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**TITLE**

***ARE THERE EFFECTIVE REMEDIES IN CASE OF THE BREACH OF THE RIGHT TO A FAIR TRIAL WITHIN A REASONABLE TIME UNDER ARMENIAN LEGISLATION?***


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## LIST OF ABBREVIATIONS

| | |
|---|---|
| **Convention** | the European Convention on the Protection of Human Rights and Fundamental Freedoms (4 November 1950) |
| **ECHR or Court** | the European Court of Human Rights |
| **CEPEJ** | the European Commission for the Efficiency of Justice |
| **Venice Commission** | the European Commission for Democracy through Law |
| **RA** | the Republic of Armenia |
| **Ombudsman** | the Human Rights Defender of the Republic of Armenia |
| **Report** | The ad hoc public report of the Human Rights Defender of the Republic of Armenia regarding the absence of recovery measures as to the breaches of the right to a trial within a reasonable time (2020) |



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## INTRODUCTION

In the era of globalization and harmonization of national legal systems with international law, the rights and freedoms acquire a new role and content. The implementation of international standards in domestic legislation requires the clarification of legal sphere of each state and features thereof. One of the rights ensured by international agreements and national legislation is a right to a fair trial.

The right to a fair trial as such consists of attributes (elements) imposing a positive obligation on states to provide, among others, the examination of cases within a reasonable time and granting individuals the right to be heard in due timeframes. Hence, one of the vital attributes of this right is a trial in a reasonable time.

However, the mere declaration of speedy trial is not sufficient to ensure its implementation in judicial practice. The said guarantee shall not be declaratory or illusory, but practical and enforceable[1]. Thus, in order to provide the practical administration of justice without excessive lengths, relevant standards should be met.

These standards include, inter alia, the effective remedies in case of a breach of a trial within a reasonable time. According to Articles 1 and 13 of the Convention, the states are obliged to ensure the enjoyment of all rights and freedoms enshrined by the Convention and envisage effective (both in law and in practice[2]) remedies in case of violations.

The ECHR case-law, the CEPEJ and the Venice Commission indicate, however, that states do not always define and provide effective remedies at the domestic level, thereby breaching Articles 6 and 13. That is why the huge portion of applications lodged to ECHR relate to Article 6 violations (including the breach of a reasonable time requirement).

Taking into account the above, this master's paper is dedicated to the illustration of the essence and content of the reasonable time requirement. However, considering the scope and limitations of the paper, the **subject matter (problem)** shall primarily be the analysis of the

[1] *Airey v. Ireland,* application no. 6289/73, 9 October 1979, ECHR, *Perez v. France*, application no. 47287/99, 12 February 2004, ECHR.
[2] *Ilhan v. Turkey,* application no. 22277/93, 27 June 2000, ECHR.



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remedies in case of breach of a reasonable time requirement and the effectiveness thereof in the ECHR and Armenian context.

The comprehensive and thorough research makes it clear that Armenian legislation sets forth some remedies for a speedy trial, however, they are not fully in line with current international standards. Despite these measures, the Armenian judicial practice in day-to-day examination of cases faces this problem. Hence, the remedial measures as to excessive proceedings are insufficient and need further amendments. The above justifies and improves the **significance** of the selection of the paper's topic.

The paper aims to figure out the international (the ECHR) and Armenian practice concerning the remedies for breaches of a reasonable time requirement. To achieve this aim, the following **objectives** have been set forth:

a) to clarify the essence and content of the reasonable time requirement,

b) to present the ECHR applicable standards as to the calculation and criteria of the reasonable time requirement,

c) to elucidate the effective remedies accepted by the ECHR, the CEPEJ and the Venice Commission,

d) to illustrate the respective legal provisions and practice in Armenian legal system,

e) to make proposals on how to fix problematic issues concerned.

Master's paper encompasses the following **methodology**: the cognitive method, the comparative method, content analysis, interviews with experts in the field. Described methods are to provide the full picture of the problems at stake.

Considering the standards for papers, **the scope of this paper is limited** to applicable ECHR and Armenian legislation/practice. However, some international tools (the CEPEJ, the Venice Commission) and practice are also taken into account during the research of the problem.

This paper consists of an introduction, two chapters, a conclusion, and a bibliography. The **Introduction** highlights the primary problem of the paper and the background thereof, provides a brief answer to the issue concerned, elucidates the methods of research, justifies the significance of the topic's selection, as well as the scope and limitations of the paper. **Chapter 1** presents the essence and content of the reasonable time requirement. **Subchapter 1** presents a general overview of the reasonable time requirement. **Subchapter 2** covers the



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calculation and criteria of the reasonable time requirement. **Chapter 2** illustrates the remedies in case of the breach of the reasonable time requirement. **Subchapter 1 and Subchapter 2** respectively present the remedial measures in international (ECHR) and Armenian contexts. The **Conclusion** succinctly outlines the main findings of the research. **Bibliography** listing all the sources used for the paper follows the Conclusion.

***Justice delayed is justice denied***

## CHAPTER 1

## THE REASONABLE TIME REQUIREMENT OF THE FAIR TRIAL

### 1.1 The general overview of the reasonable time requirement

The right to a fair trial is one of the fundamental and inalienable rights of each individual seeking to exercise, restore and protect his/her rights and legitimate interests. The roots of the said right go back to the international agreements[3] of the last century enshrining the essence and attributes thereof. Afterward it started to be implemented by the states and exercised both on international and national levels.

Like many other rights, the right to a fair trial is a complex one, i.e. it encompasses certain elements (attributes) inherent thereto. *"Article 6 of the Convention enunciates rights which are distinct, but stem from the same basic idea and which, taken together, make up a single right: thus the right to a court is coupled with a string of guarantees laid down … as regards both the organization and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing"*[4].

Initially, it included not all the standards that are currently envisaged in international instruments (some of them were defined or evolved afterward). Besides, the scope of the

[3] Article 10 of the Universal Declaration of Human Rights, 10 December 1948, https://www.un.org/en/universal-declaration-human-rights/, Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf, Article 14 of the International Covenant on Civil and Political Rights, 16 December 1966, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, Article 8 of the American Convention on Human Rights, 22 November 1969, https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm, Article 7 of the African Charter on Human and Peoples' Rights, 01 June 1981, https://www.achpr.org/legalinstruments/detail?id=49.

[4] *Golder v. UK*, application no. 4451/70, 21 February 1975, ECHR.



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proceedings to be covered by those international conventions was limited (e.g. Article 6 of the Convention: civil rights and obligations or any criminal charge).

The further developments in the international legal system elucidate that the right to a fair trial bore respective amendments through its practical application and relevant case-law. Considering the existence and functioning of the ECHR, the right to a fair trial obtained a new role and content. In other words, Article 6 right of the Convention has been interpreted in the light of present-day conditions[5] and absorbed wider scope of proceedings.

Along with other elements of the right to a fair trial, the reasonable time requirement underlines the importance of administering justice without delays which might jeopardize its effectiveness and credibility[6]. Moreover, excessive delays in the administration of justice constitute a danger for the respect of the rule of law[7]. Besides, in each specific case it is the state's duty to provide for proceedings in reasonable timeframes.

The core meaning of the due process is the parties' practical and effective right to claim the examination and settlement of his or her case without undue delays. Judicial proceedings may not be pursued ***ad infinitum***, not even when this prolongation may eventually lead to substantive justice. Therefore, decisions must at some foreseeable point become final[8].

In sum, each case must be processed within an optimum timescale. The CEPEJ places great importance on the ***foreseeability*** of such a timeframe. Namely, "*one of the most awkward problems for court users is that they are unable to predict when proceedings will end. Users need foreseeable proceedings (from the outset) as much as optimum time. However, it must be noted that a foreseeable time-limit is not* ***per se*** *an acceptable time-limit.*"[9]

In general, the trial within a reasonable time cannot be an end itself and be isolated from other attributes thereof. The notion of reasonableness must reflect the necessary balance

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[5] Ivana Roagna, *The Right to Trial within Reasonable Time under Article 6 ECHR, A Practical Handbook*, pg. 7 (2018).

[6] *Vernillo v. France*, application no. 11889/85, 20 February 1991, ECHR, *Moreiro de Azevedo v. Portugal*, application no.11296/84, 23 October 1990, ECHR.

[7] European Commission for Democracy through Law (Venice Commission), Report on the effectiveness of national remedies in respect of excessive length of proceedings (adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006), Strasbourg, 3 April 2007, Study no. 316/2004), CDL-AD (2006)036rev5, pg. 5.

[8] *Id.,* pg. 6.

[9] European Commission for the Efficiency of Justice (CEPEJ), A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe, Framework Program, CEPEJ (2004)19rev2, Line of Action 3.



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between ***expeditious*** proceedings and ***fair*** proceedings[10]. A careful balance needs to be struck between procedural safeguards which necessarily entail the existence of lengths that cannot be reduced, and a concern for prompt justice[11].

Celerity must not be sought to the detriment of the good administration of justice[12]. In the first place, the fairness of the proceedings needs to be ensured: the other guarantees implied in Article 6 of the Convention, must not be undermined or affected by rushed conduct of the procedure[13]. Accordingly, the fair equilibrium of Article 6 elements, as a whole, may ensure the effective and speedy proceedings.

Moreover, the violation of the reasonable time requirement may have an adverse effect on other rights enshrined by the Convention. Particularly, the failure to administer justice in line with Article 6 of the Convention may result in breaches of Articles 3, 5, 6, 8, 14 or Article 1 of Protocol N1 rights[14].

Summing up the above, the right to a trial within a reasonable time is of utmost importance in the administration of justice (judicial proceedings) and is closely connected with other elements (attributes) of the fair trial. Meanwhile, the speedy and due proceedings shall be in fair balance with other rights of the Convention in order to prevent the violation of those rights.

### 1.2 The calculation and criteria of the reasonable time requirement

Before the analysis of the standards of a reasonable time, it should be underlined that they are applicable to civil and criminal proceedings. However, the ECHR case-law has expanded the scope and currently, it includes certain disciplinary and administrative[15] cases, being qualified as a "civil" or "criminal" pursuant to the ECHR case-law. Thus, the calculation and criteria regarding the speedy proceedings have a wider application in practice.

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[10] *Nideröst-Huber v. Switzerland*, application no. 18990/92, 18 February 1997, ECHR, *Acquaviva v. France*, application no.19248/91, 21 November 1995, ECHR.
[11] *Supra* 9, Third principle.
[12] *Gast and Popp v. Germany*, application no. 29357/95, 25 February 2005, ECHR.
[13] *Supra* 7, pg. 6.
[14] *Labita v. Italy*, application no. 26772/95, 6 April 2000, ECHR, *W. v. United Kingdom*, application no. 9749/82, 8 July 1987, ECHR, *supra* 5, pg. 44-47.
[15] *Engel and others v. the Netherlands*, application no. 5100/71, 8 June 1976, ECHR, *Öztürk v. Germany*, application no. 8544/79, 21 February 1984, ECHR.



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- **Calculation**

When assessing the reasonableness of proceedings, the courts shall correctly determine the starting point (**dies a quo**) and the end (**dies ad quem**) of the period to be considered[16]. Depending on the nature of the proceeding (civil or criminal), the calculation method seems to be different. The clarification thereof is the crucial part of the calculation and the objective basis for further assessments (according to the criteria defined by the ECHR).

- **The starting point (dies a quo)**

In **civil** proceedings time, as a rule, begins to run from the moment the action was brought before the competent court[17].

The ECHR can take as the starting point the date of a preliminary application to an **administrative** authority when this is a prerequisite for the commencement of proceedings[18].

With regard to **criminal** proceedings, the period to be taken into consideration begins on the day on which a person is **"charged"**, which has an autonomous and substantive rather than a formal meaning.[19] Pursuant to the ECHR case-law, the term charge may, in general, be defined "*as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence*", but "*it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect*".[20] In other words, the person is charged from the moment when the situation of the accused is "substantially affected".[21]

- **The end of the period (dies ad quem)**

In **criminal** cases, the period ends when the final judgment is handed down on the substantive charges. It may take the form of an acquittal or conviction but may also be a prosecution decision to terminate or discontinue proceedings or a decision by the court that the case is time-barred[22].

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[16] *Supra 5*, pg.15
[17] *Poiss v. Austria*, application no. 9816/82, 23 April 1987, ECHR, *Bock v. Germany*, application no. 11118/84, 29 March 1989, ECHR.
[18] *König v. Germany*, application no. 6232/73, 28 June 1978, ECHR, *X. v. France*, application no. 18020/91, 31 March 1992, ECHR.
[19] *Deweer v. Belgium*, application no. 6903/75, 27 February 1980, ECHR.
[20] *Foti and others v. Italy*, application no. 7604/75, 10 December 1982, ECHR, *Pantea v. Romania*, application no.33343/96, 3 June 2003, ECHR.
[21] *Tychko v. Russia*, application no. 56097/07, 11 June 2015, ECHR.
[22] *Mori v. Italy*, application no.13552/88, 19 February 1991, ECHR.



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For the **civil** proceedings, the final decision settling the dispute[23], indicates the end of the period to be taken into account. If proceedings combine the jurisdictions of civil and administrative courts, the Court considers the proceedings in their entirety[24].

The Court also includes in the length of proceedings, an action for damages brought subsequently against the state for a violation of the reasonable time requirement and assesses more comprehensively the speed of the second authority[25].

This concept has a broader scope since it encompasses the enforcement phase of a trial in calculating the overall period. Enforcement of a decision must be deemed an integral part of the trial within the meaning of Article 6. It would be illusory if the state enabled a final judicial act to remain ineffective to the detriment of any party.[26]

The length of enforcement proceedings must also be appraised pursuant to the same criteria as the length of the main proceedings.[27] Meanwhile, the procedure for enforcing a foreign judgment is subject to the same requirements and must be executed within a reasonable time[28]. Thus, the authorities' failure to implement a final decision within a reasonable time may also result in a violation of Article 6§1.

- **The stages of proceedings taken into account**

Another aspect of the reasonable time is the clarification of the trial phases (stages) to be included in the calculation thereof. The ECHR case-law indicates that appeal proceedings[29] shall be considered as a part of trial and be assessed accordingly. The Court also includes the examination of the Constitutional Court[30], if the result of the appeal can influence the outcome of the case. Moreover, the Court also takes into account the non-judicial phases[31] of the case submitted to it, as well as subsidiary proceedings[32].

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[23] *Guincho v. Portugal*, application no. 8990/80, 10 July 1984, ECHR, *Erkner and Hofauer v. Austria*, application no. 9616/81, 23 April 1987, ECHR.
[24] *Guillemin v. France*, application no. 19632/92, 1 February 1997, ECHR.
[25] *Palmero v. France*, application no. 77362/11, 30 October 2014, ECHR.
[26] *Hornsby v. Greece*, application 18357/91, 19 March 1997, ECHR.
[27] *Bendayan Azcantot and Benalai Bendayan v. Spain*, application no. 28142/04, 9 June 2009, ECHR.
[28] *Hohenzollern v. Romania,* application no. 18811/02, 27 May 2010, ECHR.
[29] *Ouendeno v. France*, application no. 39996/98, 16 April 2002, *Brochu v. France*, application no. 41333/98, 12 June 2001, ECHR.
[30] *Deumeland v. Germany*, application no. 9384/81, 29 May 1986, ECHR, *Çevikel v. Turkey*, application 23121/15, 23 May 2017, ECHR.
[31] *Dumas v. France*, application no. 53425/99, 23 September 2003, ECHR.
[32] *Robins v. United Kingdom*, application no. 22410/93, 23 September 1997, ECHR, *Silva Pontes v. Portugal*, application 14940/89, 23 March 1994, ECHR.


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- **Criteria**

Whenever the duration of the proceedings appears ***prime facie*** excessive or protracted, the states must "give satisfactory explanations", otherwise it entails the violation of the reasonable time requirement. At the same time, there is a presumption against the state that the proceedings are unreasonably long unless proved otherwise[33].

The "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the concrete case and based on the ECHR criteria: **the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute[34].**

- **Overall assessment and specific assessment**

The ECHR, as a rule, makes "overall assessment" straight away,[35] it continues, however, to use its conventional method of specific analysis in less straightforward cases.[36] Mere delays that "could probably have been avoided" are not sufficient for the Court to find a breach of Article 6§1, delays must be considered "sufficiently serious" for "the permissible limit" to have been over-stepped.[37] On the other hand, delays that may be acceptable as long as they are considered separately and in isolation may constitute a violation if viewed cumulatively and in combination.[38]

To summarize the above, the courts shall correctly determine the starting point and the end of the period in each specific case and assess (overall or specific, depending on the circumstances of the particular case) the reasonableness of the proceedings in the light of the 4 criteria (the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute) defined by the ECHR case-law.

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[33] *Foti and others v. Italy*, application no, 7604/76, 10 December 1982, ECHR, *Alimena v. Italy*, application no.13978/88, 19 February 1991, ECHR.

[34] Considering the scope and limitations of the paper, criteria established by the ECHR case-law are not covered in detail.

[35] *Périscope v. France*, application no. 11760/85, 26 March 1992, ECHR, *Boddaert v. Belgium*, application no. 12919/87, 12 October 1992, ECHR.

[36] *Vernillo v. France*, application no. 11889/85, 20 February 1991, ECHR, *Wiesinger v. Austria*, application no. 11796/85, 30 October1991, ECHR.

[37] *Pretto and others v. Italy*, application no. 7984/77, 8 December 1983, ECHR, *H. v. France*, application 10073/82, 24 October 1989, ECHR.

[38] *Deumeland v. Germany*, application no. 9384/81, 29 May 1986, ECHR, *Ruotolo v. Italy*, application no. 12460/86, 27 February 1992, ECHR.



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*Ubi jus ibi remedium*

## CHAPTER 2

## THE REMEDIES IN CASE OF THE BREACH OF THE REASONABLE TIME REQUIREMENT

### 2.1 The remedies in case of the breach of the reasonable time requirement in international context

The right to a remedy in respect of a claim of a violation of a right or freedom is explicitly guaranteed by almost all international human rights instruments.[39] States have the primary duty to protect human rights and freedoms first within their legal system. The ECHR exerts its supervisory role subject to the principle of subsidiarity, i.e. only after domestic remedies

[39] Article 8 of the Universal Declaration on Human Rights and Freedoms, 10 December 1948, https://www.un.org/en/universal-declaration-human-rights/, Article 13 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf, Article 2 of the International Covenant on Civil and Political Rights, 16 December 1966, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, Article 6 of the Convention on the Elimination of Racial Discrimination, 21 December 1965, https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx, Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx.



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have been exhausted or when domestic remedies are unavailable or ineffective.[40] The right to an effective remedy enshrined in Article 13 of the Convention derives directly from this principle.

The national authority eligible to provide the remedy must not necessarily be a judicial authority.[41] The powers and procedural guarantees of domestic authority will be relevant when determining whether a specific remedy is effective.[42] Any such remedy must be effective both in practice and in law.[43] However, the effectiveness of the remedy within the meaning of Article 13 does not depend on the certainty of a favorable outcome.[44]

Effectiveness shall be assessed with respect to the possibility of redressing the violation of the right envisaged by the Convention, by cumulating available remedies. Indeed, even when none of the remedies available to an individual would satisfy Article 13 requirements taken alone, the aggregate of remedies prescribed under domestic law may be considered as "effective".[45] In other terms, there is no particular form of remedy required, and the states have a margin of discretion in conforming to their obligations.[46]

Interesting is the link between rights stipulated by Articles 6 and 13 of the Convention and the interrelation thereof. Until fairly recently, the Court considered that, since the requirements of Article 6§1 are stricter than those of Article 13, in case a violation of Article 6§1 was found, it was unnecessary to figure out whether there had also been a breach of Article 13; the requirements of the latter were entirely "absorbed" by the former.[47] This was the case when the claim concerned the absence, within the domestic legal system, of a body competent to examine the claim that the length of proceedings was excessive,[48] or of any means to reduce or terminate the excessive length of the procedure.[49]

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[40] *Z. and others v. UK*, application no. 29392/95, 10 May 2001, ECHR.
[41] *Golder v. UK*, application no. 4451/70, 21 February 1975, ECHR, *Leander v. Sweden*, application no. 9248/81, 26 March 1987, ECHR.
[42] *Domenichini v. Italy*, application no. 15943/90, 15 November 1996, ECHR, *Calogero v. Italy*, application no.15211/89, 15 November 1996, ECHR.
[43] *Ilhan v. Turkey*, application no. 22277/93, 27 June 2000, ECHR.
[44] *Vilvarajah v. UK*, application no. 13163/87, 30 October 1991, ECHR.
[45] *Silver and others v. UK*, application no. 5947/72, 25 March 1983, ECHR, *Chahal v. UK*, application no. 22414/93, 15 November 1996, ECHR.
[46] *Chahal v. UK*, application no. 22414/93, 15 November 1996, ECHR.
[47] *Airey v. Ireland*, application no. 6289/73, 9 October 1979, ECHR.
[48] *Giuseppe Tripodi v. Italy*, application no. 40946/98, 25 January 2000, ECHR.
[49] *Bouilly v. France*, application no. 38952/97, 7 December 1999, ECHR.



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Nonetheless, the requirements of Article 13 should be considered as reinforcing those of Article 6§1, rather than being absorbed by the obligation to prohibit excessive delays in judicial proceedings under Article 6§1.[50] Article 13 aims at granting a means whereby individuals may obtain relief at the national level for violations of their rights before having recourse to the Court (in case no (unsatisfactory) relief has been given).[51]

The Court currently suggests states **two alternatives** in domestic law, either to offer applicants **compensation** for harm caused by undue delays (under a subsequent or concomitant compensatory remedy) or to make it possible to **expedite** the pending proceedings.[52]

The CEPEJ states that *"the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process and provide only one element* ***a posteriori*** *in the event of violation proven instead of trying to find a solution for the fundamental problem of excessive delays.*[53] Whereas, the Committee of Ministers recommends to states, as general measures, those which allow not only the compensation for the delays already occurred in the past, but also for the acceleration of pending proceedings.[54]

The Court, while leaving the choice between compensatory and acceleratory remedies, expresses its preference for the latter and seems to encourage the states to adopt them, by granting certain "privileges", e.g. by according that lower damages may be awarded by those states which have introduced "*a number of remedies, one of which is designed to expedite proceedings and one to afford compensation*".[55]

There can be a categorization of the **remedies** available for the allegations of unduly lengthy proceedings:

- **Preventive or acceleratory** (designed to speed up the proceedings in order to prevent them from becoming excessively lengthy),

- **Compensatory** (provide the individual concerned with redress for delays that have already occurred, regardless of whether or not the proceedings have ended).

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[50] *Bottazzi v. Italy*, application no. 34884/97, 28 July 1999, ECHR.
[51] *Supra* 7, pg. 12.
[52] Françoise Calvez & Nicolas Regis, *Length of Court Proceedings in the Member States of the Council of Europe Based on the Case Law of the European Court of Human Right,* pg.14 (3rd edition by Nicolas Regis, as adopted at the CEPEJ 31th plenary meeting (Strasbourg), 3 and 4 December 2018), CEPEJ (2018)26.
[53] *Supra* 9, Introduction.
[54] *Supra* 7, pg. 37.
[55] *Id.*



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- **Pecuniary** (afford a financial reparation for the damage incurred, be it material or non-material, or both).

- **Non-pecuniary** (grant a moral reparation, e.g. the acknowledgment of the violation or the mitigation of a sentence).

- **Available for both pending and terminated proceedings.**

- **Only available for pending proceedings** (when the proceedings are over, acceleratory remedies are of no use, and the remedy may only consist in compensation for the damage or in a disciplinary action against the dilatory authority).

**- Applicable to any kind of proceedings** (civil, administrative or criminal).

- **Applicable only to criminal proceedings**.[56]

Each state has the discretion to determine the scope and variety of remedies, either acceleratory or compensative. It should be noted indeed that in most countries different forms of redress coexist and may be applied cumulatively. Thus, there is no direct and specific rule with regard to remedies. The remedies according to the type of judicial proceedings (civil, administrative or criminal) are as follows:

- **Remedies available for civil/administrative proceedings**

Preventive remedies are available for administrative and civil proceedings enabling the parties to lodge a request for the acceleration of the proceedings. Such requests may be lodged to a superior authority (court), directly[57] or through the court dealing with the proceedings. In the latter case, the court will transmit it to the competent court (authority)[58] or with the dilatory court.[59]

The measures taken in response to the above requests may be as follows:

a) fixing an appropriate time-limit for the relevant authority to

- take a particular procedural step (holding a hearing, obtaining an expert's report, issuing orders or taking acts that the authority has failed to take),[60] or
- decide on the merits of the case or terminate the proceedings,[61] or

[56] *Supra* 7, pg. 17.
[57] Bulgaria, Estonia, Switzerland, *supra* 7, pg. 18.
[58] Austria, the Czech Republic, Poland, Slovenia, *id.*
[59] Denmark, Lithuania, Netherlands. Norway, Slovenia (a supervisory appeal), Spain, Serbia and Montenegro, *id.*
[60] Austria, Cyprus, the Czech Republic, Denmark, Estonia (administrative proceedings), Lithuania, Malta, Poland, Slovakia, Slovenia, *id.*
[61] Austria, Bosnia and Herzegovina, Croatia, Cyprus, Slovakia, *id.*


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b) transferring jurisdiction to a different court or a superior authority.[62]

Acceleratory (preventive) remedies co-exist with compensatory ones.[63] In a few countries, however, pecuniary compensation for damage remains the only possible remedy an applicant can claim in respect of delay of proceedings.[64] Compensation can be sought: a) from the same authority determining the reasonableness of the length of the proceedings,[65] b) or in separate proceedings.[66]

Respective reparation may be granted on account of:

- a fault of a judge or another officer of the court,[67]

- the heavy workload of the courts,[68]

- an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limits,[69]

- an unlawful act or omission committed in the course of proceedings,[70]

- a malfunctioning of justice or denial of justice,[71] or

- a violation of the right to a hearing within a reasonable time.[72]

The kind (measures) of compensation may take different forms: pecuniary compensation (material or non-material damage or both), assumption of a decision in the applicant's favor, disciplinary sanction to the dilatory judge, exemption from legal costs,[73] lowering of an administrative sanction.[74]

- **Remedies available for criminal proceedings**

The above-mentioned remedies described for civil and administrative proceedings are not exclusive of these trials but may also be applicable in criminal proceedings. Therefore, general constitutional or legal actions directed to the acceleration of the proceedings, the

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[62] Austria, Cyprus, *id.*
[63] Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Liechtenstein, Lithuania, Netherlands, Poland, Portugal, Serbia, Montenegro, Slovakia, Slovenia, Spain, *id.*
[64] Italy, *id.*
[65] Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Italy, Malta, Netherlands, Poland, Slovakia, *id.*
[66] Netherlands, Poland, Spain, *supra* 7, pg. 19.
[67] Lithuania, Netherlands, *id.*
[68] Belgium, *id.*
[69] The Czech Republic and Slovakia, *id.*
[70] Netherlands, Poland, Portugal, Sweden, *id.*
[71] France, Spain, *id.*
[72] Croatia, Italy, Lithuania, Switzerland, *id.*
[73] Denmark, Iceland, *id.*
[74] Netherlands, *id.*



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reparation of damages or a disciplinary action against the judge may also be applied in criminal cases when a breach of the reasonable length of proceedings occurs[75].

As for preventive remedies, a characteristic of criminal proceedings is that, in general, the trial phase is preceded by an investigative or pre-trial phase. In this sense, some countries provide for specific preventive remedies that are geared to speeding up investigative or pre-trial proceedings by allowing for complaints or requests for acceleration to be submitted to the superior prosecuting or judicial authority.[76]

Measures taken in response to the aforesaid requests range from a dismissal of the application (if the delays are unjustifiable), an investigation into the causes of the delays or a request for follow-up reports, to the fixing of a time-limit to conclude the investigative phase, instructions between prosecutors on how to handle the case, or the adoption of disciplinary measures.[77]

With respect to compensatory remedies, in criminal proceedings, if a violation of the reasonable time requirement is found to have occurred, the court may decide to give redress, particularly by means of:

- a reduction or mitigation of the sentence,[78]

- a mere declaration of guilt,[79]

- an acquittal,[80] or

- a decision to stay the prosecution or discontinue the proceedings.[81]

Under the ECHR case-law, as regards to remedies, it is an obligation of result that is required by Article 13. Even when none of the remedies available to an individual, taken alone, would satisfy the requirements of Article 13, the aggregate of remedies envisaged under domestic law may be considered as "effective".[82] Eventually, "*the best solution in absolute terms is indisputably, as in many spheres, prevention*."[83]

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[75] Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Germany, Netherlands, Portugal, Sweden, Switzerland and the United Kingdom, *supra* 7, pg. 20.
[76] Belgium, Bulgaria, Denmark, Portugal, *id.*
[77] *Id.*
[78] Denmark, Estonia, Finland, Germany, Iceland, the Netherlands or the United Kingdom. Belgium, *supra* 7, pg. 21.
[79] Belgium, Denmark, Switzerland, *id.*
[80] Estonia, Finland, *id.*
[81] Netherlands, Switzerland, Germany, *id.*
[82] *Cocchiarella v. Italy,* application no. 64886/01, 29 March 2006, ECHR.
[83] *Scordino v. Italy*, application no. 36813/97, 29 March 2006, ECHR, *Sürmeli v. Germany*, application no. 75529/01, 08 June 2006, ECHR.



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*"A remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation, since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach* ***a posteriori****, as does a compensatory remedy*.[84]

Hence, the acceleratory remedy would be "the most effective solution", and the Court expresses a clear preference for an acceleratory remedy over a mere compensatory remedy, since the latter, in fact, only offer ***a posteriori*** remedy and are unable to prevent successive violations[85].

The same preference for acceleratory remedies has been expressed by the United Nations Human Rights Committee, by stating that all stages of judicial proceedings must take place without undue delay and that, to make this right effective, a procedure must be available to ensure that this applies in all instances. Furthermore, according to the Committee, "*the mere possibility of obtaining compensation after, and independently of, a trial that was unduly prolonged does not constitute an effective remedy*" for the purposes of the International Covenant on Political and Civil Rights.[86]

Where "the proceedings have clearly already been excessively long", mere prevention may not be adequate.[87] In this case, compensatory remedies may be appropriate instead. A compensatory remedy may take the form of financial reparation of the damage (pecuniary and non-pecuniary) incurred. Indeed, the Court emphasizes that ***a combination of two types of remedy, one designed to expedite the proceedings and the other to afford compensation, may appear as the best solution***.[88]

Whatever measure may be ordered by a competent authority, a domestic remedy in respect of undue delays will comply with the requirements of the Convention only when it has acquired a sufficient legal certainty, in theory, and in practice, enabling the applicant to have used it at the date on which an application is lodged with the Court.[89]

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[84] *Scordino v. Italy*, application no. 36813/97, 29 March 2006, ECHR.
[85] *Supra* 7, pg. 31
[86] *Id.*
[87] *Id.*
[88] *Id.*, see also Recommendation CM/Rec (2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings (adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies), point 7.
[89] *Baumann v. France*, application no. 33592/96, 22 May 2001, ECHR.



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A remedy in respect of the excessive length of judicial proceedings must be **effective, sufficient and accessible.**[90] There must exist sufficient case-law proving that the application can actually result in the acceleration of a procedure or adequate redress.[91] The duration of the remedial procedure needs to be reasonably short and requires "special attention" on the part of the competent authorities in order to avoid breaches of Article 6 in this respect.[92]

An unreasonably protracted duration of the remedial procedure may amount to a disproportionate obstacle to the effective exercise by an applicant of the right to the individual application within the meaning of Article 34 of the Convention and exempt an individual from the obligation to exhaust it.[93]

The duration of the phase of enforcement of decisions within reasonable timeframes is crucial: the payment of the awarded compensation must be made within six months from the date when the relevant domestic decision becomes final and enforceable.[94] Indeed, in order to be effective, a compensatory remedy must be accompanied by an adequate budgetary provision.[95]

It shall be stressed that the procedural rules are not exactly the same as for ordinary actions for damages. It is for each state to determine, on the basis of the rules applicable in its judicial system, which procedure will comply with the requirement of "effectiveness", provided that the procedure conforms to the principles of fairness guaranteed by Article 6 of the Convention.[96]

The sufficiency of the remedy may depend on the level of compensation. The determination of non-pecuniary damage for an unreasonable length of proceedings "*must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Court. Some divergence is permissible within reason*".[97]

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[90] *Belinger v. Slovenia*, application no. 42320/98, 13 June 2002, ECHR.
[91] *Doran v. Ireland*, application no. 50389/99, 31 July 2003, ECHR, *Timar v. Hungary*, application no. 36186/97, 25 February 2003, ECHR.
[92] *Paulino Tomas v. Portugal*, application no. 58698/00, 27 March 2003, ECHR, *Gouveia da Siva Torrado v. Portugal*, application no. 6530501, 22 May 2003, ECHR.
[93] *Vaney v. France* application no. 53946/00, 30 November 2004, ECHR, *Scordino v. Italy*, application no. 36813/97, 29 March 2006, ECHR.
[94] *Supra* 7, pg. 35.
[95] *Id.*
[96] *Id.*
[97] *Id.*, *Ohlen v. Denmark*, application no. 63214/00, 24 February 2005, ECHR.



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Compensation that is lower than the amount usually awarded for comparable delays by the Court may nevertheless be considered "adequate" in the light of the specific circumstances of the case, such as the standard of living in the relevant state, the promptness of the finding and award by the national court as well as the promptness of the payment within the national legal system.[98]

A lower level of compensation awarded by a state which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, is acceptable, given that it is not unreasonable and that the relevant decisions are consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly.[99]

Simultaneously, in conjunction with the aforementioned special measures, the CEPEJ has introduced the following reformatory proposals to meet the reasonable time requirement:

1. Increase of resources allocated to the justice system, increase in the number of judges, prosecutors and judicial staff,
2. Creation of additional first and second level courts,
3. Recourse to alternative forms of settling disputes,
4. Clarification of rules relating to jurisdiction,
5. Restrictions introduced on the possibility of referring matters to courts of appeal and courts of cassation, the introduction of procedures to filter appeals to those courts, along with more restrictive admissibility criteria, creation of panels and streamlined procedures for immediate rejection of inadmissible or manifestly ill-founded appeals,
6. Paperless judicial proceedings, notification procedures, summonses, and enforcement procedures, introduced by computerized case-management systems,
7. Reducing certain serious offenses to lesser ones, and lesser offenses to petty ones,
8. Increasing the number of single-judge proceedings,
9. Shift from oral to written proceedings,
10. Initial and in-service training of judges and prosecutors,
11. Specialization of the formations of the courts.[100]

[98] *Bako v. Slovakia*, application no. 60227/00, 15 March 2005, ECHR.
[99] *Supra* 85, *Dubjakova v. Slovakia*, application no. 67299/01, 10 October 2004, ECHR.
[100] *Supra* 52, pg. 62.



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The proposed measures of the CEPEJ are aimed at ensuring judicial proceedings in a reasonable time (without undue delays) and harmonious implementation thereof may fix the problem concerned.

Summarizing the above, the conclusion may be drawn that in international practice there are two types of remedies - acceleratory (preventive) and compensative. Those remedies, in turn, are categorized in pecuniary and non-pecuniary, applicable for pending and/or terminated proceedings and also applicable to civil, administrative and/or criminal proceedings.

Moreover, such remedies should be effective both in law and in practice in order to comply with Article 13 requirements. Additionally, states have the discretion to choose acceleratory (preventive) and/or compensative remedies, however the combination of both is considered the best solution.

On the other hand, there are a number of proposals geared to reform the judicial system of states in order to meet the reasonable time requirement and guarantee the trials in due timescales.

## 2.2 The remedies in case of the breach of the reasonable time requirement in Armenian legislation

The Republic of Armenia, through the ratification of the international agreements, bore obligations to secure the rights and freedoms enshrined therein, including the right to a fair trial within a reasonable time. Implementation of the aforesaid obligation has been occurred not only in the legislative level but also in practice. However, the sole proclamation of the speedy trial is not itself enough to ensure the efficient and unequivocal exercise of that guarantee.

Firstly, the right to a fair trial (within a reasonable time) is envisaged in Article 63.1 of RA Constitution:[101] "*everyone shall have the right to a fair and public hearing of his or her case, **within a reasonable time**, by an independent and impartial court*". Moreover, the right to a

[101] RA Constitution (06.12.2015).



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fair trial in reasonable time has been promulgated in other branches of law as well, thereby providing the trial in due timescales both in civil, administrative and criminal proceedings.

According to Article 17.1 of RA Criminal Procedure Code: [102] "*everyone shall have the right to a fair and public hearing of his or her case, **within a reasonable time**, by an independent and impartial court".* Under Article 377.1 of RA Civil Procedure Code: [103] *"the Court of Appeal shall examine the appeal against the final judicial act and take a decision within a **reasonable time**, but not later than three months after the appeal has been received",* and under Article 400.1: *"the Court of Cassation shall examine the cassation complaint received and take a decision within a **reasonable time**".*

Meantime, pursuant to Article 84.1 of RA Administrative Procedure Code:[104] "*the preparation of the case for trial and the actual trial shall be conducted within a **reasonable time**, except where certain time limits are set by the Code for the examination and settlement of individual cases*." In accordance with the Articles 140.1 and 165.1 of the same code: *"the Court of Appeal shall hear and settle the case within a **reasonable time"**, and "the Court of Cassation shall hear and settle the case within a **reasonable time**."*

Consequently, the domestic laws (the Constitution and procedural codes) clearly define the state's positive obligation to provide for a trial within a reasonable time and each individual's right to be heard in due timeframes.

On another note, RA Judicial Code constitutional law[105] defines the fundamentals of the judicial proceedings and the principles of the courts' efficient activity. Particularly, under the Article 8 of the Judicial Code: *"the activities of the courts shall be organized in such a way as to ensure the effective judicial protection of the rights and freedoms of everyone by a fair, public hearing in a **reasonable time** by an independent and impartial tribunal established by law."*

Moreover, Article 9 of the Judicial Code is dedicated to the reasonable time requirement of a fair trial and represents the content of the said procedural principle. Namely, according to Article 9: *"1. The examination and settlement of the case shall be carried out within a **reasonable time.***

[102] RA Criminal Procedure Code (01.07.1998).
[103] RA Civil Procedure Code (09.02.2018).
[104] RA Administrative Procedure Code (05.12.2013).
[105] RA Judicial Code constitutional law (07.02.2018).



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*2. In determining the reasonableness of the length of a case, the following shall be taken into account:*

*1)* ***the circumstances of the case, including the legal and factual complexity, the conduct of the trial participants, and the consequences of a lengthy trial for the trial participant;***

*2)* ***the court's actions and their effectiveness in conducting the examination and settlement of the case within the shortest possible time;***

*3)* ***the total duration of the examination of the case;***

*4)* ***the average benchmark length of the trial set by the Supreme Judicial Council[106].***

*3. If a specific time limit is set by law for the examination and settlement of a case, it shall be examined and settled within that time limit. The extension of such period shall be permitted only in cases and in the manner prescribed by law."*[107]

The comparison of the ECHR case-law and RA Judicial Code makes it clear that the criteria laid down for the judicial proceedings are almost the same. From this standpoint, RA domestic legislation is in line with European standards and is aimed at providing for the trial without delays.

Although these criteria have been implemented in RA legal system, judicial practice indicates the drawbacks and hindrances of their efficient implementation. The analysis of the reports of the Supreme Judicial Council figures out the problems of excessive delays in criminal, civil and administrative procedures[108]. Therefore, the practical steps directed to the settlement of undue delays during the examination of cases shall be initiated.

Until recently, the prescribed problems have been raised by different courts and the parties of trials, since the given criteria did not have practical implementation and the breaches thereof had been generally ignored. That is why the decision of the Cassation court devoted to a fair trial within a reasonable time indicated the problem of excessive proceedings.

In ԵԱՔԴ/0016/01/14 case dated on 18.09.2019, the Cassation court analyzed the ECHR case-law, respective international documents and set forth the criteria to be taken into account when assessing the reasonableness of the proceedings. Particularly, the Cassation court noted

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[106] The analysis of legislation, web site of Supreme Judicial Council and conversations with the latter's representatives made it clear that currently there is no such a decision defining the average benchmark lengths for proceedings.

[107] Meantime, those criteria have been envisaged by the decision N 98 of the Board of Courts' Chairmen of RA (13.06.2006).

[108] Statistics of judicial practice are available at http://court.am/hy/statistic.



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that when determining the reasonableness of the examination of the case the following criteria shall be considered on a case by case basis, i.e.

- the complexity of the case,
- the conduct of the person concerned,
- the consequences of a lengthy trial for the person concerned,
- the initiated means of competent authorities and their effectiveness in conducting the examination of the case within the shortest possible time,
- the total duration of the examination of the case.

In essence, those standards are the duplications of that envisaged by RA Judicial Code, and the double fixation thereof is another indicator of the problem of the excessive length of proceedings. It is indeed noteworthy that the principles (criteria) of the speedy trial has been implemented not only as legal provisions but also found practical application in a specific case (cases).

The problems of judicial practice regarding the length of proceedings have been raised and outlined by the ad hoc public report of RA Human Rights Defender[109]. Therewith the Ombudsman considered the absence of recovery measures as to the breaches of the right to a trial within a reasonable time.

In Report, the Ombudsman analyzed the following 4 mechanisms as to remedial measures regarding the excessive length of proceedings:

b) appellate procedures of judicial acts;

c) procedures of the examination of the excessive length of proceedings by another court and compensation of non-pecuniary damages;

d) mechanism of disciplinary liability;

e) preventive measures.

Concerning the appellate procedures, the Ombudsman raised the issue of whether the appellate procedures may be considered as an effective remedy under Article 13 and their practical applicability. Accordingly, the Ombudsman pinpointed the peculiarities of national appellation proceedings and drew the following conclusions:

[109] ՀՀ ՄԻՊ Արտահերթ հրապարակային զեկույցը ողջամիտ ժամկետում գործի բննության պահանջի խախտման դեպքում իրավունքի վերականգնման մեխանիզմների բացակայության վերաբերյալ, Երևան, 2020:



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- in criminal, civil and administrative procedures the ground for the appellation is **a judicial error**, i.e. a violation of substantive or procedural law,
- the logic of judicial review is the abolishment of judicial error **considering the effect thereof on the outcome of the case.**

Thus, the Ombudsman concluded that appellate procedures cannot be deemed as an effective remedy in terms of Article 13 on account of their incapacity to expedite the trial or provide for relief.

With respect to the procedures of the examination of the excessive length of proceedings by another court and compensation of non-pecuniary damages, the Ombudsman outlined the absence of systemic mechanisms in this aspect and therefore the ineffectiveness of this procedure in practice.

When discussing the disciplinary liability of the judges, the Ombudsman reiterated the viewpoint of the Venice Commission, i.e. "*a disciplinary action against the dilatory judge may amount to an effective remedy against the length of the proceedings in terms of Article 13 of the Convention only if it has a "**direct and immediate** consequence for the proceedings which have given rise to the complaint*".[110]

In the light of this requirement and respective provisions, the Ombudsman underlined that the disciplinary measures vis a vis judges do not suffice the above standard and thus are inefficient under Article 13.

As regards the preventive measures, the Ombudsman, in view of the ECHR case-law and the Venice Commission's proposals, expressed a clear preference to those measures and considered them to be a more optimal and effective remedy for expeditious trials.

Thus, the observations and rationales of the Report, summarizing the ECHR standards and domestic legislation, indicate the inefficiency of our legal system and inability to resolve the acceleration and relief issues of lengthy proceedings.

On account of the lack of thorough mechanisms and effective remedies, the Ombudsman lodged an application to RA Constitutional court[111] and challenges respective provisions of RA Judicial Code in so far as they do not envisage effective remedies in case of a breach of the requirement to examine the case in reasonable time or to enforce the final judicial acts.

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[110] *Supra* 7, pg. 32.
[111] The decision ՍԴԱՈ-4 of the RA Constitutional Court (17.01.2020).



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Hence, according to the Report, RA domestic legislation does not envisage any effective preventive and/or compensatory measures in case of a breach of a trial within a reasonable time. Current situation is in contradiction with the obligations deriving from the Convention, namely Articles 1, 6 and 13 and, therefore, shall be fixed.

In respect of acceleratory measures, RA Judicial Code (Article 42.2) envisages that: "*in the event of a* ***case of a particular difficulty*** *in a judge's proceedings, a judge may apply to the Supreme Judicial Council for the purpose of* ***temporarily removing his/her name and surname from the distribution list or set a separate percentage of the cases to be assigned to him/her.***

*If the judge's application is justified, the Supreme Judicial Council decides to temporarily remove the judge's name and surname from the list of cases or set a separate percentage for the cases to be distributed,* ***setting a time limit not exceeding six months****. On the basis of a judge's request, the Supreme Judicial Council may decide to* ***extend the six-month period if the examination of a case of a particular complexity is not completed."***

Provided mechanism may be deemed as an **indirect** acceleratory remedy aimed at ensuring the effective and speedy examination of cases. The implementation thereof is contingent with the complexity of cases examined and may decrease the backlog of judges. Hence, ***the temporary removal of the judge's name and surname from the distribution list or setting a separate percentage of the cases to be assigned to him/her may indirectly accelerate judicial proceedings.***

Nevertheless, the analysis of RA legislation constitutes the absence of **direct** acceleratory remedies aimed at speeding up pending proceedings.

The acceleratory remedies discussed in the previous paragraph[112] may also be fixed in RA legislation and prevent undue delays of proceedings. A variety of acceleratory measures shall ensure speedy proceedings and shall be considered by the Court when determining the presence and effectiveness of the remedies at the national level.

[112] **For civil/administrative cases**: a request for the acceleration of the proceedings to a superior authority/court, fixing an appropriate time-limit for the relevant authority to take a particular procedural step or decide on the merits of the case or terminate the proceedings, transferring jurisdiction to a different court or a superior authority, **for criminal cases**: a dismissal of the application if the delays are unjustifiable, an investigation into the causes of the alleged delays or a request for follow-up reports, the fixing of a time-limit to conclude the investigative phase, instructions between prosecutors on how to handle the case, or the adoption of disciplinary measures.



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Complex analysis of RA legislation, however, sheds light on the compensation as to the breaches of conventional rights (including Article 6). Pursuant to Article 162.1 of RA Civil Code:[113] "a person … shall have the right to seek judicial remedy for non-pecuniary damage if the prosecution authority or court has established that as a result of a decision, act or omission of a state or local self-government body or an official thereof the violation of that person's following fundamental rights guaranteed by (…) the Convention has occurred: 4) the right to a fair trial.

As regards to the compensation procedure, the non-pecuniary damage caused by a violation of fundamental rights shall be compensated in accordance with the procedure and conditions set forth in Article 1087.2. The latter defines the scope and peculiarities of the compensation process.

Under Article 1087.2, non-pecuniary damage is subject to compensation regardless of the pecuniary damage and irrespective of the fault of the official causing the damage. It is compensated at the expense of the state budget. As to the amount of damage, it shall be determined by the court in accordance with the principles of reasonableness, equitability and proportionality. However, the maximum amount may not exceed 2 million AMD, i.e. approx. 3800 EUR (with some exceptions).

To proceed with the action, the time-limits shall also be met. A claim for non-pecuniary damage may be filed to the court either with a claim to establish a violation of the right within one year after the person becomes aware of the violation, or within one year of the entry into force of a judicial act confirming the infringement of that right (…)[114].

The Venice Commission indicates that *"a remedy in respect of the excessive length of judicial proceedings must be **effective, sufficient and accessible**. A national "complaint about delays" must not be merely theoretical: there must exist **sufficient case-law** proving that the application can result in the acceleration of a procedure or adequate redress".*[115]

However, the respective provisions of RA Civil Code do not envisage full redress, including the compensation of both pecuniary and non-pecuniary damages. Additionally,

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[113] RA Civil Code (05.05.1998).

[114] For more details about the non-pecuniary damages see Grikor Bekmezyan, *On Some Issues Pertaining to Compensation of Non-Pecuniary Damage in Civil Law of the Republic of Armenia*, YSU press, pg. 153-165 (2018).

[115] *Supra* 7, pg. 34



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after the amendments of RA Civil Code and promulgation of provisions concerning the non-pecuniary damage, there is no sufficient case-law as to the compensation of Article 6 violation (a breach of a reasonable time)[116].

On another note, it is not clear whether a breach of a reasonable time requirement should be examined within the same procedure or the applicant has to lodge another action to the court. Since the court is unable to hear the case by itself and constitute the violation of Article 6, the optimistic way may be the establishment (acknowledgment) of the violation and fair redress in another, separate procedure.

Pursuant to the Venice Commission's viewpoint, with regard to the requirement that a remedy affording compensation complies with the reasonable-time requirement, it may well be that the **procedural rules are not exactly the same as for ordinary applications for damages**[117]. It is essential for any compensatory remedy to be conducted in the **swiftest possible** manner. Compensatory procedures should follow **simplified rules**, possibly not be subject to three levels of jurisdiction, and be governed by **strict time-limits**[118].

Additionally, the decisions awarding damages should be **immediately enforceable**, and provision should be made for their enforcement **within a maximum of six months** (supported by adequate budgetary provisions).[119]

Yet under RA legislation the described cases shall be examined and settled in a general manner. In that scenario there are no specific timeframes and peculiarities, e.g. simplified proceedings, to examine cases without undue delays. Therefore, ***the implementation of a specific procedure with reduced time limits and simplified rules in RA domestic legislation may be a practical solution.***

The compensative measures proposed by the ECHR case-law and the Venice commission provided in the previous paragraph[120] may also be implemented in RA legal system accordingly. In that case, the international best practice shall be implemented at the national level and prevent respective violations (accelerate the trial or provide relief). Such measures,

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[116] According to the data available at www.datalex.am internet portal of cases.
[117] *Supra* 7, pg. 35
[118] *Supra* 7, pg. 42
[119] *Id.*
[120] **For civil/administrative cases**: pecuniary compensation (material or non-material damage or both), assumption of a decision in the applicant's favor, disciplinary sanction to the dilatory judge, exemption from legal costs, lowering of an administrative sanction, **for criminal cases**: a reduction or mitigation of the sentence, a mere declaration of guilt, an acquittal, or a decision to stay the prosecution or discontinue the proceedings.



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in their entirety, may diminish risks as to breaches of Article 6 and deter applications to the ECHR.

Meantime, the proposed measures of the CEPEJ[121] may also be implemented at national level. Such reconstructions of RA legal system shall assist to overcome the respective impediments and properly fulfill international obligations.

## CONCLUSION

Summarizing the main observations and the findings of this master paper, it is noteworthy to mention that RA legislation does not envisage effective, sufficient and accessible remedies (supported by sufficient case-law) in terms of Article 13 of the Convention as to the breach of Article 6 of the Convention, in particular, the right to be heard in a reasonable time.

As to **acceleratory (preventive) remedies** the following shall be underlined: Article 42 of RA Judicial Code envisages the temporary removal of the judge's name and surname for the distribution list or setting a separate percentage of the cases to be assigned thereto in the event of a case of particular difficulty. In case the application is justified, the Supreme Judicial Council may take a decision in favor of the judge and set a time limit of six months.

However, this remedy (measure) is not **directly** geared to expedite the proceeding of the specific case, rather it is aimed at reducing the backlog of cases (workload of judges) in general. Thus, this measure may be deemed as an **indirect acceleratory measure.** Meantime, the research of RA legislation indicates the absence of **direct** acceleratory remedies aimed at speeding up pending proceedings.

Concerning **compensatory remedies**, it can be concluded that RA Civil Code stipulates the mechanism so as to redress the non-pecuniary damages of the individuals, whose Article 6 rights (namely, right to a trial in reasonable time) have been violated. Accordingly, under Article 162.1 of RA Civil Code a person concerned shall have the right to seek a judicial remedy for non-pecuniary damage as a result of the violation of Article 6 right.

On another note, Article 1087.2 of RA Civil Code envisages that non-pecuniary damage is subject to compensation regardless of the pecuniary damage and irrespective of the fault of the official causing the damage. The amount of compensation shall be determined in

[121] Listed in previous paragraph.



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compliance with the principles of reasonableness, equitability and proportionality and it may not exceed 2 million AMD (approx. 3800 EUR).

However, according to the Venice Commission's appraisals, the remedies shall be effective, sufficient and accessible, supported by sufficient case law. In addition, the procedural rules shall not be the same as for ordinary applications for damages. Moreover, such a procedure needs to be conducted expeditiously, based on simplified rules and strict time-limits. Furthermore, decisions awarding damages should be immediately enforceable (maximum 6 months).

From this perspective, RA Civil Code does not envisage the aforementioned standards and therefore is in conflict therewith. Thus, the procedure for the compensation of non-pecuniary damages may be deemed ineffective and insufficient. However, **the implementation of a specific procedure with reduced time limits and simplified rules may be a practical solution.**

On the other hand, the Venice Commission introduced a number of acceleratory and compensative measures directed to guarantee the trial in reasonable timescales.

As to **acceleratory** measures in civil and administrative proceedings, the proposals are the following:

a) fixing an appropriate time-limit for the relevant authority to

- take a particular procedural step (holding a hearing, obtaining an expert's report, issuing orders or taking acts that the authority has failed to take), or
- decide on the merits of the case or terminate the proceedings, or

b) transferring jurisdiction to a different court or a superior authority.

With respect to **acceleratory** remedies in criminal proceedings, the measures are as follows:

- a dismissal of the application (if the delays are unjustifiable),
- an investigation into the causes of the delays or a request for follow-up reports,
- the fixing of a time-limit to conclude the investigative phase,
- instructions between prosecutors on how to handle the case, or
- the adoption of disciplinary measures.

Regarding the **compensatory** remedies in civil and administrative proceedings, there are the following measures:



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- pecuniary compensation (material or non-material damage or both),
- assumption of a decision in the applicant's favor,
- disciplinary sanction to the dilatory judge,
- exemption from legal costs,
- lowering of an administrative sanction.

Concerning the **compensatory** remedies in criminal proceedings, the following measures are proposed:

- a reduction or mitigation of the sentence,
- a mere declaration of guilt,
- an acquittal, or
- a decision to stay the prosecution or discontinue the proceedings.

Implementation of the above-mentioned proposals at the national level may prevent the breaches of Article 6 rights and reduce the applications to the ECHR.

Along with specific measures, i.e. acceleratory (preventive) and/or compensative remedies, the CEPEJ provides for general reformatory measures (proposals) in order to ensure the examination of cases in a reasonable time. Those measures, *inter alia*, are as follows:

- Increase of resources allocated to the justice system, increase in the number of judges, prosecutors and judicial staff,
- Creation of additional first and second level courts,
- Recourse to alternative forms of settling disputes,
- Clarification of rules relating to jurisdiction,
- Restrictions introduced on the possibility of referring matters to courts of appeal and courts of cassation, the introduction of procedures to filter appeals to those courts, along with more restrictive admissibility criteria, creation of panels and streamlined procedures for immediate rejection of inadmissible or manifestly ill-founded appeals,
- Paperless judicial proceedings, notification procedures, summonses, and enforcement procedures, introduced by computerized case-management systems,
- Reducing certain serious offenses to lesser ones, and lesser offenses to petty ones,
- Increasing the number of single-judge proceedings,
- Shift from oral to written proceedings,
- Initial and in-service training of judges and prosecutors,



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- Specialization of the formations of the courts.

The adoption of those general measures combined with the specific remedies may diminish the risks of the violation of the reasonable time requirement and hasten the examination and settlement of cases (civil, administrative or criminal). This comprehensive and complex approach shall ensure the proper and efficient administration of justice and full compliance with international (UN, ECHR, Venice Commission, CEPEJ) standards.

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