Length of legal proceedings and the pilot judgment procedure of the European Court of Human Rights: new challenges and problems

Duración de los procedimientos judiciales y procedimiento de sentencia piloto del Tribunal Europeo de Derechos Humanos: nuevos desafíos y problemas

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Abstract

The article examines issues related to the impact of the pilot judgment procedure of the ECtHR on the problems of excessive length of legal proceedings in national legal systems. A brief overview of some of the pilot judgments adopted in relation to Respondent States is provided, and an assessment of the effectiveness of the general measures taken is given. Conclusions are drawn about the criteria for determining reasonable terms of legal proceedings in the practice of the ECtHR. As recommendations, a number of measures are proposed that will help states eliminate the excessive length of legal proceedings.

Keywords: European Court of Human Rights; pilot judgment procedure; structural (systemic) problems; general measures; reasonable time; length of proceeding.

Resumen

El artículo examina cuestiones relacionadas con el impacto del procedimiento de sentencia piloto del TEDH sobre los problemas de la duración excesiva de los procedimientos judiciales en los sistemas jurídicos nacionales. Se proporciona una breve descripción general de algunas de las sentencias piloto adoptadas en relación con los Estados demandados y se ofrece una evaluación de la eficacia de las medidas generales adoptadas. Se extraen conclusiones sobre los criterios para determinar los términos razonables de los procedimientos legales en la práctica del TEDH. Como recomendaciones, se proponen una serie de medidas que ayudarán a los estados a eliminar la excesiva duración de los procedimientos legales.

Palabras clave: Tribunal Europeo de Derechos Humanos; procedimiento de juicio piloto; problemas estructurales (sistémicos); medidas generales; tiempo razonable; duración del procedimiento.

Introduction

The achievements of the European Convention on human rights (Convention) and its highest judicial body, the European Court of Human Rights (ECtHR), are widely hailed by academics, lawyers, civil servants and human rights defenders. Since its founding 70 years ago, the Convention has expanded in three areas-legal, institutional and geographical. What was once an agreement between a small group of Western European States to guarantee fundamental civil and political freedoms through an optional judicial review mechanism has now been supplemented by 14 Protocols, one of which - Protocol No. 11 – transformed the ECHR into a permanent, permanent court with mandatory jurisdiction.

With the accession of former Soviet bloc States to the Council of Europe, the ECtHR now covers more than 800 million people in 47 countries stretching across and across the continent and beyond, from Azerbaijan to Iceland and from Gibraltar to Vladivostok. It is no exaggeration to say that the Convention and its growing and diverse body of case law have changed the legal and political landscape of Europe, qualifying the ECtHR as the most effective international court of human rights in the world. Nevertheless, the ECtHR receives thousands of complaints every year about violations of reasonable time limits for legal proceedings. This problem is systemic in many States, as the ECtHR has repeatedly pointed out in pilot judgments.

The European Court of Human Rights is the jewel of the world's most advanced international system for the protection of civil and political freedoms (Laurence, 2008). However, in recent years, the ECtHR has been a victim of its own success (Entin, 2010). ECtHR is currently facing a large-scale judicial crisis caused by the growing number of States under its jurisdiction and deep-rooted human rights problems in others. One of these structural problems is the problem of excessive length of legal proceedings in the member States of the Council of Europe.

Every year, hundreds of applicants complain to the European Court of Human Rights that the proceedings in their national courts take too long and thus violate article 6 of the Convention, which States that "everyone is entitled to the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law". States that have acceded to the Convention are required to apply reasonable time limits in the administration of justice in national courts. The right of a suspect or accused in criminal proceedings to be tried within a "reasonable time" is guaranteed by the main international human rights conventions. In particular, the international Covenant on civil and political rights of 1966 provides in article 14(3)(C) that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality to be tried without undue delay".

The "reasonable time" requirement set out in article 6 of the Convention did not attract much attention in the early years of the Strasbourg mechanism, but several early cases established some fundamental principles (Konig v. Germany, 1978); 2 EHRR 170 at para 99). Cases involving excessively lengthy proceedings became much more common in the 1990s (Kuijer, 2013). As Marc Henzelin and Héloïse Rordorf notes, has been waging a war on excessively lengthy trials at the national level Since the mid-1990s (Henzelin & Rordorf, 2014).

The ECtHR issues dozens of judgments every year stating that there is a violation

of article 6 (1) of the Convention related to the violation of reasonable time limits for legal proceedings. In 2019, the ECtHR issued 884 judgments, of which 106 were related to the length of the proceedings. The highest number of cases of violation of reasonable time limits for legal proceedings was detected by the ECHR in 2019 in Ukraine (35), Hungary (27) and Serbia (10).

The Committee of Ministers of the Council of Europe also drew attention to the problem of violation of reasonable time limits for legal proceedings. In recommendation CM/Rec(2010)3, the Committee of Ministers recommended that the governments of the member states take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time. The Venice Commission, for its part, also drew attention to the need for member States to provide adequate means to ensure that cases are heard by the courts within a reasonable time frame (CDL-AD(2006)036rev).

Methods

The methodological basis of the research is based on general scientific methods of cognition: dialectical, logical system, statistical, etc. In addition, the methods inherent in the science of international law were used: system-legal, comparative-legal and method of interpretation of law. The latter was particularly relevant when considering the legal nature and specifics of the pilot judgments of the ECtHR. Of particular importance is the method of legal analysis, which allows us to identify patterns and trends in the development of national legislation, the legal position of the ECHR in the field of excessive length of proceedings. The use of statistical data makes it possible to estimate the number of judgments issued by the ECtHR with reference to article 6 (1) of the Convention. In General, the consistency of the methodology is associated with the fact that the research is closely linked to practice, which allows you to learn about real processes and phenomena.

Discussion and results.

The pilot judgment procedure and a critical assessment

With the introduction of the pilot judgment procedure, the ECtHR has given itself a new function – the ability to indicate to respondent states the need to take general measures within the national legal system. The pilot judgment requires the respondent state to comply with its obligations to ensure that "appropriate legal measures and administrative methods" are adopted, based on article 46 of the Convention (Grzinčič v. Slovenia, 03.05.2007, № 26867/02, para. 102; Finger v. Bulgaria, 10.08.2011, № 37346/05).

Polish researcher Jakub Czepek notes that the pilot judgment procedure has become a necessary element of the Strasbourg landscape over the years (Czepek, 2018). One of the goals of the pilot judgment procedure, as noted by the then Secretary-Chancellor of the ECHR, Eric Friebergh, is an indicative goal, which manifests itself in "encouraging the respondent state to ensure the protection of Convention rights" (Fribergh, 2008).

It is very important that the ECtHR leaves the national authorities some autonomy in choosing the necessary general measures, without imposing them. This policy is also aimed at striving, in the process of dialogue between governments and the Committee of Ministers of the Council of Europe (CMSE), to develop the necessary action plan, including concrete measures.

Uncertainties and ambiguities in the formulation of general measures also make it difficult for respondent states to select

the measures necessary to address the structural problem. This criticism, in particular, is supported by judge V. Zagrebelsky in a separate opinion in the case "Lukenda v. Slovenia", in which he argues that the reasoning part of the decision is confusing and the Court's judgments are too general. So, the judge writes the following: «In conclusion, in point 5 of the operative provisions of this judgment, the Court is requesting the Government to change the national system in law and in practice. Nothing more, nothing less. I do not think that this can be regarded as a judgment of a court. It is not an order that can be executed as judicial orders usually are. The timing and monitoring of the quality and suitability of the "execution" measures that the Government should introduce can only be guessed at. In my view it is up to the Committee of Ministers to identify, request, suggest, secure and monitor the measures which appear to be necessary» (Lukenda v. Slovenia, 06.10.2005, жалоба № 23032/02).

According to A. Buyse, «the pilot judgment procedure depends to a large extent on the willingness of the respondent state to cooperate. Since the pilot solution is applied in a broader situation than just the individual applicant's situation, the problem of state cooperation can be called the "Achilles' heel" of this procedure» (Buyse, 2009).
In most cases, the difficulties in implementing pilot judgments related to the excessive length of legal proceedings are caused not only by a lack of will on the part of national authorities, but also by financial, legal and political problems that precede the adoption of general measures aimed at addressing the problem at the national level. The elimination of this structural problem is often associated with large expenditures that may not be sufficiently provided for by the state budget.

Criteria for determining a reasonable time

According to the case law of the ECtHR reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the individual 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. These criteria must be also considered when determining accurate amount of just satisfaction for non-pecuniary damage sustained from excessive length of proceedings. In order to avoid the risk of delaying proceedings, States should lay the foundations for an effective judicial system so that they can meet the requirement to deal with cases within a reasonable time frame (Mžiková et al., 2012).

In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility (H. v. France, § 58; Katte Klitsche de la Grange v. Italy, § 61). Article 6 § 1 obliges the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements. Where the Court finds that in a particular State there is a practice incompatible with the Convention resulting from an accumulation of breaches of the "reasonable time" requirement, this constitutes an "aggravating circumstance of the violation of Article 6 § 1" (Bottazzi v. Italy [GC], § 22; Scordino v. Italy (no. 1) [GC], § 225).

The reasonable-time requirement applies to all stages of the legal proceedings aimed at settling the dispute, not excluding stages subsequent to judgment on the merits (Robins v. the United Kingdom, §§ 28-29). Assessment in the specific case: The reasonableness of the length of

proceedings coming within the scope of Article 6 § 1 must be assessed in each case according to the particular circumstances (Frydlender v. France [GC], § 43), which may call for a global assessment (Obermeier v. Austria, § 72; Comingersoll S.A. v. Portugal [GC], § 23; Nicolae Virgiliu Tănase v. Romania [GC], § 214).

The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and in accordance with 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 (Comingersoll S.A. v. Portugal [GC]; Frydlender v. France [GC], § 43; Sürmeli v. Germany [GC], § 128; Lupeni Greek Catholic Parish and Others v. Romania [GC], § 143; Nicolae Virgiliu Tănase v. Romania [GC], § 209). Since it is for the member States to organise their legal systems in such a way as to guarantee the right to obtain a judicial decision within a reasonable time, an excessive workload cannot be taken into consideration (Vocaturo v. Italy, § 17; Cappello v. Italy, § 17). Nonetheless, a temporary backlog of business does not involve liability on the part of the State provided the latter has taken reasonably prompt remedial action to deal with an exceptional situation of this kind (Buchholz v. Germany, § 51).

Furthermore, the introduction of a reform designed to speed up the examination of cases cannot justify delays since States are under a duty to organise the entry into force and implementation of such measures in a way that avoids prolonging the examination of pending cases (Fisanotti v. Italy, § 22). In that connection, the adequacy or otherwise of the domestic remedies introduced by a member State in order to prevent or provide redress for the problem of excessively long proceedings must be assessed in the light of the principles established by the Court (Scordino v. Italy (no. 1) [GC], §§ 178 et seq. and 223).

In determining whether the length of the criminal proceedings was reasonable, the ECtHR takes into account factors such as the complexity of the case, the applicant's conduct and the actions of the relevant administrative and judicial authorities (Konig v. Germany, para. 99; Neumeister v. Austria, para. 21; Ringeisen v. Austria, para. 110; see also Pelissier and Sassi v. France [GC]), para. 67, and Pedersen and Baadsgaard v. Denmark (para. 45).

- **The complexity of the case** may be due, for example, to the number of charges, the number of witnesses and accused involved in the proceedings, or the international aspect of the case (Neumeister v. Austria, para. 20:
- **The applicant's behavior.** Article 6 does not require applicants to actively cooperate with the judicial authorities. Nor can they be held responsible for the full use of the remedies available to them under national law.
- **Conduct of the relevant authorities.** Article 6, paragraph 1, imposes an obligation on Contracting States to organize their judicial systems in such a way that their courts can meet all its requirements (Abdoella v. the Netherlands, para. 24; Dobbertin v. France, para. 44).
- **The question of what the accused risks** should be taken into account when assessing the validity of the duration of the trial. For example, if a person is being held in pre-trial detention, this factor should be taken into account when assessing whether charges were brought within a reasonable time (Abdoella v. the Netherlands, para.24

Marc Henzelin, Héloïse Rordorf, having analyzed the case-law of the ECtHR regarding the assessment of reasonable periods of criminal proceedings, suggest a «3–5–7 schematic»: a period short of 3 years does not usually infringe Article 6(1) ECHR and after 7 years the length of the proceedings is usually considered

unreasonable. It is around the 5 years mark that the predictions are the most hazardous and a balance of the criteria in favour of, respectively against, reasonableness must be made (Henzelin & Rordorf, 2014).

Excessive period of proceedings and lack of domestic remedies

Excessive periods of trials, accompanied by a lack or inadequacy of effective remedies, is a fairly common structural problem in criminal, civil and administrative cases. Possible reasons in such situations are usually national procedural rules and the gaps in the practical functioning of the judicial system, including insufficient budgetary funds.
The systemic nature of excessive periods of proceedings and the lack of domestic remedies were first identified by the European Court in the case of "Lukenda v. Slovenia" (the total duration of the proceedings in two instances was more than five years). Considering that during the pilot judgment there were more than 500 clone cases pending before the Court, the Court ordered the Slovenian authorities to take a number of general measures aimed at the existing means of legal protection improvement, or the creation of new ones to ensure truly effective compensation for the excessive length of the proceedings.

To solve this problem, Slovenia launched the Lukenda project in 2006 and the Act Regulating the Protection of Right to Trial without Undue Delay was adopted, which provides for the creation of a new compensatory remedy in case of excessive length of proceedings in Slovenian courts. Among other measures taken by the Slovenian authorities to address the identified systemic problem, the following should be highlighted: the adoption of the law on alternative resolution of civil disputes to ease the workload of civil courts (2010); setting a maximum period (60 days) for the provision of opinions by forensic experts; an increase in the staff of judges and other employees of the judicial system (Slovenia managed to take first place among the EU member states in terms of the number of judges: in 2014, there were 45 judges per 100,000 inhabitants); introduction of modern technologies in the administration of justice, etc.

The Government of the Republic of Slovenia reacted to this situation by adopting a program, thanks to which it was possible to reduce the duration of proceedings in local and regional courts by 2010: from 18 months (as it was in 2006) to 6. Besides, by 2016, national authorities were able to reduce the number of pending cases to 190,894 (for comparison: the number of pending cases in Slovenian courts was 427,967 during 2010) (DH-DD (2016) 1212).

A systemic problem concerning the form of excessive length of proceedings was also identified in the pilot judgment on the case “Rumpf v. Germany” dated on 2 September 2010, in which the Court pointed out that there was a problem in the administrative courts (the applicant Rüdiger Rumpf sought to renew the license for the weapon in four instances, within the framework of administrative proceedings for over 13 years).

During the period from 1959 to 2009 the European Court of Justice has made resolutions in over 40 cases against Germany, finding systematic violations in the periods of the civil proceedings. The systemic and persistent nature of the problem of excessive length of civil proceedings in the domestic courts was further evidenced by the fact that at the time of the pilot judgment there were about 55 similar complaints against Germany pending before the European Court.

Following the adoption of a pilot ruling in

December 2011, the Federal Republic of Germany entered into force the Protracted Proceedings and Criminal Investigations Act (hereinafter - the Remedies Act), which included the tools to expedite civil proceedings and provisions against delays in legal proceedings, allowing a claim on compensation to the court of appeal.

It should be noted that these measures have contributed significantly to raising awareness of the need to take effective measures against the problem of excessive length of proceedings. For example, by the judgment of the Supreme Administrative Court of Berlin-Brandenburg (27 March 2012) the applicant was awarded EUR 4,000 in respect of non-pecuniary damage for an excessively lengthy trial. In another judgment, the Supreme Court of Saxony-Anhalt (29 November 2012) ordered compensation in the amount of EUR 2,400 for the plaintiff due to the excessive length of the proceedings.

The problem of excessive length of proceedings was also identified in another pilot judgment concerning the case "Athanasiou and Others v. Greece" dated on 21 December 2010. The Court concluded that the shortcomings of the Greek judicial system gave rise to excessive length of proceedings in the administrative courts. The proceedings, which had lasted approximately 13 years and eight months in 3 courts, were found to be excessively lengthy and breaching “reasonable time” requirement. More than 200 cases against Greece raising the issue of excessive length of proceedings, of which approximately 100 are related to administrative courts, have confirmed the structural nature of the problem. In total, the Court made about 300 decisions in similar cases from 1999 to 2009.

Following the adoption of the pilot judgment in April 2012, Greece entered into force the “Fair Trial Within a Reasonable Time Act” (hereinafter - the Law 4055/2012), which introduced two remedies of a compensatory and preventive nature, allowing compensation in the event of unreasonably long proceedings before the Greek administrative courts.

In the judgment of inadmissibility on the case "Techniki Olympiaki A.E. v. Greece" (1 October 2013) the Court found the remedies introduced by Law 4055/2012 to be effective and accessible both in Greek law and in the practice of the national courts. A Greek government report dated on (November 25, 2015) indicates that the average length of proceedings has decreased for all administrative courts and there is a positive trend in the speedy and efficient administration of justice. The Greek authorities noted that the identified trend will continue in the coming years, despite the financial difficulties caused by the economic crisis (reduction of court staff, lack of premises, equipment, etc.) (DH-DD (2015) 1269).

The shortcomings of the judicial system, giving rise to excessive length of proceedings in civil and criminal cases, were also highlighted in the pilot judgments on the cases “Dimitrov and Hamanov v. Bulgaria” and “Finger v. Bulgaria” dated on May 10, 2011. The European Court turned to statistics indicating the existence of a systemic problem, noting that it had previously found a violation of the Art. 6 of the Convention in about 130 similar cases on the length of the proceedings against Bulgaria (over 80 in criminal proceedings and almost 50 in civil). Approximately 700 more similar complaints were pending. Despite the adoption of new legislative and organizational measures by the Bulgarian authorities in 2006-2010, the problem of excessive length of court proceedings was unresolved.

Following the adoption of pilot resolutions, the Judicial Power Law (2007) and the Law on State and Municipalities

Liability for Harm (1988) were amended by establishing new compensatory remedies in the administrative procedure (right to file a complaint for the Minister of Justice after the trial) and the court order (entered into force on 01.10.2012). The total amount of compensation paid by the Bulgarian authorities until 15 May 2015 amounted to 1,272,078 Bulgarian leva (approximately 650,403 euros) (DH-DD (2015) 664). The Bulgarian national authorities have also taken a number of measures aimed at expanding and increasing the number of courtrooms, and computerizing the work process. For comparison, in Sofia District Court, before the adoption of the pilot judgment, hearings were organized in 39 halls, and in 2015 the number of courtrooms was already 70 (DH-DD (2015) 664). As can be seen from the statistics of the Supreme Cassation Prosecutor's Office, the number of cases exceeding one year has significantly decreased (61,161 cases in 2013, 8,649 cases in 2014).

Besides, the Bulgarian authorities amended the Criminal Procedure Code (entered into force on 17 August 2013), giving the accused the right to request that his case be brought to trial or closed (if more than one year has passed since the date of a criminal case initiation). If the indictment is not presented by the prosecution, then the court must discontinue the criminal case within three months. Such a right, however, is not granted to the persons accused of serious crimes.

Administrative measures were also taken as the measures aimed at reducing the duration of civil and criminal proceedings: an electronic case management system was introduced in judicial institutions, and an electronic register system in the prosecution authorities to monitor the cases under investigation. Also, a mechanism was launched to verify and supervise the Supreme Judicial Councils of courts and prosecutors concerning the possibility of applying disciplinary measures for failure to comply with the time limits established by law for complaint consideration about excessive length of court proceedings. Additional 94 administrative officials and 30 judges had been approved in the capital of Bulgaria, Sofia, by April 2015.

In a resolution adopted during the 1236-th meeting, the Committee of Ministers noted that a number of problems remain not fully resolved: delays in the transfer of cases at the stage of pre-trial investigation to the courts of first instance and high workload (in particular, in Sofia). Highlighting the results achieved by the Bulgarian authorities, as well as the determination of the national authorities to continue taking further measures to address the structural problem, the Committee of Ministers completed its supervision under the pilot regulation procedure (DH-DD (2015) 664).

In another case, "Ummiihan Kaplan v. Turkey" dated on 20 March 2012 the Court also found that the length of the proceedings (in administrative, civil, criminal and commercial cases, as well as in labor and regional courts) was excessive. As of December 31, 2011, over 2,700 similar complaints were pending before the European Court (of which 2,373 were not communicated to the respondent state, and 330 were communicated).

Subsequently, under the influence of this pilot judgment, the Turkish National Assembly adopted the Law No. 6384 “On Compensation (by Awarding Compensation) for the Length of the Proceedings” (January 2013) on the complaints not yet brought to the attention of the Turkish government and filed with the Court before 23 September 2012 (hereinafter - the Law No. 6384).

Under the pilot judgment procedure on the cases "Michelioudakis v. Greece" dated on April 3, 2012 and "Glykantzi v. Greece"

on October 30, 2012, the Court identified the shortcomings in the Greek judicial system, leading to excessive length of proceedings. In "Michelioudakis v. Greece", the ECHR noted that it has adopted more than 40 decisions since 2007 having violated the Art. 6 of the Convention due to the length of proceedings in criminal courts. During the pilot judgment, there were over 250 similar applications against Greece pending before the Court, 50 of which related to criminal proceedings.

Another pilot judgment in "Glykantzi v. Greece" identified the shortcomings in the Greek legal system related to the excessive length of proceedings in civil courts. In 1999-2009 the court made about 300 decisions on the cases against Greece, in which it was stated that the proceedings were excessively long, including in civil cases.

Following the initiation of the pilot judgment procedure, the Greek authorities introduced a compensatory remedy. The Law No. 4239/2014 (adopted by the Greek Parliament on February 13, 2014, entered into force on February 20, 2014) establishes the right to adequate and sufficient compensation in cases where proceedings in civil and criminal cases or the proceedings in the Audit Court exceeded a reasonable period. Besides, as was indicated in the Action Report, the budget allocated funds for the construction of additional “palaces of justice” to increase courtrooms and such innovation as electronic filing of claims was introduced (DH-DD (2015) 1211).

In the judgment on "Xynos v. Greece" (October 9, 2014), the Court recognized the new remedy as effective and accessible. In particular, the Court concluded that the applicant's complaint about the excessive length of the proceedings on two of his complaints before the Court of Audit should be dismissed as new domestic remedies had not been exhausted.

In turn, by the pilot judgment “Rutkowski and Others v. Poland” dated on July 7, 2015 the European Court ordered the Polish authorities to take additional measures to ensure the right to a trial within a reasonable time and the effectiveness of the domestic remedy.

As the measures aimed at shortening the length of proceedings in administrative courts, the Polish authorities amended the Law on Administrative Courts Proceedings, which entered into force on August 16, 2015. According to the authorities, the relevant amendments are aimed at shortening the length of administrative proceedings by simplifying the procedure in administrative courts and the Supreme Administrative Court.

The authorities have also adopted other legislative measures aimed at efficiency increase and simplifying certain types of administrative procedures. In particular, by changing the legislation on construction, the authorities have thereby reduced the list of grounds for obtaining a building permit. According to the authorities, the amendment reduced the number of complaints about the excessive length of the construction permit proceedings.

Amendments were also made to the Civil Procedure Code (entered into force on November 18, 2015) and the Criminal Procedure Code (entered into force on July 1, 2015), aimed at simplifying and speeding up the proceedings; transfer of a number of powers of judges to consider certain categories of cases to out-of-court officials and other legal institutions (for example, notaries).

The Committee of Ministers noted that these amendments not only simplified various procedural aspects of proceedings in administrative courts, but also had a direct impact on the length of proceedings in administrative bodies

(CM/Notes/1273/H46-19). On November 30, 2016, the Polish authorities adopted the amendments to the 2004 Law to resolve the fragmentation problem and oblige the courts to take into account the entire course of the proceedings in order to calculate the amount of compensation. These innovations will also have to establish the minimum amount of compensation.

In the judgment on the case "Zaluska, Rogalska and Others v. Poland" dated on June 20, 2017, the ECHR noted the active and genuine intention of the Polish authorities to take measures to eliminate systemic defects in legislation and law enforcement practice. However, at present, the problem of the excessive length of proceedings is not fully resolved in criminal and civil cases in Poland: remedies still give rise to certain problems concerning their application (fragmentation, insignificant amounts of compensation, formalism).

Nine days after the pilot judgment about the excessive length of the proceedings in the Polish legal system, the European Court initiated the pilot judgment procedure, now in Hungary, pointing out a similar structural problem on the case "Gazsó v. Hungary" dated on July 16, 2016.

Since the Hungary Convention entry into force and until 1 May 2015, more than 200 judgments concluded that the Hungarian authorities had violated reasonable time limits for civil proceedings. The respondent government also entered into amicable agreements and submitted unilateral statements in other numerous cases. Another 400 cases against Hungary on similar issues were pending before the European Court of Justice.

In December 2016, the Committee of Ministers noted that the Hungarian authorities had failed to meet the deadline set by the pilot judgment and took note of the Government updated action plan, urging the establishment of an effective compensatory remedy as soon as possible (CM/Del/Dec (2016) 1250/H46-12).

On January 1, 2018, the adopted codes of civil procedure and criminal procedure came into force, including the provisions aimed at simplifying legal procedures in order to prevent excessive length of proceedings in national courts. The law providing for a compensatory remedy in the case of excessive length of proceedings entered into force on 1 July 2018. The effectiveness of the remedies created by the Hungarian authorities has to be assessed by the European Court in the future.

In its judgment in the leading case Keaney v. Ireland (application no. 72060/17), the European Court of Human Rights (ECtHR) has unanimously held that Irish law does not provide for effective remedies for complaints about excessive length of proceedings. The ECtHR further noted the insufficiency of the principal remedy proposed by the Irish Government, namely an action in damages for breach of the constitutional right to a timely trial. The ECtHR found that such a remedy was not effective, in spite of the Irish Supreme Court’s recent efforts to clarify the conditions under which such damages would be granted. This decision can leave no doubt that the ECHR feels that Ireland needs to take decisive action here in terms of the availability of effective remedies for unreasonable delay. This may be a concern for the Irish Courts going forward particularly considering the backlog that is likely to be created by the current and ongoing Covid-19 health crisis. Judge O’Leary outlined that this decision was a “renewed declaration of the ineffectiveness of the constitutional remedy” available and furthermore a “failure of the respondent State to put in place a mechanism…guaranteeing such an

effective remedy despite a decade of discussion and attempted reform.”.

The influence of the European Court of Human Rights position on the development of a legal institution for the protection of the right to legal proceedings within a reasonable time in the Russian Federation

The European Court of Human Rights, while resolving a significant number of cases, continues to pose new questions and challenges to the Russian legal system. At the same time, structural problems are revealed more and more often, requiring national authorities to take general measures to address them.

The ECHR, following the consideration of the case "Burdov v. Russian Federation", noted that the Russian Federation systematically violated the paragraph 1 of the Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in terms of non-observance of reasonable time limits for legal proceedings, and there are no effective remedies for the right of citizens to trial within a reasonable period.

As general measures aimed at a domestic remedy development, they should note the Federal Law No. 68-FL "On Compensation for Violation of the Right to Judicial Proceedings within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" (hereinafter the Law "On Compensation"), which entered into force on May 4, 2010, as well as the Federal Law of the Russian Federation, amending certain legislative acts of the Russian Federation. As was noted by A.I. Kovler, “encouraged by the constructive reaction of the Russian authorities” to the judgment, the European Court of Justice issued similar pilot decisions in respect of Moldova (Olaru and Others v. Moldova, dated on 28 July 2009) and Ukraine (Yuri Nikolayevich Ivanov v. Ukraine dated on October 15, 2009) (Kovler & Gerasimov, 2014).

With all the shortcomings of the adopted legislative measures, primarily related to the implementation of the Law "On Compensation", one cannot fail to note important changes in the regulation of the very mechanism for the execution of decisions on budgetary obligations of the state. For the first time an attempt was made in the domestic legal system to create an effective legal remedy against non-execution or long-term execution of national court decisions.

Conclusions

The consolidation of the procedure for obtaining compensation in national courts is only the first step towards a legal institution development for the protection of the right to legal proceedings within a reasonable time in the Russian Federation. The next step should be the development of legislative mechanisms and the ways to improve the administration of justice in terms of preventing violations of legal proceeding reasonable terms. It is necessary to develop measures to prevent similar offenses in the future at the level of the national legal system.
The problem of the amount of compensation awarded for the violation of the right to trial within a reasonable time remains unresolved: it is not commensurate with the trial length.

The introduction of the rules governing the procedural procedure into Russian legislation to obtain compensation for violation of the right to legal proceedings within a reasonable time should have initiated an effective domestic mechanism development protecting the right to legal proceedings within a reasonable time. But this did not happen. At present, this legal institution has reduced the number of applications to the European Court of

Human Rights with the complaints about the lengthy proceedings in Russian courts.

Summary

Thus, the problem of excessive length of proceedings in civil, criminal and other cases is a fairly common and chronic disease of the national legal systems of the respondent states. It should be admitted that the European Court initiated the pilot judgment procedure in the reviewed cases, also on the basis of a significant number of similar complaints. At the same time, the national authorities of the respondent states took, first of all, legislative measures by creating compensatory remedies, and then later developed measures (electronic mechanism development for court proceedings, increase of courtrooms, professional development of court officials) aimed at the dysfunction elimination identified by the Court.

It seems clear that the list of pilot judgments on the issue of excessive length of proceedings will continue to grow and expand, since the increase of the burden on national judicial authorities and the increase of proceeding time is an inevitable trend. The establishment of compensatory remedies under the pilot judgment procedure by the authorities of Germany, Greece, Bulgaria, Slovenia and Turkey is a positive example for other States - the Parties to the Convention, which can learn from relevant experience in general measure implementation to avoid the chronic nature of excessively lengthy litigation.

Among the general measures taken by the respondent States to eliminate the excessive length of trials are the following ones:
- creation of legal remedies aimed at criminal, civil and administrative proceeding acceleration;
- annual reports on the state of proceeding duration by national courts and the execution of ECHR decisions (Germany);
- introduction of technologies and electronic systems for court case reso;ution (Bulgaria, Slovenia);
- the transfer of a number of powers of judges to consider certain categories of cases to out-of-court officials and other legal institutions (for example, notaries - Poland);
- rationalization and acceleration of proceedings before administrative courts and modernization provision (Greece);
- creation of assessment and verification mechanisms, for example, through the collection and analysis of statistical data (Bulgaria);
- strengthening control over the court activities by the presidents of the Supreme Courts, Presidiums (Poland), the Supreme Judicial Council in relation to courts and prosecution authorities (Bulgaria) to comply with the deadlines established by law to consider complaints about excessive length of proceedings;
- court proceeding time reduction and the introduction of simplified procedures for judicial review of cases;
- digitization of the court archives, providing easier, faster access (Italy and Turkey);
- introduction of a unified method of civil archive management in courts of appeal and tribunals (Italy);
- an increase of judges and employees of the judicial apparatus (Slovenia).

Compensatory remedies for excessively lengthy trials are of particular note. Challenging issues remain in the application of compensation laws. For example, remedies in the context of civil and criminal proceedings still give rise to certain problems concerning their application (fragmentation, excessively low level of compensation, formalism). Moreover, the domestic courts award lower amounts of compensation than the European Court of Justice in similar cases.

However, the creation of compensatory remedies by the authorities of Germany, Greece and Bulgaria serves as a positive example for other States - the parties to the Convention, which should learn from the existing experience in the implementation of general measures to eliminate the chronic nature of excessive length of proceedings.

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