

**Recommendation CM/Rec(2010)3
of the Committee of Ministers to member states
on effective remedies for excessive length of proceedings**

*(Adopted by the Committee of Ministers on 24 February 2010
at the 1077th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the Heads of State and Government of the Council of Europe member states, meeting at the Third Summit in Warsaw on 16 and 17 May 2005, expressed their determination to ensure that effective domestic remedies exist for anyone with an arguable complaint of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5 – hereafter referred to as “the Convention”);

Recalling Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies and intending to build upon this by giving practical guidance to member states in the specific context of excessive length of proceedings;

Recalling also the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (adopted on 19 May 2006 at its 116th Session);

Welcoming the work of other Council of Europe bodies, notably the European Commission for Democracy through Law (Venice Commission) and the European Commission for the Efficiency of Justice;

Emphasising the High Contracting Parties' obligations under the Convention to secure to everyone within their jurisdiction the rights and freedoms protected thereby, including the right to trial within a reasonable time contained in Article 6.1 and that to an effective remedy contained in Article 13;

Recalling that the case law of the European Court of Human Rights (hereinafter “the Court”), notably its pilot judgments, provides important guidance and instruction to member states in this respect;

Reiterating that excessive delays in the administration of justice constitute a grave danger, in particular for respect for the rule of law and access to justice;

Concerned that excessive length of proceedings, often caused by systemic problems, is by far the most common issue raised in applications to the Court and that it thereby represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention;

Convinced that the introduction of measures to address the excessive length of proceedings will contribute, in accordance with the principle of subsidiarity, to enhancing the protection of human rights in member states and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court,

Recommends that the governments of the member states:

1. take all necessary steps to ensure that all stages of domestic proceedings, irrespective of their domestic characterisation, in which there may be determination of civil rights and obligations or of any criminal charge, are determined within a reasonable time;
2. to this end, ensure that mechanisms exist to identify proceedings that risk becoming excessively lengthy as well as the underlying causes, with a view also to preventing future violations of Article 6;
3. recognise that when an underlying systemic problem is causing excessive length of proceedings, measures are required to address this problem, as well as its effects in individual cases;
4. ensure that there are means to expedite proceedings that risk becoming excessively lengthy in order to prevent them from becoming so;
5. 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;
6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;
7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:

- a. the proceedings are expedited, where possible; or
- b. redress is afforded to the victims for any disadvantage they have suffered; or, preferably,
- c. allowance is made for a combination of the two measures;

8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;

9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case law of the Court and recognise, in this context, a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;

10. consider providing for specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings, as appropriate, in criminal or administrative proceedings that have been excessively lengthy;

11. where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;


12. take inspiration and guidance from the Guide to Good Practice accompanying this recommendation when implementing its provisions and, to this end, ensure that the text of this recommendation and of the Guide to Good Practice, where necessary in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities can take account of it.

Related Documents

Meetings

1077th meeting of the Ministers' Deputies (CM Room) / 24 February 2010

Other documents

CM(2010)4add1E / 12 January 2010 

CM/Del/Dec(2010)1077/4.5E / 01 March 2010 