LEGAL REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME – MACEDONIAN PERSPECTIVE

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1. Introductory remarks

The development of the procedural law in the last few decades has been profoundly marked by the penetration of the idea of fairness and consequently by the affirmation of the concept of fair trial, as an aggregate notion of the basic principles of administration of justice, a notion which is articulated and realised through an essential minimum of procedural guaranties/standards, as permanent and invariable elements of the civilised system of the proper administration of justice[2]. Amongst them, the procedural guarantee for termination of the proceedings as promptly as possible or within reasonable time has fundamental meaning. Its conceptual substratum is the insistence that the subjects whose rights are protected in court proceedings should not be exposed to long-lasting uncertainty with regard to the final outcome of the proceedings, as well as their right to have their legal matters resolved in foreseeable and relatively predictable time limits. Excessive delays in the administration of justice constitute an important danger, in particular with regard to the rule of law.

Under the impact of numerous international documents, especially the European Convention for the Protection of Human Rights and Fundamental Freedoms[3], the standard of "a trial within a reasonable time" is a procedural ideal which models the procedural and, even more, the judicial system in each country. As a regulative rule with high level of abstraction, the standard of "a trial within a reasonable time" is a procedural principle - direction which should be followed by the legislator in the creation of procedural rules, but also direction for the courts in the process of implementation. Form the perspective of the subjects of the rights, the standard aggregates the legitimate right to have the proceedings for the protection of the rights terminated in time limit that precludes the unnecessary delays. It is generally accepted that the notion of reasonableness must reflect the necessary balance between expeditious proceedings and fair proceedings. The standard of "a trial within a reasonable time" affirms

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[2] As R. Summers, says: "Every legal process can be seen not only from the perspective of its result but also from the point of view of the process in itself". Thus, the process values can be characterized "to refer to standards of value by which we may judge a legal process to be good as a legal process, apart from any "good result efficacy" it may have". See R. Summers, "*Evaluating and Improving Legal Process - A Plea for "Process Values" (1974) 60 Cornell Law Review 1, p.1 and 3*.

[3] European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.11.1950, hereinafter shall be referred as ECHR.

the celerity of the proceedings to an extent that it excludes the unnecessary delays.[4]

On the other hand, the length of the proceedings is a very complex problem which many European States experience with different degrees of gravity: for some of them it is a generalised problem, a "systemic" one", whereas for others it must rather be seen as an occasional dysfunction of an otherwise effective system of administration of justice[5].

The first guarantee for the realization of the right to a trial without unnecesary delays is certainly the proper application of the procedural laws by the courts, as well as due diligence by the parties in the proceedings. These represent primary preconditions for timely realization of the right which is being decided in the proceedings. But, what happens when the application of the procedural laws does not give the expected results? The reasonable speed in taking procedural steps has to be provided by other procedural remedies. Therefore, a conclusion can be reached that the right to a trial within a reasonable time is an autonomous procedural right which *per se* deserves protection, irrespective of the protection of the right on which the court decides in the proceedings.

The European system for protection of human rights has not only influenced the national legal systems to proclaim the fundamental procedural right to a trial within a reasonable time (providing, in the same time, on supranational level, a procedure and sanctions in the cases of violations), but has also provided for an important impulse in the creation of effective domestic legal remedies for the protection of the right to a trial within a reasonable time. The development of the mechanism of protection of the right to a trial within a reasonable time in European context and particularly its current status and functioning in the Republic of Macedonia will be the object of our further analysis.

2. On the notion of "an effective legal remedy"

The establishment of an effective legal remedy before the national bodies/authorities for the protection of any right under the ECHR is an obligation for the Contracting States under the Article 13 of the ECHR:

„*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"*.

Although the effectiveness of human rights largely depends on the effectiveness of the remedies which are provided to redress their violation, almost two decades from the beginning of the

[4] See: C.H. van Rhee (ed.) The Law's delay, Essays on Undue Delay in Civil procedure, 2004, Intersentia, Antwerp - Oxford - New York.

[5] See: Draft Study on the effectiveness of national remedies in respect of excessive length of proceedings, European Commission for democracy through law (Venice Commission), Study no. 316/ 2004, Strasbourg, 8 December 2006.

application of the ECHR, the controlling bodies in Strasbourg had a rather indifferent position toward the application of this provision, avoiding to analyze and to interpret it, so that the provision became one of the most unclear provisions of the ECHR. At the beginning of the 1980s, in the decision rendered in *Silver and others case*[6], the European Court of Human Rights (hereinafter "ECtHR") has established several principles, whose realization is considered to be a necessary critical mass of preconditions for the applicability of Article 13 of ECHR. Pursuant to the Court's opinion, in cases „*where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress*". The term "national authority", "*may not necessarily be a judicial authority but, if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective"*. The Court has further considered that „*although no single remedy may itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so"*.[7]

In regard to the protection of the right to a trial within a reasonable time, for a long time within the European control mechanism there was a dominant position that the question of an effective legal remedy for the protection of this procedural right is absorbed in Article 6 paragraph 1, which requires a trial within a reasonable time and even provides for stricter guaranties than Article 13 of the ECHR[8]. The judgment rendered in *Kudla case*[9] is a turning-point in the practice of the European control mechanism, in a manner that, the ECtHR has for the first time simultaneously considered and found a violation of Article 6, as well as of Article 13 of the ECHR, taking the general position that Article 13 of the ECHR guaranties the right of effective legal remedy before a national authority for a violation of any right under the Article 6 of the ECHR, including the right to a trial within a reasonable time. It is said that "*the question of whether the applicant in a given case did benefit from trial within a reasonable time in the determination of civil rights and obligations or a criminal charge is a separate legal issue from that of whether there was available to the applicant under domestic law an effective remedy to ventilate a complaint on that ground.*".[10] On the other side, the increasing number of applications to the ECtHR in connection with unreasonable length of proceedings cast doubts as to the effectiveness of the existing national remedies.

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[6] *Silver and others v. United Kingdom, Application no. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, Judgment of 25.3.1983.*

[7] *Ibid, §113*.

[8] See: *Kadubec v. Slovakia, Judgment of 2.9.1998, Reports of Judgment and Decision 1998-VI* - "*The requirements of Article 13 are less strict then, and are here absorbed by those of Article 6*" or "*The role of Article 6§1 in relation to Article 13 is that of a lex specialis, the requirements of Article 13 being absorbed by those of Article 6§1*".

[9] *Kudla v. Poland,* Application no.30210/96, Judgment of 26.10.2000.

[10] *Ibid, § 147*.

Following the impetus given by the ECtHR in this judgment, the Committee of ministers of the Council of Europe has adopted the Recommendation Rec(2004)6 on the improvement of domestic remedies[11], which has emphasised the subsidiary character of the control mechanism in Strasbourg, with a recommendation to the member States to establish effective legal remedies for protection of the rights guaranteed by the ECHR in their national legal system, with particular emphasis to the right of a trial within a reasonable time[12]. According to this Recommendation, the member States should provide for domestic legal remedies that must be "effective" in law as well as in practice,[13] and, which is especially important, these remedies must deal with the substance of any "arguable claim" under the Convention and to grant appropriate redress for the violation suffered. Each member State has a discretionary power to choose the particular legal remedies: "*It is for member states to decide which system is most suited to ensuring the necessary protection of Convention rights, taking into consideration their constitutional traditions and particular circumstances.*"[14]

The fundamental meaning of the existence of a legal remedy for the protection of the right of a trial within a reasonable time is primarily its effectiveness in the course of the proceedings itself whose length/duration is brought into question. This means that the legal remedy is effective if it prevents the alleged violation or its continuation (*mechanism of preventing delays or accelerating proceedings*)[15]. However, the effectiveness of the legal remedy in not

[11] Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, 12 May 2004.

[12] The purpose of this Recommendation was to provide the future unloading of the ECtHR from the enormous influx of applications concerning violations of the Convention rights, especially from the cases referring to the same problem (*repetitive/clone cases*), such as the cases concerning the unreasonable delay of the court proceedings.

[13] According to the Recommendation, "*the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant; but it implies a certain minimum requirement of speediness".*

[14] For the different legal remedies in different member states see: C.H. van Rhee (ed.) The Law' s delay, Essays on Undue Delay in Civil procedure, 2004, Intersentia, Antwerp - Oxford - New York; A. Uzelac, Legal remedies for the violations of the right to a trial within a reasonable time in Croatia: in the quest for the Holy grail of effectiveness, Revista de Processo (RePro, Sao Paolo), 35:180/2010, p. 159-193 and, particularly, Draft Study on the effectiveness of national remedies in respect of excessive length of proceedings, European Commission for democracy through law (Venice Commission), Study no. 316/ 2004, Strasbourg, 8 December 2006.

[15] In *Apicella case,* the ECtHR clearly states that: "The best solution in absolute terms is indisputably, as in many spheres, prevention. As the Court has stated on many occasions, Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time… *Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution*". See, Apicella v. Italy, Application no. 64890/01, Judgment of 29.03.2006, §§ 72-80.

disputed even in cases when there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded (*mechanism of compensation*).[16] Also, in different national legal systems there can be several legal remedies for the protection of the right of a trial within a reasonable time, which individually might not be effective, but, altogether, they have that quality[17].

As a consequence of the subsidiary character of the Strasbourg control mechanism, the domestic legal remedy against the excessive length of the proceedings must be exhausted before initiating a procedure in Strasbourg. On the contrary, the application shall be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 of the ECHR. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case[18].

3. Establishing a legal remedy for the protection of the right to a trial within a reasonable time in the Republic of Macedonia

3.1. Short legal background. The detailed analysis of the constitutional and statutory framework of the right to a trial within a reasonable time in the Republic of Macedonia before the judiciary reforms initiated by the Constitutional Amendments of 2005 leads us to the conclusion that the provisions establishing the standard of a trial within a reasonable time in Macedonian legislation were *lex imperfectae*, meaning that there was no effective legal remedy for the violations of this fundamental procedural right.

According to the Law on the Courts of 1995[19], within the judicial/court administration in the Republic of Macedonia, there were certain mechanisms for accelerating the proceedings. Namely, in order to accelerate the proceedings, the parties had the possibility to address (to file a complaint) to the President of the court or to the Ministry of Justice, under Articles 76, 77 and 81 of the Law on the Courts. Since the *Janeva case*[20]*,* the ECtHR has taken the position that the stated

[16] Article 13 therefore offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudla case*, § 159).

[17] The ECtHR itself has adopted a directive approach with regard to the remedy which should be considered as effective within the meaning of Article 13 of the ECHR. It provided explicit indications concerning the characteristics which an effective domestic remedy for the length-of-proceedings should have. See Scordino v. Italy (No.1), Application No. 36813/97, Judgment of 29.3.2006, § 183.

[18] See: *Baumann v. France*, Application no. 33592/96, Judgment of 22. 5. 2001, § 47.

[19] Official Gazette of the Republic of Macedonia no.36/95, 45/95, 40/96, 60/96.

[20] See*: Janeva v. the FYR Macedonia*, Application no.58185/00, Admissibility decision of 23.10.2001. In this case a friendly settlement was

possibilities refer to the "*questions of the methods which might be used to accelerate the proceedings*", but they do not address the "*question which affects the problem of exhaustion of all legal remedies in the proceedings*"[21].

The key issue set before the ECtHR when deciding on the admissibility of this case was the following: does the Republic of Macedonia have efficient legal remedies for the acceleration of the proceedings which should be exhausted, before initiating a procedure in Strasbourg?

Analysing the existing legislation in the Republic of Macedonia, the ECtHR has reached a crucial conclusion that with regard to the length of the civil proceedings (and all other court proceedings accordingly) the issue of the methods permitting the applicants to obtain accelerated proceedings is not an issue that concerns the problem of exhaustion of the domestic legal remedies. In other words, the remedies called upon by the Government of the Republic of Macedonia (*requests for administrative supervision*) do not represent an effective legal remedy, as referred to in Article 13 of the ECHR.

The conclusion that there is no effective legal remedy for the protection of the right to a trial within a reasonable time in Macedonian legal system was reached by the ECtHR in the judgement on the merits of *Atanasović and others case*:[22]

"*The Court notes that the remedies cited by the Government, that is a request to the President of the Kumanovo Municipal Court, the Ministry of Justice and the Republican Judicial Council to speed up the proceedings, effectively consist of submitting a complaint to a supervisory organ with the suggestion that it make use of its powers if it sees fit to do so. If such an appeal is made, the supervisory organ might or might not take up the matter with the official against whom the complaint is directed if it considers that the complaint is not manifestly ill-founded. Otherwise, it will take no action whatsoever. If action is taken, they would exclusively involve the supervisory organ and the officials concerned. The applicants would not be a party to any proceedings and would only be informed of the way in which the supervisory organ has dealt with their complaint".*[23]

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reached and the Macedonian Government was obliged to pay 77,000 EUR to Ms Sofka Janeva, covering any pecuniary and non-pecuniary damage, as well as the costs (also in the domestic proceedings).

[21] In its communication to the ECtHR in relation to this dispute, the Representative of the Government of the Republic of Macedonia has categorically requested the Court to dismiss the complaint for non-exhaustion of the domestic legal remedies. It argued that, in accordance to the Law on Courts, in order to accelerate the proceedings, the applicant could address the President of the Court or the Ministry of Justice. More precisely, he could file a complaint to the President of the court or the Republican Judicial Council with respect to the behavior of the judge from the Municipal Court in Štip. Pursuant to the Government's opinion, these actions would have accelerated the course of the proceedings.

[22] *Atanasović and others v. FYR Macedonia*, Application no.13886/02, Judgment of 22.12.2005.

[23] Ibid, § 31.

Therefore, the ECtHR finds that the remedies referred to by the Government can not be considered to be effective legal remedies for the protection of the right to trial in a reasonable time and consequently finds a violation of Article 13 of ECHR[24].

3.2. A step forward. Due to this, the realisation of the obligation to introduce effective legal remedy/remedies for the protection of the right to a trial within a reasonable time in domestic legal system was one of the priorities in the course of the judiciary reform which has begun in 2005. Set before the dilemma which model of legal remedy for the protection of the right to a trial within a reasonable time should be accepted, the creators of the reform have chosen the model of legal remedy within the regular judicial system which provides for the adequate compensation of the damages caused by the delay of the proceedings.

Article 36 of the new Law on the Courts[25] states that the party who considers that the competent court has breached the right to a trial within a reasonable time, has a right to submit a request for protection of that right to the immediately higher court (§1). The immediately higher court acts upon the request within six months of its submission and decides whether the lower court has breached the right to trial in a reasonable time (§2). If the immediately higher court finds that there was a breach of the right to a trial within a reasonable time, it shall bring a decision to award the applicant a fair compensation (§3). The fair compensation shall be borne by the court budget (§ 4).

The above-mentioned provisions of the Law on the Courts clearly state that, from the comparative perspective, our legislator has chosen the legal remedy which is closest to the similar one set in the Italian judicial system[26], and, thus (partly) satisfies the criteria of the ECtHR concerning to the requirements of Article 13 of the ECHR[27]. Nevertheless, from the very first moment of enacting this Law, a lot of questions arise: whether the choice is the most rational? Was an additional enhancing of the chosen procedural model needed? Would it have been more rational to introduce the institute of constitutional complaint for the protection of the right to trial in a reasonable time, etc?

At first glance, it was expected that in profiling of the legal remedy the legislator did not choose the possibility to secure the mechanism of accelerating the proceedings[28] through the same legal

[24] The ECtHR has taken the identical position in several other cases. See, e.g. *Kostovska v. FYR Macedonia*, Application no. 44353/02, Judgement of 15.6.2006, *Rizova v. FYR Macedonia*, Application no. 41228/02, Judgement of 6.7.2006.

[25] Official Gazette of the Republic of Macedonia, no.58/2006.

[26] See *Pinto Legge, no.89, 24.03 2001.*

[27] In *Brusco v. Italy* (dec.), Application no. 69789/01, ECHR 2001-IX, ECtHR has already held that the remedy before the courts of appeal introduced by the Pinto Act was accessible and that there was no reason to question its effectiveness.

[28] Probably, the reasoning was that the previous novelty in the procedural legislation in direction of accelerating the proceedings is *per se* sufficient guarantee that the application of the new procedural rules will secure a reasonable speed in the acting, thus making unnecessary the additional procedural remedies.

remedy following, for example Austrian *Fristsetzungsantrag*[29]. The scholars have pointed out that it might have been a better solution if the introduced legal remedy had been strengthened in the following manner: while the proceedings are still pending and the party considers that there is an unreasonable delay in taking of a particular procedural step (for example, holding a hearing, obtaining an expert's report, issuing another necessary order or taking an act which the concerned authority has failed to take), he/she can file a proposal to the higher court (through the court before which the procedure is pending) for determining a time limit in which the procedural step should be conducted. The court before which the procedure is pending would have two possibilities: either to take the procedural step in a certain time limit (not longer than 30 days) or, if it does not want or cannot take the procedural step (for example, when it comes to expertise), to forward the proposal to the higher court for decision. The court before which the proceedings are pending would be obligated to give an appropriate explanation for the delay of the proceedings. The higher court would decide in an urgent procedure, and if it finds that the proposal is founded, it would determine a time limit in which the step should be taken[30]. This scholar's position was based on ECtHR opinion that a combined remedy which unites expediting and compensatory relief is the most effective one[31].

On the other hand, the scholars had also pointed to several open questions which endangered the practical effectiveness of the established legal remedy for the fair compensation in cases of violation of reasonable time standard. Namely, it was obvious that the law was not completely precise when determining the essential elements of this legal remedy. For example, it was not determined when the request for protection of the right to a trial within a reasonable time can be submitted: only in the course of the proceedings, or after its termination, and, accordingly, in which time limit after the termination. It was also unclear what is included in the fair compensation: material or non-material damage, or both. Furthermore, the procedure for deciding upon these requests was not regulated etc[32]. All these shortcomings, practical problems and doubts became visible when the new legal remedy was put into effect (1.1.2007). The Supreme Court itself came out with a report in which the lack of clarity of the 2006 Law and the effectiveness of the remedy were criticised.

As a direct consequence of this status of Macedonian legislature, while deciding on the question of (non)exhaustion of domestic remedies in *Parizov case,*[33] the ECtHR found that the

[29] See § 91 of Austrian *Gerichtsorganisationsgesetz.*

[30] See: Т. Зороска – Камиловска, Траењето на парничната постапка и правото на судење во разумен рок (докторска дисертација, необјавена), Скопје, 2006, стр. 421.

[31] See the above-mentioned *Apicella case,* §§ 72-80 and also Cocchiarella v. Italy, Application no. 64886/2001, Judgment of 29.3.2006.

[32] See: Т. Зороска – Камиловска, Процесни средства за заштита на правото на судење во разумен рок, Евродијалог, 9/2007, Студентски збор, Скопје, стр. 133 -153.

[33] *Parizov v. FYR Macedonia*, Application no. 14258/03, Judgment of 7.2.2008.

remedy against the excessive length of the proceedings which was introduced by the 2006 Act and became operational on 1 January 2007 can not be considered as effective one in practise[34] (since no court decision has been taken, although more than twelve months have elapsed after the introduction of the remedy). Thus, the Court considers that it would be disproportionate to require the applicant to try that remedy[35].

3.3. Another step forward. The Macedonian Government decided to submit a proposal for changing the provisions concerning the legal remedy in cases of violation of reasonable time standard in 2008. The novelties of the Law on the Courts were enacted in March 2008[36] revising, among others, the Article 36 of this Law.

The fundamental novelty is the establishment of the exclusive competence of the Supreme Court of the Republic of Macedonia for deciding upon the requests for protection of the right of a trial within a reasonable time. Several other provisions are added to the Article 36: *the first one* prescribes the time limit for submitting the request - in the course of the proceedings or not later than six months after the court decision becomes final - so the remedy is available both for proceedings that have already ended and for those that are still pending; *second,* the content of the request for protection is determined;[37] *third*, the duration of the proceedings before the

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[34] See, for example, among others, *Horvat v. Croatia*, *Application no. 51585/99, Judgment of 26.7.2001,* §§ 37-39, where the ECtHR held that a national "complaint about delays" must not be merely theoretical; there must exist sufficient case-law proving that the application can actually result in the acceleration of a procedure or in adequate redress.

[35] In its judgment "*the Court notes*, *first, that section 36 of the 2006 Act provides for a compensatory remedy - a request for just satisfaction - through which a party may, where appropriate, be awarded just satisfaction for any non-pecuniary and pecuniary damage sustained. A compensatory remedy is, without doubt, an appropriate means of redressing a violation that has already occurred (see Scordino v. Italy (no. 1) [GC], no. 36813/97, § 187, ECHR 2006; Mifsud v. France (dec.), no. 57220/00, § 17, 11 September 2002; Kudła, §§ 158 and 159, cited above*).

The Court further observed that the expression "the court considers the application within six months" is susceptible to various interpretations (see, mutatis mutandis, Horvat v. Croatia, no. 51585/99, § 43, ECHR 2001-VIII). *It remains open to speculation whether the proceedings upon such application should terminate within that time-limit*. *In addition, the 2006 Act defines two courts which may decide upon such remedy: the immediately higher court and the Supreme Court. It does not specify which court would be competent to decide if a case is pending before the Supreme Court, as it is in the present case…. Even though the Court accepts that statutes cannot be absolutely precise and that the interpretation and application of such provisions depend on practice* (see, mutatis mutandis, Kokkinakis v. Greece, judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40), *the fact remains that no court decision has been taken, although more than twelve months have elapsed after the introduction of the remedy*. *The absence of any domestic case-law appears to confirm that ambiguity"*.

[36] Official Gazette of the Republic of Macedonia, no. 35/2008.

[37] The complaint shall contain: information about the claimant and his or her representative, information about the case and proceedings complained of, indication of the reasons for the alleged violation of the right to a hearing

Supreme Court is terminated to six months from submitting the request; *fourth*, while deciding upon the request the Supreme Court has to take into consideration the rules and principles of ECHR, especially the complexity of the case, the conduct of the applicant and the conduct of the court in question;[38] *fifth*, if the Supreme Court finds the violation of the right of a trial within a reasonable time, the Court shall set (with a decision) the time limit for the court before which the impugned proceedings is pending to decide on the right, obligation, or criminal responsibility of the claimant and award just compensation for the claimant in respect of the violation found; *sixth*, the compensation shall be paid from the Court budget within a term of three months after the Supreme Court's decision becomes final; and *seventh*, several issues of the procedure before the Supreme Court are prescribed.[39]

The question wheather the revised legal remedy for protection of the right of a trial within a reasonable time is effective one was soon raised before the ECtHR. In *Šurbanoska and others case*[40] the ECtHR found that the length remedy introduced by the 2006 Act and amended by the 2008 Act is considered to be effective within the meaning of Article 35 of the ECHR. Analysing the whole background of this case, the ECtHR stated that it is satisfied with the Supreme Court's decision of 20 October 2008 which provided the applicants with sufficient and appropriate redress capable of removing their victim status within the meaning of Article 34 of the Convention. In addition to awarding just satisfaction, the Supreme Court set the three month time-limit for the Bitola Court of Appeal to decide the applicants' claim in the substantive proceedings, which the latter court had complied with.[41]

After this positive reaction of the ECtHR, the Law on the Courts was amended once again in 2010[42]. Namely, new provisions

within a reasonable time, any claim for just satisfaction and the signature of the claimant (Art.36/3).

[38] It is obvious that the legislator has failed to mention the other relevant criterion for assessing the reasonableness of the length of proceedings - what was at stake for the applicant in the dispute. As we are familiar with the Supreme Court's practise, we may conclude that this criterion falls under "the conduct of the applicant".

[39] The new article 36-a reads as follows:

"(1) After receiving the request from the article 36 § 1 of this law, the Supreme Court shall immediately or within 15 day at the most, ask the first instance court for the copy of the documents from the relevant file and if necessary, shall ask the higher court to indicate the reasons for the duration of the proceedings pending before it.

(2) A three-judge panel of the Supreme Court decides upon the request from the article 36 § 1 of this law in a non-public session, but the Court could decide to hear the applicant and the representative of the court concerned.

(3) Within 8 days after receipt, the party concerned can appeal against the panel's decision before the Supreme Court, which decides in accordance with article 35 § 1 of this law."

[40] Šurbanoska and others v. FYR Macedonia, Decision as to the admissibility of Application no. 36665/03 of 31.8.2010.

[41] *Ibid*, §§ 39 and 44.

[42] Official Gazette of the Republic of Macedonia, no. 150/10.

concerning the execution of the Supreme Court's decisions for payment of compensation were added in order to make this mechanism practically more effective. With these amendments, the legislative process for establishing the effective legal remedy for violations of reasonable time standard was encircled.

4. Some aspects of the practical implementation of the legal remedy for violation of a reasonable time standard

According to the available statistical data on the number of cases and their outcome, the Supreme Court of the Republic of Macedonia has received 828 requests for length of proceedings protection for the period 1.1.2007 - 15.3.2011. Out of these, 741 requests concern the civil proceedings, 147 concern the criminal proceedings and 90 concern the administrative proceedings. In 657 of these cases, the decisions of the Supreme Court became final, with the following outcome:

- in 170 cases, the requests are rejected as unfounded;
- in 218 cases, the requests are accepted;
- in 266 cases, the requests are declared inadmissible[43] and
- 3 of the cases were decided differently[44].

Although there are no serious studies or other research that could objectively evaluate the Supreme Court's case-law, it seems that the ECtHR jurisprudence has had a great impact in the Supreme Court's daily dealing with these cases. There are no significant divergence between the Supreme Court's case-law and Strasbourg Court jurisprudence.

Since its earlier cases, the Supreme Court began to take into consideration the criteria that the ECtHR has established for assessing the reasonableness of the length of proceedings: complexity of the case, the conduct of the applicant and the conduct of the court/courts in question, applying them in every single Court's decision. We will not make any further comments on this question.

In this occasion, our analysis will be limited to several issues concerning the Supreme Court's case-law: *first,* the sphere of applicability of the length-of- proceedings-remedy; *second*, the Court's assessment of excessive length of proceedings; *third*, the effectiveness of the orders to expedite proceedings and *fourth*, the sufficiency of the amount of just compensation.

Soon after the amended Law was put into effect, the Supreme Court clearly indicated that the length-of-proceedings- remedy applies only to the violations of the reasonable time standard in court proceedings (civil, criminal, administrative disputes, etc), but it is not available for violation of this standard in administrative proceedings.

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[43] As having been submitted out of time, due to lack of capacity to sue or as having been incomplete, or as it is challenging the legality of the rendered court decision. On the later, see: Решение на Врховен суд на РМ, ПСРР. бр. 57/09.

[44] Judge N. Nikolovski, The Right to a fair trial, Application of the principles and standards determined with Article 6 of the ECHR - a right to a trial within a reasonable time period, Delovno pravo, Edition of law theory and practice, No. 24/2011, p.77.

Regarding the sphere of applicability of the length-of-proceedings-remedy, the Supreme Court states that "*the request for protection of the right of a trial within a reasonable time is an institute established by Law on the Courts, which provides the protection of such a right violated by the competent court, i.e. when the violation is carried out in court proceedings, so the applicant has no right to apply for protection according to Art. 36, para.1 of the Law on the Courts, when the proceedings is before the Commission for denationalization*"[45] (which is an administrative body). Still, the duration of the administrative stages of the proceedings was taken into consideration by the Supreme Court when assessing the reasonableness of the overall length in the cases when the administrative proceedings preceded the recourse for administrative dispute to a court[46].

It is well known that the ECtHR has established the fundamental principal that *"the resonableness of the duration of proceedings covered by Article 6 of ECHR must be assessed in each case according to its circumstances"*. The Supreme Court applies this principle and on account of its relativity there is no precisely fixed time period that should always be considered as reasonable or excessive one. For example, the Supreme Court considers that "the period of 10 years and 10 months for the civil proceedings while 34 court hearings were held is violation of a right to a trial within a reasonable time"[47]. On the other hand, the period of 2 years and 7 months in the proceedings for disturbing possession is not considered to be an excessive one, although, according to the Law on Civil Proceedings, this procedure is urgent and it has to be terminated in 6 months after lodging the action[48].

When the effectiveness of the orders to expedite proceedings is concerned, it seems that it is generally endangered since in the majority of cases, when the Supreme Court set a time limit for decision (which is from 3 to 6 months depending of the complexity of the case and the stage of the proceedings) the court in question did not comply with it. Namely, according to the available statistical data, among 87 cases when the Supreme Court set a time limit for decision, the courts in question complied with the Supreme Court orders only in 36 cases[49].

With regard to the sufficiency of the amount of just compensation, we consider it necessary to point out that in the ECtHR jurisprudence, the amount of compensation that the member States should afford to the victims of the violation of a reasonable time

[45] See: Решение на Врховен суд на РМ, ПСРР. бр. 48/2009.
[46] See: Решение на Врховен суд на РМ, ПСРР. бр. 67/2009.
[47] See: Решение на Врховен суд на РМ, ПСРР. Бр.106/08 - "*although the claimants' – applicants' behavior contributed to the duration of eleven years of the civil proceedings, abusing his rights provided for in Law on Civil Proceedings, and at the same time the respondent has also a contribution, due to his absence from hearings, it is court omission for not using its authority given with the Law on Civil Proceedings, and thus the Supreme Court found the violation of the right to a trial within a reasonable time.*"
[48] See: Решение на Врховен суд на РМ. ПСРР. Бр.131/09.
[49] See: Judge N. Nikolovski, The Right to a fair trial, p. 77.

standard is not strictly determined. It is accepted that the member States enjoy certain discretion in setting the amount of the compensation and it has to be in line with the general economic and living standard in the respective state. The amount of compensation awarded under the domestic remedy has already been subject to assessment of the ECtHR: whether the amount was appropriate and sufficient in the light of the principles established in the ECtHR case - law. In *Scordino case*[50], the ECtHR has clearly stated that "*the Court can also perfectly well accept that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, will award amounts which - while being lower than those awarded by the Court - are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly"*[51].

According to the Information on the Supreme Court's jurisprudence in "length-of proceedings" cases submitted by the Macedonian Government in *Šurbanoska and others case*: "*In cases where a violation of the "reasonable time" requirement was found, the Supreme Court awarded just satisfaction, the amount of which was in the range of EUR 80 (PSRR.no.86/08) and EUR 4.000 (the applicants' case)"*[52]. Furthermore, the ECtHR considers that "only in a very limited number of cases was the level of just satisfaction awarded by the Supreme Court acceptable, while in the vast majority of cases the awards were below or even far below the Court's standards". Still, in *Šurbanoska and others case*, the Court is satisfied that the amount awarded to the applicants is not manifestly unreasonable, having in mind what the Court generally awards in similar cases against the respondent State.

5. Conclusion

Members States of the Council of Europe have obligations with regard to the length of proceedings stemming not only from Article 6 § 1 but also from Article 13 of the ECHR. The international guarantee of an effective legal remedy, including the length-of proceedings-remedy, implies that a State has the primary duty to protect a right to a trial within a reasonable time first within its own legal system. As a consequence, the ECtHR exerts its supervisory role only after the domestic remedies have been exhausted or when the domestic remedies are unavailable or ineffective.

Certainly, the demands for introducing an efficient legal remedy for the protection of the right to a trial in a reasonable time in member States arise not only due to the respect toward the European control mechanism i.e. the ECtHR and the authority of its decisions, but primarily due to the interests of their own citizens for the proper (and timely) administration of justice.

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[50] Scordino v. Italy (No.1), Application no. 36813/97, Judgment of 29.3.2006.

[51] *Ibid*, §206.

[52] See: Šurbanoska and others v. FYR Macedonia, Decision as to the admissibility of Application no. 36665/03, § 24.

Generally speaking, at this moment, the model of remedy that has been established in Macedonian legal system seems to be satisfactory, both from the internal and the external perspective. It combines the mechanism of preventing delays or accelerating proceedings and the mechanism of compensation. Although there have been reproaches that the remedy is still ineffective and insufficient, proposing the possible improvements in its availability and effectiveness must be a result of serious studies, rather than provisory and partial solutions.

Selected bibliography:

Applying and supervising the ECHR, *The improvement of domestic remedies with particular emphasis on cases of unreasonable length of proceedings*, Directorate General of Human Rights, Council of Europe, 2006.

A. Uzelac, *Legal remedies for the violations of the right to a trial within a reasonable time in Croatia: in the quest for the holy grail of effectiveness,* Revista de Processo (RePro, Sao Paolo), 35:180/2010, p. 159-193.

C.H. van Rhee (ed.), *The Law' s delay, Essays on Undue Delay in Civil procedure*, 2004, Intersentia, Antwerp - Oxford - New York.

Committee of Ministers of the Council of Europe, Res DH (97)336, *Length of civil proceedings in Italy: supplementary measures of a general character*, 27 May 1997.

Draft Study on the effectiveness of national remedies in respect of excessive length of proceedings, European Commission for democracy through law (Venice Commission), Study no. 316/ 2004, Strasbourg, 8 December 2006.

European Commission for the Efficiency of Justice (CEPEJ), *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, by Ms Françoise Calvez, Judge (France), adopted by the CEPEJ at its 8th plenary meeting (Strasbourg, 6-8 December 2006).

I. Perin Tomičić*, Zaštita prava na suđenje u razumnom roku u Republici Hrvatskoj s osobitim osvrtom na problem okončanih predmeta,* Zbornik Pravnog Fakulteta Sveučilišta u Rijeci (1991) v.28, br.2 1353- 1375 (2007).

Jerry L. Mashaw, "*The Management Side of Due Process: Some Theoretical and Litigation Notes On the Assurance of Accuracy, Fairness, and Timeliness in the Adjudication of Social Welfare Claims*", Cornell Law Review*,* 59, 772/1974.

Judge N. Nikolovski, The Right to a fair trial, Application of the principles and standards determined with Article 6 of the ECHR - a right to a trial within a reasonable time period, Delovno pravo, Edition of law theory and practice, No. 24/2011.

R. Summers, *"Evaluating and Improving Legal Process – A Plea for "Process Values"' (1974) 60 Cornell Law Review 1.*

Т. Зороска – Камиловска, Траењето на парничната постапка и правото на судење во разумен рок (докторска дисертација, необјавена), Скопје, 2006.

Т. Зороска – Камиловска, Процесни средства за заштита на правото на судење во разумен рок, Евродијалог, 9/2007, Студентски збор, Скопје, стр. 133-153.