to the judicial authorities	Civil then Adm	17 ½ years (case still pending)
Vallée v. France, 26 April 1994	Difficult problems raised by the subrogation of the Fund to the rights of persons who had received compensation	The information needed to determine the State's liability had been available for a long time What was at stake	Civil then Adm (HIV)	4 years in one single court

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Pailot v. France, 22 April 1998	Certain complexity due to the nature of the case	Information needed to determine State's liability had been available for a long time Period of one year and ten months between adoption of Commission's report noting that there had been a friendly settlement and *Conseil d'Etat*'s judgment bringing to an end proceedings that had already lasted five years and six months up to conclusion of that settlement far exceeded reasonable time in such a case Exceptional diligence called for	Adm + Civil (HIV)	1 year, 10 months
Nouhaud v. France, 9 July 2002	Numerous parties involved and long lapse of time since the events took place Defendants' public law status Problems of settling jurisdiction between judicial and administrative courts	The complexity of the case and the applicant's conduct were not sufficient to explain the overall length of the proceedings	Adm	10 years for four levels of courts
Piron v. France, 14 November 2000	Land consolidation	Long periods of inactivity solely imputable to the authorities and for which no explanation supplied	Adm	26 years, 5 months (case still under way)

Case	Reasons for complexity	Grounds of violation	Type of proceedings	Length
Marschner v. France, 28 September 2004	Financial offences	Delays in submitting expert reports and in holding hearings	Adm	5 years, 4 months
Styranowski v. Poland, 30 October 1998	Transfer from one court to another	15 months of unexplained inactivity	Adm	2 years, 8 months
Naumenko v. Ukraine, 30 March 2005	The state lacked the necessary technical documentation on the problem (invalidity following employment at the Chernobyl site)	Unreasonable delays imputable to the state Importance of what was at stake for the applicant (health)	Adm	5 years, 8 months
Janosevic v. Sweden, 23 July 2002	The tax authority and the courts had to assess the turnover of the applicant's taxi business and his liability to additional taxes and tax surcharges	This did not justify the length of proceedings – on the contrary, the enforcement measures taken against the applicant called for a prompt examination of his appeals	Adm	6 years, 8 months

Appendix 3 (continued) – Complex cases – no violation of Article 6§1

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Gast and Popp v. Germany, 25 February 2000	Complexity of the points of law to which the decisions dismissing the applicants' appeals referred	The delays that occurred did not appear substantial enough for the length of the proceedings before the Constitutional Court to have exceeded a reasonable time	Criminal	approximately 2 years for each applicant
Neumeister v. Austria, 27 June 1968	Difficulties the Austrian authorities encountered abroad in obtaining the execution of their numerous letters rogatory	The delays in opening and reopening the hearing were in large part caused by the need to give the legal representatives of the parties and also the judges sitting on the case time to acquaint themselves with the case record, which comprised twenty-one volumes of about five hundred pages	Criminal	7 years (case still pending on the date of judgment)
Pedersen and Baadsgaard v. Denmark, 17 December 2004	No details on the points of the case considered complex	The applicants contributed to the delays (not very involved, did not object to adjournments and their counsel did not attend scheduled hearings) The Court detailed the length of each set of proceedings and did not find any period of inactivity sufficiently protracted to constitute a violation	Criminal	5 years, 9 months

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Van Pelt v. France, 23 May 2000	International drugs traffic, numerous persons involved, international nature of the trafficking organisation, offences partly committed abroad, need to translate documents	Numerous measures taken by the investigating judge and prompt decisions taken by the trial court Two dissenting opinions on this point	Criminal	8 years, 8 months
Calvelli and Ciglio v. Italy, 17 January 2002	Certainly complex (death of a new-born child in hospital)	No significant periods of inactivity Six years, three months and ten days for four levels of courts cannot be considered unreasonable	Criminal	6 years, 3 months for four levels of courts
I.J.L. and others v. United Kingdom 19 September 2000	Financial offences Applicants' decision to plead not guilty	Authorities could not be held responsible for the delays	Criminal	4 ½ years

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Karabas v. Turkey 21 July 2005	Charges carrying heavy prison sentences Seven co-accused Need to question some of the co-accused and witnesses in other courts following a request for judicial assistance from the state security court, which occasioned a certain delay, particularly concerning exchanges of correspondence between courts in different towns.	No significant periods of inactivity	Criminal	3 years, 9 months for two levels of courts
Özden v. Turkey, 24 May 2005	Five co-accused, including two who were fleeing justice	Applicants' lack of interest (failure to appear, absence on the day judgment handed down, which delayed the appeals process)	Criminal	4 years, 9 months for two levels of courts

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Sari v. Turkey, 8 November 2001	Complexity partly linked to extradition Case also became complex when the applicant fled to Denmark Shared jurisdiction of the two countries, leading to bureaucratic difficulties and requirements for translations	Applicant contributed to the delay, since the obligation to appear in court is a key element of criminal procedure Authorities did not contribute to prolonging the proceedings	Criminal	8 years, 7 months
Kenan Yavuz v. Turkey, 13 February 2004	21 accused Nature of the charges against the applicant Several offences Need to assemble considerable quantity of evidence	Even though the state was responsible for certain delays the total length of proceedings was not unreasonable	Criminal	more than 5 years
Akçakale v. Turkey, 25 August 2004	Three accused for several offences (great deal of work on reconstructing events, assembling evidence and establishing level of involvement)	The applicant contributed to delays, by failing to appear or furnish written material necessary for the court's deliberations No periods of inactivity	Criminal	5 years, 3 months

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Intiba v. Turkey, 24 May 2005	Numerous persons concerned Tax law	The applicant contributed to delays, by failing to appear, asking for an adjournment, dismissing his counsel, changing address to avoid notification and refusing to be represented Authorities responsible for one year's inactivity but no impact on the length of proceedings In proceedings on this scale deciding on a timetable depends on the availability of the lawyers as well as on the court	Criminal	7 years, 11 months
Keçeci v. Turkey, 15 July 2005	Numerous accused, nature of the offences, difficult to re-establish events and determine individual roles	No significant periods of inactivity	Criminal	6 years, 2 months for five levels of courts
Klamecki v. Poland, 28 March 2002	Nature of the charges Need to assemble considerable quantity of evidence Large number of witnesses heard at first instance	Applicants contributed to delays by failing to comply with court summonses Accused absent on a number of occasions, leading to adjournments Applicant dismissed counsel on a number of occasions	Criminal	6 years, 1 month

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Salapa v. Poland, 19 December 2002	International drug trafficking case Ten co-accused Numerous witnesses Need to consult the files of current criminal proceedings in other courts, for evidence purposes	Applicant contributed to delays through numerous absences (as did certain witnesses) Court tried to expedite proceedings by refusing the applicant's requests to have the case returned to the prosecution and separating the applicant's case from that of two of the co-accused, who were absent	Criminal	5 years, 8 months
G.K. v. Poland, 20 January 2004	Complex case as shown by the volume of evidence obtained and heard during the proceedings 13 accused, 104 witnesses and 9 expert witnesses	Accused contributed to delays, through absences or requests for adjournment Delays were not particularly long and certainly not imputable to the authorities	Criminal	nearly 5 years
Sablon v. Belgium, 10 April 2001	Very complex case, because of need to establish twenty years later whether applicant had been in a state of bankruptcy and difficulty of determining his assets	Applicant had lodged many applications, some of which had been irrelevant or pointless, thus complicating the case still further No significant periods of inactivity imputable to the authorities	Civil	

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Soc v. Croatia, 9 August 2003	Death of co-contracting party, who had sold property to a third party, despite the contract The other contracts had not been registered	Applicant had not supplied answers to the defendant's allegations and was absent from certain hearings Hearings were otherwise held regularly	Civil	4½ years x two sets of proceed-ings
Acquaviva v. France, 21 November 1995	Tense political climate in Corsica	Applicants contributed to prolonging the pro-ceedings Necessary steps in the investigation had proceeded at a regular pace Delays justified by the political situation	Civil	4 years, 4 months
Proszak v. Poland, 16 December 1997	Specialist medical advice essential	Applicant contributed to delays through three groundless challenges, missed hearings and refusal to attend psychiatric examination Almost the whole period falling within its jurisdiction *ratione temporis* was essentially taken up with the search for an expert with sufficient specialist qualifications, as the applicant herself had wished. With particular regard "to the part played by the applicant in the conduct of the proceedings", the Court concluded that there had been no viola-tion.	Civil	3 years, 9 months

Case	Reasons for complexity	Grounds for decision	Type of proceedings	Length
Glaser v. United Kingdom 13 December 2000	Complex family history: need to re-establish confidence between applicant and his child and mother's determination to avoid contacts	Applicant contributed to delays Delays not imputable to authorities	Civil	3 years, 11 months
Olsson II v. Sweden, 27 November 1992	Difficult assessments and extensive investigations	Hearings extended over 13½ months in three levels of courts, which was not excessive	Civil	13½ months for three levels of courts
Süssmann v. Germany, 16 September 1996	Case "*was one of twenty-four constitutional appeals raising similar issues of some difficulty, concerning supplementary pensions of large numbers of German civil servants, which necessitated a detailed examination in substance by the court*"	"*bearing in mind the unique political context of German reunification and the serious social implications of the disputes which concerned termination of employment contracts, the Federal Constitutional Court was entitled to decide that it should give priority to those cases*"	Administrative	3 years, 4 months

Appendix 4 – non-complex cases – violation

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Broca and Texier-Micault v. France, 21 October 2003	No particular issue at stake	Concerning the first applicant the Government acknowledged that the duration of the proceedings at first instance and on appeal "could be considered relatively long" Concerning the second, the appeal proceedings had been pending for three years and the Government had given no explanation for this	Administrative	First applicant: 8 years and 8 months in three tiers of court Second applicant: 5 years and 3 months (case pending)
Guiraud v. France, 29 March 2005	No particular issue at stake	Although the length of the trial stage seemed reasonable, in the circumstances of the case the investigation could not be deemed to have been conducted with diligence	Criminal	10 years and 3 months for an investigation and three tiers of proceedings, including 6 years and 8 months for the investigation alone

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Quemar v. France, 1 February 2005	No particular issue at stake	Unjustified delays and periods of inactivity by both the investigating judge and the appeal court division dealing with appeals concerning investigations. For instance, the investigating judge (who was already replacing another investigating judge) took more than ten months to join the civil party complaint to the main proceedings, and almost a further year (during which no procedural steps were taken) to call a witness	Criminal	Investigation: – 10 years and 4 months for Mrs Quemar – 10 years and 2 months for Mr Quemar
Fattell v. France, 27 January 2005	No particular issue at stake	Unjustified delay of two and a half years between registration of the applicant's appeal and the administrative appeal court's decision Unjustified delay of four and a half years between registration of the appeal on points of law and the decision by the Conseil d'Etat	Administrative	14 years and 11 months for examination of the preliminary complaint and the seven subsequent stages in the proceedings

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Schwarkmann v. France, 8 February 2005	No particular issue at stake	The investigating judge, who, despite four reminders, had received no response to a request for evidence to be taken on commission issued two years previously, merely repeated the request in the same terms	Criminal	The investigation lasted 7 years and 1 month
Guez v. France, 17 May 2005	No particular issue at stake	Unjustified delays of: 1) three years and seven months in the Paris administrative court for the first dismissal (between the filing of the application and the judgment determining compensation for loss of income) 2) four years and eight months in the Paris administrative appeal court for the second dismissal (between the judgment annulling the second dismissal and the order to reinstate the applicant) 3) eight years and six months for the subsequent compensation request (proceedings still pending).	Administrative – Labour Court	11 years in two tiers of court (the administrative appeal court had still not ruled on the application for annulment of the first dismissal)

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Podbielski v. Poland, 30 October 1998	Given the then rampant inflation the applicant had an economic interest in securing adjudication of his claim within a reasonable time	Delays caused to a large extent by legislative changes resulting from transition to free-market system and by procedural complexity	Civil	5 years and 6 months in two tiers of court (proceedings still pending)
Bursuc v. Romania, 12 October 2004	Applicant's state of health	From June 1999 to June 2000 the court ordered successive adjournments on the ground that witnesses had failed to appear, despite the fact that it had summoned them virtually every month and threatened them with procedural penalties, which were, however, not applied. The judicial authorities were required to show particular diligence in expediting these proceedings in view of the applicant's state of health	Crimiinal	4 years, of which: – 1 year and 9 months for the prosecution service's investigation – 2 years and 3 months in the first-instance court
Frydlender v. France, 27 June 2000	Loss of livelihood	The Conseil d'Etat gave its decision almost six years after the case was brought before it, and the Government offered no explanation for this clearly excessive duration	Administrative (employment dispute)	9 years and 8 months (nearly 6 years in the Conseil d'Etat)

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Garcia v. France, 26 September 2000	Loss of livelihood	The proceedings were rapid in the Dijon administrative court (a little over one year) but not in the Conseil d'Etat (four years and four months) The applicant's continuation in business depended to a large extent on the outcome of the proceedings	Administrative	5 years and 8 months in three tiers of court
Ferdandes Cascao v. Portugal, 1 February 2001	Loss of livelihood	No essential procedural steps were taken between the date of an order by the judge and the date of the preparatory decision – this two year delay is unquestionably excessive In the case of disputes concerning employees' rights to be paid or to receive compensation in lieu of pay, the moment from which the reasonable time requirement of Article 6 can be deemed to have been breached must be examined with particular care	Civil (employment dispute)	4 years and 7 months in one tier of court (resulted in a friendly settlement)

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Farinha Martins v. Portugal, 10 July 2003	Employment dispute	The time taken by the court of appeal to examine an interlocutory appeal considerably delayed the proceedings. It took more than two years to decide that a judgment by the labour court must be annulled	Civil (employment dispute)	17 years and 9 months
Kress v. France, 7 June 2001	No particular issue at stake	Significant delays in proceedings both at first instance and concerning the appeal on points of law In particular, the Conseil d'Etat, took four years and slightly more than one month to examine the applicant's appeal on points of law	Administrative	10 years and 1 month

Appendix 4 (continued): non-complex cases – no violation

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Kuibichev v. Bulgaria, 30 September 2004	No particular issue at stake	Despite a five-month delay between two hearings of the appeal court, the inadequacy of the steps taken by the authorities to secure witnesses' presence at the hearing and a further delay of three and a half months due to inaction by the prosecution service, the proceedings, which took place in four stages and at three levels of court, with no excessive delay in the Sofia Court of Appeal or the Court of Cassation, did not exceed a reasonable time	Criminal	4 years and 3 months for three tiers of court (+ investigation)

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Punzelt v. Czech Republic, 25 April 2000	No particular issue at stake	The applicant contributed to the length of the proceedings by making numerous requests for the taking of further evidence between the filing of the indictment and the first hearing Over the period of November to December 1994 courts at two levels dealt with the applicant's request for exclusion of certain judges No period of inactivity imputable to the authorities. The case was examined twice by courts at two levels. Hearings were held at regular intervals and adjourned only in order to seek further evidence	Criminal	3 years and 3 months for three tiers of court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Zielinski v. Poland, 15 February 2005	No particular issue at stake	The applicant contributed to the length of the proceedings (failed to reply in writing to the opposite party's observations within the fourteen day time-limit allowed, but did respond at the hearing; failed to take any steps whatsoever to expedite the proceedings; failed to submit a health certificate on time, resulting in a delay of about three months; etc.) The opposite party also contributed to delaying the proceedings on the merits An approximately eleven-month period of inactivity by the judicial authorities was due in part to the applicant's conduct. Similarly, a delay of nine to twelve months was caused by the opposite party's failure to pay a deposit on time. Apart from these periods of inactivity, lasting approximately one year and eight months, for which the parties and the courts bear joint responsibility, the hearings were held at regular intervals	Civil	5 years and 1 month for three tiers of court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Dostál v. Czech Republic, 25 May 2004	No particular issue at stake	Case No. 23 C 227/94 Dealt with relatively fast. Period of inactivity from June 1994 to October 1996 imputable to the applicant (late payment of fees) Case No. 30 C 580/95 Numerous requests and objections on grounds of bias filed by applicant (the national courts endlessly had to transfer the case-file from one court to another, which considerably delayed the proceedings) Case No. 30 C 581/95 The applicant submitted several imprecise or unfounded procedural requests Case No. 58 C 37/96 Numerous procedural requests: the courts merely reacted to these requests, and did so without undue delay Case No. 23 C 66/98 Numerous procedural requests: the courts were obliged to transfer the case-file (dealt with expeditiously)	Civil	*Case No. 23 C 227/94*: 6 years and 6 months for two tiers of court *Case No. 30 C 580/95*: 7 years and 2 months for two tiers of court *Case No. 30 C 581/95*: 7 years and 2 months for two tiers of court *Case No. 58 C 37/96:* 5 years and 3 months for two tiers of court *Case No. 23 C 66/98*: 4 years and 8 months

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Soner Önder v. Turkey, 12 July 2005	No particular issue at stake	No period of inactivity imputable to the national judicial authorities	Criminal	5 years and 11 months (two sets of proceedings in the State Security Court and two in the Court of Cassation)
Gergouil v France, 21 March 2000	No particular issue at stake	More than one year and two months in the court of appeal, and more than four months in the Court of Cassation, for the parties to file their submissions The proceedings before the Court of Cassation lasted two years, two months and one day: a period described as fairly long, but no period of inactivity was imputable to the authorities (the length of the proceedings in the Labour Court (five months) and the court of appeal (one year and five months) was not open to criticism.	Civil (employment dispute)	4 years and 3 months for three tiers of court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Guichon v. France, 21 March 2000	No particular issue at stake	Six-month delay due to the applicant's request for adjournment of the hearing in the Labour Court. The applicant took over three months to appeal against the first-instance decision and the parties took nine months to file their submissions with the Court of Cassation. No significant period of inactivity imputable to the national authorities. The length of the proceedings in the Labour Court (one year and seven months), the court of appeal (one year and nine months) and the Court of Cassation (one year and eight months) was not open to criticism.	Civil (employment dispute)	5 years and 3 months for three tiers of court
Piccolo v. Italy, 7 November 2000	No particular issue at stake	Two years and two months were necessary to obtain an expert opinion, leading to an out-of-court settlement (following which there was no further dispute between the parties). This duration could be seen to be acceptable (in the light of the overall length of the proceedings).	Civil	3 years and 7 months for one tier of court N.B.: Three judges issued a joint dissenting opinion[132]

132. "Even though a period of three years and seven months for a single tier of court, in a case of no great complexity, can in principle be regarded as acceptable, we note that this lapse of time has been calculated over a period running only until July 1997, when the applicant indicated that he had reached an arrangement with the respondent. However, the proceedings in fact continued well beyond that date, and would seem to have been still pending, at first instance, in September 1999, more than five years and ten months after their inception. In our opinion, this is clearly excessive "(judges Tulkens, Bratza and Costa – unofficial translation).

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
P.G.V. v. Italy, 7 November 2000	No particular issue at stake	One year and eight months for the investigation, following which 20 months elapsed before the hearing of the case. The Court held that this duration could nonetheless be seen to be acceptable if compared (as was appropriate) with the overall length of the proceedings.	Civil	3 years and 9 months for one tier of court N.B.: Two judges issued a joint dissenting opinion[133]
Marcotrigiano v. Italy, 1 March 2001	Employment dispute	Case frozen for two years and eight months (transfer of a judge): imputable to the authorities. However, the time actually taken to deal with the case was about five years and two months in two tiers of court (by signing, in 1999, a statement waiving his right to resume the proceedings in the territorially competent court the applicant showed his lack of interest in pursuing the proceedings)	Civil	5 years and 5 months (two tiers of court)

133. “In our opinion a period of three years and nine months for a single tier of proceedings, in a case of no particular complexity, goes beyond what is reasonable and hence constitutes a breach of the requirements of Article 6§1 of the Convention. In particular we note that there was an unexplained interval of twenty months between the parties’ submissions and the Milan court’s judgment; in addition a further five months was necessary for the judgment to be filed at the registry ”(judges Tulkens and Bratza – unofficial translation).

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Mangualde Pinto v. France, 9 April 2002	Employment dispute	Successive adjournments requested by the parties led to a delay of more than one year and eight months. Delays also caused by suspension of the proceedings on the ground that the applicant had failed to appear and their subsequent resumption. Only two delays were imputable to the national authorities: six months for the Labour Court's adjournment of hearing the case, and seven months for consideration of the applicant's request for legal aid. The Court held that the overall duration of more than six years was fairly long, but that the delays could not be deemed unreasonable	Civil (employment dispute)	6 years and 3 months

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Martial Lemoine v. France, 29 April 2003	No particular issue at stake	Exchange of pleadings and documents between the parties constituted a cause of delay: this took one year and one month in the Paris appeal court and one year and two months in the second appeal court although the judge responsible for preparing the case for hearing had laid down a time-table and set a closing date for the preparatory stage. The applicant's slowness in filing his initial submissions with the Paris appeal court and the parties' request to adjourn the closing date of the preparatory stage in the second appeal court delayed the proceedings by nearly eight months. The Court held that the overall duration (seven years and eight months) was fairly long but the time lapses attributable to the authorities could not be deemed unreasonable	Civil	7 years and 8 months including: – 1 year and 10 months at first instance, and 1 year and 8 months on appeal, – 1 year and 9 months in the court of cassation – 2 years in the second appeal court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Mõtsnik v. Estonia, 29 April 2003	Applicant detained pending trial	Hearings adjourned on several occasions because of the absence of the applicant or his counsel Some procedural delays not imputable to the applicant, but the overall length of the proceedings was deemed reasonable	Criminal	4 years and 6 months but the Court had no jurisdiction *ratione materiae* to deal with the proceedings in three levels of court The period to be considered was therefore 2 years and 7 months

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Liadis v. Greece, 27 May 2004	No particular issue at stake	All the adjournments in the first-instance proceedings were caused by the applicant's failure to appear. In addition, the applicant was consistently extremely slow to request a new date for a hearing, culminating in a delay of over twenty years The applicant showed no interest in resuming the proceedings with the result that the court had no leeway to act (under Articles 106 and 108 of the Code of Civil Procedure control of the course of civil proceedings lies entirely with the parties) No period of inactivity or unjustified delay was attributable to the authorities. Each time the applicant requested a new date for a hearing, the court was quick to react (and it delivered its judgment one year and three months after the relevant request). The proceedings in the court of appeal lasted one year and two months	Civil	21 years and 11 months (including more than fourteen years and nine months subsequent to 20 November 1985, the date on which Greece recognised the right of individual petition)

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Patrianakos v. Greece, 15 July 2004	No particular issue at stake	The parties failed to appear (this was the cause of all the adjournments in the first-instance proceedings) and were consistently excessively slow to request a new date for a hearing. This delayed the proceedings by nearly fourteen years The parties showed no interest in resuming the proceedings in the first-instance court and, pursuant to Articles 106 and 108 of the Code of Civil Procedure, the court of appeal had no leeway to act The applicant delayed lodging an appeal on points of law for one year and more than two months No period of inactivity or undue delay was imputable to the authorities: – each time the parties requested a new date for a hearing, the courts were very quick to react – the first-instance court delivered its judgment seven months after a new date had been given for a hearing – the proceedings in the court of appeal lasted one year – the Court of Cassation gave its decision after one year and four months The Court held that these periods were far from unreasonable.	Civil	22 years and 3 months for three tiers of court, including almost fifteen years subsequent to 20 November 1985, the date on which Greece recognised the right of individual petition.

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Wroblewski v. Poland, 1 December 2005	No particular issue at stake	Having failed to consult the case-file within the time-limit set by the public prosecutor, the applicant requested that the indictment be sent back to the prosecutor for rectification only after the investigation had been closed and a date set for the trial: this delayed the investigation, and hence the hearing of the case, by about four months The Government provided no explication for a period of inactivity of about eleven months for which the judicial authorities were held responsible. However, apart from this failure to deal rapidly with the proceedings, the authorities did not remain inactive and showed the required diligence	Criminal	5 years for one tier of court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Vendittelli v. Italy, 18 July 1994	No particular issue at stake	Although legitimate, the two adjournments requested by the applicant caused a delay of about six months (which was fairly substantial given the proceedings' overall duration of fourteen months) The first-instance court took eleven months to serve its decision on the applicant. However, the applicant had attended the hearing and could reasonably have been expected to obtain a copy of the judgment of his own initiative The appeal court's decision was not served at all, but this did not affect the length of the proceedings since it consisted in taking note of an amnesty decree.	Criminal	4 years and 5 months for two tiers of court

Case	What was at stake for the applicant	Grounds for decision	Type of proceedings	Length
Cesarini v. Italy, 12 October 1992	No particular issue at stake	For nearly two years the applicant remained inactive and took no steps to lodge an appeal (allegedly in order to seek an amicable settlement) Several periods of inactivity attributable to the authorities: the first-instance court waited seventeen months before delivering its judgment, and the court of appeal twenty months However "having regard to the fact that the case came before three different courts and to the friendly settlement, the delays that occurred do not appear substantial enough for the total length of the proceedings to be able to be regarded as excessive."	Civil	6 years and 8 months for three tiers of court

NB: In some cases the Court held that a delay could be regarded as acceptable if compared, as was appropriate, with the total length of the proceedings and the fact that the proceedings were dealt with by two tiers of court . This applied in particular to the following cases against Italy (as in the above-mentioned PGV judgment):

– *G.L. v. Italy*, 3 October 2002
– *Gemignani v. Italy*, 6 December 2001