Lursmanashvili Lasha
The University of Georgia, Georgia

Reasonable Time Requirement: ECtHR Approach

It is said that: "Justice delayed is justice denied."

The concept of access to justice is enshrined in Article 6 of the European Convention on Human Rights. It encompasses a number of core rights and the requirements arising therefrom constitute the main obligations for high contracting parties to the convention. Thus, ensuring the materialization of those rights in their respective domestic legal systems should, in fact, be perceived as the sole priority of the member states in terms of guaranteeing adequate human rights protection framework. The right to a fair trial protected by Article 6 of the convention provides that everyone is entitled to a fair and public hearing within a reasonable time in the determination of his civil rights and obligations and of any criminal charge against him. In simpler words, it says that proceedings shouldn't be excessively long. At first glance, the implementation of a reasonable time requirement seems very easy. On the other hand, if we look just a little bit deeper, several factors that hinder hearing from being within a reasonable timeframe will therefore appear, which as usual results in preventing the proper administration of the justice. Apparently, the importance of this right is itself obvious; however, alleging the violation to have proceedings concluded within a reasonable period of the time is by far the most common issue raised in applications to the ECtHR. The article analyzes the concept of the reasonable time requirement. Afterward, it describes the identification of the relevant period that ought to be taken into account while assessing the reasonableness. Lastly, the paper tries to illustrate the key criteria applied by ECtHR in order to determine the reasonableness of the proceedings referring key standards set by the court itself and examines if the methodology used by the court while assessing the reasonable length of the proceedings is the right approach to the problem.

Keywords: reasonableness of the proceedings, reasonable time requirement, The right to a fair trial, a fair and public hearing, the proper administration of the justice, ECHR, article 6, Just satisfaction, key criteria applied by ECtHR.

The right to a fair trial protected by Article 6 of the European Convention on Human Rights has a paramount importance for every state that is based upon the principles of rule of law and democracy. Generally, the right guaranteed under article 6 creates the cornerstone of the state and lies straightforwardly in its center, as a result holding equilibrium therein. Broadly speaking, it is hard to imagine even the existence of a proper-functioning state without the right to a fair trial and it appears even harder to imagine effective administration of the justice without one`s right to have proceedings concluded in accordance within the reasonable time requirements prescribed by national legislation. So, the question that needs to be asked is the following: beyond the theoretical dimension and significance of the right to a speedy trial, why it is so important in practice? Well, the answer to this question is the simplest of all. From the viewpoint of an average person involved in the court litigation, it is crucial because of the reason that an individual actually has the firm juridical interest concerning the outcome of the proceedings and usually, upon the judgments that are made on such proceedings depends the granting and then the realization of substantive rights or an abstaining from exercising such rights. In simple terms, the life plans or the life activities and even the future of him or her depend on a court decision, so, therefore, a hasty decision would be pretty beneficial. Moreover, the reasonable time requirement reduces the court workloads and protects litigants from undesirable delays (*ECtHR. Stögmüller v. Austria*, para. 5, 1969). These are the very reasons these sets of rights are made for. Therefore, ECtHR states that human rights should have practical and effective nature, rather than theoretical and illusory (*ECtHR. Artico v. Italy,* para. 33, 1980). To develop this viewpoint and to better indicate the prime importance of the reasonable time requirement set by article 6 of the Convention, I will contextualize a wide range of social activities and arising legal controversies therefrom, thus as mentioned above, it will draw up the exact landscape showing the significance of the right mentioned. For instance, in corporate litigation or in any other commercial issues when the subject matter of the case strictly refers to the certain amount of money, in this sense, speedy decision plays a key role in the further course of events. It is said that time is money. For business and the other kinds of commercial matters a reasonable time-consumed litigation is not a bad idea. In family affairs, when case refers to the child, for example to its removal or the determination a place of the residence, right to the adjudicative proceedings to be concluded in accordance within a reasonable time requirement has a substantive importance, because the value of the "good" either the plaintiff or the defendant, are having at stake is too high. In criminal matters, due to the pressing social need or the high pressure envisaged into high public interest, according to the very dogmatic objectives of the criminal law, referring key standards of the sense of the security deeply enshrined in the concept of the rule of law, I argue that the positive obligation of the state to ensure a relevant system and the negative obligation not to impair the very essence of the right has a principal importance. Even, from the perspective of the suspected or the accused person`s rights the whole image does not change at all, instead, it does gain more primacy. In addition, in crim-

inal matters, especially, it is designed to avoid the situation where a person charged should remain too long in a state of uncertainty about his fate (ECtHR. Stögmüller v. Austria, para. 5, 1969). For further clarification, if society sees the judicial settlement of disputes functions as too slow, it will lose its confidence in the judicial institutions (Kuijer, p.1). Even more importantly, the slow administration of justice will undermine the confidence society has in the peaceful settlement of disputes (Kuijer, p.1). A reasonable time requirement is an issue of fundamental importance that has caused deep concern at an international level and the treatment of this issue is the subject of ongoing discussion and research (Salamoura, p.1). In 1996 the European Court of Human Rights ('ECtHR' or the 'Court') allegedly declared a 'war on unreasonable delays' (Henzelin, Rordorf, 2014). A large number of applications inundate the ECtHR on a daily basis; the overwhelming majority of these concern the violation of the right to be tried within a reasonable time (Salamoura, p.1). According to the 3rd report of the European Commission for the Efficiency of Justice ('CEPEJ'), violations of Article 6(1) ECHR through excessively lengthy proceedings represents the primary reason for European States to be condemned by the ECtHR (European Commission for the Efciency of Justice, 2010. p. 2). Whilst most of the Court's decisions regarding the excessive length of proceedings concern civil law cases, the number of criminal cases is far from insignificant (Henzelin, Rordorf, 2014, p.79). An exemplification of a wide range of research-based statistics show that the state violation of the rights protected by convention is not necessary at all. Even with a cursory glance we can comprehend that the right to a fair trial within the reasonable time is the most frequent breach by the contracting parties to the Convention. We can simply conclude: 1. A reasonable time requirement is not a concern for a very few states of Council of Europe, but rather, it more looks like on the Achilles Tendon for the European countries. 2. Thus, this is the issue most widely addressed before the ECtHR.

Each year, the European Court of Human rights has to deal with a bunch of applications many of them alleging the breach of the reasonable time requirement. It would be interesting to find out what kind of methodology the ECtHR utilizes when assessing the reasonableness of the length of the domestic proceedings. Before that, a discussion about reasonable time requirement under the case law of the ECtHR shall therefore be essential.

Concept of "reasonable time requirement" under the case-law of ECtHR

The right to a fair trial is designated to facilitate access to justice for those in need. The provision under article 6 contains the most basic concepts how the systematic organization of the court ought to be constructed. The case-law set by ECtHR provides a much broader interpretation of the article 6 than just the wording of the provision itself.

It means that case law provides further standards mandatory for contracting parties to implement in their respective domestic legal systems. These standards include equality of arms, the right to the adversary proceedings, the rights of the accused persons, the right to the representation, right to a hasty decision and so on. It is worth noting that according to the doctrine of jurisprudence, a fair trial is called an enforcing right, due to the fact that it is the instrument which enables benefits from other substantive, procedural and/or the material rights. In other words, it gives any individual the entitlement to satisfy their subjective interests via enforcing their rights either before domestic or either before the International Tribunals. The European Court of Human Rights in its landmark case of *Golder v. United Kingdom,* referred to the distinct rights that stem from the very basic idea that taken together set up a sole right – right to a fair trial (*ECtHR, Golder v. United Kingodom*, 21 February 1975, para. 28). A reasonable time requirement is an integral part of this "very basic idea" widely reiterated in the case of Golder. On one hand, an effective administration of the justice would have lost its substance if essentially the administration of the self is slow, uncertain and is barricaded by several delays. It is a key factor that prevents the effective administration of justice and gives birth to skepticism toward the judicial bodies. On the other hand, ECtHR reiterates that in requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardize its effectiveness and credibility *(EctHR. Katte Klitsche de la Grange v. Italy,* para.61, 1994). In its judgment in *H v. France,* ECtHR states: "the Court is not unaware of the difficulties which sometimes delay the hearing of cases by national courts and which are due to a variety of factors. Nevertheless Article 6 para. 1 (art. 6-1) requires that cases be heard 'within a reasonable time'" (*ECtHR*. *H. v. France,* para. 58, 1989). The dogmatic problem lies in whether a right to a speedy trial is compatible with the right to reasoned judgment, because often the examination of the merits, facts and evidence in taking care for an adequately reasoned decision turns out to be complicated, albeit, the argument thereto solely cannot overweight the need of a hasty administration of justice. The virtue of European Court of Human Rights in this context is analogous and has already been clarified several times. "In so providing, the Convention underlines the importance of rendering justice without delays which might jeopardize its effectiveness and credibility." (*ECtHR*. *H. v. France,* para. 58, 1989) This sub-section is mainly oriented on outlining the theoretical dimension of the right and its determination in the case law of the court.

As noted above, the right to a fair trial within the reasonable time is guaranteed by article 6 of ECHR. Article 6(1) of the European Convention on Human rights reads as follows: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."* In other

words, it provides that a court, "in the determination of his civil rights and obligations[1] or of any criminal charge" (ECtHR. *Eckle v. Germany,* 15 July 1982, para. 73)[2] must decide within a reasonable time (Salamoura, E. p. 2). The Court has held that this implies a right to equality of arms (Greer, 2006, p. 274), and a right of access to courts, the latter of which can be limited, according to a national margin of appreciation, provided a legitimate aim is pursued, the principle of proportionality is observed, and the very essence of the right itself is not impaired (Greer, 2006, p. 274). One may ask, if we presume the existence of the reasonable time mechanism protected by ECHR, does it imply that there is a prescribed period of the time during which a domestic court is obliged to conclude the proceedings, including the enforcement ones? We might expect the answer to be yes, however, it is still no. Let's examine the answer by giving an etymological definition of the reasonable time and then attempt to put the definition in a legal context in relation with the core standards set by the legal order of the Council of Europe. Etymologically, reasonable time means a certain, fixed period that may be regarded as reasonable. Legally, the reasonable time requirement is a specific period of time during which a domestic court must determine the case by giving a reasoned decision. But, the mandatory element of the time to be a reasonable depends on the various factors, including the distinction between the legal systems of each state. In every member state the reasonableness is understood and then prescribed by the legislator in a different manner. For example, in Georgia, the duration of criminal proceedings are considered to be reasonable if time does not exceed the prescribed period of nine months (*Code of Criminal Procedure of Georgia*, Art.205, para 2). We can further assume that reasonable time requirements vary by state. If we put the etymological and legal definitions in the context of the jurisprudence of the Council of Europe, we will definitely conclude a non-existence of a reasonable time in the scope thereof. The reason for this assumption is simple. The Council of Europe is composed of 47 member states, each of them having their unique legal structure based on their legal tradition and experience. It would be illogical from the prospect of the Council of Europe to propose a mandatory common time system on member states, since it would in reality be extremely difficult to comply and then to implement the common time requirement. Even if we imagine a realization of this concept in any way it would be ineffective, causing only the breach of it. As we have already outlined, the legal basis of each system is different and comprehensive from their point of approach, so one size fits all policy will not be justified. For this very reason, The Court has not laid down any

[1] *Civil Rights and Obligations* are an autonomous concept deriving solely from the ECHR. It is, independent of the categorizations employed by the national legal systems of the member States. See also, ECtHR. *Georgiadis v. Greece,* 17 October 2002, para. 34

[2] *Criminal Charge* is an autonomous concept deriving solely from the ECHR. It means that, interpretation of the ECtHR is superior over any kind of interpretation given by domestic court. See also, ECtHR. *Eckle v. Germany,* 15 July 1982, para. 73

particular means of attaining the required outcome (Edel, 2007, p. 16). The Court is here laying down a positive obligation whose content remains largely unspecified and is therefore at the discretion of the state, which has a wide domestic margin of appreciation in meeting it (Edel, 2007, p. 16). For instance, like in many other cases, the court in case of *Jama v. Slovenia,* reiterates that "it is for the State to organize its judicial system in such a way as to enable its courts to comply with the requirements of Article 6 (1)"[3] and "it is not the Court's function to indicate which measures [the state] should take" (ECtHr. *Johnston and others v. Ireland,* para.77, 18 December 1986). For further clarity, in case of *Scuderi v.Italy,* ECtHR therefore confirms that, Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organize their judicial systems in such a way that their courts can meet each of its requirements (ECtHR, *De Micheli v. Italy,* 9/1992/354/428, 2 February 1993).[4] Further guidelines are not provided by the court on that matter. What does that really mean? Convention "trusts" the states in choosing their approaches while ensuring a reasonable time requirement under their respective jurisdiction and therefore grants a freedom of an action in terms of deciding their "means" for pursuing even more respective "ends". However, its supervisory mechanism plays a role of the guardian of the convention, and is not going to make itself blind when facing a violation thereof. Beside the fact that the convention has granted specific room for changes to the states, the European Court of Human rights has still elaborated a system that can assess the reasonableness of the national proceedings without even prescribing the notion of reasonableness in its case law. According to our examination, neither CoE law nor EU law has established specific time frames for what constitutes a 'reasonable time' (FRA, 2016, p. 136).

After having examined the concept of reasonable time, we have concluded that it would be meaningless for European Court of Human rights to elaborate a specific period of the time in its case law and if it decided to, indeed that would basically undermine the concept of the large room de maneouvre granted by the convention to every member state. Apart from that, the key aspect of the reasonable time requirement that needs to be discussed is its applicability. In other words, how an application occurs and what is its scope. From a very general viewpoint, the convention has legally binding power over the states and its first article rigorously imposes by a great amount of incumbency to protect every individual under its jurisdiction. It means that for the convention the primary goal constitutes to be the human, as a self-being and his or her not only the negative, natural rights but also the social, cultural and political rights derived therefrom. The state is the central subject having its unique moral and international status

[3] See, among many other examples: mutatis mutandis, R.M.D. v. Switzerland, 26 September 1997, para. 54, Reports of Judgments and Decisions 1997-VI

[4] See, among many other authorities, ECtHR, *De Micheli v. Italy,* 9/1992/354/428, 2 February 1993.

before the ECtHR. When arguing about the states duty to ensure the realization of the right to a speedy trial, here the primary question that needs to be answered is, "Which of the states' body or an organ can breach the right to a speedy trial? If we manage to answer this question properly, it will be equivalent to answering the question concerning the scope of the application. Generally, the answer to that question is simple. Indeed, it's the domestic court that basically violates right to the speedy trial, but, is there any organ capable of breaching a reasonable time requirement other than a court? As the wording of the convention outlines, the right to a hearing within a reasonable time may be invoked in relation only to a tribunal responsible for determining – in the words of Article 6 – "civil rights and obligations" or "any criminal charge" (Edel, 2007, p. 9). That means that article 6 is not a general right that has an overall scope and is not capable of holding every typical state body regulated, but rather, in its scope we can assume to be every type of domestic court, including other types of organs only in case they elaborate the power to determine the cases related to "civil rights and obligations" or "any criminal charge". However, those terms are autonomous concepts purely defined by the virtue of the convention and no matter what the domestic legal definition of those terms are the superior power shall the convention wield. The dynamic interpretation by the European Court seems to be gradually changing the position regarding these two concepts (Edel, 2007, p. 9). Today in practice – although the European Court has refrained from describing the situation in these terms – Article 6 can clearly apply to any judicial proceedings, apart from certain spheres ruled out by judicial doctrine as being impossible to assimilate to civil or criminal cases (Edel, 2007, p. 10). In so saying, defining "civil rights and obligations" and "the criminal charge" and implications thereof shall support our argument on the applicability of the reasonable time requirement. Therefore, we will draw up extensive case law of the ECtHR on this matter in order to find out which spheres are included in and excluded from the applicability of the reasonable time requirement.

As noted above, the right of access to a court under Article 6 of the ECHR is limited to disputes concerning criminal charges against the applicant or civil rights and obligations (FRA, 2016, p. 26). The concept of "civil rights and obligations" is interpreted extensively. It encompasses the whole of what continental law defines as private law, regardless of the law governing a particular case – civil, commercial, administrative, etc. – or the authority with jurisdiction to settle the dispute (Edel, 2007, p. 9). The court in case of *Georgiadis v. Greece*, "recalls that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that Article 6 para. 1 (art. 6-1) applies irrespective of the status of the parties, as of the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter" and in *Bochan v. Ukraine,* the court stipulates that "for Article 6 § 1 in its "civil" limb to

be applicable, there must be a dispute ("contestation" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognized under domestic law, irrespective of whether that right is protected under the Convention." But, when should the right be regarded as a civil? European Court has addressed this question in the case of *Konig v. Germany,* "whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned." The existence of the dispute is an integral part in terms of defining the "civil rights and obligations". The dispute must have a genuine and the serious nature, instead of having mere and formal one. In the case law of the Strasbourg Court, the detailed analysis of the "dispute" is laid down, however here discussion about its conceptual aspects are not necessary and thus exerts the purposes of the articles. All we need to take into account is considering the notion of the "dispute" as inevitable element of a context defining the "civil rights and obligations". Apart from that, the pecuniary nature of the proceedings should also be included. It gives an opportunity for the court to classify the case as a "civil" notwithstanding its place under domestic jurisdiction. In other words, the case may be classified to be consistent with public law, but because of its pecuniary nature European Court classifies as a civil case and consequently puts those cases under the scope of reasonable time requirement *(as mentioned above, in the case of Koning v. Germany, [...] "and not its legal classification - under the domestic law of the State concerned")*. Moreover, that's why the Court in the case of *Ferrazzini v. Italy* reaffirms that "the principle according to which the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions in democratic societies does not give the Court power to interpret Article 6(1) as though the adjective "civil" (with the restriction that that adjective necessarily places on the category of "rights and obligations" to which that Article applies) were not present in the text". Further, in *James and other v. The United Kingdom,* the court recapitulates that "it does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States". The virtue that is upheld in the case of James once again emphasizes on the sole relevance of the autonomous concepts derived purely from the case law of the court, thus highlighting its primacy over the domestic interpretations.

The other most basic principle upon which the convention was elaborated is its living nature. The convention is a living instrument that has got dynamic and flexible nature. It evolves step by step and "runs after" a society. So, if standards in the society are to be changed, the convention within its elaborative nature as a living instrument will ameliorate through its case law in a way that shall address any given challenge before it. The living nature of the convention is simply useful because it does not shy away from addressing contemporary challenges. If in the past the scope of applicability of

the reasonable time requirement has been narrow and was limited only to the judicial organs, today the sphere of proceedings relating to "civil rights and obligations" has thus expanded considerably to take in an assortment of disputes (Edel, 2007, p. 10). Thus, Article 6 is applicable toward disputes between private individuals and public authorities –regardless of whether the latter is acting as a private individual or the depositary of public authority – if the administrative proceedings involved affect exercise of property rights, as with proceedings relating to expropriation, pre-emption, planning permission and so on (Edel, 2007, p. 10).[5] As noted above, the pecuniary dimension of the right supports the applicability of a reasonable time requirement because the results they can produce under the national jurisdiction may have significant impact over private rights and obligations. For example, in the case of *Ringeisen v. Austria,* the subject matter was the permission of selling the land. In *Konig v Germany* – the permission to manage a private clinic. Also the building permission was included in *Sporrong and lönnroth v. Sweden.* The permission for fulfilling the requirement in order to work in a specific field of profession was said to fall under the scope of article 6 in the case of *Benthem v. Netherlands*. Even license matters in the case *Tre Traktorer aktiebolag v Sweden* have been recognized to fall therein. Moreover, disciplinary proceedings before the professional bodies in case of *Le Compte, Van Leuven and De Meyere v. Belgium; Philis v. Greece (no. 2)* were admitted to fall under the scope, when the right to practice a profession is at stake (ECtHR. *Le Compte, Van Leuven and De Meyere v. Belgium,* 18 October 1982; *Philis v. Greece (no. 2,)* para.45, 27 June 1997).

The case law cited above outlines that the pecuniary nature of the right, which may or may not have an impact over individuals' private rights, is enough to justify the applicability of Article 6th, in this context, the right to a speedy trial. On the other hand, there are specific categorization of the cases in which merely stating the pecuniary nature of a right is not enough justification to prove the validity of applicability of the right thereto, because other interests that are at stake are proved to be the sufficient ground for excluding the applicability of article 6. As in the case of Ferrazzini, European court states that "merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6(1) under its "civil" head." For instance, the court strictly excludes tax matters from this. In the same case of Ferrazzini, the Court stipulates that "there may exist 'pecuniary' obligations vis-à-vis the State or its subordinate authorities which, for the purpose of Article 6(1), are to be considered as belonging exclusively to the realm of public law and are accordingly not covered by the notion of 'civil rights and obligations" thus mentioning tax cases

[5] Edel, F. (2007). *The length of civil and criminal proceedings in the case law of the European Court of Human Rights*, Strasbourg, Council of Europe. p.10. Other examples include: land consolidation, dispute over a development plan regulating the building, environmental protection.

as "the hard core of public authority prerogatives" (ECtHR. *ferrazzini v. Italy,* para. 29, 12 July 2001). The same attitude is shown in immigration cases. The case law of the court indicates that immigration cases have nothing to do with the concept of "civil rights and obligations". Its exemplification can be found in the case of *Maaouia v. France.* "The Commission has been called upon to do so, however, and has consistently expressed the opinion that the decision whether or not to authorise an alien to stay in a country of which he is not a national does not entail any determination of his civil rights or obligations or of any criminal charge against him within the meaning of Article 6 § 1 of the Convention" (ECtHR. *Urrutikoetxea v.France,* 5 December 1996) and "the Court considers that the proceedings for the rescission of the exclusion order, which form the subject matter of the present case, do not concern the determination of a "civil right" for the purposes of Article 6 § 1. The fact that the exclusion order incidentally had major repercussions on the applicant's private and family life or on his prospects of employment cannot suffice to bring those proceedings within the scope of civil rights protected by Article 6 § 1 of the Convention" (ECtHR. *Neigel v. France,*17 March 1997). We can make the clear conclusion that sometimes even in cases when at stake it is the private and family life of the applicant cannot override the strategy of state policy in terms of the applicability of article 6. It should be further noted that, the cases concerning political factual circumstances, including the right to the immunity and the right to elections are mainly viewed as a sets of the rights that are derived from political rights, rather than considering them as an elements of the civil rights. The same manner is applied concerning the civil servants. These cases usually fall outside of the scope of application. According to the landmark case of *Vilho Eskelinen and Others v. Finland,* "to recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest." The court therefore states that the fact that an individual is working at the sector of department that takes part in the exercising of power conferred by the public law does not constitute to be the solely decisive reason to justify exclusion (ECtHR. *Vilho Eskelinen and others v. Finland,* 19 April 2007), "In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in *Pellegrin*, a *"special bond of trust and loyalty"* between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond."

After having examined the extensive case law of ECtHR we can conclude that in the

past the applicability of the reasonable time requirement (article 6) was only limited to the judicial organs having authority to exercise legally binding decisions. But, as society evolves, the convention evolve too, and its scope is extended to the various types of the cases.[6] For that very reason, we have discussed the evolution of the concept of "civil rights and obligations" and then had put in the context of applicability of article 6 (the reasonable time requirement). Shortly, we can assume that the reasonable time requirement applies to the concept of "civil rights and obligations". Not only the judicial organs that elaborate legally binding authority can breach the right to a speedy trial, but also the organs mentioned above. As the analysis of the case law has shown, the pecuniary nature of the right plays a role in determining the indicating "value" each applicant has at stake. For that reason, the right under the national jurisdiction maybe classified as a right deriving purely from public law, but for the virtue of the convention it shall still be regarded as the part of a "civil right and the obligation" because abstaining from exercising or exercising of those rights may have a specific impact over the individual. Thus, the convention does not pay attention on the domestic classification of those rights. It mainly focuses on the autonomous concepts solely derived from case law. Albeit, only asserting that the nature of the right is pecuniary seems not to be sufficient ground for the justification of the applicability of article 6 (reasonable time requirement). As we have examined, in certain types of the cases the article 6 (reasonable time requirement) is inapplicable because the mere pecuniary nature of the right cannot override the values deeply enshrined in the realm of public law and state governing policy too, therefore, for this very reason the convention usually abstains from perceiving that those certain types of disputes fall in the scope of article 6.

In order to discuss the applicability to the proceedings relating to "any criminal charge" at first the definition of "any criminal charge" must be given. Like "civil" cases, the concept of "criminal" cases has been endowed with an autonomous European meaning regardless of how it is defined in the domestic law of member states; it has been construed broadly, thanks to essentially a substantive definition by the European Court (Edel, 2007, p. 13). The truly relevant criteria for determining whether a case is criminal are, on the one hand, the nature of the offence – that is, the contravention of a general rule whose purpose is both deterrent and punitive – and/or, on the other hand, the seriousness of the penalty incurred (Edel, 2007, p. 14). Those criteria are alternative, not cumulative. The deprivation of the liberty is by far the most relevant indicator that links to the nature of the offence. Administrative sanctions and punishments also fall in the scope of article 6. The nature of the body ordering the penalty is of no consequence; the European Court has extended the criminal sphere to encompass administrative penalties, including disciplinary and tax penalties (Edel, 2007, p. 15).

[6] The list of cases I have indicated is not an exhaustive list; it is just an illustration.

In case of *A.P., M.P. and T.P. v Switzerland,* the court stated that "The penalties, which in the present case take the form of fines, are not intended as pecuniary compensation for damage but are essentially punitive and deterrent in nature." Article 6 also applies to disciplinary regulations, both in the army and in prison (Edel, 2007, p. 16).

Ultimately, almost every case falls within the article 6 under the categorization of the criminal offence. On the other hand, cases from the civil sphere suffer from numerous restrictions.

Methodology of the European Court of Human Rights

The concept of a reasonable time requirement has been analyzed above. It would be meaningless to examine the methodological approach of an assessment that is widely used by the court, if one is not capable of understanding the main essence of it. As noted, a reasonable time requirement protects parties from unreasonable delays and supports the effective administration of justice while at the same time preventing all parties to the proceedings from getting stuck in the intercourse of litigation. However, the convention sets an obligation to conduct national proceedings without exceeding such time, but does not prescribe the means of achieving these purposes. It gives an opportunity to the member states to choose in which manner the compliance with the duties imposed by the convention shall be the best for their respective domestic legal orders. We have once asserted that the contracting parties to the convention are utilizing and thus having the benefit from the margin of appreciation in choosing and deciding their implementation policy. The convention deeply believes that member states know it better how to comply with the reasonable time requirement and gives them an entitlement to organize the domestic legal system in a way they consider it is necessary. Each member state is better aware of the particular features and characteristics of their national system. Unfortunately, things are not that positive. Basically, we do not live in a perfect world and even the convention perhaps does not expect that member states will perfectly realize their obligations under their jurisdiction, but it is really acrimonious when ECtHR has a plethora of cases to determine alleged violations frequently referred to a right to a hasty trial. The problem seems to have become commonplace in Europe. Here, we are not examining the ways to prevent violations of the reasonable time requirement. Instead, our attempt is to scrutinize how the court considers the adjudicating proceedings are excessively long. As a result, we must consider the methodological approach widely utilized by the court itself. Moreover, to have the methodological approach analyzed with greater scrutiny an exemplification of the relevant case law of the court shall be essential. Nevertheless, the relevant case law of the court is too extensive because its overwhelming number of the applications

usually before the ECtHR, our venture shall imply the linkage only to those significant cases that is vital for our purposes.

The European Court of Human Rights deploys a unique approach to determining the reasonableness of the length of the proceedings. The approach thereto is neither derived from the domestic legal order nor international treaties. Even the wording of the convention doesn't contain any provision referring to it. So, we cannot find any reference other than the case law of the court itself. The methodology is solely derived from the case law of the court. It is the Strasbourg court that elaborated and then developed the notion. Regarding its contextual definition, the approach was developed so to assess the duration of the proceedings and conclude whether it is reasonable or is likely to lack it. So, what kind of function does that method have? – the function is to assess the compatibility of the national proceedings with the reasonable time requirement featured in article 6. Each case brought before the court is usually assessed on an individual basis in light of all individual circumstances (FRA, 2016, p. 138). This assessment is made pursuant to the criteria established by the ECtHR in its case law (FRA, 2016, p. 138). The court envisages that of virtue in number of cases. In its case of *Katte Klitsche de la grange v. Italy,* the court addressed that "the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law." The same is stipulated in the case of *H. v. France.*[7] Each case should be assessed in the particular context of its own and unique circumstances. The circumstances of the case have a dominant role while assessing if there is a breach of the reasonable time requirement. Generally the reasonableness of the length of judicial proceedings is assessed case by case: the assessment will depend to a large extent on "the circumstances of the case" – the Court's way of indicating that these will substantially affect the application of the general rules – and entails thorough scrutiny by the Court of the distinctive features of the particular case (Edel, 2007, p. 36). It appears that there are some principles that the assessment of the reasonable time requirement is based upon. At first, the convention obliges the member states to construct their judicial framework in order to enable their court to be compatible with the requirement of the convention. These are the institutional requirements the convention imposes on states to fulfill thoroughly. As the cases, *Comingersoll S.A. v. Austria* and *Lupeni Greek Catholic Parish and Others v. Romania* share the common spirit. In case there is a complaint referring the violation of the reasonable time requirement the attention then is paid to the courts methodology of an assessment whether the breach has really occurred. As mentioned, the cases ought to be examined according their individual, particular and unique circumstances. That is, what the Strasbourg court calls the assessment "in light of all individual circum-

[7] *The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law*

stances". But the question lies whether it should be partial or an overall assessment. So, which part of the proceedings should be assessed? Does it apply only to the first instances of proceedings or appellate and cassations too? The partial assessment would be illogical. The pure substance lies in the entirety. The court examines from the very starting point of the proceedings to the very ending point, nevertheless it is the first instance or the last round proceedings that are in question. In simple words, the court calls for a global and overall assessment. The court in the case of *Obermeier v.Austria,* notes that, "its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment". The terms, "global", "overall" and "as a whole" are the synonyms and are used similarly. For example, in *Comingersoll S.A. v. Austria,* court is using the term "as whole" to articulate the need for an overall assessment of the case, indeed in light of the individual circumstances ("In the light of the circumstances of the case, which are to be assessed as a whole"). Even more ustification is provided in the case of *König v. Germany,* where the court while assessing the proceedings, notes the need to examine "the whole of the proceedings in question." Apart from that, there is an even more exigency to examine the case as whole, like a vivid organism, taking into consideration an overall duration of it. As noted somewhere above, the aim of the reasonable time requirement is protect litigants from unreasonable delays. Whereas, alternative delays may not be presumed to be unreasonable, the delays taken altogether in cumulative manner may result into the reasonable time being exceeded. The case of *Deumalnd v. Germany* is a great example of this concern. According Deumaland, the litigation extended over the 11 years. It was divided in six independent phases. Taking into account that delays into those phases alternatively were not regarded to be excessive, an approach to examine those phases cumulatively has indicated the result of having breached the reasonable time requirement. Therefore, the court stipulates, "[…] the responsibility for its duration rests to a large degree with Mr. Deumaland, […] viewed together and cumulatively, the applicant's case was not heard within a reasonable time, as required by Article 6." The circumstances, however, can be different from what we have considered above. For example, a delay in a particular stage of the proceedings may not be conceived as unreasonable, even more they can be permissible, provided that the "whole", "overall" duration of the proceedings were not presumed to be excessive. The court in the case of *Pretto and others v. Italy,* explains that, "[…] As regards the four other phases, it does not find their duration to be unreasonable, […] Nevertheless, although these various delays could probably have been avoided, they are not sufficiently serious to warrant the conclusion that the total duration of the proceedings was excessive. The permissible limit was therefore not overstepped." From these two

examples we can draw a significant conclusion. Moreover, the case of Deumland and Pretto are key examples that emphasize a great need to assess the reasonable nature of each proceeding in overall manner, as a whole. In particular, while alternative delays may not give a rise to the issue, cumulative approach that implies analyzing all phases of the delay in a common context, may lead to an undesirable consequence. On the other hand, the particular delay can be permitted unless the overall duration of the proceedings is not excessive. There is, however, one exception, when the European Court will make an assessment unrelated to the circumstances of the case and the criteria that it has laid down (Edel, 2007, p. 37). If the case has occurred in a context of repeated breaches of the reasonable-time requirement by the defendant state, reflecting organizational failure of its judicial system, the Court confines itself to very limited scrutiny (Edel, 2007, p. 38). The Court does not examine the specific circumstances of the case: the existence of previous judgments against the state in the same sphere and an established absence of appropriate general measures to remedy the situation are adequate evidence of non-compliance with the Convention (Edel, 2007, p. 38). The court in the case of *Botazzi v.Italy,* considered that "excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law", [..] "Similarly, under former Articles 31 and 32 of the Convention, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason. The frequency with which violations are found shows that there is an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents" and further gives an explanation that "this accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention." Therefore, examination of the case in light of the individual circumstances is a usual manner for the court. The court does it with great scrutiny, analyzing each detail of the case very closely.

As discussed above, the approach taken by the court attempts to detail every case in its individual context taking into consideration the genuine nature of those cases concerned. From more theoretical point of view, the examination of the case whether it is conducted within the reasonable time is usually conducted within two phase. These phases are cumulative and not alternative. It means that court needs to determine them both in order to give the above-mentioned conclusion concerning the reasonableness of the length of the proceedings. Each of them has very unique and interconnected nature. For example, the court will not examine the second phase unless it has completed the examination of the first one. Thoroughly assessing them both enables the court to make a firm conclusion. This approach has been rooted significantly in the depths of the case law of the court. It constitutes a well-examined practice which does not really lack an effective nature. The whole idea of a two phase approach lies in determining the starting and the ending point of the proceedings and further assessing its

reasonableness referring key criteria developed in its case law. In other words, ECtHR first identifies the period to be taken into consideration in determining the length of proceedings. It then considers whether the length of time is reasonable (FRA, 2016, p. 138). Therefore, my suggestion will be discussing each phase in as much detail as is needed for the purposes of this article. To start, the first phase implies the identification of relevant period, especially the starting and ending point of the proceedings, including the civil and criminal limb.

Whatever the circumstances, when reviewing compliance with the reasonable-time requirement the Court always begins by determining the starting point (dies a quo) and the end (dies ad quem) of the period to be considered (Edel, 2007, p. 19).

As civil cases are concerned, an expeditious holding of trial is required, in order to avoid a prolonged state of uncertainty in which the involved parties find themselves (Salamoura, p. 1). In civil and administrative cases, the starting point is calculated as the date on which the concerned proceedings are addressed (i.e., the date on which the relevant action is filed with the court's secretary) (Salamoura, p. 1). As the court referred in the case of *Erkner and Hofauer v. Austria,* "In civil proceedings, the "reasonable time" referred to in Article 6 § 1 (art. 6-1) normally begins to run from the moment the action was instituted before the "tribunal" (ECtHR, *Bock v.Germany,* para. 35, 21 February 1989). Sometimes time begins to run until the moment the action is instituted. Usually it occurs when there is a need to take a certain preliminary for being entitled to start proceedings before the court. The need for lodging the complaint before the administrative body for accessing the court is a usual example of this. For instance, in the case of Golder, the court comments that "in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute." Thus the Court can take the date of a preliminary application to an administrative authority as a starting point, especially when this is a prerequisite for the commencement of proceedings (Edel, 2007; ECtHR*, König v. Germany,* para. 98; *X v. France,* para. 31*; Kress v. France* [GC], § 90). The court in the case of *Blake v. United Kingdom,* stated that "While it is conceivable that in certain circumstances the period might begin earlier *(Golder v. United Kingdom, judgment of 21 February 1975, Series A no. 18, § 32)*, this is exceptional and has been accepted where, for example, certain preliminary steps were a necessary preamble to the proceedings *(K. v. Italy, no. 38805/97, § 35, ECHR 2004-VIII)*." Particular examples that have mainly occurred during the evolution of the case law of the court are presented below.[8] Time ceases to run when the proceedings

[8] Edel, F. (2007). *The length of civil and criminal proceedings in the case law of the European Court of Human Rights*, Strasbourg, Council of Europe, p.23, As noted in Edel, 2007, the date of a preliminary claim for compensation sent to an administrative authority; the date of a non-contentious claim lodged

have been concluded at the highest possible instance, when the determination becomes final and the judgment has been executed. In civil cases the period may therefore continue after the final judgment of a court, (i.e., subsequent proceedings for the execution of that judgment) (ECtHR. Guincho v. Portugal, 10 July 1984). The court in the case of *Robins v. the United Kingdom*, confirmed that stages subsequent to the judgments on the merits will not be excluded. Same goes for an execution of the judgment as mentioned above. In the case of *Martin Moreira v. Portugal,* the court found a violation of the convention, in particular the reasonable time requirement. It further proclaimed that, "the relevant period should also extend to the subsequent enforcement proceedings" and refers to Guincho, where the court has envisaged the analogous virtue. In other words, the execution of judgment or enforcement proceedings are considered an integral part of a case for purposes of calculating the relevant period (EctHR. *Silva Pontes v. Portugal*, para.33; EctHR, *Di Pede v. Italy*, para. 24). However, the court, in the case of *Estima Jorge v. Portugal,* adopted a judgment that was quite different from its recent case law. The case can be distinguished from the previous cases that were determined before it. It has differentiated the case of Estima Jorge from the case of Martins Moreria because the "court has previously held that determination of a civil right is constituted at the moment when the right asserted actually became effective." It divulged that for identifying the relevant period it ought to be included the course of periods in which the right established becomes effective, because the time will not stop and on the contrary will run until the right obtained is not exercised. The other topic on this matter will regard constitutional courts. There is only one option the court will consider the proceedings before the constitutional court while determining the relevant period. The court takes into consideration the particular role of the constitutional court and encapsulates its legal status. According to its relevant case law, (e.g. the case of *Pammel v. Germany, Deumeland v. Germany, Süßmann v. Germany*) the constitutional court is regarded as a "special guardian of the constitution." Therefore, ECtHR takes into account its special status while determining the relevant period. The court takes proceedings before constitutional courts into account only if its outcome is likely to affect the proceedings before the ordinary courts. Lastly, distinction should be made between the intervention of the third party and the death of the applicant that is followed by his or her heir with the intention to continue the proceedings as an original applicant's heir. Where the applicant has intervened in domestic proceedings only on

with the Prime Minister; the date on which an objection was lodged by the applicant with the administrative authorities that had withdrawn his authorization to practice medicine and run a clinic; the date of a request for termination of public care of three children; the date on which the applicants lodged a challenge to a decision with the authority that had issued it; the date of the applicants' request for formal confirmation of an association's decision;86 the date of an application for restitution of real estate; the date of the first challenge to a government department regarding the total amount of compensation following nationalization of a company, etc.

his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as an heir he or she can complain of the entire length of the proceedings (ECtHR. *Scordino v. Italy (No. 1)* [GC], para. 220, 29 March 2006).

Article 6 § 1 of the ECHR guarantees the party – or in criminal proceedings the accused – the right to a fair trial, that is, the right to be tried fairly. Although the concept of a fair trial is set out in general terms, the spirit of the Convention implies that the term "fair" refers to a timely, effective and unimpeachable trial, under such procedural safeguards that enable the objective search for truth and the issuance of a sound decision (*The protection of Human Rights in Europe,* 2006; *Athens Bar Association*, p. 65). The reasonable time requirement is strictly referred to as the rights of the accused persons. As mentioned above, accused persons should not remain in the state of uncertainty too long. In the case of *Wemehoff v. Germany,* the court notes that it "is of opinion that the precise aim of this provision in criminal matters is to ensure that accused persons do not have to lie under a charge for too long and that the charge is determined." The period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term (ECtHR. *Grigoryan v. Armenia,* para. 126, 10 July 2012). As it is reiterated by the court in *Neumeister v. Austria,* the relevant period "necessarily begins with the day on which a person is charged ('accusée')." "Charge", for the purposes of Article 6 par. 1 (art. 6-1), may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence" (ECtHR. *Eckle v Germany*, para.73, 15 July 1982). The court in the case of *Todorov v. Ukraine,* notes that "this definition also corresponds to the test whether "the situation of the [suspect] has been substantially affected." In fact, while considering a complaint of violation of the reasonable time requirement provided for by Article 6(1) ECHR, the Court attaches a specific importance to the applicant's awareness of the proceedings or the police involvement in order to determine the dies ad quo and hence whether his situation has been 'substantially affected' (Henzelin, Rordorf, 2014, p. 84). Accordingly, in the case of *Ustyantsev v. Ukraine,* the court held that, "In the absence of more specific information, the Court will take this date as the dies a quo for the purposes of the present examination". *Philippe Bertin-Mourot v. France,* summarizes the already established case-law in this area.[9] It should be noted

[9] "The Court recalls that the period to be taken into consideration in respect of Article 6 paragraph 1 begins to run as soon as a person is formally charged or when the suspicions relating to this person have substantially affected the latter's situation because of measures taken by the prosecuting authorities, […] This may have occurred on a date prior to the case coming before the trial court …, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when the preliminary investigations were opened … Whilst "charge", for the purposes of Article 6 para-

that time may begin to run before a case comes before a trial court.[10] The Court exercises unfettered discretion in determining the point at which criminal proceedings first substantially affect the suspect's situation (Edel, 2007, p. 27). To conclude, the shield of procedural protection afforded by Article 6 comes into play as soon as a "criminal charge" is brought against an individual and it remains in place until the charge is "determined" that is until the sentence has been fixed or an appeal decided. But Article 6's requirements of judicial procedure do not cover the pre-"charge" phase of a prosecution, and in particular the process of criminal investigation prior to charging (Mahoney, 2004, p. 107).

Regarding the end of the period to be taken into account, it is generally unnecessary to distinguish between civil and criminal proceedings; in both spheres the period considered by the Court ends, in principle, with the last decision delivered by the domestic legal system that has become final and has been executed (Mahoney, 2004, p. 28). This may even, in certain circumstances, include a decision by the European Court if the case is still pending before domestic courts (Mahoney, 2004, p. 28). The court in the case of *König v. Germany,* emphasized the need for assessing criminal proceedings as a whole in an entire manner. It stipulates, "In criminal matters this period covers the whole of the proceedings in question, including appeal proceedings." Furthermore, in the case of *Neumeister v. Austria,* the court indicates that "as the final point, the judgment determining the charge which may be a decision given by an appeal court when such a court pronounces upon the merits of the charge." It should be noted that acquittal or the conviction of the individual should also be taken into account while identifying

graph 1, 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", 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.

[10] FRA. (2016), *Handbook on European Law relating to access to justice.* Luxembourg: Publications Office, p.140, *Further, the European Court accepts the following starting points, depending on the circumstances of the particular case.* For example, As cited in Edel, F.(2007), the date on which an arrest warrant or search warrant was issued (See, *Motta v. Italy,* 19 Feb. 1991, §15*, Coëme and others v. Belgium,* 22 June 2000, §133;); the date of the applicant's actual arrest (See, *Alimena v. Italy,* 19 Feb. 1991, §15); the date on which he was charged (or, in other words, indicted) or on which his parliamentary immunity was lifted (See, *Frau v. Italy,* 19 Feb. 1991, §14 *Pugliese v. Italy* (No. 1), *Ficara v. Italy, Colacioppo v. Italy,* 19 Feb. 1991, §14, §15 and
§13 respectively); the date, in Italy, on which judicial notification was sent or received (See, *Adiletta and others v. Italy,* 19 Feb. 1991, §15) or notice of criminal proceedings was received (See, *Mori v. Italy,* 19 Feb. 1991, §14; *Hozee v. the Netherlands,* 22 May 1998, §45.) ; the date on which the applicant was officially notified of the criminal proceedings against him or her (See, *Angelucci v. Italy,* 19 Feb. 1991, §13); the latest date on which he appointed defence counsel (See, *Raimondo v. Italy,* 22 Feb. 1994, §42; Šleževičius v. Lithuania, 13 Nov. 2001, §26.); the date of a decision ordering the confiscation of items seized or confirming the sequestration of a flat (See, *Vendittelli v. Italy,* 18 July 1994, §21). etc.

the end point in the criminal matters, even if this decision is appealed or whatever there is in any pyramid of the court structure. The court in the case of *Wemhoff v. Germany,*" reveals there is no doubt that the period to be taken into consideration in applying this provision lasts at least until acquittal or conviction, even if this decision is reached on appeal. There is furthermore no reason why protection is given to the persons concerned against the delays of the court should end at the first hearing in a trial: unwarranted adjournments or excessive delays on the part of trial courts are also to be feared. The date in which the person is informed about the final decision of the domestic court relating to his or her conviction, acquittal or the dismissal is indeed relevant. As to the knowledge of the verdict or the reasons for the decision, in a departure from the Vallon case, the Court considered in Pop Blaga v Romania that the dies *ad quem* corresponds to the day the applicant had been informed of the verdict, even if the judgment with the reasons for the decision was drafted subsequently with the applicant effectively becoming aware of those reasons at a later stage (Henzelin, Rordorf, 2014, pp. 83-84). Therefore, a criminal "charge" is presumed to be determined only after the fixation of the sentence. In *Eckle v Germany* the Court found that upon conviction, there was no "determination … of any criminal charge" within the meaning of Article 6(1) ECHR so long as the sentence was not definitively fixed (Henzelin, Rordorf, 2014, p. 84). The execution of the judgment plays a vital role in determining the relevant period. It is an integral part of the reasonable time requirement set by an article 6 of the convention. The court in the case of *Assanidze v. Georgia,* firmly stated that "the guarantees afforded by Article 6 of the Convention would be illusory if a Contracting State's domestic legal or administrative system allowed a final, binding judicial decision to acquit to remain inoperative to the detriment of the person acquitted" and therefore "If the State administrative authorities could refuse or fail to comply with a judgment acquitting a defendant, or even delay in doing so, the Article 6 guarantees the defendant previously enjoyed during the judicial phase of the proceedings would become partly illusory." It is noteworthy that the accused can raise a claim of the violation of the reasonable time requirement with the Court even though domestic proceedings are still pending and no final decision has yet been rendered (Henzelin, Rordorf, 2014, p. 84). It is an interesting point out what happens in such circumstances. Article 34 of the convention imposes an obligation for those who want to lodge a complaint before the court to exhaust all possible domestic remedies. However, this is an exception from that of rule. When proceedings at a national level are clearly taking too long, the admissibility requirements for a complaint about the unreasonable length of time are relaxed to allow an applicant to apply direct to the Convention's supervisory bodies without waiting until domestic proceedings are complete (Edel, 2007, p. 35). In other words, it is possible to complain of excessive length of proceedings to the European Court of Human Rights before the final domestic decision has been delivered, precisely because that decision is slow in coming (Edel, 2007, p. 35). Albeit, the ground-breaking precedent of *Kudla*

v.Poland set a new standard that obliges member states to organize their domestic legal system in a way to enable an individual to obtain an effective redress for breaches that arisen from the reasonable time requirement as prescribed by article 6.

As noted above, the assessment widely utilized by the court consists of two independent phases which taken as a whole creates the methodological approach of the court. The first phase of the assessment was an identifying the relevant period of time, including start and the end points. Consequently, we have examined the start and the end point of the proceedings in criminal and civil limb. The first phase contains the valuable information for the court, in particular, it determines when the proceedings before the national courts have started and when they have ended. The identification of the relevant period of the time enables court to proceed on the second phase of its assessment. The second phase is truly depends on the mastery of the court. As the court has mentioned it several times, it is the main factor in the characterization of the cases. The second phase is the right time for the court to prove this. Therefore, the court effectively does that which makes sense given the criteria are the right approach to the problem. After identifying the relevant period, we can therefore assume that the first phase is over. At the second phase the court applies the significant criteria elaborated in its case law on the relevant period of the time that has been identified in the first phase of an assessment. This is the reason why a cumulative approach is the right methodology in this context. As mentioned, the criteria are purely derived from the case law of the court. These criteria shall therefore be discussed below.

The second phase that I will be discussing is also called an objective assessment deriving from a number of criteria. In the case of *Sürmeli v. Germany,* the court "reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following 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." The complexity of the case, the conduct of the applicant and relevant authorities and what is at stake for the applicant are the fundamental criteria the court applies when assessing the reasonableness of the proceedings before domestic court. The wording in the case law may be slightly different from each other, but overall context is the same. No matter what kind of sequence of the structure is in the case law of the court, only these criteria are valid and therefore applicable. Consequently, when exercising its full powers of review, the Court uses a number of criteria to assess whether or not proceedings have been reasonable: some of the criteria concern the nature of the case (that is, its complexity and what is at stake) while others relate to the conduct of the parties (that is, the applicant and the relevant authorities) (Edel, 2007, p. 39). For further illustration these landmark cases are all of relevance (ECtHR. *Neumeister v. Austria,* 27 June 1968).

The examination has come to a final point and therefore is striving to reach its final destination, assessing whether the application of these principles are in fact an effective tool for considering the case as having excessive duration. This purpose at first entails a discussion about the criteria stipulated above using the same manner of an examination.

Complexity of the case

The first criterion the European Court of Human Rights applies is the complexity of the case. The term in this context can only be defined in relation with the case. The complexity within its theoretical dimension relates to whether such case in itself is characterized by the sufficient degree of convolution to a certain extent that may be regarded as a complex, after examination as a whole vivid organism. The complexity of the case in particular is strictly connected to the nature of the case. In fact, if we establish the case is complex then the delays can therefore be justified. Albeit, things are not that easy.

As noted above, the complexity is closely linked to the nature of the case, especially to the extent whether the case features a certain degree of complexity. The complexity may have to do with the facts to be established, the legal issues to be decided or the proceeding (Edel, 2007, p. 39). The court in the case of *Katte Klitsche de laGrange v. Italy,* agrees with the responding state and asserts that "the case was complex as regards both the facts and the law." Also in the case of *Papachelas v. Greece,* the court states that "the case is relatively complex" for its facts and laws. The complexity of the facts frequently arise when the factual circumstances of the case are unusual and is regarded as having a "difficult" nature. For example, the case of *C.P. and Others v. France* was extremely complex "where the suspicions relate to "white-collar" crime that is to say, large-scale fraud involving several companies and complex transactions designed to escape the scrutiny of the investigative authorities, and requiring substantial accounting and financial expertise". For further illustration the case of *Erkner and Hofauer v. Austria,* is a relevant example. This case referred to the land consolidation. "Any land consolidation is by its nature a complex process. Usually - and quite legitimately - the proper valuation of parcels of land to be surrendered and to be received in exchange is at the forefront of the landowners' concerns."[11] Further, the number of the defendants and the witnesses constitute to be another reason to consider the case

[11] ECtHR. *Erkner and Hofauer* (merits), 23 Apr. 1987, para. 67, The court indicates, that "The difficulties inherent in
such an assessment are often exacerbated by farmers' traditional attachment to their fields and meadows."

in overall as a complex. In the case of, *Milasi v.Italy,* the government claims that the case was complex "for three reasons, namely the nature of the charges, the number of defendants and the political and social situation obtaining in Reggio Calabria at the time." From this example, it can be assumed that not only the number of the defendant is an indicator of a complexity, but the particular nature of the charge too. In the case of the Yalgin and others v. Turkey, "the Court acknowledges the Government's submission that the case was a complex one owing to the large number of defendants, the seriousness of the charges and the courts' difficulties in handling a large-scale trial." Even sometimes, the difficulties concerning evidence can be a sufficient ground for the court to regard the case as a complex. In *Pretto and the other v. Italy,* "The Commission and the Government both considered that the facts were undisputed but that they raised a rather complex problem of legal interpretation."[12]

The legal issues are often regarded to be a further grounds for considering a case to be a complex one. This may stem, for example, from the application of a recent and unclear statute; respect for the principle of equality of arms; questions of jurisdiction, constitutionality or town-planning law; or interpretation of an international treaty (Edel, 2007, p. 40). When it comes to complexity of the proceedings, there is well-established case law of the court that describes in detail examples where the cases have been regarded to be a complex due to the procedural complexity. For example the large number of parties or interlocutory applications submitted by those parties, the whole loads of the case documents or an obtaining those documents from a foreign country, the vast number of defendant and witnesses, also a sundry problems that involve examination of evidence and so on. Hence, the case law of the court on this matter is extensive. I suppose this list does not have an exhaustive nature, but rather illustrational.

The Court sometimes restricts itself to acknowledging that a case is of some complexity and referring to the summary of the facts and also frequently has occasion to note that a case is not complex or does not involve great or particular complexity (Edel, 2007, p. 41). However, if the problems are a result of the organizational complexity of national procedures and therefore objectively attributable to the state, they may count against the respondent government (especially if the complexity increases the risk of infringement of other rights guaranteed by the Convention) (Edel, 2007, p. 41).

[12] See also, ECtHR. *Pretto and the other v.Italy,* 8 December 1983"The Court is of the same view: what was involved was the application of a relatively recent statute which did not contain any specific provisions on the legal point in issue, namely whether the conditions to be satisfied in order to exercise the right of pre-emption also applied to the right to obtain a re-sale; in addition, the decided authorities - still scarce at that time - disclosed contradictory approaches. It was thus reasonable that, with a view to eliminating this divergence of approach and to ensuring certainty of the law, the 3rd Civil Chamber of the Court of Cassation should have deferred its decision until judgment was given by the plenary Court, even though there was a possibility that this would lead to a prolongation of the proceedings."

This is the case if national law makes it necessary to apply successively to different types of court (Edel, 2007, p. 41). As noted above, the complexity strictly relates to the nature of the case. So, why does the court needs to establish the complexity of the case? Because of the reason that the complexity of the case concerned is a determinant factor that can, in some cases, justify lengthy proceedings. If a case is complex within its nature in the light of the case law of the court, then a violation may not be found on that matter. In the case of *Tierce v. San Marino,* the court states that the complexity of a case can provide sufficient explanation why the domestic proceedings have in fact been so prolonged. However, we should not make an assumption that the complexity of the case warrants the justification of lengthy proceedings. In the *Adiletta v.Italy,* the court states that "The case was of some complexity, […] the Court cannot regard as "reasonable" in the instant case a lapse of time of thirteen years and five months." Beside the fact that the complexity of the case may justify certain inactivity of the domestic courts, it may not be regarded as a sufficient for establishing the non-violation of the article 6 in terms of the entire length of the proceedings. The relevant precedents clearly justify that matter. In the case of *Rutkowski v. Poland,* the court considers that, "the applicant's case, involving a large number of accused and the charges related to organized crime, must have been of more than average complexity. This, however, does not justify the entire length of the proceedings." The last point of the complexity of the case refers to the duty of the member states to organize their domestic legal system to enable their court to comply with the requirements of the convention. If that does not happen so, the violation of can be established, notwithstanding the complexity thereof. In the case of *Lupeni Greek Catholic Parish and Others v. Romania,* the court affirms that, "Albeit the case in itself was not a particularly complex one, the lack of clarity and foreseeability in the domestic law rendered its examination difficult; those shortcomings are entirely imputable to the national authorities and, in the Court's opinion, contributed decisively to extending the length of the proceedings."

Conduct of the applicant

The next criteria that the court takes into account while analyzing the reasonableness of the length of the proceedings is the conduct of the applicant. Firstly, we should have a firm vision of the attribution here. The terms of conduct in this context means an action that has negative impact over the proper administration of the justice, in particular over the hasty proceedings. If we look through the methodology of the court, we will definitely notice that the term conduct is used in association with to criteria. First it is the conduct of the applicant and the other is the conduct of the relevant authority. It is crucial to not to mislead within these connotations. They key difference lies in the legal outcomes; they are totally different. In this section, the conduct of the applicant

shall be discussed. As noted above, conduct is an act that influences the hasty administration of the justice, as a result threatens its proper functioning and leads to the breach of article 6. Article 6 itself applies to both criminal and the civil proceedings. In civil cases, most parties are either plaintiffs or defendants. It is not significant whether the parties are private or public entities. A distinction should be made regarding criminal cases. In criminal cases the party always is suspect, accused, the defendant and the co-defendant, the prosecuting authorities as well (although the latter, like the public parties to civil proceedings, should really be included with the relevant national authorities; the same applies to some administrative departments involved in proceedings without being directly implicated) (Edel, 2007, p. 53). That means that the conduct of the applicants is only applicable to those of figurants of the proceedings that were mentioned above. The conduct of the applicant is an objective fact, which means that the court does not exercise the control over the behavior of the applicant. Objectively, the party never asks the court what actions he or she should take in order to exercise from his or her procedural instrument set by the domestic legislation. The court in the case of *Wieisinger v. Austria,* recalls that, "applicants' behavior constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account in determining whether or not the reasonable time referred to in Article 6 para. 1 (art. 6-1) has been exceeded." Moreover, in the case of *Erkner and Hofauer v. Austria*, the court reiterates: "in the first place that it has consistently held that applicants cannot be blamed for making full use of the remedies available to them under domestic law." However, in the case of *Unión Alimentaria Sanders S.A. v. Spain*, the court points out that "the person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings." A different standard is set by the case of *I.A. v. France.* The court points on "a deliberate attempt by Mr I.A. to delay the investigation is evident from the file – one example being the fact that he waited to be informed that communication of the file to the public prosecutor was imminent before requesting, on 19 July 1995, a number of additional investigative measures." The case of *I.A. v. France,* is a significant case that held that in case the evidence shows that applicants actions are dedicated for the sole purpose of prolonging proceedings, then these should also be taken into account while assessing the reasonableness. Albeit, in the case of *Mincheva v. Bulgaria,* the court has still emphasized the duty of the domestic authority to ensure the right to a hasty trial under their domestic jurisdiction, notwithstanding the conduct of the applicant.

The conduct of the applicant is an objective fact that cannot in any circumstances be attributed to the respondent state. It would be quite unfair to hold the state liable just because of the behavior widely shown by the applicant, nor should it be held liable because the applicant has utilized and maybe has exhausted all available domestic

instruments. In civil cases, the Court considers that parties may be expected to act with "due diligence" but that it is nevertheless not obliged to ascertain whether or not their conduct has been negligent, unreasonable or delaying: that conduct in itself is an objective factor for which the state cannot be held responsible (Edel, 2007, p. 57). In criminal cases this holds even truer: "Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities" (Edel, 2007, p. 58). However, domestic courts must not sit back and do nothing: even in legal systems which have established the rule that the parties control the course of civil proceedings (the *principe du dispositif* in French), the attitude of the parties "does not … dispense the courts from ensuring the expeditious trial of the action as required by Article 6" (Edel, 2007, p. 57).

The main difficulty is the following: the applicants conduct is an objective fact and the state cannot exercise control over his or her conduct. However, an applicant in any case is not responsible to actively cooperate with the judicial organs in order to speed up the proceedings. It is the duty of the state to ensure the hasty administration of the proceedings, beside the fact that applicant may sometimes use delay tactics. In these cases, the court takes into account the objective conduct by the applicant and does not attribute them with the state, albeit it examines the steps carried out by the respondent state in order to prevent the slow administration of the justice, even when applicant uses such strategies and is not cooperating actively with the domestic authority.

Conduct of relevant authority

The court takes into consideration not only the conduct of the applicants, but the conduct of the relevant authorities too. The court here imposes even more obligation on the state, starting from a very general idea that implies ensuring the relevant domestic legal order to prevent the slow administration of the justice until the concrete factual circumstances are purely attributed to the state and its lack of effective measures.

Firstly, In the case of *Von Maltzan and Others v. Germany,* the court emphasizes the doctrine of the proper administration of the justice and generally asserts the requirement of the article 6 that lays obligations on the member states to construct their domestic legal system in order to enable their courts to act in an expeditious manner. As mentioned above, the convention imposes an obligation to comply within the reasonable time requirement arising from the article 6 that are further illustrated in the cases of *Bucholz v. Germany* and *Humen v. Poland.* The state is responsible not only for the conduct of the judicial authorities but the conduct of all relevant organs that are subject to its jurisdiction. In the case of *Martins Moreira v. Portugal*, the court highlights an

even greater standard of responsibility. The court here does not limit the scope only to the judicial organs and extends it to any particular public organ that is in any aspect involved in the intercourse of the litigation and holds the liability of the state even for these conducts. It implies the approach that the state should exercise full power and control over its public organs, whether it is exercising the judicial functions. The court asserts that the chronic workload of the court is not a reasonable ground to justify the delays. In the case of *Probstmeier v. Germany*, the court reiterates that "according to the Court's established case-law, a chronic overload, like the one the Federal Constitutional Court has labored under since the end of the 1970s, cannot justify an excessive length of proceedings." Even, in legal systems where the desire of the party to take or not to take certain procedural steps has decisive importance, yet it does not exclude the obligation of the court to ensure that an expeditious trial as required by article 6 takes place. In the case of *Tierce v. San Marino,* the court points out that, "While it is true that the domestic civil procedure leaves it to the parties to decide what steps to take and when, the Court points out that such a principle does not absolve Contracting States from the obligation to ensure compliance with the requirements of Article 6 regarding a reasonable time." The same standard applies to when there is a great need for the opinion of an expert. In this case, the convention sets its prior duty on judges to prepare the case for the proceedings and to take concrete steps that would accelerate the course of the proceedings itself. The virtue envisioned in the case of *Capuano v. Italy,* where the court asserts that "in the present case, the expert was acting in the context of judicial proceedings supervised by the judge; the latter remained responsible for the preparation of the case and for the speedy conduct of the trial."

The respondent states often argue that directly that due tothe chronic workload of the court sometimes it is difficult to hear a case within the reasonable time. Under circumstances like that, member states often strive to justify non-compliance with the chronic workload experienced on daily basis by the national courts. The European court does not share the point of view of the responding states and reminds them the necessity of the compliance with the reasonable time requirement and is reiterating that chronic workload in itself cannot justify the breach. In other words, workload does not represent a sufficient justification that could prove why the court could not properly realized their obligations arising from the convention. In the case of the *Cappello v. Italy,* "The Government pleaded the backlog of cases in the Tempio Pausania District Court and the transfer of two judges, but Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organize their legal systems in such a way that their courts can meet each of its requirements." Therefore, the court in the case of Cappello referred to its case of *Vocaturo v. Italy,* the court states: "As regards the excessive workload, the Court points out that under Article 6 para. 1 (art. 6-1) of the Convention everyone has the right to a final decision within a reasonable time in the determination of his civil

rights and obligations. It is for the Contracting States to organize their legal systems in such a way that their courts can meet this requirement." As a result, putting pressure on a bunch of the cases to be dealt by the court is now a pointless. Further in the case of *Buchhloz v. Germany,* the court points out that there will be no liability for the state if the latter has ensured sufficient domestic remedies. The court in the case of Buchholz, asserts that "nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided they have taken reasonably prompt remedial action to deal with an exceptional situation of this kind."

The respondent states have often justified their delays due to their own approaches in the determination of the cases. A more frequent methodology suggested was a determination of the cases on a particular order. In their point of view, usually delays were caused because of the workload of the court and the date of the case in which it should have been determined. The court in several cases rejected this approach and stated that the introduced reason was not representing reasonable justification for the delays concerned. This vision was upheld in a number of the cases and today it is well established practice referring to the need of more sufficient standard of the proof for those delays. In the case of *Zimmermann and Steiner v. Switzerland,* the court assessed the methodology of national courts as to the extent to which they use proper approaches, e.g. by the date of submission. The court states: "Methods which may fail to be considered, as a provisional expedient, admittedly include choosing to deal with cases in a particular order, based not just on the date when they were brought but on their degree of urgency and importance and, in particular, on what is at stake for the persons concerned. However, if a state of affairs of this kind is prolonged and becomes a matter of structural organization, such methods are no longer sufficient and the State will not be able to postpone further the adoption of effective measures." Moreover, in the case of *Unión Alimentaria Sanders S.A. v. Spain,* the court pointed that such justifications are no longer relevant and courts are capable of justifying their reasonableness.

Other kinds of justification for the delays concerned included the introduction of the reform that was at aim to speed up the litigation. The respondent states have been referring to these sets of the reasons quite often. In the case of *Fisanotti v. Italy,* the court strictly rejected the idea that introducing reform in order to promote speeding up of the proceedings cannot justify the delays of the proceedings, thus such arguments are not as reasonable as to prove the reasonableness of the delays. The court in the case of Fisanotti affirmed that, "However, the introduction of a reform of this nature cannot justify delays since States are under a duty to organize the entry into force and implementation of such measures in a way that avoids prolonging the examination of pending cases." In some cases, the constant changing of the judges can also cause the violation of the reasonable time requirement. In the case of *Lechner and Hess v.*

Austria, the court found that the changing of the judges in this sense was incompatible for the purposes of the reasonable time requirement. It states that "undoubtedly, the repeated changes of judge slowed down the proceedings." The State was also held to be responsible for the failure to comply with the reasonable-time requirement in a case where there was an excessive amount of judicial activity focusing on the applicant's mental state (*Guide on Article 6*: Right to a Fair Trial (civil limb), p. 66). The case of *Bock v. Germany* is an example where the domestic courts expressed an excessive amount of the judicial activity, and thus the procedure was so prolonged that it has been regarded as a violation of the reasonable time requirement.

Although a temporary backlog cannot be attributed solely to the state, the Court has established a doctrine combining flexibility with firmness, and understanding with vigilance (Edel, 2007, p. 66), similarly the domestic court has the responsibility to ensure the attendance of the relevant participant of the proceedings. On the contrary, non-attendance will be on the part of the court. But this will result into the violation only in cases where such actions had caused numerous postpones and latter has resulted in the delay of the justice. In the case of *Tycko v. Russia,* the court stated: "As to the Government's arguments to the effect that certain delays in the proceedings were caused by the non-attendance of the participants in the trial, including the applicant, his co-defendant, their representatives and the witnesses, the Court considers that they were attributable to the State. The applicant himself was detained in custody throughout most of the trial and his attendance was dependent on the domestic authorities in charge of transporting him from the remand prison to the courthouse." On the other hand, if the health condition of an applicant is the sole reason that had caused the substantial delays of the proper administration of the justice, in particular if the latter has prevented the realization of the right to a hasty trial – it cannot be attributed to the state as it is referred in the case of *Yaikov. v. Russia.*

What is at stake?

The last criterion also relates to the nature of the case. This criterion usually determines the value of the good the party has at stake. In simple words, what he cares about. The subject matter can be pecuniary as well as non-pecuniary. Regarding the speed required of the authorities the Court draws a distinction between cases demanding "special or particular diligence" and those necessitating "exceptional diligence" (Edel, 2007, p. 45). The difference between "diligence" is only in its degree of intensity. The cases that require special or the particular diligence include the civil status and capacity. The landmark case on this matter is *Bock v. the Federal Republic of Germany,* where the court noted "what is at stake for the applicant is also a relevant consideration

and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life." The court reiterated this in its case of *Voleský v. the Czech Republic*. The Court also demands particular diligence in paternity proceedings, where what is at stake for the applicant is "to have his uncertainty as to the identity of his natural father eliminated", as stated, for example, in the Ebru and Tayfun Engin Colak judgment of 30 May 2006 (Edel, 2007, p. 44). The same applies to divorce proceedings, which, if excessively long, unquestionably affect the enjoyment of the right to respect for family life, as illustrated by the Berlin v. Luxembourg judgment of 15 July 2003 concerning divorce proceedings lasting seventeen years (Edel, 2007, pp. 44-45).

Individuals' professional activities and other social issues call for particular diligence. For example, in employment cases particular diligence is required. In the case of *König v. the Federal Republic of Germany,* the subject matter of the case referred to the right to run a clinic. According to that, the value that was at stake was incredibly high and at this extent there was a need for speedy proceedings had got paramount importance for the individual. Moreover, the case of Doustaly v. France, in which an architect brought proceedings to determine the balance of a lump sum payable under a public works contract that represented a significant proportion of his professional activity (Edel, 2007, p. 48): "the Court considers that special diligence was required of the courts dealing with the case, regard being had to the fact that the amount the applicant claimed was of vital significance to him and was connected with his professional activity". The court noted that "continuation of the applicant's professional activity depended in large measure on the proceedings." In employment disputes, pension disputes can therefore be specified. The court in the judgment of *Frydlender v. France,* noted that, "an employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence." It should therefore be borne in mind that "employment disputes by their nature call generally for expeditious decision" (ECtHR. *Tóth v. Hungary*, para. 62, 30 Mar. 2004). In its *Zawadzki v. Poland* judgment of 20 December 2001, the Court reaffirmed its view that "proceedings relating to social issues [were] especially important for the applicant" (Edel, 2007, p. 49).

Further, cases that are related to the victims of the road accidents are usually the subject of the due diligence. Concerning victims of criminal violence, "the Court considers that special diligence [is] required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he has been subjected to violence by police officers", in the words of the Caloc v. France judgment of 20 July 2000. In the Caloc case, the Court found against France because "the proceedings lasted more

than seven years merely in respect of the investigation of the applicant's criminal complaint and civil party application" (Edel, 2007, p. 47). The last type of the cases that require special diligence relates to the defendants that are held into the custody. In its *Kalashnikov v. Russia* judgment, the Court noted that, "throughout the proceedings the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously."

Cases entailing an exceptional diligence is necessary in the following spheres: A.) Parents affected by educational measures ordered by a court and restriction of parental authority (because of potentially serious and irreversible consequences for the parent-child relationship); and B.) Persons with reduced life expectancy suffering from incurable diseases (Edel, 2007, p. 51). In the first matter that court in the case of *Paulsen-Medalen and Svensson v. Sweden,* notes that "in cases concerning restrictions on access between a parent and a child taken into public care, the nature of the interests at stake for the applicant and the serious and irreversible consequences which the taking into care may have on his or her enjoyment of the right to respect for family life require the authorities to act with exceptional diligence in ensuring progress of the proceedings," whereas on the second matter concerning with reduced the life expectancy the court in its case of *X. v. France,* states that, "in the light of the applicant's state of health, what is at stake in the dispute [is] extremely important."

The approach of the court as an effective concept

After having thoroughly analyzed the approach elaborated by the court in order to assess whether adjudicative proceedings are excessively long, a conclusion must be drawn up to the extent in which it will be therefore determined if the concept proposed by the court is in itself a right approach to the problem. I consider that the methodology of the court that assesses the nature of the proceedings in terms of the speediness is the right methodology and thus is a right approach to the problem. My arguments that at least strive to justify the premise will be discussed below.

Firstly, for the sake of my argument, I will make a few indications on the nature of the convention. The European Convention of Human Rights is in fact a treaty that was created with an aim to secure the rights and freedoms for those who are under its veil. At some extent, it may be concluded that the convention is more humane with the actions of the individuals, rather than the conducts of the states, in particular in this context of the matter, I mean the reasonable time requirement. But even this approach is correct and within its very essence. When an individual gives up its individual freedom under the social contract, therefore he or she is entitled the protection of the state and by this virtue the state in this sense is more responsible ensuring the reasonable time

requirement than the person itself. The reasonable time requirement is strictly a procedural matter and in this case institutional activeness of the state is therefore required. The state should organize its legal system in a manner that could not only speed the proceedings up under its jurisdiction, but will enable the court to be complied with the requirements of the convention. My argument here strives to emphasize that the state bears a more burden of ensuring the reasonable time requirement for the individual rather than the individual for an individual. It is because of the reason that the state holds more institutional power and it is under its duty to fully exercise its institutional power granted by the population during every election. This does not really happen so. Why is the approach determined by the European Court in fact is the right approach? The first reason it is that the convention and the case law of the court focuses on an individual as a self-being that is in need of the state protection, in particular in terms of the reasonable time requirement. As I mentioned in the introduction, the central subject of the convention is an individual, whereas the state having its moral and international status bears not only moral but international legal responsibility to ensure the obligations arising from the convention. Therefore, the convention imposes the burden on the state, instead of the person. That is why the conduct of the applicant is not attributed to the state, but even so, the cases of the chronic workload are not representing the sufficient ground for the justification. The second reason why this tool is in reality effective is the manner of its applicability and utilization. As mentioned above, the approach is divided into two phase. The first phase includes the identification of relevant periods. The question arise how can the court assess the reasonableness of the proceedings if the court itself is not aware about the amount of the period of the time the court should take into account while analyzing its reasonableness. It would be illogical to ask the court to determine whether the breach of the article 6 has really occurred if the court would not at first identify the relevant period in which it could apply some standards according which it could be capable of making the concrete and adequate decision. Therefore, I believe that the first phase of the approach widely utilized by the court is relevant to approach to the problem. The third reason, the concept is the right concept because of the manner of an assessment. The court in its well established case-law has rejected the idea of the partial assessment of the cases and referred to the need of an overall assessment. Why in fact is an overall assessment better than a partial one? Generally speaking, when the court assesses the case as a whole it usually does so in the light of all individual circumstances. Moreover, it does so step by step and fact by fact. The manner of an overall assessment enables the court to see the very essence of the nature of the delays. As it is already shown by the established case law of the court, delays can occur, but as a whole they may not constitute to have exceeded the reasonable time, but on the contrary the delays may occur that partially are not representing enough grounds for justification of the breach of the reasonable time requirement, but taken them as a whole vivid organism, the breach of the reasonable time requirement may therefore occur. Case law relating to that matter

has been analyzed above. It is the reason why an overall assessment is always superior to a partial one. The 4th reason is the individual nature of an assessment. Broadly, speaking the human rights law is the law of the precedents when even the sky is not the limit. Each case is an individual in itself. An approach relating to the assessment in an individual manner is the correct approach, because simply each case is individual and each of them is in need of an individual approach. The court is not unaware of this and that is why it has chosen an individual and overall approach. Individuality refers to the "light of all factual circumstances". The court frequently reiterates in its case law that cases should be assessed on an individual basis and in light of all individual circumstances. Just because each case is an individual and viable in itself, it means that the factual circumstances are therefore different. In this sense the individual manner of an assessment relates to the assessment in the light of all individual circumstances. In the first phase of the concept, the court identifies a specific period of the time upon which it then draws up a conclusion stating whether it is reasonable. Thus it utilizes an individual and overall manner of assessment. It means that it has analyzed all of the individual circumstances in an overall context, identified the relevant period of the time and now is ready for proceeding on the next phase in which it is going to apply the criteria widely established in its case law.

As mentioned above, in the second phase the court applies the criteria. These criteria are the following: the complexity of the case, the conduct of the applicant, the conduct of the relevant authority and what is at stake for the applicant. It would be rational if we proceed discussing the effectiveness of an approach by the complexity of the case. The complexity of the case rigorously refers to the nature of the case in establishing whether the case is in fact a complex one. Complex cases are not novel, and in reality need much more time to determine. The court in its case law reiterates that normally complex cases that have many factual, legal or the procedural complications require much more time to be determined. At first glance, it may seem that if the case is complex (because many cases can be really complex) then the responding state is not going to be held liable and therefore a breach of the article 6, in particular the reasonable time requirement, will not be determined. But just because the courts approach is a unique concept to that problem, the court states that the matter of the complexity is not as sufficient a reason that it can solely drive the court to the decision of non-violation of the reasonable time requirement. It is widely reiterated in the case law of the court that the complexity of the case is not a sufficient ground for, let's say, considering the length of the adjudicating proceedings reasonable. On the other hand, the court takes into account that the complexity as the determinant of the nature of the case is a serious ground for the justification but does not accept it as one and only ground and continues digging even deeper. In other words, the court does not restrict itself from going further and is not staying satisfied just because it is revealed that the case is complex. The next criterion is a conduct of the applicant. The court applies this criterion in order to find at

what extent the applicant is liable for the delays. However, it implies that the applicant is not obliged to cooperate with the judicial authorities and thus is entitled to use every available remedy that can be utilized in the domestic law. Why the second criterion is an effective tool? Because, here the court examines if the conduct by the applicant has a causal link to the delays of the proceedings. The court does so taking into account all factual circumstances of the case as a whole. If the court determines that applicant have used some procedural tactics in order to cause delays it takes it into consideration. Similarly to the relationship with complexity, the court does not consider that the conduct of the applicant itself can justify the lengthy proceedings. In this context, the court looks whether the domestic authority has taken certain steps in order to speed up the proceedings, besides the active "involvement" of an applicant in terms of producing more delays. For example, the constant changing of the lawyer is an indicator that an applicant strives to prolong proceedings, but here the court also takes into account the steps taken by the domestic system for preventing such delays. The next criterion is the conduct of the relevant authorities. The court while analyzing the conduct of the relevant authorities takes into account the actions that has been committed by the national authority that resulted in a preventing the hasty administration of the justice. At this stage, practically, the European Court shows a no tolerance policy in relation with the state. The reason behind this is that states are contracting parties to the convention and their institutional inactivity is often the reason for occurrence of such delays. Even in legal systems where the procedural "willingness" is on part of the individual and he or she does not exercise it so, the court still obliges the member state to ensure an expeditious trial. Moreover, at this stage, the court importantly puts pressure on judges. It stipulates that judges are in fact individuals who should facilitate access to justice for an individual and they actually represent the communication bridge between the domestic judicial authority and the population of the state itself. In simple words, in the examination of this stage complete attention is paid to the domestic legal organs that on one hand are trying to ensure the obligation of the court and on the other hand the court looks whether the conduct of such organs in fact caused the occurrence of the delays. The main reason for its effectiveness is that the court takes into account not only the conduct of the applicant but the conduct of the relevant authority too. In other words, the European Court takes into account both of the conducts, either the conduct of the applicant, either the conduct of the domestic authority and does it on the equal basis, taking into consideration the portion of an action of the both parties into the preventing the hasty administration of the justice. The last criterion that the European Court applies is the matter of what is at stake for an applicant. As noted above, it means the "price" of the good the applicant has at stake. The court here is mainly focused on a need of an individual relating to the hasty administration of the justice. Subjectively, I reckon the court on this stage more supports the applicant. This standard requires the domestic court to show either due diligence, either exceptional diligence that in fact strictly depends on each case. If we look even deeper at this we will see why this cri-

terion is effective. The main advantage of having this criterion in the list of applicable criteria is that it shows to the European Court which specific reasons was the domestic court obliged to show the particular diligence which in this context should result into the hasty administration of the justice. Those specific reasons are the implications of the subject matter of the case. In other words, by analyzing the subject matter of the case is directly equal within its content as to what is at the stake for the applicant the court gains an information why proceedings should have been conducted in a fast manner and therefore why national courts have been obliged to showcase more diligence and express even more scrutiny while determining the case. For instance, the examples which have been provided in section (iv) are pure justification of what the Strasbourg court strives the national courts to care for and to be aware of.

Lastly, the concept elaborated by the court is in fact an effective tool and is in reality the right approach to the problem. Here I will draw up a conclusion showcasing the concrete reasoning. 1. At first it identifies the relevant period, e.g. ff the court will not identify the relevant period, how can the latter determine whether it is a reasonable?; 2.The court assesses each case in the context of individual circumstances – each cases varies by the factual circumstances, therefore an individual approach is a beneficial; 3. The court assesses the duration of the case as a whole – partial assessment may lead the court to the false decisions, because, as noted, sometimes the delays taken separately does not constitute the violation of the article 6, but taken altogether cumulatively may result into the breach of the convention. 4. The court addresses the complexity of the case in relation to the nature of the case. The logical approach here lies in determining complexity. If a case is complex, it is logical that it will require much more time for domestic courts to determine; 5. The conduct of the applicant is the objective fact that cannot in any case be attributed to the respondent state. But the court does not limit the scope here and affirms that the conduct of the applicant has nothing to do with the states duty to exercise the relevant system to be concluded the proceedings within the reasonable time, so it takes into consideration what certain steps the authority has taken in order to eliminate delays despite the behavior shown by the applicant. 6. The conduct of the relevant authority is widely taken into account by the court. The court here pressures the domestic authority and examines the steps that, has been taken for eliminating the occurrence of such delays. 7. What is at stake for the applicant – the subject matter of the case, by which the court examines whether the government has shown a due or exceptional diligence in terms of speeding up the proceedings. According to the argument mentioned above, I believe that the approach of the court is in fact the right approach to the problem.

Consequently, when the court takes into account the premises that were mentioned above, it then analyzes them thoroughly and draws up a conclusion whether the duration of the proceedings before the domestic court was in fact exceeded.

The conclusion

Article 6 of the European Convention on Human Rights ensures the right to a speedy trial. It imposes obligations on the member states to guarantee the reasonable time requirement under their respective jurisdictions. Besides the prime significance of the right thereto, the violation of the reasonable time requirement has become a commonplace in Europe and the court has a number of applications to determine on the daily basis concerning this matter. The European Court of Human Rights has elaborated the specific approach that assesses the reasonableness of the length of the national proceedings. It consists of two phases. The first phase implies identification of the relevant period and the other includes applying the relevant criteria. This article analyzes the concept of the reasonable time requirement, as well as the approach taken by the court. Lastly, it examines the approach of the court and determines if the concept is the right approach to the problem.

References

Code of Criminal Procedure of Georgia, Art. 205, para 2;

ECtHR. Bock v. Germany, para. 35 (21 February 1989);

EctHR. Katte Klitsche de la Grange v. Italy, para.61 (19 September 1994);

ECtHR. Artico v. Italy, para. 33 (13 May 1980);

ECtHR. Eckle v Germany, para.73 (15 July 1982);

ECtHR. Ferrazzini v. Italy, para.29 (12 July 2001);

ECtHR. Grigoryan v. Armenia, para. 126 (10 July 2012);

ECtHR. Guincho v. Portugal (10 July 1984);

ECtHR. H. v. France, No.10073/82, para.58 (24 October 1989);

ECtHr. Johnston and others v. Ireland, para.77 (18 December 1986);

ECtHR. Le Compte, Van Leuven and De Meyere v. Belgium, para.45 (18 October 1982); Philis v. Greece (no. 2,) (27 June 1997);

ECtHR. Neigel v. France (17 March 1997);

ECtHR. Neumeister v. Austria (27 June 1968);

ECtHR. Scordino v. Italy (No. 1) [GC], para. 220 (29 March 2006);

EctHR. Silva Pontes v. Portugal, para. 33; EctHR, Di Pede v. Italy, para. 24;

ECtHR. Stögmüller v. Austria, para. 5 (10 November 1969);

ECtHR. Tóth v. Hungary, para.62 (30 Mar. 2004);

ECtHR. Urrutikoetxea v.France, (5 December 1996);

ECtHR. Vilho Eskelinen and others v. Finland (19 April 2007);

Edel, F. (2007). *The length of civil and criminal proceedings in the case law of the European Court of Human Rights.* Strasbourg: Council of Europe;

European Commission for the Efficiency of Justice (CEPEJ). (2012). *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.* Strasbourg: Council of Europe;

FRA. (2016). *Handbook on European Law relating to access to justice.* Luxembourg: Publications Office;

Guide on Article 6: Right to a Fair Trial (civil limb);

Guide on Article 6: Right to a Fair Trial (criminal limb);

Henzelin, M. & Rordorf, H. (2014). When Does the Length of Criminal Proceedings Become Unreasonable According to the European Court of Human Rights? *New Journal of European Criminal Law*, Vol. 5, No. 1;

Kuijer., M, EJTN Seminar *'Effective Remedies, Lengthy Proceedings and Access to Justice in the EU;*

Mahoney, P. (2004). The right to a fair trial in criminal matters under Article 6 ECHR. *Judicial Studies Institute Journal*. Vol. 4, No. 2;

Salamoura, E. *The right to be tried within a reasonable time and the restoration of the party's "presumptive" prejudice.* p.1 See at: https://ssrn.com/abstract=1709473;

The protection of Human Rights in Europe. (2006). Athens Bar Association.