How to execute the "reasonable time" decisions of the ECHR – Reactions of the Hungarian legislation.

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I. Introduction

It is said that a decision is worth only that much what is possible to execute of it. This statement is especially true for the decisions of the European Court of Human Rights (ECHR). The execution of the decisions of an international forum is always harder than those of a domestic forum, because instead of the latter, international bodies usually do not have their own law enforcement agencies, therefore they need the help (and consent) of the State to have the decision enforced through its own law enforcement system.

This problem gets in a special point of view when the decision is against the State itself. Of course as the part of the international community they can't afford to act against the decision of an international body – in our case the ECHR – but sometimes the execution of the decision is more than just paying a sum of money (e.g. for the damages of the applicant) – and this could be a problem of sovereignity.

International courts – and from now we're just focusing on ECHR – are never the appellation forums for domestic decisions, their jurisdiction is not in that close connection with the facts of the original case. This jurisdiction has to do something with the relation of the person and the State. After the second world war it became clear in the international community that the rights and freedoms of people are more valuable than the unquestionable sovereignity of the States.

To have the domestic law judgements made and procedures taken by domestic courts are natural parts of sovereignity from the time States exist. Although if the ECHR declares that the remedy for the applicant is to have a new trial, it really interferes with sovereignity. Of course it can't be done without the consent of the State and of course ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms naturally is the acceptance of these kind of limitations of sovereignity – but we must notice that this type of obligation for the State comes up on a not so wide field: the retrial of the single case.

Another important field of sovereignity is legislation – and this takes as right to our chosen topic. What happens, if the ECHR decides there has been a violation of Article 6 § 1 of the Convention because the State was unable to conclude the procedure in reasonable time? Of course pecuniary and non-pecuniary damages can be paid. But how to execute now the procedure in reasonable time?

The question is easier if the procedure is – unfortunately – still pending: than a measure should be taken to get the case out of the normal order of cases and have every measure taken as soon as possible and try to finish it in the closest possible time ("out of turn procedure").

But what if the case is already finished? Of course a new procedure in reasonable time wouldn't help the applicant. Would then be the only remedy for the lack of reasonable time to pay the damages? In this case the State should take a step back and have a look at the problem in a different view. This case is already finished, so there is nothing to do but to pay the damages. Then there's the question what was the cause of the length of the procedure? Is it only an individual phenomenon caused by special circumstances of a single case or is it a more general problem? If it is a general problem than it must be somehow in connection with the legal system so there is a possible need to change the legislation.

So our point is, that if there is a breach of reasonable time, then the judgement of ECHR does not only have effect on the special case but also on the whole legislation of the country. The violation of Article 6 § (1) "reasonable time" is usually caused by the structural problems of the judicial system or the procedural codes, so if the State wants to avoid these problems in the future it has to change it's legislation.

This means that the execution of the decisions according to reasonable time cannot be interpreted only on a single case, but on a wider range of future cases. When writing our paper our goal was to see how did the Hungarian State execute the decisions of ECHR in this broader view and was it enough or what new problems may occur?

II. The definition of the reasonableness of the length of proceedings

Before introducing how the Hungarian procedural law[1] was changed to reflect on the "reasonable time" requirement, we should try to define the reasonableness of the length of proceedings. Generally we can say that the procedure begins when a legal action is filed. The so called "starter-document" can be the accusation in criminal cases and the statement of claim in civil cases. In case there was a previous procedure the duration of that should also be taken into account. The final

1 In Hungary there are two main procedural codes. The Act III. of 1952 which is the Civil Procedural Code that is not only applicable on the "classical" civil law cases, but also on family law, administrative law and labour law cases. The other one is the Act XIX. of 1998 which is the Criminal Procedural Code applicable on every criminal case.

domestic decision is considered as the end of the judicial procedure. According to the Convention, as regard of the length of procedure the duration of the execution also can't be ignored. On the grounds of the Convention and not on the grounds of the domestic law can it be decided when a case is effectively finished. However, the parties – mostly the plaintiff – is not obliged to wait either for the final domestic decision or for the end of the execution procedure to file an action for equitable damages based on breach of his fundamental rights. An extremely long procedure of the first instance may set up the violation of the "reasonable time" requirement provided that the party should exhaust all available domestic remedies. It follows that the reasonableness of the length of the proceedings must be assessed not according to the objective length but 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.

The complexity of the case is determined by the high number of the parties or the witnesses, difficulties of the verification, international connections etc. The conduct of the applicant should be examined in two aspects: first whether the applicant and the party delayed the procedure with his acts or with his omissions, second whether he did his best on behalf of the acceleration of proceedings. As regards the conduct of the authorities it is almost decisive whether the authorities were active at all.

A direct definition cannot be found either in the international law or in the national law, the case-law of the ECHR establishes the system of requirements for "reasonable time" which the contracting parties have to follow.

The Hungarian courts adopted the definition of "reasonable time" as determined by the Constitutional Court of Hungary[2]: "reasonable time" is the period which is satisfactory to render judgement in the relevant case; "reasonable time" does not involve the periods while there are no actions in progress or there is action in progress but it does not have any connection to the case; the unjustified delay is considered as a breach of the "reasonable time" requirement.

III. Changes in the 90's

On the 23rd of October 1989 the President of the Parliament of Hungary announced the Republic of

2 Decision no. 8/1992 (I.30.) AB

Hungary. In the next years the courts of the Hungarian Republic had to deal with completely different problems than in the socialist era. The changes in the economical, social etc. systems caused the number of civil and criminal procedures to increase radically but neither the legislation nor the judicial system did not follow this process. The courts had to work with the Civil Procedural Code from 1952, with the Criminal Procedural Code from 1973 and the Court Administration Regulations from 1974. This contrast almost automatically led to the numerous breaches of Article 6 § 1 – especially to the breach of "reasonable time" and the legislation had to react on this.

Hungary had signed the Convention for the Protection of Human Rights and Fundamental Freedoms on the 6th of November in 1990 and ratified it on the 5th of November in 1992. It was promulgated in Hungary with the Act XXXI. of 1993. This means that the the period to be considered in accordance with reasonable time begins only on the 5th of November 1992, when Hungary's recognition of the right of individual petition took effect.[3]

IV. The modifications of the Civil Procedural Code of Hungary as a reflection on the "reasonable time" requirement

IV.1. Unfair trial manners of the parties – before the first cases

The Code of Civil Procedure was modified for the first time in **1995** which came into effect in the same year. The new regulation emphasises the liability of the parties as well, because it states that the delay in the proceeding can be caused by the other party in the procedure.

The new 141 § (2) imposes an obligation on the parties to make their statements and submit their motions in a timely manner, in a way to facilitate the procedure. Of course, as also declared by the Code of Civil Procedure, when a party violates his procedural obligations a fine can be imposed. However, this fine is not an appropriate way to compensate the other party, since the fine is directly paid into the state budget.

The court wants to act equally fair and also fulfil the requirement of the "reasonable time" at the same time, but of course the proceedings cannot be ended in a time frame so as to comply with reasonable time requirement. For this reason 141 § (6) gives the court the right to decide without

3 Foti and Others v. Italy, application no. 7604/76; 7719/76; 7781/77; 7913/77, the judgement became final on the 10th December 1982.

waiting for the submissions or motions for evidence of the parties, should they be in a delay after being ordered by the court to act accordingly. This Section also states that the court is allowed to wait for the submissions to be made if waiting for the submissions of the parties despite the delay does not influence the in time completion of the proceedings.

The modification also expended the measures applicable against the witnesses and the experts. The 185 § (1) point a) and b) gives the court the right to order them to reimburse the costs they caused or to impose a fine if they did not carry out the order of the court. The conduct of the witness or the expert constitutes a ground for this sanctions when they do not appear at the trial although summons have been served on them without any deep reason or leave without permission or deny to answer the questions of the court without any reason or despite a legally binding decision.

IV.2. Ex-officio verification of facts and damages caused by the court

The second stage of the revision in connection with the requirement of the "reasonable time" was in **1999**. With this modification the legislator admitted the conduct of the court itself could also lead to excessive delay.

For this reason in 2 § (1) of the Civil Procedural Code the legislator declared for the first time the requirement to conclude the procedure in reasonable time as one of the basic task of the court. From that time the court has to finish the procedure in reasonable time without the obligation to investigate the truth, because it is the obligation of the parties to bring the evidences to the court and so determine the direction of the evidence founding procedure.

In the nineties the Civil Procedural Code already had regulations to ensure reasonable time during the procedures but it was only a secondary rule according to the obligation of the court to ex officio reveal the truth – even if the parties were uninterested in this.

The first applications against Hungary were filed on this legal basis in 1996-1997. In the case *Erdős v. Hungary*[4] the most relevant reason for the length of the procedure was obtaining experts' opinion in this not so complicated case. Of course there are special questions where there is a need for an expert's opinion but according to the regulations of the Civil Procedural Code it could be the ex

4 Application no. 38937/97. The judgement became final on the 9th of July 2002.

officio decision of the court to obtain an expert's report if the court's opinion is that the plaintiff's claims have to be founded by such. Of course having such an opinion lengthens the procedure and sometimes the plaintiff needs to have a quick decision so it would be more reasonable for him not to have the opinion but have a faster procedure and get less money.

So because these types of problems the Civil Procedural Code was modified in 1999 and now it declares that the court has to finish the procedure in reasonable time without the obligation to investigate the truth, because it is the obligation of the parties to bring the evidences to the court and so determine the direction of the evidence founding procedure.

The 2 § (2) of the Civil Procedural Code states the definition of reasonable time of the length of proceedings with the same criteria developed by the ECHR and the Constitutional Court of Hungary. This Section also states that the applicant cannot refer to the requirement to conclude proceedings in reasonable time if he delayed the procedure with his acts or with his omissions.

The 2 § (3) as the second significant modification made the legal ground for compensation of damages caused by the conduct of the court. This is a special liability doctrine which constitutes a basement for the objective sanction, irrespective of the fact whether damages occurred or not. The practice of the court differs as regards the nature of this liability. This is almost an objective formation but it generates a form of liability which comprises elements of culpability as well. As a consequence, the three elements of this form of liability are:

1. the unlawful conduct of the court,
2. damages were caused to the party,
3. a casual link between the act of the court and the damages.

This section states if the court do not conclude the proceedings within reasonable time the party referring to the breach of his fundamental rights can file an action for equitable damages.

According to this section there is another important condition the liability of the court only comes up if the damages were not avertable by an regular or irregular judicial remedy (e.g. appeal).

IV.3. Problems with length of the experts' work

Another modification to the Civil Procedural Code was added in consequence of the *Kútfalvi v. Hungary* judgement[5]. Before the Act XLVIII. of **2005** the courts didn't have the possibility to reduce the expert's fee if he was late with giving the opinion. Before this Act the expert could only be fined, but the amount of the fine was usually under the expected fee of the experts.

One of the most common reasons of the extension of proceedings is that the experts' reports are made in a very long time. Nevertheless it is the task of the court to conduct the trial in time, that's why the court has to apply the imperative measures ensured by the law, for example to fine the experts. When this measure does not make an effect the court is allowed to order another expert – but it causes even more delay.

In Kútfalvi case one of the relevant reasons for the length of the procedure were the two experts who haven't made their opinions within 30 days as defined by the procedural code, but in months.[6]

The Hungarian legislator thought that the reduction of the fee will be a better coercive measure towards the experts than the fine, so when experts are appointed by the court they are warned that if they do not make there opinion within the deadline given by the Court – usually 30 days – or do not ask for a longer deadline their fee could be decreased instead of fining. The new regulation decreased the number of these types of problems but it was not enough, so the possible fining of the expert was re-established in 2008, but the decrease of the fee is still possible, so the two measures can be taken in the same time.

IV.4. Unjustified delay – objection as a domestic remedy?

In many cases related to Hungary the Court established that there has been an "unjustified delay" during the procedure[7]. It was a problem both for criminal and civil procedures.

Before the 1st of April **2006** there was no possibility for the parties to have a domestic legal remedy during the procedure if the court's attitude seemed to lengthen the procedure. Even after the final decision it was no use to mention in the appeal the length of the procedure because the second

5 Application no. 4853/02 The decision became final on the 5th of January 2005.
6 Experts are often the causes of the breach of reasonable time, as also seen in case Erdős v. Hungary.
7 Sikó v. Hungary, application no. 53844/00, the judgement became final on the 4th of February 2004.

instance court had nothing to do with it[8]. The only possible domestic remedy was to start a new procedure against the court and claim the damages caused by the unjustified length of the procedure.

But with the Act XIX. of 2006 the Hungarian legislation made the possibility to object against the length of the procedure during the process both in criminal and civil cases. It is possible to object if the court missed a deadline, another party or participant of the procedure had missed a deadline and the court didn't take the appropriate measures, or there was any unjustified delay in the procedure caused by the court.

If the court finds the objection well founded takes the appropriate measures within 30 days. If it finds it unfounded then it has to send the objection to the second instance court that decides if the objection is well founded or not, and orders the first instance court to take the effective measures if necessary. This decision is not a subject of an appeal.

There is one big question according to this quite new and not often used objection possibility: is it a real domestic remedy? If it is, then if the applicant didn't use it during the procedure the application is inadmissible.

The same problem was faced in the case *Holzinger c. Austria*[9]. According to Austrian domestic law if a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step. Unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith. Sub-section (2) declares if the court takes all the procedural steps specified in the request within four weeks of receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request. The request referred to in sub-section shall be determined with special expedition by a Chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal.

8 Except in criminal cases where the length of procedure can be a punishment decreasing circumstance if the delay was not caused by the accused person.

9 Application no. 23459/94.

The Austrian government stated that the applicant had failed to exhaust domestic remedies as he had not made an application under section 91 of the Courts Act. In the Government's view, such an application was an effective remedy as its use would have reduced the length of the proceedings.

The ECHR found that what is important is whether a given remedy is capable of speeding up proceedings or preventing them becoming unreasonably long. The effectiveness of a remedy which has to be used for the purposes of Article 35 may depend on whether it has a significant effect on the length of the proceedings as a whole.[10] Furthermore the Convention organs have repeatedly held in the past, in case of doubt as to the effectiveness of a remedy, it has to be used.[11]

So in *Holzinger v. Austria* case the ECHR therefore found that in the circumstances of the case an application under section 91 of the Courts Act must be considered an effective and sufficient remedy which the applicant has not used, so domestic remedies were not exhausted in the instant case.

The conclusion is, that although "the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism" and "the rule of exhaustion is neither absolute nor capable of being applied automatically"[12] the new Hungarian legal remedy "objection against the length of procedure" counts as an effective remedy which must be exhausted for the application to be admissable.

IV.5. Small value – big haste

In the 2000' years the Hungarian judicial system faced a new problem: because of the extremely high number of the small value cases[13] these procedures started to last extremely long.[14]

In the case *Ajzert v. Hungary*[15] the claim of the plaintiff was only around 125,- Euros but the

10 Similar opinion in Tomé Mota v. Portugal, Application no. 32082/96. In this case the applicant Tomé Mota failed to file such a similar application during the domestic procedure,so the Court considered that he had failed to exhaust domestic remedies.

11 Raif v. Greece, application no. 21782/93, and Akdivar and Others v. Turkey application no. 21893/93

12 Hartman v. The Czech Republic Application no. 53341/99

13 E.g. parking fee cases, usually between 15 and 100 Euros.

14 Although it must be noted that the complicatedness of the case has nothing to do with the pecuniary claim of the plaintiff.

15 Application no. 18328/03. The judgement became final on the 26th of March 2007.

procedure took eleven years to finish on two levels of jurisdiction.

To avoid similar situations the Hungarian legislation took the following measures:

1.)
With the Act XXX. of **2008**. the Civil Procedural Code was amended with a new chapter of special rules for claims under the value of 1.000.000,- Forints (app. 3.700,- Euros) – which must start with a warrant of payment, from the 1st of September 2010 issued by a notary public. The first trial must be held within 45 days if the respondent objects the warrant of payment and all the propositions of the parties must be made on the first trial. Appeal is restricted only for the violation of essential procedural rules or the misinterpretation of substantive law.

The problem seems to be solved for the small claim procedures, but as the same judges of local courts have to deal with these cases who are in charge of "normal" procedures as well the quick jurisdiction in these simple cases causes delay in normal cases because this new procedure has strict deadlines.

Now the Hungarian Judicial Association suggests to remove these small claim procedures from the authority of normal judges and either establish a special court (or at least a group within courts) to deal with them or let the vice-judges deal with them and so remove the weight from the shoulders of civil law judges.

2.)
Because this problem mostly occurs in the so-called central region of Hungary (in Budapest and Pest County) the National Council of Justice[16] ordered in the 144/2008. regulation that a comprehensive investigation – done by independent experts – should be taken what reasons caused these long lasting procedures at these courts and also gave these courts 14 new judges' positions to help to deal with the remaining cases.

IV.6. Out of turn procedures

Generally Hungarian courts deal with cases in the order they arrive at the court. But the Hungarian

16 The National Council of Justice is the self government body of the judicial system that is responsible for the financial management of the court system.

legislation knows some types of cases where for some reason every action of the court should be taken as soon as possible, so they have priority over normal cases. The cause of this could be the vulnerability of the party (e.g. the plaintiff is under the age of 18), the right to personal freedom (e.g. the accused person is in detention) or the special attributes of the case (e.g. remedy for the violation of inherent rights caused by the press).

The Hungarian legislation also made it possible for the parties to propose this out of turn procedure to the court. According to the Act XXIX. of **2004**. anyone can lodge a complain to the president of the court in almost every problem in accordance with the case, except in the case when it is possible to have other legal remedy (e.g. appeal).

The president of the court (and not the judge of the case) decides about the urgency claim, but until 2004 there were no regulations enacted what should be taken into consideration before making the decision – so it was really the "sovereign" decision of the president[17].

These "urgency claims" were often filed by the parties if the procedure was too long, but were usually denied by the court presidents without real reasoning, so most of time the parties didn't even knew what points were taken into consideration.

In the case *Vass v. Hungary*[18] this claim was also denied but it didn't came up in front of the ECHR whether these type of urgency claims count as effective remedies that should be exhausted for the application to be admissable.

In case *Hartman v. The Czech Republic*[19] this question came up and the Czech government pleaded failure to exhaust domestic remedies with regard to the complaint under Article 6 § 1 of the Convention, arguing that the applicants had not availed themselves of any of the remedies intended to expedite judicial proceedings. In the Czech legal system it is possible to lodge complaints with the organs of the judicial system (such as presidents of courts, or the Ministry of Justice) concerning the way courts have conducted judicial proceedings, whether these concern delays, inappropriate behaviour on the part of persons invested with judicial functions or interference with the proper conduct of court proceeding. An appellant is entitled to obtain information on the measures the

17 The Presidents have the authority to delegate this power to the vice-presidents or department leaders.
18 Application no. 57966/00, the judgement became final on the 25th November 2003.
19 Application no. 53341/99, the judgement became final on the 3rd of December 2003.

supervisory authority has taken in response to his appeal, but the latter does not give him a personal right to require the State to exercise its supervisory powers.

The Court stated that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically. In the mentioned case, the Court considered that there is no legal remedy whereby someone can complain of the excessive length of proceedings in the Czech Republic. The applicants were therefore justified in considering that no domestic legal remedy would have enabled them to raise their complaint effectively.

If the question comes up in accordance with a Hungarian case, the decision could be the same. One question is that is this a real remedy against the the negligence of the court? The answer is: yes, it could be, because if the president of the court orders an out of turn procedure the judge has to take every measure as soon as possible and write a report of the case in every month until is it finished so in this point it is a really effective remedy.

But on the other hand the question is, what are the chances to have such a decision? As the ECHR emphasized in case *Akdivar and others v. Turkey*[20] , that amongst other things not only the existence of formal remedies in the legal system of the Contracting Party must be taken into account but also the general legal and political context in which they operate.

In 2004. the Court Administration Regulations were modified and it was declared that when the president of the court decides about ordering an out of turn procedure he must take into account the personal circumstances of the applicant, the special circumstances of the case, the objective circumstances of the activity of the court, the special public interest for the decision of the case and the special vulnerability of minors.

Although this still doesn't mean that this claim became an effective remedy: in the year 2009 at the Metropolitan Court of Budapest only 3% of these urgency claims were accepted[21]. Taken this into consideration this doesn't count as an effective remedy that should be exhausted. Because of the

20 Application no. 21893/93

21 For example an out of turn procedure was ordered in the case when the accused person was over 90 years of age and he asked for an out of turn procedure because he wanted to live the end of the trial to be found “not guilty”, or in the case when the Hungarian Railway Company caused serious damage to the health of a minor passenger and the first instance decision - which was made after three years of trial – was quashed by the second instance court so a new first instance procedure had to be started.

huge amount of cases the presidents only allow this out of turn procedure in really extreme situations, because if it would occur in many cases it would lose its value and it also would be unfair towards the parties of other cases because if there would be too many out of turn procedures, it would slow down the "normal" procedures.

IV.7. The exclusion of biased judges

The Hungarian procedural codes declare that a judge who is biased is excluded from the case. It is a problem in many cases that if the party feels that the case is not going well for him he files a motion for bias against the judge to get some more time before a decision is made or hoping that the appearance of a new judge would turn the case in the favour of him. This procedure could really slow down the trial because if the judge doesn't feel biased, than another judge of the court must decide about this claim, and if the party filed the motion for bias against all of the judges of the court or against the president of the court, the decision about the exclusion of the court must be taken by another court.

In many Hungary related case[22] the slow decision about the possible bias of the judge/court or the late appointment of the new judge/court was one of the reasons of the length of the procedure. After these cases the Act CLIII. of **2010**. modified the civil and criminal procedural codes, so after a motion for bias is filed in against the judge or the court the decision about the exclusion of the judge or court has to be made in an out of turn procedure.

Another important modification was made because of the case *Militaru v. Hungary*[23]. The case is especially interesting because the applicant wanted to divorce from his husband who was a lawyer. The divorce was filed on the 13th of October 1995, but because the husband repeatedly filed in motions for bias against all the judges and courts who appeared in the case, the case was still pending in front of a first instance court in 2003.

In this period the procedural codes stated, that after a motion for bias has been filed against the

22 Vass v. Hungary, Application no. 57966/00, the judgement became final on the 25th November 2003, Szilágyi v. Hungary Application no. 73376/01, the judgement became final on the 12th of October 2005, Tóth, Magyar and Tóthné v. Hungary Application no. 35701/04 , the judgement became final on the 6th of March 2006.

23 Application no. 55539/00 , the judgement became final on the 12th of February 2004.

judge or against the court, the judge is not allowed to finish the case until the question of bias has been decided.

There are more causes that could make a judge biased according to the Hungarian procedural codes[24], the most of them are based on facts (e.g. the judge is a close relative of the party or is being influenced by the outcome of the case), but there is also a cause which could be interpreted with quite flexibility – this is the "infamous" 21 § (1)/e section of the criminal and 13 § (1)/e section of the Civil Procedural Code, which states that the judge must be excluded from the case if an impartial decision cannot be expected from him because of "any other cause". This could really mean anything – the judge is the neighbour of the best friend of the plaintiff, the judge follows the same religion as the defendant and so on – the fantasy of the parties is inexhaustible.

After the problems faced in Militaru case the procedural codes were modified by the Act LXXXIII. of 2009., and now the judge can finish the case, if the motion for bias is based on the "(1)/e" section of the procedural codes.

V. Ending - the nature of the right for conclusion of the procedure within reasonable time

The right for the conclusion of the procedure within reasonable time is as part of the right to fair trial, and these are considered to be fundamental constitutional rights and human rights declared by international conventions. A question comes up whether the right to "reasonable time" is really a right of the person or more like it is an obligation to the State? On the national "playground" the opinions are splitted. The majority's opinion is that this right is not an inherent right, because inherent rights have an absolute structure, which means that they have to be respected by everybody, everybody has to refrain from violating these rights. In contrast the requirement to terminate the trial within a reasonable time imposes obligations on the courts and the parties having the right to action are only the parties of the procedure.

In the opposite of this aspect which appears in the Concepts of the new Civil Code of Hungary this right is an inherent right as in case of violation of the 2 § (1) of the Hungarian Civil Procedural Code the applicant should not only get pecuniary damages but non-pecuniary damages as an equal damages ensured in the 2 § (3). Non-pecuniary damages are the legal consequences specifically of

24 The rules of filing the motion for bias against the judges and the exclusion of the biased judge/court are practically the same in both procedural codes in Hungary.

the violation of inherent rights according to the Concept of the new Civil Code. These non-pecuniary damages could be remedies for the harm of the applicant because of the long duration of proceedings. In the Hungarian case-law in case of violation of the right for completion of the procedure within a reasonable time the breach of the inherent rights can be assessed when the court commits a procedural offence. The fact is that until these days there is not a common opinion concerning the nature of this right.

The Convention declares that "everyone is entitled to a fair and public hearing within a reasonable time" - this makes us to believe that the question is very easy to decide, but in a similar case even the president of the Hungarian Constitutional Court stated that "the regulation of the 70/E. Section of the [Hungarian] Constitution 'every citizen is entitled to have social security' does not establish an inherent right for social security"[25].

Although our opinion is the nature of the right to "reasonable time" includes both opininons. The State is obliged to take every appropriate measure to ensure reasonable time in general and in single cases as well. Generally through proper legislation and in the single cases through maintaining an effective court system. But the people also have it as an inherent right so if the time of the procedure is not reasonable the state cannot protect itself by stating that it has done every appropriate measure that was possible.

Who gives fast, gives twice – this should be the motto of the courts worldwide. To deal with cases in reasonable time is a problem throughout Europe but if legislators keep an eye on the decisions of the ECHR, effective legislative actions may help to decrease the seriousness of the problem[26].

25 Decision no. 31/1990. (XII. 18.) AB

26 In the year 2010 the 30% of the judgements were made by an application according to the length of the proceedings. The ratio is 66% among the judgements against Hungary.

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