BREACH OF THE REASONABLE TIME REQUIREMENT IN HUNGARIAN LAW AND IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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I. Introduction

The present contribution deals with a crucial question of effective access to justice, namely the specific civil procedural law requirement that procedures should be concluded within reasonable time. This requirement has been first formulated by the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (hereinafter: Rome Convention or Convention) and has been since then interpreted and filled with content by the case-law of the European Court of Human Rights (hereinafter: ECHR). Article 6 of the Convention provides for a right to a fair trial. Art. 6 states in its subsection (1) the following: "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."

Hungary is a Contracting Party to the Rome Convention. Hungary signed and ratified the treaty and afterwards promulgated it in the domestic legal system with Act XXXI. of 1993.

Six years after the promulgation of the Rome Convention an amendment to Act III. of 1952 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure) was passed. This amendment introduced into the Code of Civil

Procedure a similar rule [Section 2(1)-(2)] to the cited requirement of the Rome Convention, requiring the court to conclude the procedure in the framework of a fair trial and within reasonable time. In addition, Section 2(3) explicitly entitles the party, whose case hasn't been decided within a reasonable time, to a specific new remedy. The party can thus file an action for equitable damages based on infringement of his fundamental rights. As explicitly stated in Section 2(3) of the Code of Civil Procedure: n case of failure to comply with the reasonable time requirement as set out in Section 2(1) on grounds of infringement of his fundamental right the party may sue the court for equitable damages. An additional condition of this standing to sue is that no further judicial remedy is available in the shape of an appellate relief. This Section 2(3) is effective as of July 1, 2003.

This presentation will give an overview of the named requirements of this new damages rule, having roots both in international law and the national legal system. This double-rooted character of the damages rule necessitates an examination of the interpretation in the case law both of the ECHR and of the national courts. Since the requirement has been first formulated by the Convention, at the outset the relevant case law of the ECHR and in a second step the domestic practice will be scrutinized.

II. Reasonable time in the case-law of the ECHR

II.1. Judgments of the ECHR and the award of a just satisfaction

As the ECHR points it out, a judgment where a Contracting State is found to be in breach of its obligations, imposes a legal obligation on the Respondent State to put an end to the breach and to repare the consequences occurred in a way that a restoration of the situation before the breach takes place.[1] If the internal law allows only partial reparation to be made Art. 41 of the Convention gives the ECHR the power to award compensation, i.e. a just satisfaction to the party injured by the act or the ommission leading to the finding of the violation of the Convention. The Court enjoys a certain discretion in the exercise of that power as the adjective „just" and the phrase „if necessary" attest.[2]

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[1] *Papamichalopoulos and Others v. Greece*, Judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34.
[2] See *Guzzardi v. Italy*, Judgment of 6 November 1980, Series A no. 39, p. 42, § 114

Among the matters which the Court takes into account when assessing this just satisfaction are first pecuniary damage, that is the loss actually suffered as a direct result of the alleged violation, and second non-pecuniary damage, that is reparation for the anxiety, inconvenience and uncertainty caused by the violation of the Convention and other possible non-pecuniary loss. In addition, if one or more items of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves to be extremely difficult, the Court may decide to make a global assessment.[3]

The Contracting States parties to a case are in principle free to choose the means by which they want to comply with the judgment where the Court has found them to be in breach of the Convention. This discretion as to the manner of compliance with an ECHR-judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows a *restitutio in integrum* to take place, it is for the Respondent State to effectuate it, the Court having neither the power nor the practical possibility of doing so itself. If on the other hand national law does not allow – or allows only partial – reparation to be made for the consequences of the breach Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate.[4] In the Colozza-judgment[5] for instance the Court found that whilst it could not speculate as to the outcome of the trial, had the position been otherwise[6], it did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities. To this loss of real opportunities the non-pecuniary damage could be added undoubtedly suffered by the applicant and his widow.[7] These elements of the damage in whole could not be exactly calculated, however, taken on an equitable basis the Court awarded the applicant a just satisfaction.

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3 See *B. v. the United Kingdom*, Judgment of 9 June 1988, Series A no. 136-D, pp. 32-33, §§ 10-12; *Dombo Beheer B.V. v. the Netherlands*, Judgment of 27 October 1993, Series A no. 274, pp. 20-21, § 40 and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV.

4 See *Brumărescu v. Romania* [GC], no. 28342/95, § 20, ECHR 2001-I; *Scordino v. Italy,* no. 36813/97, § 247.

5 *Colozza v. Italy*, Judgment of 12 February, 1985, no. 9024/80, § 38

6 The case concerned proceedings which were instituted against Mr. Colozza, however, as he claimed he was at no time aware of these proceedings and he was not able to defend himself effectively. He served a larger part of the sentence imposed on him.

7 *Colozza v. Italy* (see reference above under No. 5), and *Pélissier and Sassi v. France* [GC], no. 25444/94, § 80, ECHR 1999-II.

II.2. The question of "reasonable time"

In the ECHR case-law solely the fact that the procedure exceeded the reasonable length of the proceeding (objectively determined upon the beginning date and the finishing date of the proceeding), and the State is not able to exculpate itself is sufficient to find a breach of the „reasonable time requirement." As stated by the Court in the Molnár v. Hungary case[8] "having examined all the materials submitted to it, the Court considers that the Government has not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the » reasonable time « requirement."

The Convention places a duty on the Contracting States to shape their legal systems in a way to allow the courts to comply with the requirements of Section 6(1) including that of the trial within a "reasonable time." Nonetheless, a temporary backlog of business does not involve liability on behalf of the Contracting States provided that they take with the requisite promptness remedial action to deal with an exceptional situation of this kind. 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.[9]

The ECHR reiterates that the "reasonableness" of the length of 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 in the dispute.[10] The reasonableness of the length of proceedings coming within the scope of Article 6(1) must be assessed in each case

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[8] *Molnár v.Hungary* no. 22592/02, § 22, unreported.

[9] Case of *Zimmerman and Steiner v. Switzerland*, application no. 8737/79; similar observations can be found in *Miklós v. Hungary*, no. 21742/02, § 16, unreported; *Dala v. Hungary* no. 71096/01, § 15, unreported; *Klement v. Hungary*, no. 31701/02 § 19, unreported; *Kalmár v. Hungary*, no. 32783/03 § 24, unreported; *Fejes v. Hungary*, no. 7873/03 § 22, unreported.

[10] See among others *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Kemmache v. France* (nos. 1 and 2), Judgment of 27 November 1991, Series A no. 218, p. 27, § 60; *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II.

according to the particular circumstances.[11] The Court has to have regard inter alia to the complexity of the factual or legal issues raised by the case, to the conduct of the applicants and the competent authorities and to what was at stake for the former; in addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement.[12]

As regards the conduct of the authorities it is almost decisive whether the authorities were active at all. For example in the Buchholz judgment[13] although almost five years had gone by before the final domestic decision was rendered the proceedings had passed through three jurisdictional levels and had been characterized throughout by the taking of numerous measures, either to ascertain the facts or for other purposes. Contrary to that case, in the Zimmermann and Steiner judgment[14] the Court was faced with a single and lengthy period of total inactivity, which could have been justified only by exceptional circumstances. Nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with the exceptional situation.[15]

II.3. The requirement to exhaust available remedies

The requirement that the party should exhaust all available domestic remedies does not mean that a procedure terminated on first instance with a legally binding decision cannot underlie a claim for recovery of damages. Nevertheless, the court has to examine whether the party exhausted the available remedies and if it did whether the harm had been already compensated in the contested procedure. If there was no remedy the indemnification court should examine whether the harm could have been redressed in the relevant remedial procedure or not.

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[11] *Buchholz v. Germany*, no. 7759/77, Judgment of 6 May 1981, Series A no. 42, p. 15, § 49

[12] See mutatis mutandis *König v. Germany*, No. 6232/73, Judgment of 28 June 1978, Series A no. 27, pp. 34-40, §§ 99, 102-105 and 107-111, and the above-mentioned Buchholz-judgment, Series A no. 42, p. 16, § 49; also *Zimmermann and Steiner v. Switzerland*, no. 8737/79, § 24.

[13] *Buchholz v. Germany,* no. 7759/77, § 51, ECHR Series A no. 42.

[14] *Zimmermann and Steiner v. Switzerland*, no. 8737/79, § 27.

[15] *Zimmermann and Steiner v. Switzerland,* no. 8737/79, § 29; see also the above-mentioned *Buchholz* judgment, Series A no. 42, p. 16, § 51, and *Foti and Others* v. Italy, Judgment of 10 December 1982, Series A no. 56, p. 21, § 61.

The purpose of Article 35(1), which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court.[16] The rule in Article 35(1) is based on the assumption reflected in Article 13 - with which it has a close affinity - that there is an effective domestic remedy available in respect of the alleged breach of an individual's rights and freedoms as set forth in the Convention.[17]

III. The liability of the State to establish a proper legal framework to comply with the reasonable time requirement

Before we examine the requirement of terminating the procedures within a reasonable time in the domestic legal practice we have to draw the attention to the different approach in this regard between the international and the national legal practice.

In the case-law of the ECHR it is often reiterated that it is for the Contracting States to organize their legal system in a way that their courts can guarantee to everyone the right to a final decision within a reasonable time.[18] As stated for instance in the case Scordino v. Italy[19] since Article 1 of the Convention provides that "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention lies with the national authorities. The possibility of filing a complaint to the ECHR is thus subsidiary to the national systems safeguarding human rights. This subsidiarity is also explicitly stated in Artt. 13 and 35(1) of the Convention. As regards the reasonable time requirement, in the case Pélissier and Sassi v. France[20] the ECHR also stated that Art. 6(1) of the Convention imposes on the Contracting States the duty to shape their legal system in a way that their courts can meet each of the requirements of that Article, including the obligation to decide cases within a reasonable time.[21]

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16 See among others *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V.
17 See *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI.
18 *Caillot v. France*, no. 36932/97, § 27, 4 June 1999.
19 Application no. 36813/97.
20 Application no. 25444/94.
21 See also *Duclos v. France,* Judgment of 17 December 1996, Reports 1996-VI, pp. 2180-81, § 55.

Naturally, in national law the requirement of terminating civil procedures within a reasonable time depends a lot on the legal framework provided by the legislator, since a defective provision of law itself allows the proceedings to exceed the reasonable time limit of the procedure. However, the court is equally obliged by these provisions of law to act as they stipulate, which can lead to excessive delays. Nevertheless, in a published case a domestic court decided that damage occurred through a regulation coming into effect does not establish a legal relationship between the aggrieved party and the legislator. As a consequence, no claim for damages can be filed.[22] According to a county court resolution the absence of a rule owed to the default of the legislative power to take action is not sufficient ground for a compensation claim based on the violation of the reasonable time requirement.[23] In this respect the Draft of the new Civil Code of the Republic of Hungary, which should be passed by the Parliament shortly states that liability for legislative action may only give a right for compensation if the law passed violates the Constitution.

Besides these defective rules which raise the question of liability of the legislative power, it can as well happen that the law vests the judge with a discretionary right, the use of which prolongs the procedure. Therefore, the court acts equally fairly and fulfils the requirements provided by law whatever decision it may take. Nevertheless, the proceedings cannot be ended in a time frame so as to comply with the reasonable time requirement. For instance, Section 141(6) of the Code of Civil Procedure gives the court the right to decide without 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. However, this same Section also states that should the court be of the opinion that waiting for the submissions of the parties despite the delay does not influence the timely completion of the proceedings the court can as well wait for the submissions to be made. Another example for the court acting within the boundaries set by law and at the same time contributing to the violation of the requirement of reasonable time is when the court has a deadline set by law to take action. If the court takes action on the very first day of this deadline – for example examine the motion for evidence on its day of receiving – or if it takes action on the 29th day of the deadline, is of outmost significance from the point of view of the reasonable time requirement, however, in both cases the court acts according to the law.

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[22] BH 1994.312.
[23] County Court Csongrád No. 19.P.21 071/2006/45.

As a consequence, one can of course notice that there is a significant difference between the practice of the national courts and the case-law of the ECHR. However, besides noticing this difference, one also has to take into account that under the Convention the adressee of the rules, the entity under obligation are the Contracting States, while in national law the entity under obligation is the court itself.

IV. The liability of the individual judges and courts to comply with the reasonable time requirement

IV.1. Grounds for the delay of the proceedings

Several reasons can lead to a delay in the proceedings, in the way that the reasonable time requirement cannot be met any more. The delay in the proceeding can be caused by the other party in the procedure, for instance when he does not appear at the trial although a summons has been served on him, or when he violates the provisions set out in Section 141(2) of the Code of Civil Procedure. This Section 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 provided 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 means to compensate the other party, since the fine is directly paid into the state budget. The harm caused to the other party can be to some extent compensated by way of the award of the legal expenses, however, non-pecuniary damages cannot be compensated. These claims can only be recovered through a new trial against the other party involved.

The conduct of the court itself can also lead to excessive delays. Until the present only a few cases have been published with regard to this question, because the provision giving a right to action only applies to proceedings commenced after the entering into force of the provision that is July 1, 2003.[24] Thus, lawsuits based on infringement of the reasonable time requirement are in progress nowadays in front of the first and second instance courts. One published case can however already be found where the court was found to be in failure to comply with the reasonable time requirement.[25]

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[24] BDT no. 2006.1495

[25] Győr-Moson Sopron County Court no. P.20.702/2006/15.

IV.2. The nature of the right for conclusion of the procedure within reasonable time

Although it is difficult to identify a precise practice common to all the courts the right for a fair trial and the right for completion of the procedure within a reasonable time are both considered to be fundamental constitutional rights. They are not regarded as personality rights, meaning that the violations of this right cannot be the ground for a recovery of non-pecuniary damages.[26] However, one must also mention that there are opinions saying that the right for termination of the procedure within a reasonable time is a personality right.[27]

In our opinion the right for conclusion of the procedure within reasonable time is not a personality right. Personality rights have an absolute structure, meaning 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 a right to action are only the parties of the proceedings. On these grounds, the right for termination of the procedure within a reasonable time has to be considered to be a legal relationship with a relative structure.[28]

IV.3. The liability under Section 2(3) of the Code of Civil Procedure

Legal grounds for compensation of damages caused by the conduct of the court are Section 2(3) of the Code of Civil Procedure and Section 349(1)-(3) of the Civil Code.[29] A different point of view, however, says that "[legal action] cannot be initiated on grounds of Section 349 of the Civil Code, since this provision does not intend to compensate damages caused by the conduct of the court. That role is assumed to Section 2(3) of the Civil Code ruling upon the violation of the reasonable time requirement."[30]

The courts regard Section 2(3) of the Code of Civil Procedure as a special liability doctrine under the Civil Code. As explicitly stated by a court: "the regulation is defective, therefore it is certainly required to be applied as a substantive law provision of the Civil Code."[31] Consequently – if the above

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[26] Regional Court of Appeal Budapest 5.Pf.20.395/2008/3.
[27] Regional Court of Appeal Debrecen No. Pf.I.20.369/2007.
[28] Regional Court of Appeal Debrecen No. Pf. II. 20.312/2008/7.
[29] County Court Nógrád no. 19. P. 21 071/2006/45.
[30] Regional Court of Appeal Szeged no. Pf.III.20.591/2007/5.
[31] Regional Court of Appeal Budapest no. 5.Pf.21.523/2007/7.

statement is accepted – the following conclusions can be made on grounds of the liability for damages doctrine under the Civil Code. Three elements of liability can be distinguished: damage, malfeasance and causal link between the two.[32] Culpability is not a requirement.

The practice of the courts differs as regards the nature of this liability. "The liability set forth under Section 2(3) of the Code of Civil Procedure is almost an objective formation but it generates a form of a liability which comprises elements of culpability as well."[33] As a consequence, the three elements of this form of liability are: *(1)* the unlawful conduct of the judge; *(2)* damages; and *(3)* causal link between the two.[34] There is, however, also a different point of view suggesting that the liability under Section 2(3) of the Code of Civil Procedure is a unique form of liability different from the liability regulated in the Civil Code.[35] This difference would lead to the conclusion that the violation of the reasonable time requirement alone constitutes a ground for the objective sanction, irrespective of the fact whether damage occurred or not. This interpretation comes close to the new liability concepts of the new Civil Code, and particularly to the doctrine of legal consequences in case of violation of personality rights. In these cases namely the new Civil Code does not require real damages to occur for the compensation of the aggrieved party to be possible.

Considering the definition of the abovementioned sanction even the substantive law of the Civil Code of Hungary cannot give a proper orientation. The substantive law differentiates between two kinds of damages, pecuniary and non-pecuniary damages. Pecuniary damages cannot be equitable by their nature, as a consequence, it cannot be assumed that on grounds of Section 2(3) of the Code of Civil Procedure pecuniary damages are awarded. Furthermore, the right to terminate the trial within a reasonable time is a fundamental procedural right, but not a personality right. Consequently, non-pecuniary damages cannot be awarded on grounds of Section 2(3) either. In the meantime, the court practice in this respect is also contradictory. For

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[32] Section 339 (1) of CC A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.
[33] County Court Győr-Moson-Sopron no. P.20.702/2006/15.
[34] Regional Court of Appeal Budapest no. 5.Pf.20.395/2008/3.
[35] Regional Court of Appeal Budapest no. 5.Pf.21.523/2007/7.

instance, the Győr–Moson–Sopron County Court has awarded non-pecuniary damages based on Section 2(3) of the Code of Civil Procedure.[36]

In our opinion Section 2(3) can be regarded as a special form of liability, which should be regulated within substantive law. Therefore, the implementation of this provision causes serious problems, because it is unknown and it is not regulated what kind of conditions should be examined in the course of determination of the sum of the claim.[37] There are opinions which point out that the party ordered to pay the legal expenses cannot vindicate it as pecuniary damage, consequently there is no legal basis for indemnification.[38] The fact that according to the third sentence of Section 2(3) of the Code of Civil Procedure it is not possible to effectively refer to the lack of culpability of the judge does not exclude the exculpation to be successful on the basis of referring to other facts and circumstances. The objective nature of the liability does not in itself contradict this - in the case cited the death of the judge involved did not constitute a ground for exculpation.[39] However, the stricter point of view suggests that the provision creates exclusively an objective liability for the damages occurred, without any consideration of the culpability of the court.[40]

IV.4. The parties participating in the proceedings

The party under obligation is the court itself.[41] A recommendation[42] also points out that the defendant of a proceeding based on Section 2(3) of the Code of Civil Procedure is the county/regional court having full legal capacity. Furthermore, Section 2(3) of the Code of Civil Procedure not only applies to judges, but to legal secretaries as well.

The party entitled to compensation shall be the party who participated in the contested proceeding. The claim is strictly attached to the party itself therefore it is not possible to assign the compensation assuring equitable indemnification under Section 2(3) of the Code of Civil Procedure. However,

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[36] Győr-Moson-Sopron County Court no. P.20.702/2006/15.
[37] Regional Court of Appeal Budapest No. 5.Pf.21.523/2007/7.
[38] County Court Csongrád No. 2.P.20.855/2007/9.; Regional Court of Appeal Budapest No. 5.Pf.20.567/2007/6.
[39] Regional Court of Appeal Budapest no. 5.Pf.21.523/2007/7.
[40] JNKMB PGKK No. 3/2003. (X.10.) recommendation
[41] Regional Court of Appeal Budapest no. 5.Pf.21.523/2007/7.
[42] The recommendation concerning the liability for damages of the Jász-Nagykun-Szolnok County Court Civil-Economical-Administrative Department no. 3/2003.. (X. 10.)

the party who contributed to the prolonging of the proceedings cannot claim damages.

IV.5. "Reasonable time" in the practice of Hungarian courts

The pivots required to be examined in connection with the determination of the breach of reasonable time within the Hungarian court practice are as follows: *(1)* the complexity of the case; *(2)* whether the can be decided easily or with difficulty considering the facts and the applicable provisions of law; *(3)* the number of claims submitted, whether there has been a counter-claim, claim for set-off etc.; *(4)* the nature of the evidence procedure, the extent and the length of the evidence procedure, the types of evidence, expert witnesses used for deliberation; *(5)* whether special facultative procedures have been conducted: preliminary ruling of the European Court of Justice, proceeding of the Constitutional Court.

Noncompliance with the requirement of reasonable time can originate from either objective or subjective causes. However, from the point of view of the party the right of whom was violated it is irrelevant whether the cause occurred within the judicial system (the number of the staff of the court, excessive workload, the lack of personal and material conditions, etc.) or it originated in the conduct of the judge who heard the case. The malicious conduct of expert witnesses, witnesses, the other party and other participants involved in the procedure that leads to an unjustified prolongation of the trial cannot be brought up against the court unless it did not assure the principle of bona fides conduct to prevail.[43]

The courts adopted the definition of "reasonable time" as defined in decision No. 8/1992 (I.30.) of the Constitutional Court of Hungary, notably: "reasonable time" is the period which is satisfactory to render judgment 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.[44] The general considerations point out that it

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[43] Section 8 and 185 of CPC; JNKMB PGKK No. 3/2003. (X.10.) recommendation

[44] County Court Csongrád No. 2.P.20.855/2007/9.; unnumbered Regional Court of Appeal Debrecen No. Pf.I.20.369/2007/3.

should be examined whether the proceeding lasted longer than other similar cases as regards its objective and the nature of the dispute.[45]

Not the individual procedural actions or the compliance with their deadlines have to be examined but the whole proceeding in its complexity – including remedial proceedings, too – when determining whether the right for termination of the proceeding within a reasonable time has been complied with. Noncompliance with one deadline does not mean automatically that the proceeding exceeded the reasonable time requirement.[46]

However, a certain trend in the practice of the courts can be noticed. If the conduct of the court can be considered lawful (lawful adjournment of the trial[47] etc.) no violation of the requirement of reasonable time will be found. Consequently according to this practice the lawful procedure per se justifies the delay. This general practice is very problematic primarily with respect to the general principles of the Rome Convention, since an excessively prolonged proceeding can be absolutely lawful considering procedural law aspects but at the same time it can also violate the principle of the reasonable time requirement.

V. Conclusion

One has to bear in mind that the two "damages tools" dealt with above represent different levels of jurisdiction and different levels of the legal system. The ECHR is an institution deciding on whether the Contracting States which have submitted themselves to its jurisdiction have violated the rights and freedoms set out in an international treaty. Its margin of appreciation originates from this distance, from not being able and willing in certain circumstances to decide a case. However, what is beyond doubt is that the Contracting States have undergone the obligation to guarantee to their citizens the rights and freedoms set out in the Convention and as a consequence they cannot exculpate themselves in the course of the proceedings in front of the ECHR by referring to deficiencies within their legal systems. They have the obligation to organize their legal system in the way

[45] Regional Court of Appeal Budapest No. 5.Pf.21.523/2007/7.; Regional Court of Appeal Debrecen No. Pf. II. 20.312/2008/7.
[46] Regional Court of Appeal Budapest No. 5.Pf.21.523/2007/7.
[47] Regional Court of Appeal Szeged No. Pf.III.20.591/2007/5.

that it guarantees the citizens all the rights and freedoms as specified in the Convention.

As a consequence concerning the requirement of termination of the procedures within a reasonable time the ECHR examines the duration of the proceeding, the complexity of the case, the activity of the court and places the burden to exculpate itself on the Respondent State. If the Respondent State cannot put forward any fact or circumstance being appropriate to exculpate the State, the breach of the Convention will be established. In the end a just satisfaction can be awarded to the parties who suffered a harm the compensation of which is not possible under national law.

In national law the same requirement of termination of the proceedings within reasonable time has been introduced. Although the requirement is the same, several problems arise on this level from the interpretation and application of the relevant rule. National law works with clarified legal institutions with boundaries set. A new institution not clearly and deeply enough regulated, furthermore misplaced as regards the relevant Code and branch of law raises questions which cannot be answered easily and dogmatically clearly. As it has been shown above the question what form of liability has been introduced with this rule, what kind of damages can be awarded based on it, is still unanswered. Although the requirement is similar to the international law requirement and basically the same pivots have to be examined, there still are problems to be solved basically due to the fact that the rule introduced into the Code of Civil Procedure left fundamental questions – as discussed above - unanswered. Not to mention the appropriateness of the rule. Should really Hungarian courts be given the right to decide on the violation by the same Hungarian courts of the requirement of terminating the procedure within a reasonable time? This possibility stands to our knowledge alone also in a comparative perspective.