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The Right to Trial within a Reasonable Time

1. Conceptual clarification

The right to a fair trial is in itself a complex set of principles. The right to trial within a reasonable time[2] (hereinafter "reasonable time requirement") is one of the sub-rights to a fair trial so, in order to present the constitutional context, first I consider it necessary to review the concept and principles of a fair trial.

The development of the principle of fair trial is the result of a historical process dated back to the thirteenth century. The detailed content and the elements of this principle have appeared in various international legal documents since the middle of the last century. In 1948, the Universal Declaration of Human Rights already set out the principle of fair trial in its Articles 10 and 11. According to the Geneva Conventions of 1949's Protocol II, drafted and adopted in 1977, fair trial is mandatory even in armed conflicts.[3]

The International Covenant on Civil and Political Rights, which was adopted in 1966 and entered into force in 1976, declares in its Article 14 that "[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." [4]

The Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the eight additional protocols thereto, were ratified by Act XXXI of 1993 in Hungary, then, except for Protocols 12 and 16, the others were promulgated by various laws (hereinafter together: the Convention).

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2 At this point, I must address the difference in the use of terms by the ECtHR and the Hungarian Constitutional Court. The ECtHR uses the concept of the *right to a fair trial within a reasonable time* as a sub-right to a fair trial and refers to it briefly as the reasonable time requirement, and refers to cases as length of proceedings cases. The Hungarian Constitution and the Fundamental Law use the concept of the *right to the adjudication within a reasonable deadline*, emphasising the right to a decision, to the completion of the proceedings and not just the right to a hearing. Despite two formulations, the essential content is the same.

3 Universal Declaration of Human Rights, UN webpage http://www.un.org/en/universal-declaration-human-rights/ accessed 30 September 2020

4 International Covenant on Civil and Political Rights, OHCHR webpage https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx accessed 30 September 2020

Article 6 of the Convention lays down the substantive content of a fair trial when it states that 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." The right to a fair trial has a position of pre-eminence in the Convention, both because of the importance of the right involved and the great volume of applications and jurisprudence that it has attracted.[5]

In line with international development, the principle of fair trial has also become part of the Hungarian constitution. The constitutional requirement of the fair trial was formulated by Article 57 (1) of the Constitution, which was in force until 31 December 2011. It says that everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law. As regards the substantive contents of the constitutional provision of the fair trial, Article XXVIII (1) of the Fundamental Law of Hungary – that came into force on 1 January 2012 – is identical to Article 57 (1) of the former Constitution. It stipulates that everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by law.

For the first time after the entry into force of the Fundamental Law, the Constitutional Court compared in its decision[6] the content of the relevant provisions of the former Constitution and the Fundamental Law. The result of this comparison was that there was no obstacle to the applicability of the arguments and findings of previous Constitutional Court decisions; the Constitutional Court considered the former constitutional practice, elaborated in connection with the fundamental right, to be applicable to a fair trial in the future.

Following the Fourth Amendment of the Fundamental Law (25 March 2013) with respect to the aspects fixed in Decision 13/2013. (VI. 7.) AB in connection with the applicability of the former Constitutional Court's decisions, the Constitutional Court re-examined whether the practice of a fair trial would be applicable in future. As a result of this examination, the Constitutional Court found that there was still no obstacle to the use of previous constitutional practice in relation to the fundamental right to a fair trial[7]. Subsequently, the Constitutional Court's decisions – in connection with Article XXVIII (1) of the Fundamental Law – were held in this spirit.

Clearly, as we saw, the relevant texts of the former Constitution and the Fundamental Law are identical in content. In my view, however, in the meantime there was a huge change in the regulation of and a difference in the content of the right to a fair

5 Harris, O'Boyle & Warbrick, *Law of the European Court of Human Rights* (3rd edn., Oxford University Press 2014) 370

6 Decision 7/2013. (III. 1) AB of the Constitutional Court, Statement of Reasons [24]

7 Decision 8/2015. (IV. 17.) AB of the Constitutional Court, Statement of Reasons [57]

trial. These results, on the one hand, from the spirit of the Fundamental Law and, on the other hand, from the shift in emphasis caused by the legal institution of the constitutional complaint. The case law of the Constitutional Court also shows that the importance of one of the sub-rights of the right to a fair trial, namely the reasonable time requirement, is now subject to a different assessment than before.

2. The sub-rights of the fair trial

Parliament has placed the right to a fair trial among judicial procedural guarantees regulated by Article XXVIII of the Fundamental Law. A fair procedure as a requirement, however, appears in Article XXIV (1). This latter basic provision explicitly sets out the requirement of fairness for the administrative authorities' proceedings. As a guarantee of judicial procedure, Article XXVIII (1) of the Fundamental Law is the correct reference. The principle of fair trial is enshrined in Act XC of 2019 on Criminal Procedure, too. It is also set out in the preamble to the Act explicitly, but also included in its various provisions (e.g. presumption of innocence in § 1, right to defence in § 3).

Article XXVIII (1) of the Fundamental Law contains a set of principles of due process, while its other paragraphs contain other guarantees of judicial procedure, namely:

- the presumption of innocence [Article XXVIII (2)],
- the right to defence [Article XXVIII (3)],
- the principle of the *nullum crimen sine lege* and *nulla poena sine lege* [Article XXVIII (4)],
- the *ne bis in idem* principle [Article XXVIII (6)],
- the right to legal remedy [Article XXVIII (7)].

The fairness of proceedings in the ordinary sense also includes the judicial procedural guarantees in Article XXVIII (2)-(7) of the Fundamental Law as the fulfilment of the requirements set out in Article XXVIII (1).

However, the significant difference is that while the procedural guarantees set out in paragraphs 2 to 7 are examined by the Constitutional Court on the basis of the general rules of necessity and proportionality, the requirement of paragraph 1 requires a specific assessment. In the practice of the Constitutional Court, the right to a fair trial is an absolute right, over which no other fundamental right or constitutional purpose can be considered, since it is itself the result of discretion and thus the right to a fair trial cannot be restricted. However, it is possible to examine, within the meaning of fair procedure, the necessity and proportionality of the restrictions in respect of certain sub-rights of the right to a fair trial. Sub-rights can be limited and they guarantee the fairness of the procedure in their entirety. The content of the right to a fair trial was formulated by Decision 6/1998. (III. 1.) AB and these principles

were later confirmed by the Constitutional Court in a number of decisions.[8] By interpreting Article XXVIII (1) of the Fundamental Law, the sub-rights of the right to fair trial could be formulated. According to the practice of the Constitutional Court, these in particular are the following:

- the right of access to court,
- the fairness of the hearing,
- the requirement of a public hearing and the public announcement of the judicial decision,
- the court established by law,
- the requirement for judicial independence and impartiality, and
- the requirement for decisions to be made within reasonable time.
- The rule is de facto not fixed, but according to the interpretation of the Constitutional Court, it is a part of a fair trial to ensure the equality of arms in the proceedings.[9]
- According to the practice of the Constitutional Court, the right to a reasoned judicial decision is also to be regarded as a part of the right to a fair trial. [10]

The Constitutional Court found in Decision 7/2013. (III. 1.) AB that there was no obstacle to the applicability of the arguments and findings contained in previous decisions regarding the right to a fair trial, and therefore the Constitutional Court considers them to be applicable in the future. In accordance with its practice based on the provisions of Articles 24 (2) (d) and 27 of the Fundamental Law, the Constitutional Court expressly stated that the constitutional requirements arising from the right to a fair trial, as elaborated in its previous practice, are not only related to the regulatory environment, but also to individual judgements.[11]

My opinion is that, in these cases, when a judicial decision itself is judged and the final decision can be annulled, the Constitutional Court should exercise this right with particular care and examine whether the petitioner's claim has a relevance in respect of fundamental rights and it constitutes such a serious violation that it can justify the annulment of the challenged judicial decision. Procedural violations emerging in judicial proceedings, by way of exception, may have a fundamental right nature and this circumstance raises the possibility of violation in the context of the right to a fair trial.

8 See Decision 5/1999. (III. 31.) AB, ABH 1999, 75; Decision 14/2002. (III. 20.) AB, ABH 2002, 101, 108; Decision 15/2002. (III. 29.) AB, ABH 2002, 116,118-120; Decision 35/2002. (VII. 19.) AB, ABH 2002, 199, 211

9 Decision 8/2015. (IV. 17.) AB of the Constitutional Court, Statement of Reasons [63]

10 Decision 7/2013. (III. 1) AB of the Constitutional Court, Statement of Reasons [34]

11 Decision 7/2013. (III. 1.) AB of the Constitutional Court, Statement of Reasons [27]

3. Principles of a reasonable time requirement according to the case law of the European Court of Human Rights

The reasonable time requirement has been elaborated in detail by the European Court of Human Rights (ECtHR). It published a summary of its case law in two guides, one on problems in its civil field and the other on aspects of criminal law. In this article, I shall examine the part of the latter case-law, which relates to the adjudication of criminal cases.

In criminal matters, the purpose of Article 6 § 1 of the Convention (right to a fair trial) is to ensure that the suspect does not remain under charge for an unreasonable length of time. The beginning of the period taken into account by the ECtHR is the date of the arrest (detention) of the accused and the date of the official notification by the investigating authority that he has committed a criminal offence.[12] The ECtHR considers the date when the accused is first interrogated as a suspect in Hungarian cases to be the beginning of the proceedings, so it also covers a part of the investigation phase of the proceedings[13]. The substantive requirements of "reasonable time" under Article 6 § 1 of the Convention are generally examined by the ECtHR until the criminal proceedings have been concluded, including the appeal stage, until the appellate courts rule on the merits of the charge and not merely on ancillary issues[14]. The ECtHR's definition includes not only part of the investigative phase of criminal proceedings, but also the enforcement of a final judgment. According to the ECtHR, the enforcement of the criminal consequences of a final decision is also part of the procedure, so any delay in doing so also renders the authorities liable, e.g. following the announcement of the acquittal, the detained accused shall be released immediately unless there is due cause[15]. According to the ECtHR, the length of the proceedings shall be assessed in the light of the specific circumstances of the case and in a comprehensive manner. The length of the proceedings *per se* does not mean that they have been protracted and that the courts have committed a breach of convention. Article 6 § 1 of the Convention requires the proceedings to proceed at a good pace, but the ECtHR considers that this should not be to the detriment of ensuring an adequate level of judicial activity. It is up to the member states to find the right balance between these two fundamental aspects.[16] The ECtHR also examines the absolute duration of the proceedings, as there may be cases where certain stages of the proceedings proceed at an appropriate pace, but the

12 Buzadji v. Moldova, App no 23755/07 (ECtHR, 5 July 2016), para 85

13 Csák v. Hungary App no 25749/10 (ECtHR,15 October 2015), para 5, Udvardy v. Hungary, App no 66177/11 (ECtHR, 1 October 2015), para 5

14 O'Neill and Lauchlan v United Kingdom, App no 41516/10, 75702/13 (ECtHR, 28 June 2016), para 82

15 Assanidze v. Georgia App no 71503/01, (ECtHR, 8 April 2004), para 181

16 Gankin and Others v. Russia App no 2430/06, 1454/08, 11670/10, 12938/12 (ECtHR, 31 May 2016), para 26

whole is still beyond a reasonable time.[17] The ECtHR considers criminal proceedings approaching or exceeding 10 years to be of such length as to constitute a clear violation of the reasonable time requirement of Article 6 § 1 of the Convention.[18] In assessing the reasonable length of criminal proceedings, the ECtHR takes into account not only the length of the proceedings but also other factors, in particular the complexity of the case and the conduct of the applicant and the public or judicial authorities concerned[19]. The complexity of the case may be supported by circumstances such as a large number of committed crimes, defendants or witnesses.[20] Complex criminal proceedings, which appear to be lengthy in absolute terms, do not necessarily infringe the reasonable time requirement either.[21]

According to the ECtHR, in assessing the applicant's conduct, it must be borne in mind that Article 6 of the Convention does not require him to cooperate with the judiciary. Nor can he be penalised for having recourse to all the remedies available to him. However, the applicant may also engage in litigation for which is not incumbent on the authorities to conduct the proceedings within a reasonable time.[22] According to the ECtHR, the applicant must be reprimanded if it is clear from the file that he has delayed the proceedings.[23] Nor can the applicant base a successful claim on the length of the proceedings resulting from his own escape, unless proved otherwise.[24] The applicant must exhaust the available domestic remedies, except those that are ineffective. With regard to Hungarian cases, the ECtHR stated that an objection due to the length of the proceedings [Section 262/A, Section 262/B of Act XIX of 1998 on Criminal Procedure (hereinafter: old Act)] was not considered to be such an effective remedy that the applicant must exhaust.[25] According to the ECtHR, Article 6 § 1 of the Convention obliges Member States to organise their judicial systems in such a way as to enable their courts to comply with the reasonable time requirement.[26] The reference

17 O'Neill and Lauchlan v United Kingdom App no 41516/10, 75702/13, (ECtHR, 28 June 2016), para 95, Moreno Carmona v. Spain App no 26178/04 (ECtHR, 9 June 2009), para 63

18 13 years 9 months in Csák v. Hungary App no 25749/10 (ECtHR, 15 October 2015), para 11; 8 years 3 months in Udvardy v. Hungary App no 66177/11 (ECtHR, 1 October 2015), para 11; 7 years and 4 months in János Dániel Szabó v. Hungary App no 30361/12 (ECtHR, 17 February 2015), para 8; 9 years in Balázs and Others v. Hungary App no 27970/12 (ECtHR, 17 February 2015), para 9

19 László Magyar v. Hungary App no 73593/10 (ECtHR, 20 May 2014), para 64

20 C.P. and Others v. France App no 36009/97, (ECtHR, 1 August 2000), para 30

21 Lakos v. Hungary, App no 51751/99 (ECtHR, 11 March 2003)

22 Most recently: Süveges v. Hungary App no 50255/12 (ECtHR, 5 January 2016), para 124

23 I.A. v. France App no 28213/95 (ECtHR, 23 September 1998), para 121

24 Vayic v. Turkey App no 18078/02 (ECtHR, 20 June 2006), para 44, Czimbalek v. Hungary App no 23123/07 (ECtHR, 23 September 2013), paras 18-19

25 Barta and Drajkó App no 35729/12 (ECtHR, 17 December 2013), paras 26

26 Grujovic v. Serbia App no 25381/12 (ECtHR 21 July 2015), paras 65-66

to serious backlogs and efforts to eliminate them does not exempt a member state from finding a breach of the Convention in relation to the length of the proceedings.[27]

According to the case law of the ECtHR, not only proceedings that are manifestly long but also those appearing to be unduly brief in absolute terms may be in breach of the Convention if they involve significant, unjustified periods of inactivity on the part of the court (or authority). The ECtHR considers acts or omissions as inactivity if the court (or authority) does not act with sufficient speed, or make an effort to continue the proceedings or facilitate the performance of the act in question.[28] The ECtHR considers that part of the proceedings where, as a general rule, no progress has been made in them for more than six months as inactivity.[29] A period can also be considered inactive if, for example, the courts are awaiting the opinion of experts without urgency or other pressing measures.[30] According to the case law of the ECtHR, the suspension of criminal proceedings does not count towards the period on which the breach of the Convention is based only if the measure was taken on reasonable grounds and the courts (as well as the authorities) did their utmost to continue the proceedings.[31]

According to the practice of the ECtHR, the stake and importance of the procedure from the point of view of the applicant must be examined as an additional factor. Consequently, in the case of a detainee, the ECtHR considers the delay in the main proceedings to be more serious than in the case of a defendant defending himself at large.[32]

Contrary to the other rights enshrined in the Convention, the violation of the requirement of a reasonable time is special in that the applicant does not have to wait for the domestic proceedings to be completed, but, *inter alia,* may also apply to the ECtHR during ongoing criminal proceedings for a violation of Article 6 § 1 of the Convention.[33]

According to the case law of the ECtHR, in a criminal judgment, the mitigation of a convicted person's punishment or the suspension of imprisonment may be considered as a remedy for a violation of the Convention resulting from the lengthy proceedings.[34] However, the ECtHR will only consider a reduction or suspension as an appropriate remedy if the national court expressly states, in the grounds of its judgment that the proceedings have been lengthy. The statement of reasons should also indicate that the court mitigated the sentence due to the length of the proceedings, including the suspension of the imprisonment. The reduction of the penalty must be not only apparent but also substantial.[35]

27 Béla Szabó v. Hungary App no 37470/06 (ECtHR, 9 December 2008), para 12
28 Zoltán Németh v. Hungary App no 29436/05 (ECtHR, 14 June 2011), para 55
29 Barta and Drajkó v. Hungary App no 35729/12 (ECtHR, 17 December 2013), paras 20-21
30 Pélissier and Sassi v. France App no 25444/94 (ECtHR, 25 March 1999, paras 69-70
31 Kriston v. Hungary App no 39154/09 (ECtHR, 24 September 2013), paras 5, 12
32 Süveges v. Hungary App no 50255/12 (ECtHR, 5 January 2016), para 121
33 Palásti v. Hungary App no 54244/10 (ECtHR, 22 April 2014), paras 10, 14
34 Lie and Berntsen v. Norway App no 25130/94 (ECtHR, 16 December 1999)
35 Lie and Berntsen v. Norway App no 25130/94 (ECtHR, 16 December 1999)

The ECtHR has stated in several cases concerning Hungary that, in view of the protracted criminal proceedings, the reduction of the punishment is considered a legal remedy. If the grounds for the judgment show the extent of the advantage granted due to the length of the proceedings, the applicant may no longer claim further compensation in that regard. Under Article 34 of the Convention, the applicant cannot claim in this case that he is the victim of a violation of Article 6 § 1 of the Convention. [36] In some cases, the ECtHR no longer accepted complaints from applicants who had received such a remedy.[37] However, the reduction of the penalty must be apparent from the grounds of the judgment, even if they were made in abbreviated form.[38]

4. Remedies for the violation of the reasonable time requirement available to the Constitutional Court

The Fundamental Law is based on Article XXVIII (1), in contrast to Article 57 (1) of the Constitution, which was in force before 1 January 2012, and expressly enshrines the right to assess rights and obligations within a reasonable time. In view of this, the Constitutional Court has ruled that the right to adjudicate a legal dispute within a reasonable time falls within the scope of the rights guaranteed in the Fundamental Law, the violation of which may form the basis of a constitutional complaint.[39]

Following the entry into force of the Fundamental Law, several petitioners referred in their constitutional complaint to the protracted nature of the underlying litigation and, consequently, to the violation of their right to a decision within a reasonable time.

The Constitutional Court has mostly rejected complaints based on the violation of this fundamental right, e.g. for failure to exhaust objection as a remedy[40], or due to lack of competence.[41] Exceptionally, however, the Constitutional Court also investigated a violation of this sub-right and stated in the specific case that the prolongation of the main proceedings was caused to a large extent by objective factors independent of the acting bodies.[42]

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36 Somogyi v. Hungary App no5770/05 (ECtHR, 11 January 2011), para 31, Goldmann and Szénászky v. Hungary App no 17604/05 (ECtHR,30 November 2010), para 26, Földes and Földesné Hajlik v. Hungary App no 41463/02 (ECtHR 31 October 2006), para 24, Kalmar v. Hungary App no 32783/03 (ECtHR, 3 October 2006), para 27, Tamás Kovács v. Hungary App no 67660/01 (ECtHR, 28 September 2004), para 26

37 Csorba v. Hungary App no 944/12 (ECtHR, 23 June 2015), Lehel v. Hungary App no 8185/05 (ECtHR, 16 September 2008), Dányádi v. Hungary App no 10656/03 (ECtHR, 6 July 2006)

38 Bodor v. Hungary App no 31181/07 (ECtHR,14 June 2011), para 13

39 Decision 3174/2013. (IX.17.) AB, Statement of Reasons [18]

40 Decision 3309/2012. (XI.12.) AB, Statement of Reasons [5]

41 Decision 3174/2013. (IX.17.) AB, Statement of Reasons [20] - [21]

42 Decision 3115/2013. (VI.4.) AB, Statement of Reasons [30]

In its decision[43] the Constitutional Court stated that, as the main body for the protection of the Fundamental Law, it cannot effectively perform its fundamental rights protection task related to the reasonable time requirement, which is part of the right to a fair trial. The Constitutional Court does not have at its disposal a legal remedy for the damage caused. Nevertheless, in its decisions, the Constitutional Court generally drew attention to the fact that the complainant may bring a special claim for damages against the court in order to assert his right to a fair trial and to complete it within a reasonable time[44]. In its decision,[45] the Constitutional Court established a constitutional requirement, namely in connection with the application of Section 258 (3) e) of the old Criminal Code[46]. Accordingly, in applying the provision of the old Code referred to, the constitutional requirement arising from Article XXVIII (1) of the Fundamental Law is that if the court mitigates the criminal penalty imposed on the accused due to the protraction of the proceedings, the reasoning of its decision shall contain the fact of the length of the proceedings and, in that connection, that the penalty was reduced and the extent of the reduction.

According to the reasoning of the above-mentioned decision, the reasonable time requirement is a sub-right to a fair trial. Consequently, the constitutional approach of examining the whole and some of the parts of the court proceedings at the same time must be applied to the examination of this sub-right in order to establish the trial court's intention to adjudicate within a reasonable time. If it can be concluded from the acts of the examined court proceedings, from the history of the lawsuit, that the court did not keep this constitutional requirement in mind, the protraction of the given criminal proceedings, the court's inactivity – regardless of the duration of the procedure – could then be found. On this basis, the proceedings in a case initiated and closed very rapidly may be protracted if the facts of the criminal proceedings do not indicate the efforts of the trial court to reach a decision on the charge as soon as possible, bearing in mind the requirements of a fair trial. The duration of criminal proceedings, even if the Act on Criminal Procedure is complied with, violates Article XXVIII (1) of the Fundamental Law if there are unreasonable periods of inactivity attributable to the trial courts and the extreme length of the criminal proceedings is not justified by the complexity of the case. In the opinion of the Constitutional Court, however, the unconstitutionality arising from the protracted criminal proceedings can be remedied during the imposition of a sentence. If it is established from the reasoning of the judgment that the court has imposed a lesser punishment during the imposition of the sentence due to the passage of time, or applied other sanctions instead of imprisonment, the defendant's right to adjudication within a reasonable deadline could be no longer be a relevant ground for violation.

43 Decision 3024/2016. (II.23.) AB, Statement of Reasons [18]

44 Decision 3174/2013. (IX.17.) AB, Statement of Reasons [20] - [21]

45 Decision 2/2017 (II.10.) AB

46 Act XIX of 1998 on Criminal Procedure

In order to ensure that the purpose of reducing the sentence was to remedy the length of the proceedings can be clearly established for the accused from the reasoning of the judgment, the Constitutional Court considered it necessary to define a constitutional requirement related to the application of Section 258 (3) (e) of the old Criminal Code.[47] As a result, Section 564 (4), b) of the new Criminal Code already contains the requirement established by the decision of the Constitutional Court, so the legislator has already raised it to the level of law.

It has also been emphasised by law enforcement, the legislature and society that court proceedings should be completed within a reasonable time, precisely in order to ensure that the proceedings are not protracted and that there is no period of inactivity in the court proceedings and that putting the judgement in writing does not unduly increase the length of the procedure. The National Courts Office also prescribed measures to facilitate the completion of the proceedings within a reasonable time. Judges are also required to report on a monthly basis on setting the date of pending cases and recording the completed cases in writing.

The legislature has already set itself the objective of reducing the length of criminal proceedings to a reasonable period by amending a number of provisions of the old Criminal Code.

The old Criminal Code had the following methods serving the purpose of accelerating procedures:

- appointing the hearing quickly,
- maintaining the rules on priority cases,
- limiting the duration of pre-trial detention,
- indicating in the judgment that the proceedings were lengthy and that the court therefore assessed the lapse of time when imposing the sentence.

In 2014, the ECtHR had already found such kinds of violations of the Convention in 24 cases and more than 400 cases were pending before it on the date of the *Gazsó judgment*.[48] As a result, it was clear that there was it deemed a structural problem, for which there had not been an adequate domestic remedy. The ECtHR therefore applied in this regard the so-called pilot judgment procedure.

In its pilot judgment, the ECtHR ordered Hungary to establish a legal remedy providing for pecuniary compensation in all proceedings, including criminal proceedings.

5. Creating an effective domestic remedy

The pilot judgment procedure in *Gazsó v. Hungary* was made possible by the fact that, by ratifying the Convention, Hungary undertook to ensure the reasonable time requirement under Article 6 and to ensure an effective remedy in the event of a breach

47 Decision 2/2017. (II.10.) AB, Statement of Reasons [82], [88], [99] - [100]

48 Gazsó v. Hungary App no 48322/12 (ECtHR, 16 July 2015)

of this right. According to Article 13 of the Convention, the member states have an obligation to ensure that court proceedings are concluded within a reasonable time by establishing effective rules of procedure that ensure efficient and timely proceedings and by creating appropriate conditions for the courts to operate in, and providing adequate redress for damages caused by unreasonably long proceedings.

The pilot judgment procedure has been used as a specific form of procedure since the *Broniowski judgment*[49] but was introduced into Rule 61 of the ECHR Rules only on 21 February 2011. According to the procedure applied by the ECtHR, this new procedure may be used if, on the basis of the facts set out in an application, a structural or systemic deficiency in the legal order of the member state can be identified and a number of similar complaints can be expected. The pilot judgment procedure may be initiated by the parties, but the ECtHR may decide to apply it *ex officio* and if the ECtHR selects one or a few cases, the member state must deal with them as a matter of urgency, in accordance with Rule 41 of the Rules. In the case at hand, the ECtHR must identify the error or omission of national law that may give rise to mass infringement and indicate the remedies available to the state at fault, at national level, in order to comply with the judgment of the ECtHR. The ECtHR may also specify a time limit within which these measures must be taken. If the ECtHR finds that the state at fault has failed to do so, it has the right to continue the process before the ECtHR and decide on all pending proceedings.

In its judgement in a civil lawsuit,[50] the ECtHR found that the length of court proceedings and the lack of related legal remedies resulted from structural deficiencies in the domestic legal system. The ECtHR in this pilot judgement procedure, called on Hungary to establish a domestic remedy (or set of remedies) without delay, but no later than one year after the final judgment (16 October 2015). This domestic remedy had to address the protracted court proceedings in accordance with the Convention principles laid down in ECtHR case law. At the same time, the ECtHR postponed the examination of further applications submitted after the judgment became final.

Article 13 of the Convention allows member states to choose between expedited and ex post remedies, subject to the provisions of the Convention, but they must take into account the case law of the ECtHR and the recommendations of the Committee of Ministers of the Council of Europe. States may decide to combine the two remedies, and may introduce a so-called combined redress model.

In *Barta and Drajkó v. Hungary*[51] in connection with a criminal case and in *Bartha v. Hungary*[52] in connection with a civil case, the ECtHR also stated that, in Hungary, the expedited legal remedies (objection) in their current form are ineffective against the protraction of the procedure.

49 Broniowski and Others v. Poland App no 31443/96 (ECtHR, 22 June 2004)

50 Gazsó v. Hungary App no 48322/12 (ECtHR, 16 July 2015)

51 Barta and Drajkó v. Hungary App no 35729/12 (ECtHR, 17 December 2013)

52 Bartha v. Hungary App no 33486/07 (ECtHR, 25 March 2014)

Following the call of the ECtHR, it became necessary to rethink domestic compensation for delays in proceedings, to develop uniform substantive and procedural regulations that meet the requirements of actuality, speed and efficiency. In December 2015, the Government informed the Committee of Ministers that, according to professional resolutions, the new procedural codes would ensure the prompt and efficient conduct of court proceedings, and a new *sui generis* compensation procedure could be introduced in parallel. The Government informed the Committee of Ministers that the compensation procedure would follow the German model, but would not have retroactive effect for constitutional reasons. At its meeting on 8-10 March 2016, the Committee of Ministers welcomed the legislative intention of the Hungarian authorities. In November 2016, the Government again informed the Committee of Ministers of the implementation of the *Gazsó* judgment, the measures taken and planned so far and the timetable for implementation. The ECtHR did not consider the measures taken by the Hungarian Government in the recent period to be satisfactory, and expects the introduction of a compensatory remedy that will provide the applicants with prompt and adequate compensation. The matter shall be placed on the agenda by the Committee of Ministers until a solution has been reached.

The ECtHR expects the introduction of a compensatory remedy that will provide applicants with prompt and adequate compensation. The bill regulating the subject was submitted by the Government to the Parliament in October 2018[53] and its discussion has begun.

Important steps have already been taken with the adoption of the new rules on civil, criminal and administrative procedure. These laws entered into force on 1 January and 1 July 2018 and made a significant contribution to speeding up procedures.

The Hungarian codes of different procedures introduced a number of solutions aimed at completing the proceedings within a reasonable time. Act XXX of 2016 on Civil Procedure (hereinafter: "Code of Civil Procedure"), for example, divided the first-instance proceedings into two sections; with this solution it switched to a split-trial system and gave a greater role to the preparation of the lawsuit. The admission phase of the lawsuit focuses on determining the precise content of the legal dispute and defining its framework successfully, so that the substantive litigation stage can be conducted more efficiently and quickly. The claim must specify, in a manner that does not require further interpretation, the content and type of the legal protection against the defendant and the court decision requested by the plaintiff for this purpose. The plaintiff must file his claim in such a way that, if the claim is well-founded, the operative part of a sentence or a court order with the same content can be issued. The new Code of Civil Procedure intended to make not only the preparation of the lawsuit but also the other rules of litigation more effective and pursued a dual purpose. On the one hand, the Code ensures that the right to a remedy is properly exercised, and on

53 It has been waiting for the discussion of Parliament's Legislative Committee for two years (see Bill T/2923).

the other hand, it does not allow room for litigation in appeal proceedings. In order to achieve that objective, it defined the scope of the appellate court's power of review and, in that regard, also the mandatory content of the appeal, and provided that the appellate court, in principle, shall adjudicate appeals without a hearing.

Act CL of 2016 on General Administrative Procedure also introduces several new solutions to speed up the procedure. Such is the case, for example, at the beginning of the proceedings, if the administrative authority rejects the application. The authority shall reject the application if the legal conditions are missing for initiating the procedure, but also if the authority exercises its discretionary power and considers that the application must be rejected. The initiation of the procedure is simplified so that the method of communication can be chosen by the client (orally, in writing, electronically). By definition, electronic communication also serves the aim of acceleration. The determination of the types of administrative procedures and their deadlines also apply the principle of adjudication within a reasonable time (e. g. automatic procedure - 24 hours, summary procedure - 8 days, full procedure - 60 days).

The aim of the codification work of Act I of 2017 on Administrative Court Procedure was to enforce the principle of effective legal protection as widely as possible. It is very important to ensure effective legal protection in time: there is a need for rules that allow for more concentrated litigation and more opportunities for final settlement by the court. The aim is therefore to improve temporal efficiency by establishing a differentiated system of immediate remedies based on current judicial case law and by limiting the reference to new facts and evidence so that the administrative authorities' pre-litigation procedure takes precedence.

In the view of the legislator, temporal efficiency is counteracted by the transformation of court proceedings into second-instance administrative proceedings. In connection with this, the Act re-regulated the judicial appeal system: it provides a regular appeal against a decision of a court of first instance, and some judgments and orders can be appealed. In addition to the ordinary legal remedy (appeal), the Act allows for a limited number of extraordinary legal remedies. The possibility of review is limited to the minimum according to the constitutional criteria: the Curia of Hungary will accept the request for review only in cases in which it is justified by a deviation from the published judicial practice or uniformity decision of the Curia of Hungary or the necessity of a preliminary ruling procedure.

The Explanatory Memorandum to Act XC of 2017 on Criminal Procedure (hereinafter: "Code of Criminal Procedure") also sets out the legal solutions with which the legislator intends to achieve the goal of efficient criminal proceedings and to speed up the proceedings. Efforts to accelerate and "tighten up" the procedure and, at the same time, to keep a reasonable time, have become paramount at all stages of the criminal proceedings, with precise time limits for the proceedings and penalties for failure to comply with each time limit. The Code of Criminal Procedure places special emphasis on the cooperation of the defendant, which is already possible during

the investigation. In line with the reasonable time requirement and economical procedure, most European states already apply the principle of different treatment and the application of procedural rules in cases where the accused confesses to having committed the crime, in contrast to proceedings in which the accused does not admit his guilt. As to the investigation, the deadline was increased from 2 years to two and a half years and the investigation phase is separated into the stage of detection and the investigation stage. A completely new legal institution is the preparatory procedure, which, together with the aforementioned legal institutions, aims to prepare the court proceedings thoroughly. In the court phase, the mandatory preparatory meeting, which must be held within the time limit, essentially serves to concentrate the litigation, the responsibility for which is not only on the court and the prosecutor, but also the accused and the defence counsel, and it requires a decision on behalf of the defence on the tactics as well. The measures in force have consistently sought to speed up criminal proceedings in ordinary and extraordinary court proceedings following the investigation, in order to meet the requirements within a reasonable time as set out in Article XXVIII (1) of the Fundamental Law.