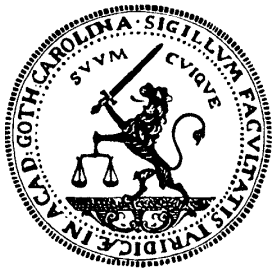

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Reasonable time in Swedish courts

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Contents

Summary

In a judicial system it is very important to administer justice without delay to uphold the rule of law. Lengthy proceedings subject the concerned individuals to stress and uncertainty, and might jeopardize the effectiveness and credibility of justice.

The European Convention on human rights, which is incorporated in Swedish law, provides a right to a fair trial within reasonable time, but is Sweden able to live up to its obligations?

Excessively long proceedings are a problem in most countries and Sweden is no exception. Article 6.1 of the European Convention on Human Rights is one of the most invoked articles by applicants to the European Court and as a result there is a comprehensive amount of case law concerning the criteria of 'reasonable *time'*. In its case law the European Court has set up a number of criteria to determine the reasonableness of the time of proceedings.

Violations of the reasonable time requirement are one of the most common breaches of the Convention committed by Sweden and there is a growing number of cases were Sweden has been found to violate Article 6.1.

Lately the Swedish judicial system has received a lot of criticism concerning the time of court proceedings from the national authorities that monitor the judicial system, such as the Ombudsmen of justice. Excessively long proceedings seem to exist in all tiers of Swedish courts.

Delays can be remedied by appropriate relief, such as expediting the proceedings or monetary compensation. Swedish remedies for lengthy proceedings mostly offer redress for delays that have occurred and there seems to be no effective remedies to prevent delays. There are also questions about the effectiveness of the remedies offered in Sweden.

It seems the excessively long proceedings are a substantial problem in Swedish courts. The main causes of delays seem to be increased caseloads, backlogs of cases and periods of inactivity. The measures taken by the Swedish courts to prevent these delays do not seem to be effective enough.

Since the time of proceedings often are excessively long and the remedies that are available to redress delays are not always effective, Sweden seems to fail to live up to the obligations set up by the Convention.

The Swedish government must act and take measures to deal with the causes of delays to prevent excessively long proceedings. Both economic resources and new legislation is needed to deal with this problem. The Swedish justice system is effective, but it is not perfect. The European Convention demands much of its member states and Sweden needs to improve its justice system to live up to the obligations in the Convention.

Sammanfattning

Det är viktigt att undvika förseningar i ett rättssystem för att upprätthålla rättssäkerheten. Långa handläggningstider utsätter de berörda individerna för stress och osäkerhet, vilket kan riskera både effektiviteten och trovärdigheten av rättssystemet.

Europakonventionen, som också är Svensk lag, innehåller bestämmelser om en rättvis rättegång inom skälig tid. Frågan är dock om Sverige lever up till sina skyldigheter?

Alltför långa handläggningstider är ett problem i många länder och Sverige är inte undantaget. Artkel 6.1 i Europakonventionen är en av de bestämmelserna som åberopas mest i ansökningar till Europadomstolen. Detta har medfört att det finns en stor samling rättsfall som kriteriet *skälig tid*.

Genom alla rättsfall har Europadomstolen tagit fram ett antal kriterier som används för att bedöma skäligheten i handläggningstiderna.

En av de vanligaste överträdelserna av konventionen som Sverige gör sig skyldig till är just skälig tid-kriteriet. Antalet rättsfall där Sverige har bedömts överträda artikel 6.1 ökar konstant.

På senare tid har det svenska rättssystemet kritiserats allt mer från de nationella kontrollmekanismer som utövar översyn av rättssystemet, t.ex. Justitieombudsmännen. Det verkar som alltför långa handläggningstider finns i alla domstolstyper och på alla nivåer.

Förseningar kan gottgöras på olika sätt, t.ex. genom att påskynda handläggningen eller att erbjuda skadestånd. De svenska rättsmedel som finns tillgängliga har att hantera långa handläggningstider, siktar oftast in sig på att erbjuda gottgörelse för förseningar som redan inträffat. Det verkar inte finnas några effektiva rättsmedel för att förhindra att förseningar uppstår. Det kan även ifrågasättas hur effektiva de rättsmedel som finns egentligen är.

Alltför långa handläggningstider är ett märkbart problem i Svenska domstolar. De vanligaste orsakerna till att förseningar uppstår verkar vara en hög måltillströmning, stora inneliggande balanser av mål, samt perioder av inaktivitet. De åtgärder som vidtagits av svenska domstolar för att förhindra förseningar verkar inte ha varit tillräckligt effektiva.

De alltför långa handläggningstiderna i kombination med rättsmedel för gottgörelse som inte alltid är effektiva, resulterar i att Sverige verkar misslyckas med att nå upp till de krav som ställs i Europakonventionen.

Sverige måste agera och vidta åtgärder för att få bukt med orsakerna till att förseningar uppstår i domstolarna och förhindra allför långa handläggningstider. Det krävs både ekonomiska resurser och ny lagstiftning för att lösa dessa problem. Det svenska rättssystemet är effektivt, men inte perfekt. Europakonventionen ställer höga krav på sina medlemsstater och Sverige måste förbättra sitt rättssystem för att nå upp till de krav som ställs i konventionen.

Preface

Finally! It has taken me a long time to get this thesis finished, a little too long. I must say that I'm relieved to finally hand it in and leave this part of my education behind me.

I want to thank all my friends and my family for not letting me forget that I wasn't finished with my thesis and for continuously pushing me to finally finish it.

I hope you all will enjoy my thesis!

/Jesper

Abbreviations

BrB	Brottsbalken
CEPEJ	Commission Européenne pour l'Efficacité de la Justice (European Commission for the Efficiency of Justice)
Dnr	Diarienummer
DS	Departementsserien
EC	European Community
ECHR	European Convention on Human Rights
ECHR	European Court of Human Rights
NJA	Nytt Juridiskt Arkiv
RB	Rättegångsbalken
RÅ	Regeringsrättens Årsbok
SOU	Statens Offentliga Utredningar
UDHR	Universal Declaration of Human Rights

1 Introduction

Excessively long proceedings are a problem in most countries and Sweden is no exception.

In a judicial system it is very important to administer justice without delay to uphold the rule of law. Lengthy proceedings subject the concerned individuals to stress and uncertainty, and might jeopardize the effectiveness and credibility of justice.

If and when a delay occurs it is important to offer redress for damages caused by this delay. By offering redress the state both admits its wrongdoings to the concerned individual and puts pressure on the courts to expedite proceedings to avoid unnecessary delays.

The European Convention on human rights provides a right to a fair trial within reasonable time. So what is reasonable time?

Applications to The European Court of human rights often concern the question of reasonable time. This has created a vast case-law on the matter of reasonable time. However, once in a while the Court changes its case-law in order to make the provisions in the Convention more effective. This was the case of Article 6.1 and its relation to Article 13.

The Swedish judicial system is well organized and seems to function effectively. Lately, however, complaints have arisen concerning the time of proceedings in the courts. The national authorities that monitor the judicial system have made the same discovery. Changes need to be made, but what is it that needs to be changed?

1.1 Purpose and theme

The purpose of this thesis is to examine the reasonable time requirement in Article 6.1 of the European Convention on Human rights and how the Swedish courts are able to live up to this provision.

In my thesis I will try to find out what the reasonable time requirement in Article 6.1 means, what the common causes of delay are and which remedies there are available to redress delays.

With that background I will try to find out if Sweden is living up to the obligations set up in Article 6.1 of the European Convention. To do that I will try to answer these three questions:

- Is the length of court proceedings in Sweden in accordance with the reasonable time requirement?
- Does Sweden have an effective remedy against violations of the reasonable time requirement?
- What problems do the Swedish courts have and what actions are taken to deal with lengthy proceedings?

1.2 Method and material

The method used is the traditional judicial analytical method, using case-law, legislation including preparatory works, and doctrine.

I have studied case-law from both Swedish courts and the European Court of human rights.

The European Commission for the Efficiency of Justices' report *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* has been of much value to me in finding important case-law of the European Court.

I have not been able to find much else written about the reasonable time requirement, most doctrine concerning Article 6.1 just contains short notes and references to cases concerning the reasonable time requirement. There doesn't seem to be any deeper investigations into the subject except for the CEPEJ-report. Most doctrine concentrates on the *fair trial* part of Article 6.1 not on the length of proceedings.

1.3 Delimitations

The thesis has several delimitations that have been necessary to keep the subject within the scope of a master thesis.

Case-law statistics on the matter of time of proceedings is not examined in detail to avoid an empiric analysis.

The outcome and use of the new Swedish remedy *Declaration of priority*, has not been examined since the remedy is so new that its use and results are not representative.

The details of the new technologies that are being applied to the Swedish justice system with the work in the RIF-cooperation are not examined in detail since this work aims for much more than expediting the time of proceedings.

Protocol 14 is not examined at all partly since it entered into force as late as the 1st of June, partly since it aims to make the European Court more effective, not the national courts.

The focus of this thesis is on reasonableness of the length of court proceedings in Sweden and the effectiveness of the remedies that Sweden has to offer.

1.4 Disposition

I will try to find out if Sweden is living up to the obligations set up in Article 6.1 in the European Convention on human rights.

To do this I will briefly introduce the European convention on Human rights and the criteria for a fair trial according to Article 6.1. I will also explain the criteria set up by the European Court of Human Rights concerning reasonable time. I will then give further details of cases from the European Court against Sweden and the criticism Sweden has received

concerning lengthy proceedings, Swedish legislation and case-law, problems in the Swedish court system and Swedish remedies for violations.

Finally I will look into what the Swedish government is doing to deal with these problems and try to make a conclusion of the reasonableness of the length of Swedish court proceedings in regard to the criteria set up by the European court, as well as commenting on the effectiveness of to remedies offered in Sweden to redress damages caused by court delays.

2 The European Convention on Human Rights

2.1 The creation of the Convention

After the Second World War many countries sought to find means of preventing the horrors of wars and to strengthen the protection of the individual's human rights. The European Council was created in 1949 to '*achieve a greater unity between its Members*' and during the councils first session, it was decided that a convention on human rights was to be made.[1]

The European Convention on Human Rights is based on the Universal Declaration on Human Rights that was adopted by the General Assembly of the United Nations in 1948. The UDHR is, however, not legally binding and lacks provisions of supervision. With that in mind, the European Convention on Human Rights was created to be legally binding to the participating states with joint organs to supervise the states obligations to the Convention.[2]

The Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights, was drafted in Rome on the 4th of November 1950 and entered into force on the 3rd of September 1953.[3]

2.2 Provisions of the Convention

The European Convention on Human Rights consists mainly of civil and political rights. The Convention guarantees the right to life, liberty and security; prohibition of torture, slavery and forced labour; the right to a fair trial; freedom of thought, conscience, religion, expression and assembly, among other rights. Additional Protocols adds more rights to the Convention, such as property rights and the right to education.[4]

2.3 Supervision

The Convention created two organs to ensure that the member states honoured their obligations: The European Commission of Human Rights and the European Court of Human Rights. These organs dealt with applications made by both states and individuals claiming violations of the Convention. The Commission decided if an application was admissible and made the first investigations of whether there had been a violation of the Convention. The

[1] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 17; Art 1(a), Statute of the Council of Europe
[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 17
[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 17
[4] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 2-6

Commission could then produce a report of its opinion in the matter or refer the case to the court that, after a full judicial procedure, made its judgment.[1]

A growing number of cases required a reformation of the system and with Protocol 11 the Convention was amended to create provisions for a new system of supervision. On the 1st of November 1998 the Commission and the Court were replaced by a new European Court of Human Rights that handles both admissibility and the merits phase of the application.[2]

Protocol 14, which entered into force on the 1st of June 2010, creates new means to ensure that the member states abide the Courts judgments.[3]

2.4 Member states & the Council of Europe

The European Convention on Human Rights can only be adopted by the members of the Council of Europe. To be a member in the Council the state has to be European. States that only partly are in Europe, Turkey and Russia, have been accepted as well as Armenia, Azerbaijan and Georgia. All 47 member countries of the Council of Europe have ratified the Convention. All new members of the Council are *required* to accede to the European Convention.[4]

[1] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 8-10
[2] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 10
[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 32
[4] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 20-21

3 A fair trial

3.1 Article 6.1

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

3.1.1 Introduction

The right to have civil disputes and criminal charges tried in court is a universal and fundamental principle of law.

Article 6.1 of the European Convention on Human Rights is a wide provision and the rights protected are central in the Convention. It is also one of the most frequently invoked provisions by applicants to the European Court of Human Rights.[2]

Article 6 does not give the European Court of Human Rights jurisdiction to reopen, overturn or quash a judgment by a national court. The Court only examines if the proceedings leading to the judgment were fair and in accordance with the Convention. Even if the Court finds a breach of Article 6, this will have no effect on the examined judgment of the national court.[3]

The provision sets up a number of criteria for the trial: The court or tribunal needs to be independent and impartial; the court or tribunal shall be established by law; the proceeding or hearing shall be fair to the individual; the proceeding or hearing shall generally be public, but there are exceptions; judgment shall be pronounced publicly; judgment shall be given within reasonable time.[4]

[1] Article 6.1, the European Convention on Human Rights
[2] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 158-159
[3] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 159
[4] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 135

3.1.2 Autonomous meaning

Article 6.1 applies 'In the determination of [a persons] civil rights and obligations or of any criminal charge against him'.[1]

To prevent states from avoiding Convention controls by national classifications, the Court has stated that '*civil rights and obligations*' as well as '*criminal charge*' have an autonomous meaning, independent from national categorizations and how it is viewed in domestic law.[2]

3.1.3 Civil rights and obligations

There are three conditions to define '*civil rights and obligations*'. There must be a right or an obligation, the right or obligation must exist in national law and the right or obligation must be civil in nature.[3]

Civil litigations between private individuals are clearly covered by the provision but it was uncertain if Article 6.1 was applicable in disputes between individuals and the State, often concerning rights falling under administrative and public law.[4]

Starting with the case of *Ringeisen v. Austria*, Judgment of 16 July 1971, the Court adopted a liberal interpretation of '*civil rights and obligations*' and stated that '*it is not necessary that both parties to the proceedings should be private persons*'.[5]

In the case of *Pudas v. Sweden*, Judgment of 27 October 1987, the Court held that public law features of the case did not exclude it from the scope of Article 6.1. A number of cases concerning questions such as the withdrawal of licenses to serve alcohol; children taken into public care; the expropriation of property by public authorities, have all been held by the Court to fall within the scope of Article 6.1.[6]

3.1.4 Criminal charge

To determine what constitutes a '*criminal charge*' the Court examines the nature of the offence charged (national categorization of the offence), the group to whom the legislation applies and the severity of the sanction at stake. These criteria were stated by the Court in the case of *Engel and others v. Netherlands*, Judgment of 8 June 1976, and later applied in the case of *Ezeh and Connors v. United Kingdom*, Judgment of 9 October 2003.[7]

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[1] Article 6.1, the European Convention on Human Rights
[2] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 159-160, 163-164
[3] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 163
[4] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 163
[5] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 164-154; Para. 94, *Ringeisen v. Austria*, Judgment of 16 July 1971
[6] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 165-166
[7] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 160-161

The Member States are free to label any offence as a criminal, and as such Article 6.1 is applicable. To label an offence as disciplinary or administrative does, however, not necessary exclude Article 6.1 from being applicable.[1]

3.1.5 Access to court

The right of access to a court, for the determination of a civil issue, is a right developed from Article 6.1. This right was first recognized by the Court in the case of *Golder v. United Kingdom*, Judgment of 21 February 1975. The Court stated that Article 6.1 contains a right of access to court, though not without limitations. States can impose restrictions as long as these pursue a legitimate aim and are not so wide-ranging that the essence of the right is destroyed.[2]

If a question concerns '*civil rights and obligations*', then national courts should have jurisdiction. If the national courts are excluded from such a matter, there is a breach of Article 6.1.[3]

Preventing vexatious litigants from pursuing claims and the immunity of foreign states and international organizations have been considered as legitimate restrictions and limitations of the right of access to court.

The right of access to a court must also be effective, which can mean that a State must provide legal aid to the litigant or defendant. This applies if the proceedings are complex and professional legal assistance is 'indispensable for an effective access to court'.[4]

3.1.6 Independent and impartial tribunal established by law

Civil and criminal trials before a court are only fair if the court is independent and impartial.[5]

The Court of Human Rights has stated that '*tribunal*' is more than the traditional courts. Several national authorities in many Member States have been seen as tribunals by the Court.[6]

The tribunal shall be independent and impartial both in regards to the State and other public authorities, and in regard to the parties. There are both subjective and objective elements of independence and impartiality. Since the subjective elements are almost impossible to prove, the emphasis when determining independence and impartiality is on the objective elements.[7]

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[1] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 152
[2] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 170-171
[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 157-158
[4] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 171
[5] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 180-181
[6] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 181
[7] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 182; Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 181

The tribunal shall be established by law. This provision prevents states from creating temporary courts for special matters.[1]

3.1.7 Public hearings and public judgments

A public hearing is seen as a guarantee of the fairness of the trial since it allows the public to see the process of justice and prevent arbitrary decisions.[2]

To determine if a hearing is public, the proceedings in whole must be considered. In the case of *Axen v. Germany*, Judgment of 8 December 1983, the Court ruled that even though only the first instance hearing was public, the proceedings as a whole was to be considered as public.[3]

There is a list of limitations to the right to a public hearing in Article 6.1. In the interests of morals, public order, national security, protection of juveniles, privacy, or when it's strictly necessary in the interests of justice, the public can be excluded from all or parts of the trial.[4]

Family proceedings concerning children were held by the Court in the case of *P and B v. United Kingdom*, Judgment of 24 April 2001, as a '*prime example of cases where exclusion of the press and public may be justified in order to protect the privacy of the child and parties and to avoid prejudicing the interests of justice*'.[5]

Judgments in civil and criminal cases are to be pronounced publicly. The Court has stated that '*pronounced publicly*' does not necessarily mean that the judgment has to be read out in open court. In the case of *Pretto and others v. Italy*, Judgment of 8 December 1983, the Court concluded that a judgment deposited in the court registry, where it was available to anyone, was to be seen as publicly pronounced.[6]

There are no expressed limitations to the right of public judgments, but in the case of *P and B v. United Kingdom*, Judgment of 24 April 2001, the Court held that the judgment did not need to be made public, in order to protect the privacy of the child. Since anyone with a special interest in the case could obtain the judgment, the Court stated that the requirements of Article 6.1 were satisfied.[7]

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[1] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 200
[2] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 185
[3] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 185
[4] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 185
[5] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 186
[6] Mowbray, Alastair, Cases and Materials on the European Convention on Human Rights, 2nd ed., pp. 443-444; Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 216
[7] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 217; Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 187

3.1.8 Fair hearing

To determine if a hearing is fair, the proceedings as a whole must be considered. Case law has produced the following criteria that are used to determine if a hearing was fair: Appearance in person, effective participation, equality of arms, an adversarial process and a reasoned decision.

Appearance in person is not always necessary depending on the nature of the proceedings. For criminal cases the general rule is that the accused should be present in the first instance.

Effective participation means that it is not sufficient for the party to be present in court; he must also be able to effectively participate in the proceedings. This may require provision of legal aid to one of the parties.

Equality of arms requires a fair balance between parties in both civil and criminal cases. Each party needs to be given an opportunity to present his case and evidence without placing him at a substantial disadvantage to the other party. This was first stated in the case of *Neumeister v. Austria*, Judgment of 27 June 1968. It is, however, not a contradiction to Article 6.1 to use the principle of *in dubio pro reo* in criminal cases.

An adversarial process guarantees that both parties have knowledge on all materials and evidence files or adduced in the process. All relevant materials and evidence shall be available to both parties, with a possibility to comment on it. The disclosure of evidence may, however, be limited by factors such as national security, protection of witnesses, or to keep secret police investigation methods.

A reasoned decision is not expressly required by Article 6.1, but the Court has stated in several cases that national courts need to give some reasons for their decisions and judgments.[1]

3.2 Summary

The right to a fair trial in Article 6.1 is one of the most invoked provisions in cases tried by the European Court.

The provision is applicable to proceedings concerning civil rights and obligations, as well as criminal charges. Civil rights and obligations, and criminal charge have an autonomous meaning and are not dependent on national classification.

Civil rights and obligations are defined as a right or an obligation that exists in national law and is civil in nature.

Criminal charge is defined by the national categorization of the offence, to whom the legislation applies and the severity of the sanctions at stake.

Article 6.1 gives a right of access to a court when determining a civil issue. National courts shall have jurisdiction when determining questions of civil rights and obligations. The right of access to court must be effective.

[1] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 175-177; Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 218-219, 227, 257-259

Civil and criminal proceedings need to be independent and impartial to be fair which, for instance, requires the court or tribunal to be established by law.

Hearings shall be public, but limitations can be made. Judgments in both civil and criminal cases shall be pronounced publicly.

When the Court determines if a hearing is fair, the proceedings as a whole are considered.

4 Reasonable time

4.1 Introduction

Article 6.1 guarantees the right to a '*fair and public hearing within reasonable time*'. In international law there is no other provision that so clearly targets the need to avoid delays in both civil and criminal court proceedings.

The Universal Declaration of Human Rights has a provision, Article 10, stating the right to a fair trial, but it does not express anything similar to '*within reasonable time*'. Article 10 of the UDHR 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.*" The term '*Equality*' is in a way connected to '*reasonable time*' since excessive delays can be a source of inequality. For example when one of the parties lacks the financial means for a long court process, time can itself become a source of injustice.[1]

The idea of the right to a fair trial in criminal court proceedings '*within reasonable time*' is repeated in Article 14.3 of the UN International Covenant on Civil and Political Rights of 1966, that states that '*In the determination of any criminal charge against him everyone shall be entitled to […] be tried without undue delay*'.[2]

Article 6.1 of the European Convention on Human Rights is one of the most invoked articles by applicants to the Court. The Court has a produced a comprehensive amount of case law concerning the criteria of 'reasonable *time*'.[3]

In the case of *Bottazzi v. Italy*, Judgment of 28 July 1999, the Court Stated that the provision in Article 6.1 aims to protect the concerned individuals from living too long under the stress of uncertainty, and to ensure that justice is administered without delay that might jeopardize its effectiveness and credibility.[4]

4.2 Article 6.1 and article 5.3

Article 6.1 and Article 5.3 both express a right to a fair trial or hearing within reasonable time. While Article 5.3 is only valid for criminal cases

[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 14
[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 14
[3] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 158-159
[4] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., pp. 187-188

concerning arrested or detained persons, Article 6.1 applies to both civil and criminal cases, with individuals both detained and at liberty.[1]

The term '*reasonable time*' is to be interpreted differently in the two provisions. Article 5.3 only applies to arrested or detained persons and aims to limit the time of the detention. In the case of *Stögmüller v. Austria*, Judgment of 10 November 1969, the Court stated that Article 5.3 required a 'special diligence' in bringing the case to trial if the accused is detained. The time that can be considered reasonable is generally longer when applying Article 6.1.[2]

A delay in a criminal case concerning a detained person that is not a breach of Article 6.1 may very well be a breach of Article 5.3.

4.3 Length and circumstances of the court proceedings

As mentioned above, there is a vast case-law on Article 6.1 and the reasonable time requirement. To decide the reasonableness of the length of the court proceedings the Court first determines the starting and end points of the proceedings. It then examines the circumstances of case using different criteria, such as the complexity of the case or what is at stake for the applicant, established in the Courts case law.

4.3.1 Starting point & end of the period

To examine if the length of the court proceedings is within reasonable time, you must first determine the starting and end points of the proceedings.

In the case of *Eckle v. Germany*, Judgment of 15 July 1982, the Court held that in criminal cases the starting point is when a person is charged with a suspicion of crime and is substantially affected by the situation. A person getting questioned as a suspect or being detained or arrested, is substantially affected.[3]

In civil cases the starting point is normally when the case was referred to the competent court.[4]

Administrative matters often start at a national authority which makes a decision that may be appealed to a court. The time spent at the national authority is also included when determining the starting point.[5]

As the Court stated in the case of *Mattoccia v. Italy*, Judgment of 25 July 2000, the end point is, in both civil and criminal cases and administrative matters, when there is a final judgment with no further right to appeal. If the

[1] Ovey, C. & White, R., Jacobs & White – The European Convention on Human Rights, 4th ed., p. 187
[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 262
[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 262-263; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 32-33
[4] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 263
[5] Palm, Elisabeth och Ericsson, Margaretha, Att klaga till Europadomstolen, 1st ed., p. 124

case has been tried by more than one instance, the end point is the time of the final judgment from the highest instance.[1]

If the proceedings end with a higher instance denying appeal, the end point is the time of that decision. If the proceedings don't end with a judgment, for example if the case is inadmissible or if a criminal case is closed, the end point is the date of that decision.[2]

In civil cases the end time can be the time of the execution of the judgment, since that's when the judgment had any real affects on the parties. The execution of the judgment has been seen by the court as a secondary part of the proceedings, which is to be included when the length of the proceedings is to be determined.[3]

In both civil and criminal cases and administrative matters it's possible that the parties don't obtain the judgment directly when it's given. In that case the end point is the time when the party obtained the judgment, for example the day of service.[4]

4.3.2 Complexity of the case

There are a vast amount of factors that may render a case complex. The Court has held that elements such as multiple parties, the need to hear numerous witnesses, difficulty in locating witnesses, the need to translate documents or call on an interpreter, are to be taken into account when determining the complexity of the case.[5]

Some cases are complex by their very nature, such as cases concerning expropriation, land consolidation, compulsory purchase, fraud and international financial offences.[6]

In an overall assessment the complexity of the case may not justify the length of the proceedings, in the light of other criteria.[7]

4.3.3 The applicant's conduct

Even if the proceedings have been excessively long, there will be no violation of Article 6.1 if the applicant is responsible for the delays.[8]

In criminal cases the applicant is not required to actively cooperate with the judicial authorities, but is required to show diligence in carrying out procedural steps relating to him. In the case of *Guerreiro v. Portugal*,

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[1] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 263; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 32-33

[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 263

[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 263

[4] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 264

[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 33

[6] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 33; Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 25

[7] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 26

[8] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 26

judgment of 31 January 2002, the Court stated that an applicant cannot be blamed for making full use of the remedies available in domestic law.[1]

Time when an applicant is evading justice or delays caused by an applicant failing to give the authorities his address is excluded when determining the length of the proceedings. Delays that are caused by *force majeure*, for example an accident or illness, are not to be deemed the responsibility of the applicant. Only applicants that have manifestly shown bad faith are to be held responsible for delays.[2]

Making groundless claims and challenges, failing the attend hearings, having poor coordination with ones counsel or making repeated requests for adjournments may lead to the applicant sharing the responsibility for the delay. This may result in even excessively lengthy proceedings not being a violation of Article 6.1.[3]

4.3.4 Conduct of the national courts and authorities

The conduct of the national courts or authorities can result in a violation of the time requirement in Article 6.1.[4]

The time before the first hearing is held, the preparation of the case and periods of inactivity, are important factors when the European Court examines the conduct of the national courts and authorities.[5]

National courts with exceptional case overloads are common, but the European Court has not accepted overloads as an excuse for delays.[6]

The Court has stated that Article 6.1 imposes a duty on the Contracting States to organise their legal and judicial systems in such a way that their courts can guarantee everyone a fair judgment within a reasonable time, so that the requirements of the provision is met.[7]

Overloads caused by certain circumstances may, however, absolve the state of responsibility for the delays.[8]

Backlogs and case overloads in the national courts resulting in delays may not be a violation of the reasonable time requirement, if the cause is

[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 28; Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 264
[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 27
[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 27-28
[4] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 28
[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 34
[6] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 34
[7] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 30
[8] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 28

unusual political and social disturbances, with effects that could not have been anticipated by the state.[1]

Efforts by national authorities to deal with overloads and backlogs may result in the European Court not finding violations of Article 6.1, even though the proceedings have been lengthy. In the case of *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, the European 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*".[2]

Reasons excusing national courts and authorities from responsibility for excessively lengthy proceedings include the effects of lawyers' strikes and requests for international judicial assistance in criminal cases. States must, however, do what they can to reduce any resultant delay.[3]

Applicants not being affected by the delay, national legislation allowing extensions of time limits or case-overloads caused by new domestic law, does not absolve a State from its responsibility to meet the reasonable time requirement.[4]

4.3.5 What is at stake for the parties

Depending on what is at stake for the applicant different degrees of diligence and expedition is required. What is at stake is to be determined by facts of the case. Judgments of the Court identify several such types of cases.[5]

Since labour and employment disputes often are of vital significance to the individual concerned, the Court has stated that special diligence is required by the national courts.[6]

The applicants' state of health or age can also require special diligence. If the applicant has a low life expectancy, the issue at stake is often of crucial importance and exceptional diligence is required from the national courts. This was stated by the Court in the case of *X v. France*, judgment of 31 March 1992, in which the applicant died of AIDS while his case was before the European Court.[7]

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[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 29
[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 29
[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 29-30
[4] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 31-33
[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 35
[6] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 33-35
[7] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 35

In several child custody cases, the Court has held that a lengthy process may damage the parent-child relationship and that it is important to maintain family links. In this type of cases long proceedings may render it impossible for a parent to have a normal relationship with his/her child. The Court has stated that custody cases need to be dealt with speedily.[1]

Cases concerning compensation for victims of accidents, police violence and the length of a prison sentence have also been considered by the Court as requiring special diligence and expedition.[2]

4.3.6 Other circumstances and overall assessment

Proceedings involving multiple instances of courts are often long, but to determine if the time spent is a breach of Article 6.1 the Court examines each instance individually. In the case of *Lemoine v. France*, judgment of 29 April 2003, the Court stated that the proceedings lasting seven years and eight months were lengthy, but that the time of proceedings had been no longer than two years in any of the four instances of courts involved. The Court concluded that there was no breach of Article 6.1.[3]

In several cases the Court has made an overall or global assessment of the circumstances in the case to determine if the time of the proceedings is reasonable. In the case of *Obermeier v, Austria*, judgment of 28 June 1990, the Court held that instead of considering different circumstances of the case in detail, it is sometimes enough to make a global assessment of the circumstances of the case.[4]

4.4 Causes of delays

In its judgments the Court has found many different reasons for delays. Theses causes play an important role when the Court makes its assessment of the case using the criteria stated above.

The causes of delay can be divided in three groups: Common, specific to a category of proceedings and external. The Court examines the delay to determine if the time of the proceedings has been excessive and a breach of Article 6.1. Some causes of delays may justify even excessively long proceeding not being a breach of the reasonable time requirement.

4.4.1 Common delays

Most delays are common to all type of proceedings. The causes of the delays are often held by the Contracting States as reasons to absolve the states responsibility. The Court, however, finds most causes of delays to be

[1] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 266
[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 33-35
[3] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 35
[4] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 37; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 35

within the responsibility of the State and its obligation to organize its judicial system in a way that its courts can meet the requirements of the Convention.[1]

Excessive caseloads or backlogs of cases are one of the most common causes of delays. The causes of this can be problems with the geographical organization of the courts due failure to respond to demographic and economic changes, problems with recruiting and managing judges creating a shortage of judicial manpower or inefficient use of judges by systematic use of benches of judges at first instance.[2]

Another common cause of delay is inactivity by the judicial authorities or courts. If the national authorities can't offer an explanation, the Court always finds periods of inactivity unacceptable.[3]

The national judicial system in itself may be a cause of delay in some states, for example systematic deficiencies in the judicial system or difficulties from having both administrative and judicial courts.[4]

Numerous adjournment of hearings, by the courts own motion or the parties request, and excessive intervals between hearings are another cause of delay. Hearings are often adjourned due to the failure of the national authorities to summon parties, witnesses or defendants.[5]

The behaviour of the other actors in the proceedings may also cause delays, such as difficulties in obtaining medical reports, problems with expert witnesses or the conduct of lawyers and non official public bodies. In these cases the Court examines the conduct of the national courts. Granting excessive extensions of time or failure to penalize delays and lack of diligence by national courts may lead to the delay being the states responsibility.[6]

Some States have problems with the time it takes for a judgment to be notified in writing to the parties, which often is the endpoint of the proceedings. Excessive laps of time between the handing down of a judgment

[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 49, 53-69

[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 53-56

[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 57-58

[4] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 58-60

[5] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 60-61, 65

[6] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 62-66

and its notification to the parties or court registry have been considered as an excessive delay by the Court and a breach of Article 6.1.[1]

4.4.2 Specific delays by type of proceedings

Some delays are specific to civil, criminal or administrative proceedings.

In civil proceedings failure by the national courts to use powers granted by the rules of procedure or to check that summons to appear are properly drawn up, may mean that the delay are the States responsibility. Some national codes of civil proceedings state that it is the parties who are to take initiative with regard to progress. This does, however, not absolve the Contracting States or national courts from ensuring compliance with the reasonable time requirement.[2]

In criminal proceedings the problems with the organisation of the prosecution service may cause delays, which are within the responsibility of the State. The Court has also criticised periods of inactivity even in the investigation stage of the case. Delays caused by the time-period between hearings being too long have been held by the Court as the responsibility of the State. Repeated adjournments of hearings due to failure of witnesses to attend, is a common cause of delay. If national criminal code authorise courts to fine witnesses who have been properly summoned, but fail to attend without good cause, and national courts does not use these powers to expedite proceedings, the Court has found that the delays are imputable to the State.[3]

In administrative proceedings the most common cause of delay is the conduct of non-judicial authorities. The Court has held that such delays are imputable to the Contracting State.[4]

4.4.3 External reasons for delay

The effects of major political and social events as reasons for delays have been taken into account by the Court on several occasions. In the case of *Süssmann v. Germany*, judgment of 16 September 1996, the Court stated that a Constitutional court sometimes must take into account the political and social importance of a case when prioritizing. In this case the Constitutional court had given priority to urgent cases linked to the German

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[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 68-69; Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 264-265

[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 69-73

[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, pp. 73-76

[4] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 77

reunification, creating a backlog of other cases, which the European Court found was not a breach of the Convention.[1]

In cases concerning social, pension and retirement systems in countries that newly merged (Germany) or split (former Yugoslavia), the Court has stated that the complexity of these cases allows lengthy proceedings in the constitutional courts without being excessive and a breach of the reasonable time requirement. The same is valid for when major political and economical reforms have led to major changes in the judicial and court systems, for example the transition from a planned economy to a market economy.[2]

Delays in ordinary courts have been treated more harshly by the European Court and it has held that even though a State has to overcome serious political and social difficulties, by ratifying the Convention it has committed to organise its judicial system in such a way that the requirements of Article 6.1 are satisfied.[3]

4.5 Reasonable time according to the Court

In the numerous cases in the European Court concerning Article 6.1 and the reasonable time requirement, the Court has refrained from making general rules and principles in determining if the length of proceedings is reasonable. The reasonableness of the length of the proceedings is assessed in the light of all the circumstances, as noted above, in each case.[4]

When reviewing the cases from the Court some tendencies, although not explicitly stated, of what the Court deems reasonable can be found. Generally, it seems that cases that the Court finds to be in compliance with the reasonable time requirement have a procedural phase of less than two years.[5]

If the proceedings in the case have been longer than two years, the Court usually examines the circumstances of the case in detail, such as the diligence of the parties and the national authorities as well as the case's complexity. This examination is normally not carried out by the Court if the proceedings have been less than two years.[6]

Cases with proceedings lasting less than two years may be considered by the Court if they are prioritised. In these cases the criteria of what is at

[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 50
[2] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 51-52
[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 51
[4] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 36
[5] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 83; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 36
[6] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 84; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 36-37

stake for the applicant is very important in the Courts assessment of the time of the proceedings.[1]

In complex cases the Court has accepted lengths of proceedings being more than two years. In these cases the Court focuses on excessive lengths of the proceedings, such as long periods of inactivity, and demands precise explanations of these periods. If no acceptable explanation is given, the Court usually finds a violation of Article 6.1. In simple cases the Court is less strict in its assessment of excessive lengths of proceedings. Even in complex cases the Court rarely seems to accept proceedings lasting more than five years and almost never proceedings lasting more than eight years.[2]

Proceedings lasting longer than two year are almost always considered excessive by the Court in objective terms. In several such cases, however, the Court has found no violation of the reasonable time requirement since the applicants or the parties conduct have contributed to the delay.[3]

The conclusion that can be drawn is that proceedings lasting less than two years is reasonable for most cases, i.e. cases that are not prioritised and not too complex. For complex cases the length of proceedings should never be more than five years to be reasonable.

4.6 Remedies

Violations of the Convention, like excessively lengthy proceedings, can be remedied by appropriate relief, for example by expediting the proceedings or by monetary compensation. Both national authorities and the European Court can remedy a violation of the Convention. All national remedies must first be exhausted before an application can be made to the European Court, which is stated in Article 35 of the Convention.[4]

4.6.1 Article 13

"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."[5]

Article 13 provides the means to obtain remedy for a violation of the Convention on a national level.[6]

For some time it was unclear if Article 13 required an actual breach of the Convention to come into effect. In the case of *Klass and others v. Germany*, judgment of 6 September 1978, the Court stated that Article 13 was an independent provision that could be violated even if there, in fact,

[1] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 84
[2] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 36-37
[3] Calvez, Francoise, Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, CEPEJ, 2006, p. 84
[4] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 39-41
[5] Article 13, the European Convention on Human Rights
[6] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 131-132

was no other violation of a Convention right. There must, however, be an arguable violation of another Convention right.[1]

In the case of *Silver and others v. the United Kingdom*, judgment of 25 March 1983, the Court clarified the *Klass*-statement by saying that anyone who '*has an arguable claim*' to a violation of the Convention has the right to an effective remedy in accordance with Article 13.[2]

There is no clear definition of '*arguable claim*' and the Court makes its decision on a case-by-case basis and has not made any general statements.[3]

The national remedy also needs to be effective. In the case of *Čonka v. Belgium*, judgment of 5 February 2002, the Court stated that the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. The remedy must, however, be effective in both practice and law. There is no need for the national authority to be a judicial authority, like a court, but its powers and the guarantees which it affords needs to be sufficient.[4]

Jurisprudence can be an indication that a remedy is effective. The remedy also needs to result in a decision within reasonable time. Decisions that take too long may no longer have any practical effect, and in that case the remedy is not effective. The same is valid for the execution of the decision; if the execution of the decision isn't possible or isn't made within reasonable time, the remedy is not effective. In the case of *Scordino v. Italy*, judgment of 29 March 2006, the Court stated that monetary compensation must be paid in full to the applicant within six months of the decision for the remedy to be effective.[5]

The right to have an effective remedy for violations of the Convention does not necessarily mean that the Convention has to be incorporated in national law, it is enough that national legislation guarantees compliance with the Convention rights.[6]

4.6.2 Article 6.1 and effective remedies

Since the provisions of Article 6.1 provides the right to a trial and has more strict requirements, it has been considered *lex specialis* to Article 13. If the matter was within Article 6, the Court held that there was no need to consider Article 13.[7]

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[1] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 131-132

[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 427-428

[3] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 134-135

[4] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 136-137

[5] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 428-431; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 40-41

[6] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 431-432

[7] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 432-433; White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 138-139

In the case of *Kudla v. Poland*, judgment of 26 October 2006, the Court reviewed its case-law in light of the numerous applications to the Court concerning the reasonable time requirement. In the *Kudla*-case the Court stated that Article 13 provides the right to an effective remedy before a national authority for an alleged violation of the reasonable time requirement in Article 6.1. In other violations than the reasonable time requirement, Article 13 will continue to be absorbed by Article 6.1.[1]

With the *Kudla*-case the European Court has forced the Member States to supply a national remedy for complaints of excessively long proceedings.[2]

4.6.3 Remedies for excessivly long proceedings

The remedies for violations of the reasonable time requirement in Article 6.1, either ensures that delays are avoided, expedite the proceedings or provides redress when a delay has occurred.[3]

The Court has held that remedies that aim to avoid delays are preferable since they seek to prevent new violations from occurring.[4]

Remedies that aim to prevent delays or expedite proceedings are, however, not enough if the delay is too excessive, which was stated in the *Scordino*-case. In several cases the Court has held that remedies combining redress and expediting the proceedings may be the best solution.[5]

The most usual remedy is monetary compensation but other forms of redress have been accepted by the Court. In several cases, such as *Eckle v. Germany*, judgment of 15 July 1982, and *Ohlen v. Denmark*, judgment of 24 February 2005, the Court has held that reduction of a prison sentence, discontinuance of prosecution or exemption from paying legal fees, may be considered just satisfaction of violations of Article 6.1.[6]

When remedies of this kind are used, the national court must acknowledge, either expressly or in substance, a breach of the Convention and then afford redress for it.[7]

In the case of *Bako v. Slovakia*, decision of 15 March 2005, the European Court stated that national levels of monetary redress must not be manifestly inadequate, compared to the redress awarded by the Court under similar circumstances.[8]

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[1] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., p. 139

[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 432-433; White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., pp. 138-139

[3] White, R. & Ovey, C., Jacobs, White, & Ovey – The European Convention on Human Rights, 5th ed., p. 139

[4] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 42-43

[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 43

[6] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 433; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 43-44

[7] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 44

[8] Cameron, Ian, Skadestånd och Europakonventionen för de mänskliga rättigheterna, 2006, pp. 11-12

4.7 Summary

Article 6.1 provides the right to a fair trial within reasonable time. The reasonable time requirement aims to prevent delays in civil and criminal proceedings. Preventing delays protects individuals from living under the stress of uncertainty and ensures effectiveness and credibility of justice.

Article 5.3 also provides the right to a trial within reasonable time, but this provision only applies to arrested or detained persons in criminal cases, while the reasonable time requirement in Article 6.1 is applicable to all types of cases.

To determine the reasonableness of length of the proceedings, the starting and end point of the proceedings must first be determined.

The complexity of the case is another circumstance that must be examined. There are several factors that make a case complex and some cases are complex by their nature.

The applicants conduct is important when determining if there has been a violation of Article 6.1. If the applicant is responsible for the delay and has manifestly shown bad faith, this may result in the Court not finding a violation of Article 6.1, even though proceedings have been excessively long.

The conduct of the national courts and authorities is also an important criterion when examining the length of the proceedings. Delays caused by inactivity or overloads are not accepted by the Court as an excuse for lengthy proceedings. Article 6.1 creates an obligation for the States to arrange their judicial system in a way that the national courts can guarantee a fair trial within reasonable time.

The examination of the case also covers what is at stake for the applicant, which is determined by the facts of the case. Depending on what is at stake the proceedings may require special diligence by the national courts and authorities.

In many cases the European Court makes an overall assessment when determining the reasonableness of the length of the proceedings.

There are many reasons for delays, some are common to all type of proceedings and some are specific to civil, criminal or administrative proceedings. Excessive caseloads, backlogs and inactivity are among the most common reasons of delays. Major political and social events may also cause delays. The European Court seldom accepts these reasons of delays as an excuse for lengthy proceedings and finds that most delays are imputable to the State.

The reasonableness of the length of the proceedings is assessed in the light of all the circumstances mentioned above. Proceedings lasting less than two years, that are not prioritized, are usually found reasonable by the Court. Proceedings lasting more than two years are examined in detail by the Court when determining the reasonableness. Proceedings lasting more than five years are rarely accepted as reasonable, and proceedings lasting more than eight years are almost never accepted as reasonable. Even though the proceedings objectively have been excessively long, there is no violation of

the reasonable time requirement if the delay is caused by the applicants conduct.

Violations of the Convention can be remedied. The right to an effective remedy is provided in Article 13 when there is an arguable violation of a Convention right. When there is an alleged violation of the reasonable time requirement, Article 13 provides the right to an effective remedy before a national authority.

Remedies for excessively long proceedings includes measures to avoid further delays, expediting the proceedings or offering redress for delays that have occurred.

5 Court proceedings in Sweden

5.1 The European Convention on Human Rights in Sweden

Sweden ratified the European Convention on the 4th of February 1952 and on the 1st of January 1995 the Convention was incorporated in Swedish legislation.[1]

At the time of the incorporation an amendment was made in the Swedish Constitution, *Regeringsformen 2 kap. 23 §*, saying that Swedish legislation may not be made in contrary to the European Convention.[2]

A problem may arise if there is a conflict between national law and the Convention. The principle of *lex posterior derogat legi priori* is probably applicable to legislation older than the incorporation. If newer legislation is in conflict with the Convention there is, however, no clear provision giving the Convention precedence, since the Constitutional provision is aimed at the legislator, not the courts.[3]

In its referral opinion to the incorporation proposal, the Swedish Supreme Court (*Högsta Domstolen*) held that in a situation of legislation conflict, the Convention, by its particular nature, should have special importance.[4]

The Convention has been held with special importance by Swedish courts since its ratification in 1952. Since its incorporation in Swedish legislation its importance has increased further and in Swedish case-law the Convention has been given special importance when in conflict with national law. In the case of *Pastor Green (NJA 2005 s. 805)* the Supreme Court held that national criminal law had been breached, but since a conviction would be a violation of the Convention, the court passed a verdict of acquittal. This highlights the importance of the Convention in the Swedish judicial system.[5]

5.2 Cases from the European Court

In several cases the European Court has found that Sweden has violated the Convention. Half of these cases concerned the right to a fair trial within reasonable time.[6]

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[1] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 31; Oskäliga väntetider i domstolarna – ett allvarligt hot mot rättssäkerheten, Centrum för rättvisa, 2009, p. 6
[2] SOU 2008:3, Skyddet för den personliga integriteten, 2008, pp. 91-92
[3] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 34-35; SOU 2008:3, Skyddet för den personliga integriteten, 2008, pp. 91-93
[4] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 35-36; SOU 2008:3, Skyddet för den personliga integriteten, 2008, pp. 92-93
[5] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., pp. 36-37; SOU 2008:3, Skyddet för den personliga integriteten, 2008, p. 93
[6] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 37

In the case of *Wassdahl v. Sweden*, judgment of 6 February 2007, the proceedings lasted seven years and three months in four tiers of courts and authorities. The Court found that the case was not particularly complex, the sum of money that was at stake for the applicant were considerable and the applicants conduct could not be blamed, but there were long periods of inactivity that were within the responsibility of the national courts. In conclusion the Court found that the proceedings were excessively long and violated the reasonable time requirement.[1]

The same applied to the case of *the estate of Nitschke v. Sweden*, judgment of 27 September 2007, where the proceedings of nine years and nine months were found unreasonable, even though the applicants conduct had contributed to the delay.

In the case of *Paulsen-Medalen and Svensson v. Sweden*, judgment of 19 February 1998, concerning child custody, the Court found that the proceedings in the Supreme Administrative Court (*Regeringsrätten*), lasting two years and five months, were unreasonably long.[2]

The Swedish Supreme Administrative Court has been criticized by the European Court on several occasions for its excessively long proceedings concerning questions of granting a leave to appeal (*prövningstillstånd*).

In the case of *Västberga Taxi Aktiebolag and Vulic v. Sweden*, judgment of 23 July 2002, the proceedings lasted seven years and five months. The Court held that the Supreme Administrative Court spent more than a year on the question to grant a leave to appeal, a delay that was attributed to the conduct of the national authorities. The overall length of the proceedings was found to have exceeded what was reasonable and was in violation of Article 6.1.[3]

In the case of *Klemeco Nord AB v. Sweden*, judgment of 19 December 2006, involving two separate proceedings, the Court found that the length of the second proceeding, lasting seven years and four months, were in violation of Article 6.1. The Court stated that even though the applicant were partly responsible for the delay, there had been long unexplained periods of inactivity, mostly in the Court of Appeal.[4]

A District Court was criticized in the case of *Rey and others v. Sweden*, judgment of 20 December 2007, where proceedings lasted for seven years and nine months. The Court held that the proceedings in the Court of Appeal, lasting eight months, and the Supreme Court, lasting 9 months, were reasonable, but the period of time spent in the District court, six years and two months, were in violation of the reasonable time requirement. The Court stated that the case had some complexity and some of the delays were attributable to the parties, but that it was the responsibility of the national court to see to it that the proceedings were conducted expeditiously.[5]

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[1] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 37
[2] Danelius, Hans, Mänskliga rättigheter i europeisk praxis, 3rd ed., p. 266
[3] Oskäliga väntetider i domstolarna – ett allvarligt hot mot rättssäkerheten, Centrum för rättvisa, 2009, pp. 10-11
[4] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 37-38
[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 38

The lengths of two proceedings, one criminal and one administrative, were on trial in the case of *Lilja v. Sweden*, judgment of 23 January 2007. The criminal proceedings had lasted seven years and five months. The preliminary investigation was concluded in 1998 but the applicant wasn't indicted until 2002. The administrative proceedings lasted seven years, with a period of more than three years in the Administrative Court of Appeal. The Court stated that the two proceedings were of a complex nature, but that the prosecutors' delay of indictment in the criminal case and period of inactivity in the Administrative Court of Appeal were unreasonable. In the criminal case the Court stated that it was the District Courts responsibility to ensure that the case proceeded with appropriate speed. In conclusion the Court found that the overall length of the proceedings was excessive and a breach of Article 6.1.[1]

In a number of cases in the European Court the Swedish government have settled out of court. Most of these cases have concerned excessively lengthy proceedings. In most of these cases the Swedish government has paid a settlement-remuneration almost equal to the remedy awarded by the court for similar delays.[2]

5.3 Aims and legislation concerning reasonable time in Swedish courts

The annual letter of directions (*regleringsbrev*) from the Swedish Ministry of Justice to the Swedish courts expresses the aim for the work of the Swedish courts to be of high quality and effective.[3]

The Swedish Ministry of Justice has an aim for 2010 that 75 percent of all criminal cases, not counting priority cases (*förtursmål*), shall be completed within five months and that 75 percent of all civil cases, not counting cases of joint application of divorce, shall be completed within seven months, per instance of court, in the District courts and Courts of appeal. The main part of all cases in the Administrative courts and Administrative courts of appeal, excluding priority cases and cases concerning aliens and nationality (*migrationsmål*), shall be completed within six months, per instance of court.[4]

The aims set in the letter of directions acts as guidelines when the Swedish courts set their own aims, in close collaboration with the Swedish National Courts Administration (*Domstolsverket*). These aims are generally less ambitious than the aims set by the Ministry of Justice.[5]

In Swedish legislation there are a number of provisions to ensure effective and expedited proceedings.[6]

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[1] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 38-39
[2] Oskäliga väntetider i domstolarna – ett allvarligt hot mot rättssäkerheten, Centrum för rättvisa, 2009, pp. 6-7
[3] Regleringsbrev för budgetåret 2010 avseende Sveriges Domstolar, 2009-12-21, p. 1
[4] Regleringsbrev för budgetåret 2010 avseende Sveriges Domstolar, 2009-12-21, p. 1
[5] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 5-6
[6] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 6-7

The Swedish Code of Judicial Procedure (*rättegångsbalken*) has several provisions concerning the length of proceedings. Chapter 42 paragraph 6 states that the court shall ensure that the preparation of the case aims for a speedy judgment in civil cases. The court shall also draw up a schedule for the proceedings that shall be communicated with the parties.[1]

Chapter 45 paragraph 14 of the Swedish Code of Judicial Procedure regulates criminal proceedings, and states that the time of the main hearing shall be decided as soon as possible. If the accused is detained or have travel restrictions, the main hearing must be held within certain time limits.[2]

The Administrative Act (*förvaltningslagen*) and the Administrative Procedure Act (*förvaltningsprocesslagen*) both have provisions of expedited proceedings (*7 § Förvaltningslagen, 9 § Förvaltningsprocesslagen*).[3]

There are also several provisions for different types of cases concerning the length of proceedings and expedition, such as criminal cases with juveniles (*29 § Lag (1964:167) med särskilda bestämmelser om unga lagöverträdare*) and administrative cases concerning the care of juveniles (*33-34§§ Lag (1990:52) med särskilda bestämmelser om vård av unga*).[4]

Chapter 49 paragraph 7 of the Swedish Code of Judicial Procedure provides a possibility to appeal against any decision that causes an unnecessary delay in the proceedings. Since this provision is only applicable to decisions, not inactivity or the proceedings in general and only to decisions in Civil Courts, its use in avoiding delays is rather limited.[5]

5.4 The length of Swedish court proceedings

Increased caseloads and backlogs of cases are a problem in Swedish courts. The Swedish courts have made several efforts in the last years to find a remedy for this problem, which have had some effect in decreasing the time of proceedings.[6]

The problems with lengthy proceedings can be shown in the decisions of criticism from the Ombudsmen of Justice (*Justitieombudsmännen*) directed at the Swedish courts. The Ombudsmen of Justice reviews the activities of the Swedish courts and since 2002 the number of decisions of criticism, concerning excessively long proceedings, has increased. This indicates a growing problem with lengthy proceedings in Swedish courts.[7]

In the Ombudsmen of Justices' decisions of criticism concerning excessive delays in Swedish court, the main tendency seems to be long periods of unexplained inactivity in the Swedish courts proceedings. In

[1] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 6-7; Rättegångsbalken 42 kap 6 §
[2] Rättegångsbalken 45 kap 14 §
[3] Lindman, Malen, Nya regler om förtursförklaring i domstol – analys, 2009, http://www.jpinfonet.se
[4] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 6-7; 29 § Lag (1964:167) med särskilda bestämmelser om unga lagöverträdare
[5] Rättegångsbalken 49 kap 7 §; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 47
[6] Press release from Domstolsverket, 2009-01-14, Stora satsningar har lyckats korta väntetiderna i Sveriges Domstolar, 2009, http://www.domstol.se
[7] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 70

several cases, both civil and criminal, periods of more than six months of inactivity has been found.[1]

Adding the fact that a large number of cases have a procedural phase of more than two years in the first tier of court clearly indicates that the reasonable time requirement is violated in Swedish courts.[2]

The problem exists in all instances of courts and in civil, criminal and administrative cases. The Supreme Administrative Court is the court that has the largest percent of backlog cases older than two years and has also been criticised by the European Court on several occasions.[3]

As mentioned above, the Swedish courts are making an effort to deal with backlogs of cases. According to statistics from 2008 and 2009 most courts are able to live up to the goals set by the courts and the Swedish National Courts Administration (see 5.3). In 2009 the Supreme Administrative Court and the Administrative Courts of Appeal did, however, not reach the aims set.[4]

Statistics also show that the courts do not reach the goals set by the Ministry of Justice (see 5.3) concerning time of proceedings. With the exception of civil cases in District Courts in 2009 and cases concerning aliens and nationality in 2008, none of the goals set where reached in 2008 or 2009 by any tier of court. The average length of proceedings in Swedish courts is, however, usually less than one year in all tiers of courts for all types of cases.[5]

When examining the backlogs of all types of cases in each tier of court you find that 14% of the District Courts cases, 8% of the Courts of Appeals cases, 6% of the Supreme Courts cases, 7% of the Administrative Courts cases, 14% of the Administrative Courts of Appeals cases and 15% of the Supreme Administrative Courts cases, are older than one year. With the exception of the Administrative Courts of Appeal, all courts have lowered the percentage of cases older than one year since the previous year.[6]

5.5 Swedish remedies for lengthy proceedings

Sweden has a number of different remedies that can be used for lengthy proceedings. Most of these remedies offer redress for delays that have already occurred. Until recently there have been no real remedies to prevent further delays, but since the 1st of January 2010 there is a way to expedite proceedings when a delay has occurred.

The Swedish legislation that concerns damages caused by the state does not grant redress for non-pecuniary damages. Since redress for non-

[1] Decisions from Justitieombudmännen dnr. 5860-2009, 6033-2009, 6111-2008, 5831-2008, 2374-2009 and 4142-2009
[2] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 71
[3] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 71
[4] Domstolsverket, Dnr 1749-2008, Sveriges Domstolar Årsredovisning 2008, pp. 114-133; Domstolsverket, Dnr 2046-2009, Sveriges Domstolar Årsredovisning 2009, pp. 118-137
[5] Domstolsverket, Dnr 1749-2008, Sveriges Domstolar Årsredovisning 2008, pp. 14-15; Domstolsverket, Dnr 2046-2009, Sveriges Domstolar Årsredovisning 2009, pp. 14-15
[6] Domstolsverket, Dnr 2046-2009, Sveriges Domstolar Årsredovisning 2009, pp. 25-56

pecuniary damages is necessary for a remedy to be considered effective by the European Court, this has been a problem in Sweden. The Swedish Supreme Court has, however, made an important change in its case-law to remedy this problem.

It is of course also possible for an individual to file a complaint directly to the European Court if all national remedies have been exhausted or proven ineffective.

5.5.1 Reduction of the sentence or penalty

Swedish criminal and tax legislation has some provisions concerning lengthy proceedings.

The Swedish Penal Code states that when determining the sentence, the courts shall consider if an unusual amount of time has passed since the crime was committed in regard to the nature of the crime. If there are particular reasons (*särskilda skäl*) the court may use a sentence that is more lenient then what is prescribed for the crime.[1]

The same consideration shall be done when the courts decide the consequence (*påföljdsval*) of the crime committed.[2]

There is also a possibility for a penalty remission (*påföljdseftergift*) if, in regard to the nature of the crime, an unusual amount of time has passed since the crime was committed and it is manifestly excessive (*uppenbart oskäligt*) to award a penalty. The provision of penalty remission is to be used with great restriction.[3]

Since these provisions address the time passed since the crime was *committed*, they take a more generous stand than the starting point of the proceedings in Article 6.1. It is likely that they can be used as an effective remedy when the proceedings have been excessively long.[4]

In Sweden there is no possibility to dismiss or quash an indictment by the sole reason of a breach of the reasonable time requirement. This was stated by the Supreme Court in the case of *NJA 2003 s.414*.[5]

Swedish legislation has several provisions for penalty fees (*sanktionsavgifter*). The most usual penalty fee is penalty tax (*straffskatt*). The Taxation Code (*taxeringslagen*) the Tax Payment Code (*skattebetalningslagen*) both have provisions for reducing or eliminating the penalty tax if the proceedings have been excessively long.[6]

In the case of *RÅ 2006 ref. 43* the Supreme Administrative Court reduced a special fee (*särskild avgift*) with reference to the reasonable time requirement in Article 6.1.[7]

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[1] Brottsbalken 29 kap 5 § 7p och 29 kap 5 § 2st; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 49

[2] Brottsbalken 30 kap 4 §; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 49

[3] Brottsbalken 29 kap 6 §; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 49

[4] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 49

[5] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 50

[6] Skattebetalningslagen (1997:483) 15 kap 10 § 3 st; Taxeringslagen (1990:324) 5 kap 14 § 3 st; SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 50-51

[7] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 51

When remedies or redress like these are used, the European Court has stated that is important that the national courts, expressly or in substance, acknowledges a breach of the Convention and then afford redress for it (see chapter 4.6.3).

These remedies are only available if there is a conviction. If the accused is acquitted there is no penalty or sentence to reduce if the proceedings have been to long. The provisions are also only applicable to accused persons and offer no remedy for other parties, for example the plaintiffs.[1]

5.5.2 Non-pecuniary damages

The monetary redress awarded by the European Court as compensation for delays is usually for non-pecuniary damages, which is redress for the stress of legal uncertainty that the delay has caused.

The Swedish States responsibility for damages is regulated in the Code of damages (*skadeståndslagen*) chapter 3 paragraph 2. This provision gives the right to personal, property and pure economic (*ren förmögenhetsskada*) damages, but no right to redress for non-pecuniary damages (*ideella skador*).[2]

In the case of *NJA 2005 s. 726* the Supreme Court stated that this provision may offer redress for economic damages caused by unacceptable delays.[3]

Unacceptable delays are delays that are in violation of the reasonable time requirement in Article 6.1. This was stated by the Supreme Court in the case of *NJA 2005 s. 462*.[4]

The fact that there is no provision in Swedish legislation that offers redress for non-pecuniary damages when an excessive delay has occurred have been a problem for Sweden when it comes to the obligation of offering an effective remedy.

In the case of *NJA 2005 s. 462* the applicant sought redress for excessive delays in a criminal proceeding. In its judgment the Supreme Court, with reference to the European Courts' case of *Kudla v. Poland*, changed its case law and stated that redress for non-pecuniary damages can be awarded without any expressed legal basis.[5]

This statement was reaffirmed in the case of *NJA 2007 s. 295*, where the Supreme Court held that national courts can award redress for damages caused by the Swedish State without legal basis, when necessary to comply with the obligations in the European Convention on Human Rights.[6]

Redress for non-pecuniary damages can be awarded not only for Convention violations in criminal proceedings but for all types of proceedings, which can be seen in the case-law of the Supreme Court.[7]

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[1] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 50
[2] SOU 2008:16, Förtursförklaring i domstol, 2008, p. 51
[3] NJA 2005 s. 726
[4] NJA 2005 s. 462
[5] NJA 2005 s. 462
[6] NJA 2005 s. 295
[7] NJA 2007 s. 584; NJA 2009 s. 463

This means that it is now possible to sue the Swedish State for damages caused by excessively long proceedings.[1]

5.5.3 Voluntary settlement of claim

The Office of the Chancellor of Justice (*Justitiekanslern*) is an independent Swedish authority with the competence to reach out of court settlements on behalf of the Swedish State in actions for damages. These voluntary settlements of claim are initiated by an application for compensation filed directly to the Chancellor of Justice. If the Chancellor rejects the application, the right to initiate court proceedings remains.[2]

Since the Supreme Courts decision in *NJA 2005 s. 462* the Chancellor of Justice has awarded redress for non-pecuniary damages when the length of the proceedings has been excessive. This can be seen in the decisions *Dnr 5879-08-40*, where a company was awarded redress for non-pecuniary damages caused by excessively long proceedings in a civil case, *Dnr 7912-07-40, 7913-07-40 and 7914-07-40*, where the applicants sought and was awarded redress for non-pecuniary damages caused by lengthy proceedings in the Supreme Administrative Court, and *Dnr 5416-06-40*, where the applicant was awarded redress for non-pecuniary damages caused by excessively long proceedings.[3]

In its decisions, the Office of the Chancellor of Justice has argued that the sum of the awarded compensation shouldn't differ too much from what is awarded based on national legislation in similar cases. This is based on a statement made by the Supreme Court in the case of *NJA 2007 s. 584*.[4]

The monetary compensation awarded by the Office of the Chancellor of Justice is, however, generally lower than those awarded by the European Court.

The procedure of voluntary settlement of claim is free for the applicant and is generally faster than court proceedings. The processing of an application takes about 1-2 years.[5]

5.5.4 *"Förtursförklaring"* – Declaration of priority

Since the 1st of January 2010 Swedish legislation has offered the possibility, in *Lag (2009:1058) om förtursförklaring i domstol*, for the parties to apply for a declaration of priority (*förtursförklaring*). A declaration of priority means that the case shall have priority above cases that lacks nature of priority. There is, however, no set time-limit for judgments in cases with a declaration of priority.[6]

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[1] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, p. 7

[2] http://www.jk.se; Förordning (1995:1301) om handläggning av skadeståndsanspråk mot staten

[3] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 54-55; Decisions by Justitiekanslern Dnr 5879-08-40, 7912-07-40, 7913-07-40, 7914-07-40 and 5416-06-40

[4] Decisions by Justitiekanslern Dnr 7912-07-40, 7913-07-40 and 7914-07-40

[5] SOU 2008:16, Förtursförklaring i domstol, 2008, pp. 54-55

[6] Lag (2009:1058) om förtursförklaring i domstol; Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 20-21;

A declaration of priority is valid until the court has made its final judgment in the case and can not be revoked. The declaration is not transferable to another court if the judgment is appealed.[1]

The provision is applicable to all cases in all Swedish courts, both civil and administrative, as well as the specialized courts such as the Labour Court (*Arbetsdomstolen*), the Market Court (*Marknadsdomstolen*) and the Court of Patent Appeals (*Patentbesvärsrätten*).[2]

The application is made to the court that is processing the case in question and shall be processed with expedition. The decision can not be appealed, but it is possible to file unlimited applications for a declaration of priority in the same case.[3]

The provision is only applicable when a delay has occurred.[4]

The criteria to grant a declaration of priority, listed in the provision, are a clear reference to the criteria set up by the European Court when determining the reasonableness of the length of the proceedings, and include the complexity of the case, the conduct of the parties and national authorities, and what is at stake for the party.[5]

5.6 Swedish reforms

Sweden is constantly working to improve the protection of human rights. Increased caseloads have made lengthy proceedings a priority and many resources are spent on dealing with this problem, throughout the Swedish judicial system. There have been several efforts by both the courts and the Swedish government to deal with the increased caseloads and backlogs, to shorten the time of proceedings.

5.6.1 Efforts to deal with caseloads and backlogs

The Swedish National Courts Administration and the Swedish courts have made several efforts during the last years to deal with increased caseloads and backlogs of cases. These efforts has resulted faster proceedings and declining number of backlog cases, even though the number of new cases has increased during the same period. All instances of courts report declining backlogs and the average time of proceedings have been shortened by almost a month.[6]

5.6.2 Direktiv 2009:40

In 2009 a committee was appointed to look into Sweden's responsibility for damages caused violations of the European Convention.

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[1] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 21 and 25; SOU 2008:16, Förtursförklaring i domstol, 2008, p. 134

[2] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 21-22

[3] Regeringens proposition 2008/09:213, Förtursförklaring i domstol, 2009, pp. 27-31

[4] Lag (2009:1058) om förtursförklaring i domstol, 1 §

[5] Lag (2009:1058) om förtursförklaring i domstol, 1 §

[6] Press release from Domstolsverket, 2009-01-14, Stora satsningar har lyckats korta väntetiderna i Sveriges Domstolar, 2009, http://www.domstol.se

The committee will specialize in monetary compensation as redress for breaches of the Convention. The aim is to present a draft for a new law regulating the States responsibility, and limitations, in different cases of Convention violations. The provisions shall be explicit and easy to survey and ensure the rule of law.[1]

The committee shall also examine which criteria are relevant when determining the sum of the monetary compensation with regard to both cases of the European Court and Swedish case-law.[2]

The committee will present its results in December 2010.[3]

5.6.3 New technologies

The Swedish justice system is currently working for a common way to transmit and receive electronic case-information and for that information to be registered only once and then transmitted electronically to other authorities in need of that information. It also aims for the majority of all case-information to be electronic, such as e-summons (*eStämning*) in criminal cases and electronic judgments (*e-dom*).

The effort to reach these aims is coordinated by *Rättsväsendets informationsförsörjning* (RIF), which is a coordinating organ between most authorities in the Swedish justice system, such as the Police (*Rikspolisstyrelsen*), the Swedish National Courts Administration, the Swedish Prosecution Authority (*Åklagarmyndigheten*), and the Swedish Prison and Probation Service (*Kriminalvården*), under the supervision of the Ministry of Justice.

One of the goals with the RIF-collaboration is to shorten the time of criminal proceedings.

5.7 Summary

Sweden ratified the European Convention on Human Rights in 1952, and in 1995 the Convention was incorporated in Swedish legislation. The Convention has been given special importance in Swedish case-law, and has been given precedence to national law.

Violations of the reasonable time requirement are one of the most common breaches of the Convention committed by Sweden.

The Swedish Ministry of Justice as well as the Swedish courts, aims to shorten the time of proceedings and to comply with requirements set up by the Convention.

Swedish legislation contains several provisions concerning the length of proceedings and expedition.

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[1] Kommittédirektiv 2009:40 – Statens skadeståndsansvar vid överträdelser av Europakonventionen, 2009, p. 1

[2] Kommittédirektiv 2009:40 – Statens skadeståndsansvar vid överträdelser av Europakonventionen, 2009, p. 6

[3] Kommittédirektiv 2009:40 – Statens skadeståndsansvar vid överträdelser av Europakonventionen, 2009, p. 1

Backlogs and increased caseloads are a big problem in Swedish courts and many efforts are made to battle these problems. One of the main causes of delays is, however, inactivity by the courts. Excessively long proceedings exist in all tiers of Swedish courts. Statistics show that even though the length of proceedings is decreasing, Swedish courts are not able to reach their goals.

Swedish remedies for lengthy proceedings mostly offer redress for delays that have occurred, such as reduction of penalty, or monetary compensation for non-pecuniary damages, but the new ability to apply for a declaration of priority, in all cases in all Swedish courts, provides the mean to avoid delays or expedite proceedings when in danger of a delay.

Sweden is constantly working to improve the protection of human rights and its compliance with the Convention. The proposition for new legislation concerning the States responsibility for damages caused by Convention breaches is under way, and new technologies are introduced in the justice system in order to make proceedings shorter and more effective.

6 Conclusion

6.1 Reasonable time in Swedish courts

Cases against Sweden in the European Court are dominated by claims of violations of the reasonable time requirement in Article 6.1 and the Court often finds violations of the Convention. In many of these cases Sweden settles out of court, paying the applicant a settlement-remuneration, an indication that there has indeed been a violation of the Convention.

Decisions from national control mechanisms, such as the Ombudsmen of Justice and the Chancellor of Justice, show that the number of cases with excessively long proceedings are growing and are a major problem in the Swedish courts.

Statistics show that the aims of time of proceedings set up by both the Swedish government and the courts are not entirely reached, but the courts are coming closer to the aims set every year.

The Supreme Administrative Court has been criticized by the European Court on several occasions and seems to have serious problems with time of proceedings. The main problem seems to be the time of proceedings when granting a leave to appeal. This procedure must become much faster if the Supreme Administrative Court seeks to avoid further violations of the Convention. This may be something for the legislator to look into; a time limit for when a leave to appeal should be granted or denied could be a possible solution.

The problems with excessively long proceedings, however, seem to exist in all instances of courts.

In general it seems that excessively long proceedings in Swedish courts are a substantial problem. Even though the average length of proceedings is less than one year in all tiers of courts, a considerable number of cases, for example 14 percent of the cases in the District Courts and 8 percent of cases in the Courts of Appeal, are older than one year. This means that it is not uncommon that the total time of proceedings in Swedish courts is 1.5-2 years or more and thus in risk of or in violation of the reasonable time requirement. The decisions from the Ombudsmen of Justice and the Chancellor of Justice show that violations of the reasonable time requirement are a growing problem.

The common causes of delays seem to be increased caseloads, backlogs of cases and periods of inactivity. The courts have taken measures to prevent delays which have proven to be effective, but not effective enough, even though the average time of proceedings is becoming shorter each year. To avoid periods of inactivity the courts need to set up a more effective system for monitoring the progress in its cases and make it possible to act when inactivity occurs.

6.2 Effective remedy in Sweden

A remedy for excessively long proceedings needs to be effective in both practice and law and result in a decision, and execution of that decision, within reasonable time.

One of the more commonly used remedies in Swedish courts is reduction of the sentence or penalty. This is an effective remedy since it's based on law and has a direct practical effect with the execution of judgment or decision. As mentioned above, this kind of remedy is only available to the accused or respondent and can't mend breaches of the Convention in regard to other parties of the proceedings. It is also only available if the accused or respondent is found guilty and convicted. These conditions make its use rather limited. Delays affecting other than the accused or respondent, such as the plaintiff, must be remedied by other means.

Redress for non-pecuniary damages when a delay has occurred can be awarded according to the case law of the Swedish Supreme Court. This remedy has no legal basis except for the Convention which may be a problem in regard to its effectiveness. Jurisprudence will, however, probably mend this problem and show that this in fact is an effective remedy. In the *Wassdahl*-case (p. 28) the European Court stated that this possibility was not an effective remedy since it was only applicable to criminal cases. The Swedish Supreme Court has, however, showed in its following cases that the remedy is applicable to all types of cases. Even though the remedy has not been tried by the European Court after these new cases, it can probably be safe to say that it is an effective remedy.

There is, however, one fact that may be a problem in regard to effectiveness. Cases concerning damages are not prioritized in Swedish courts and if the court fails to produce a decision within reasonable time, the remedy will not be effective. Prioritizing cases concerning claims of redress for convention violations may be necessary to make this an effective remedy.

The voluntary settlement of claims administered by the Chancellor of Justice is usually faster, but it's questionable if it's fast enough. An application process of 1-2 years is probably too long to be seen as effective. A time of 6 month to 1 year to process an application is probably necessary for this remedy to be effective, which means that this kind of applications must be prioritized by the Chancellor of Justice. There is also the question about the levels of compensation. Since the monetary compensation awarded by the voluntary settlements of claim is lower than those awarded by the European Court for an equal delay and the European Court has stated that national levels of redress should not be manifestly inadequate, the voluntary settlement of claim may not be effective.

Declaration of priority is a new remedy in Sweden and its effects are still unknown. The idea is good though and may help to expedite proceedings when a delay has occurred to avoid further delays. Applications for a declaration of priority may become a burden on the courts which may cause more delays. This is, however, unlikely since the application process is rather simple and cannot be appealed. Another concern is that even though a case

has gotten a declaration of priority, there are no explicit time requirements saying when the case should be finished. This means that delays may occur and that the time of proceedings may be in violation of the Convention even though the case has a declaration of priority.

It is only possible to apply for a declaration of priority when a delay has occurred which makes its useless against preventing delays. It can, however, prevent further delays and even expedite proceedings so that even though a delay has occurred, the time of proceedings as a whole is reasonable.

6.3 Common causes of delays and solutions

The most frequent cause of delay in Swedish courts, as in many other European countries, seems to be backlogs of cases and overloads. These problems exist in all types of courts and in all types of cases. Periods of inactivity and excessively long proceedings when granting a leave to appeal are also common problems. The delays when granting a leave to appeal seems to be a problem mainly in the Supreme Administrative Court, but periods of inactivity can be found in all instances of courts and in all types of cases.

The Swedish Government and the courts aim to shorten the time of proceedings and some improvements can be seen in the last years.

The courts have a responsibility to make the proceedings advance and to come to a final decision as fast as possible. This means that the courts have to monitor its cases and proceedings more closely and also to more actively communicate with the parties when inactivity occurs. This includes contacts with the prosecution authority when delays of prosecution occurs even though the preliminary investigations are complete, and contacts with both plaintiff and respondent when the parties are inactive.

The Swedish government needs to help the courts in their efforts, both economically and by legislation.

The aims set by the courts and the Swedish government seeks to eliminate delays and reduce the time of proceedings. These aims are, however, not met, probably due to lack of resources, even though improvements are made every year

Economic resources needs to be directed toward the justice system as a whole, including police, prosecutors, courts and the prison and probation services, to deal with backlogs and increasing caseloads. More manpower, improved case management and new ways of communicating electronically will make the Swedish courts more effective and time of proceedings shorter.

Legislation must also keep up with the problems that arise. New procedural rules for cases where delays are common, for example when granting a leave to appeal, are a way to deal with lengthy proceedings. The same goes for remedies when delays have occurred. The Swedish remedies that exist today are not, with the exception of the declaration on priority, made with the European Convention and the reasonable time requirement in mind. New legislation that aims to create effective remedies for excessively long proceedings must be made. The committee that is examining monetary

redress for Convention violation is a good start but more efforts must be made not only to offer redress, but to prevent delays. The Swedish legal system more or less lacks adequate provisions to prevent delays and the provisions that exist are too vague to be useful and effective. More precise provisions are needed, with more exact time-limits for the courts to follow.

6.4 Final comments

The Swedish courts have problems with delays and lengthy proceedings that are not seldom in violation of the reasonable time requirement. Even though efforts are made to shorten the length of proceedings more needs to be done. It is clear that one of the big causes of delays is lack of adequate resources and the Swedish government needs to act on this problem. Economic resources are not enough and new legislation is needed, in regard to both time of proceedings and effective remedies for delays.

Being a member state to the European Convention demands a lot from the state in question. Monitoring the judicial system and its efficiency is vital to be able to live up to the requirements set up by the Convention. Monitoring is, however, not enough: The state must be prepared to take action and counteract any causes of delays that exist or appears in their judicial system.

The Swedish government and the system of authorities set up in the judicial system, such as the National Courts Administration, are capable of monitoring the judicial system and find most causes of delays. The courts and the National Courts Administration are, however, limited in what countermeasures that can be taken by the resources supplied by the Swedish government. As a result it is still not uncommon that time of proceedings are excessively long and in breach of the Convention. There is a lack of adequate remedies to prevent delays which creates a focus on redress for delays that has occurred. In the end this will lead to more delays, more violations of the reasonable time requirement and more redress paid for damages caused by the delays.

This is clearly the wrong way to go and focus must be put on the causes of delays. I have, unfortunately, not found any evidence that this is something the Swedish government is looking into more closely.

In conclusion I will answer the question if Sweden is living up to the obligations set up in Article 6.1 of the European Convention; my short answer is no. Excessively long proceedings in breach of the Convention are too common and the Swedish government has not arranged the judicial system in such a way that the courts can guarantee a fair trial within reasonable time. Sweden need to make changes in the judicial system if it aims to live up to the obligations set up in Article 6.1 of the European Convention.

Supplement A – Articles 6 and 13

The European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 6 - Right to a fair trial
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 13 - Right to an effective remedy
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Supplement B – Förtursförklaring

Lag (2009:1058) om förtursförklaring i domstol

1 § Om handläggningen av ett mål eller ärende har oskäligt fördröjts, ska domstolen efter skriftlig ansökan från en enskild part förklara att målet eller ärendet ska handläggas med förtur i domstolen (förtursförklaring).
Vid bedömningen av om handläggningen har oskäligt fördröjts ska det särskilt beaktas
1. hur komplicerat målet eller ärendet är,
2. hur parterna agerat under förfarandet,
3. hur myndigheter och domstolar handlagt målet eller ärendet, och
4. sakens betydelse för sökanden.
En ansökan om förtursförklaring ska handläggas skyndsamt.

2 § Beslut enligt denna lag får inte överklagas.

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