

PROBLEMS REGARDING COMPENSATION FOR THE BREACH OF THE RIGHT TO CRIMINAL PROCEEDINGS WITHIN A REASONABLE TIME

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Abstract. States have an obligation to ensure that criminal proceedings last for a reasonable time. If this obligation is not fulfilled, the damage suffered by the person must be effectively compensated. This article aims to determine whether effective compensation for violations of excessively long criminal proceedings is ensured in Lithuania. In order to achieve this goal, the legal regulation of Lithuania is analyzed through the prism of the criteria formed by the ECtHR, and is compared with that of other EU countries. The research shows that in other European countries, unlike in Lithuania, the right to compensation for damage caused by the excessively long duration of criminal proceedings is directly enshrined in legal acts, or compensation is provided in accordance with special legal instruments. The article reaches the conclusion that – although, in the ECtHR’s assessment, the practice of Lithuanian courts can be considered an effective remedy for the protection of the right enshrined in Article 6 (1) of the ECHR – the legal regulation of Lithuania is insufficient. Considering the position of international institutions and the practice of other European countries, the conclusions of this article suggest that the clear and unambiguous right of a person to compensation for material and non-material damage caused by excessively long criminal proceedings should be enshrined.

Keywords: criminal procedure, tort liability, infringement of criminal procedure, compensation for damages, criminal proceedings within a reasonable time.

Introduction

One of the means of ensuring the human right to a fair trial is the principle of the speed of proceedings. This principle has a supranational character and is established in the main legal acts of the European Union (EU) regulating the protection of human rights. Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the ECHR) establishes the right of everyone to have their case properly examined within the shortest possible time, under the conditions of equality, in public, and by an independent and impartial tribunal constituted in accordance with the law. Article 47 (2) of the Charter of Fundamental Rights of the EU states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Ensuring that the state of uncertainty regarding the fate of a person who is subject to criminal proceedings is ended as soon as possible by resolving the issue of the criminal charges brought against them (and, accordingly, the issues of the related civil rights and obligations) implements both general legal certainty and that of the individual, as well as promoting the interests of process economy (*Stögmüller v. Austria*, 1969). Justice must be executed promptly, otherwise the effectiveness and reliability of the administration of justice, as well as respect for the principle of the rule of law, may be undermined. In its decision in *Sürmeli v. Germany*, the European Court of

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Human Rights (hereinafter – the ECtHR) stated that it is the duty of the Contracting States to organize their legal systems in such a way that their courts can fulfill Article 6 (1) of the ECHR requirements, as well as the obligation to examine cases in the shortest possible timeframe (*Sürmeli v. Germany*, 2006). Despite the above-mentioned imperative obligations and efforts made by states to ensure that criminal proceedings are as short in duration as possible, in the practice of the ECtHR the violation of Article 6 (1) of the ECHR is established most often (Council of Europe, n.d.).

In the jurisprudence of the ECtHR emphasizing the importance of the principle of the speed of criminal proceedings, it is stated that the effort to protect a person from a state of uncertainty that continues for too long is particularly important in criminal proceedings when deciding on the issue of a criminal charge brought against a person (*Stögmüller v. Austria*, 1969). EU legal obligations do not provide a justification for Member States' failure to comply with the reasonable time principle (European Union Agency for Fundamental Rights and Council of Europe, 2016, p. 141). Article 13 of the ECHR states that “everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”. The turning point in the practice of the European control mechanism is the case of *Kudla v. Poland* (2000), as, for the first time, the ECtHR considered that it was necessary to examine an application under Article 13 when a violation of Article 6 (1) had been found. Therefore, the correct interpretation of Article 13 should be that it guarantees an effective remedy for an alleged breach of the right to have a court case determined within a reasonable time (Zoraska Kamilovska, 2021, p. 65).

Taking into account the aforementioned international requirements for States, and considering the fact that the excessively long duration of the criminal process is one of the most common violations of the ECHR in cases against Lithuania (Representation and Agent of the Government, 2021), the purpose of this article is to determine whether effective compensation for violations of excessively long criminal proceedings is ensured in Lithuania. Thus, this research does not aim to determine the definition of what is considered an excessively long criminal process, the reasons for it, nor what measures the state can use to ensure a speedy process. Instead, this article mainly focuses on the analysis of the effectiveness of compensatory measures when the requirement for the shortest possible process has already been violated. To achieve this goal, the legal regulation of Lithuania will be analyzed through the prism of criteria formed by the ECtHR, and will be compared with that of other EU countries. Systematic analysis, synthesis, critique and other scientific research methods will be used in this research.

1. Remedies of Redress for the Violation of the Principle of the Reasonable Time Limit of Criminal Proceedings

Various measures may be taken in the event of finding a breach of the principle of the reasonable time limit of proceedings and in the determination of the question of compensation. Article 13 of the ECHR allows a State to choose between a remedy which can expedite pending proceedings or a remedy *post factum* in damages for a delay that has already occurred (*McFarlane v. Ireland*, 2010). The Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13, and conform to their Convention obligation under that provision (*Scordino v. Italy*, 2006). States' freedom of discretion in the choice of measures is also emphasized in the Recommendation of the Committee of Ministers of the Council of Europe to Member States on effective remedies for excessive length of proceedings, which calls on States to provide measures to speed up processes, compensate for damages caused by excessively long processes, and, if necessary, combine both of these methods (Recommendation CM/Rec(2010)3). Member States themselves choose which measures to provide in national law – as such, they can provide only one (for example, compensatory) or both measures (preventive and compensatory) (Averkienė, 2015, p. 163).

Preventive defense remedies play an important role in ensuring compliance with the shortest possible time requirement. The existence of an effective remedy for the protection of a right to a trial within a reasonable time primarily encompasses its effectiveness in the course of the proceedings where their length is brought into question. This means that the remedy is effective if it prevents the alleged violation or its continuation (a mechanism of preventing delays or accelerating proceedings) (Zoraska Kamilovska, 2021, p. 66). The ECtHR takes the stance that the best solution in absolute terms is indisputably prevention, as it is in many spheres (*Apicella v. Italy*, 2006). Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely

repair the breach *a posteriori*, as a compensatory remedy does (*Gazso v. Hungary*, 2015). In practice, this would mean that in the countries of the preventive system there is a legal remedy in the form of a request for acceleration of the procedure submitted to the competent authority (Kurtović & Bećirović-Alić, 2020, p. 486). Preventive measures that guarantee the right to the shortest possible criminal trial can be implemented by a diverse set of legal instruments. Some countries provide specific preventive remedies which aim at speeding up investigative or pre-trial proceedings by allowing for complaints or requests for acceleration to be lodged with the superior prosecuting or judicial authority.³

Some States, such as Austria, Croatia, Spain, Poland and Slovakia, have understood this situation perfectly by choosing to combine two types of remedy – one designed to expedite the proceedings and the other to afford compensation (Kuijer, 2014, pp. 28–29). It should be noted that this form of redress has been introduced in countries such as Croatia, Slovakia, and Poland, where Constitutional or Appeals Courts have, rather successfully, been given the power to order the acceleration or conclusion of delayed proceedings (Final Resolutions DH(2005)60 and DH(2005)67, 2005). In the case of Croatia, the Constitutional Court must set a time limit and grant compensation to individuals for such delays (Sitaropoulos, 2011, pp. 22–23).

In cases where preventive defense measures have proved to be ineffective, and there is reason to believe that the requirement of the shortest possible criminal process has been violated, compensatory measures become relevant. Different types of remedy may redress this violation appropriately by: reducing the sentence in an express and measurable manner (in criminal cases) (Kuijer, 2013, p. 786), paying compensation of a reasonable or not manifestly inadequate amount, or discontinuing proceedings together with the payment of some legal costs (Reid, 2011, p. 205).

In most European countries (e.g., Germany, Norway, Denmark, Hungary, etc.), the excessively long duration of the criminal process is compensated for by imposing a sentence lower than that which the criminal law provides for the respective act. However, the legal doctrine states that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of their status as a victim within the meaning of Article 34 of the ECHR (Pantazatou, 2018, p. 5). However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (*Eckle v. Germany*, 1982; *Beck v. Norway*, 1995; *Cocchiarella v. Italy*, 2001; *Morby v. Luxembourg*, 2002 etc.). In other words, it is required that the sentencing must show that national courts recognize the violation and that it can be ascertained to what extent the violation has affected the sentencing (Nordhus, 2019, p. 60).

For example, in the case of *Tamás Kovács v. Hungary*, the applicant complained, *inter alia*, of the 8 years and 4 months that the criminal trial had lasted for. The court of first instance decided that the proceedings were too long and reduced the applicant's sentence from 2 years and 6 months to 2 years of imprisonment, suspending its execution for 4 years. The national court emphasized that the sentence was reduced only because of the unreasonably long duration of the process. Taking this into account, the ECtHR found that the applicant received sufficient compensation for the alleged violation of his right to a trial in the shortest possible time, established in Article 6 (1) of the ECHR (*Tamás Kovács v. Hungary*, 2004). It should be noted that the damage caused by an excessively lengthy process can be compensated for not only by directly mitigating the imposed punishment, but also by refusing to make it tougher (e.g., by refusing to satisfy an appeal from a prosecutor which asks for a harsher sentence than the one imposed by the court of first instance; *Bochev v. Bulgaria*, 2008). The analysis of the practice of the ECtHR shows that the damage caused by the violation of the requirement of the shortest possible time can be compensated for by mitigating not only the deprivation of liberty, but also other punishments, such as a fine (*Ohlen v. Denmark*, 2005).

Even in cases where the circumstances of the case show that the sentence was mitigated due to the violation of the right to the shortest possible criminal trial, in the practice of the ECtHR this is not always recognized as suitable compensation for the violation. As mentioned, the mitigation of the sentence must be in an express and

³ For example: Belgium (where the request can be lodged not only by the defendant but also by the Attorney General), Bulgaria, Denmark and Portugal (where any party can request that the proceedings before the Prosecution Services or those taking place in a court or before a judge be expedited when the time-limits provided by law for any procedural step are exceeded) (Venice Commission, 2007, p. 18).

measurable manner. For example, in the case of *Taavitsainen v. Finland* (2009), the ECtHR noted that although the national court had taken into account the length of the proceedings in mitigating the applicant's sentence, it was not clear from the judgment what this mitigation was. If the decision of the national courts is not sufficiently clear and measurable, then compensation will often be the only alternative remedy to compensate for this breach (Nordhus, 2019, p. 60).

It is worth mentioning that in Germany, although as a general rule the length of the proceedings is a factor to be taken into account when imposing the sentence, judgments may even be annulled if the proceedings have persisted longer than necessary (Detter, 1992, p. 171). According to Beulke (2002, p. 16), German jurisprudence represents the view that there may be cases when, due to the particularly long delays in the procedure and the difficulties of the defendant in this regard, the recognized interest of the rule of law is to waive the enforcement of the criminal claim and discontinue the procedure.

In Hungary, according to Article 648 (c) of the Code of Criminal Procedure, there is room for legal review against the final decision of the court on the basis of the decision of a human rights body established by international treaty (thus, the ECtHR). At the same time, on the basis of Article 650 (4) of the Code of Criminal Procedure, there is no room for legal review based on the decision of the ECtHR if it only establishes a violation of the requirement to adjudicate the case within a reasonable time. The reason for this is that if a new procedure could be ordered for this reason, the principle of adjudication within a reasonable time would be further violated.

Principle 1 of the Recommendation of the Committee of Ministers of the Council of Europe "On Public Liability" indicates that compensation for damage caused by an act of a public authority must be ensured if the damage occurred because the public authority did not act towards the injured person in a way that is reasonably expected in its activities, considering legal requirements (Recommendation R 84 (15)). Despite the greater effectiveness of preventive measures, the legal doctrine states that the effectiveness of the remedy is not disputed even in cases when there are procedures providing redress for unreasonable delays in proceedings, whether ongoing or concluded (mechanism of compensation) (Zoroska Kamilovska, 2021, p. 66).

The approach of the Venice Commission to monetary compensation as a means of redressing the damage caused by excessively long criminal proceedings is far more critical. In December 2006, the Venice Commission published a report on the effectiveness of national remedies in respect of excessive length of proceedings. The Venice Commission went a step further than the ECtHR regarding preventive remedies (that is, the possibility to prevent exceeding the reasonable time requirement by expediting the judicial proceedings) (Kuijer, 2013, p. 788). The Venice Commission (2007) stated:

While the payment of pecuniary compensation must be granted in cases where undue delays have occurred pending the possibly necessary reforms and improvements of the judicial systems and practices, it should not be regarded or accepted as a form of fulfillment of the obligations stemming from Articles 6 and 13 of the Convention.

In the jurisprudence of the ECtHR, it would be possible to distinguish the following requirements for monetary compensation as a form of remedy for damage caused by excessively long criminal proceedings: 1) if there has been a violation of the reasonable time requirement as set out in Article 6 (1), there should be a finding of such a violation by the domestic authority which is binding; 2) the remedy needs to be "effective, adequate and accessible", i.e., excessive delays in an action for compensation will affect whether the remedy can be considered "adequate" – likewise, the "accessibility" of the remedy could be affected by the rules regarding legal costs; 3) there should be "appropriate and sufficient" redress, which means, *inter alia*, that compensation should be paid without undue delay (i.e., 6 months from the date on which the decision awarding compensation became enforceable), and the amount of compensation paid by the domestic authority should not vary significantly from the standards concerning financial compensation developed by the ECtHR; and 4) the basic principles of "fairness" guaranteed by Article 6 (1) of the ECHR should be respected by the domestic authority in the compensatory proceedings (Kuijer, 2014, p. 14).

2. Compensation for a Violation of an Excessively Lengthy Process in Lithuania

As mentioned, States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their ECHR obligations under that provision (*Scordino v. Italy*, 2006). The ECtHR has often emphasized that the national authorities have the competence to construe and apply domestic law (Gerards, 2019, p. 185). Despite that, the remedy required by Article 13 must be available in practice as well as in law, and must be adequate (Moya & Milios, 2021, p. 126).

As in most European countries, in Lithuania, the possibility of the mitigation of a sentence due to the violation of the right to the shortest possible criminal trial is established in the Criminal Code of the Republic of Lithuania and is applied in consistent national court practice. According to the judicial practice formed by the Supreme Court of Lithuania, the excessively long duration of criminal proceedings, depending on the circumstances significant to the imposition of the sentence established in the criminal case and the circumstances of the violation of the right to a trial in the shortest possible time, may be the basis for reducing the punishment, without leaving the limits of the sanction of the relevant article of the special part of the Criminal Code (Orders of the Supreme Court of Lithuania in cases No. 2K-296-788/2017; No. 2K-75-677/2016; No. 2K-7-358-303/2015, etc.).

Meanwhile, the situation regarding monetary compensation when a violation of Article 6 (1) of the ECHR is established is slightly different. Before starting to analyze Lithuanian legal regulation and court practice, it is necessary to emphasize that the ECtHR may deal with a matter only after all domestic remedies have been exhausted (Renucci, 2005, p. 109). The respondent State “must first have an opportunity to redress the situation complained of by its own means and within the framework of its own domestic legal system” (*Louvain Inhabitants v. Belgium*, 1994). Despite this, the respondent State must prove the existence of domestic remedies that have not been exercised (*Hauschildt v. Denmark*, 1989; *Whiteside v. the United Kingdom*, 1994; *Spencer v. the United Kingdom*, 1998; etc.).

Compensation for damage caused by excessively long criminal proceedings is regulated quite differently in European countries. In some countries it is regulated by criminal procedure, in others by civil or administrative law (Kuijer, 2013, p. 791). In Lithuania, compensation is regulated both by the norms of criminal procedure and by civil law. Article 44 (5) of the Lithuanian Code of Criminal Procedure (hereinafter – the CPC) states that “Every person accused of committing a criminal offense has the right to have his/her case heard fairly by an independent and impartial court in the shortest possible time under conditions of equality and publicity”. Thus, this article of the CPC establishes a concrete guarantee for the participants of the judicial process to a quick, public, fair, independent and impartial trial. The CPC also provides the duty of the prosecutor and the judge to explain the procedure for compensation of damages to a person due to their illegal detention, arrest or conviction. This obligation arises only in cases when the criminal proceedings are terminated due to the fact that no evidence of a crime or misdemeanor has been established, as well as when an acquittal is passed (CPC, 2002, Article 46 (1)). Article 6.272 (1) of the Lithuanian Civil Code (hereinafter – the CC) states that

Damage resulting either from unlawful conviction, or unlawful arrest, as a measure of suppression, as well as from unlawful detention, or application of unlawful procedural measures of enforcement, or unlawful infliction of administrative penalty – arrest – shall be compensated fully by the state irrespective of the fault of the officials of preliminary investigation, prosecution or court.

Thus, Lithuanian legal regulation clearly and unequivocally guarantees the human right to timely criminal proceedings. However, when analyzing the legal measures intended to compensate for violations of the aforementioned right, several important aspects can be observed. Both the CPC and the CC guarantee a person’s right to compensation only if they suffer as a result of very specific actions in the criminal process, such as: illegal conviction, illegal arrest procedure, illegal detention, and illegal application of procedural coercion measures. If a person suffers damage due to other procedural actions or decisions, as well as due to excessively long criminal proceedings, the Lithuanian legal acts do not provide for the right to compensation. In other words, according to the CC and CPC, the State’s tortious liability is possible only with regard to certain actions committed in the course of criminal proceedings listed in the aforementioned “finite lists”.

Thus, it could be stated that there are no effective remedies in Lithuanian legal acts to compensate for the violation of the right to a prompt trial, and such a situation contradicts the practice of the ECtHR. However, this problem is solved through case law, which took a significant amount of time to form and which was largely influenced by the jurisprudence of the ECtHR.

In Lithuania, the first court decision in a case dealing with the State's tortious liability for damage caused to a person in criminal proceedings was adopted on 8 January 1996 (Šalčius, 2021, pp. 21–22). Until 2007, the practice of this category of cases was very scarce. Although in recent cases the issue of compensation for damage caused by excessively long criminal proceedings was raised *inter alia*, the legal acts in force at the time, as well as those currently in force, did not provide for the tortious liability of the State for such violations. Damages were usually awarded only for acts falling within the “finite list” of criminal proceedings. However, the courts, realizing the flawed nature of the legal regulation, decided to establish the violation of Article 6 (1) of the ECHR. For example, when the duration of arrest or temporary restriction of property rights was determined to be too long, the entire duration of the criminal process was additionally determined to be too long (Orders of the Supreme Court of Lithuania in civil cases No. 3K-7-183/2006; No. 3K-3-895/2003; etc.). Thus, in the period from 8 January 1996 to 6 February 2007, violation of Article 6 (1) of the ECHR was not seen as an independent basis for compensation for damages suffered in criminal proceedings (Šalčius, 2021, pp. 126–127).

Only in the ruling of 6 February 2007 did the Supreme Court of Lithuania present a more detailed position regarding the infringement of Article 6 (1) of the ECHR as an independent ground for redress (Order of the Supreme Court of Lithuania in civil case No. 3K-7-7/2007). In this ruling, the Court stated that

A person who is notified of suspicions that he has committed a criminal act may, at any stage of the criminal proceedings, request to defend his right to a trial as short as possible, if he believes that there are indications of unjustified delay, because the violation of this right may involve possible violations of other fundamental human rights (Order of the Supreme Court of Lithuania in civil case No. 3K-7-7/2007).

The Court, rejecting the arguments that Lithuanian legal acts do not provide for compensation for damage caused by excessively long criminal proceedings, stated that

The legal system of the Republic of Lithuania consists not only of national legal acts, but also of international treaties, in which the Republic of Lithuania has undertaken to ensure the protection of certain rights and interests, and to consider actions that violate them as a violation. <...> In cases when a person refers to possible illegal actions of officials, which are not defined in special legal norms regulating the responsibility of officials, the courts evaluate the presented facts about possible violations in the context of general legal principles, the Constitution of the Republic of Lithuania and international agreements. Legal regulation, when the actions of certain institutions or officials are not identified as a possible basis for liability, cannot deny a person's right to claim compensation, if such damage was caused by the relevant actions (Order of the Supreme Court of Lithuania in civil case No. 3K-7-7/2007).

This ruling of the Supreme Court of Lithuania fundamentally changed the practice of Lithuanian courts. After this, the tort liability of the State began to be interpreted much more broadly. Today, damages are awarded not only for excessively long proceedings, but also for any other violation of the criminal process (e.g., for a pre-trial investigation that commenced illegally, unfounded suspicion, the untimely termination of pre-trial investigation, as well as for the inadequate quality of the entire criminal process in general) (Šalčius, 2021, p. 145).

It can be assumed that such a fundamental change in the practice of the Lithuanian courts was determined by several factors, first among which were the decisions made by the ECtHR against Lithuania in 2000–2003 and in subsequent years, by which the State was obliged to compensate for the damage suffered due to the violation of Article 6 (1) of the ECHR (e.g., *Grauslys v. Lithuania*, 2000; *Šleževičius v. Lithuania*, 2001; *Meilus v. Lithuania*, 2003; *Girdauskas v. Lithuania*, 2003). Another factor that led to such changes in the practice of ordinary courts was the ruling of 19 August 2006 of the Constitutional Court of Lithuania. In this ruling, the Constitutional Court of Lithuania stated that the definition of illegal actions – when a complete (final) list of illegal actions that can cause harm to a natural person relating to quotas, interrogation, prosecution and the court is provided – is legally

incorrect. Such a definition does not include all possible illegal actions that can cause harm (including moral) to a person (Ruling of the Constitutional Court of the Republic of Lithuania of 19 August 2006).

According to the ECtHR, the ruling of the Supreme Court of Lithuania of 6 February 2007 can be considered as the starting point from which judicial practice began to take shape in Lithuania, based on which a person has the ability to effectively defend their rights if they have suffered damage due to the excessively long duration of criminal proceedings (*Savickas and others v. Lithuania*, 2013). In the practice of the ECtHR, Article 6.272 of the CC was not considered an effective remedy of defense in the sense of Article 13 of the ECHR due to its lack of legal certainty (e.g., *Simonavičius v. Lithuania*, 2006; *Kuvikas v. Lithuania*, 2006; *Gečas v. Lithuania*, 2007; *Baškienė v. Lithuania*, 2007; *Naugžemys v. Lithuania*, 2009). Only in the ruling of 15 October 2013 did the ECtHR state that the judicial practice that began to take shape, and which has been formed since the above-mentioned ruling of the Supreme Court of Lithuania, had acquired sufficient legal clarity and therefore could be considered as an effective remedy of legal defense – i.e., demanding compensation from the state for damages suffered due to the excessively long duration of criminal proceedings (*Savickas and others v. Lithuania*, 2013). It is clear that, according to the ECtHR, Lithuania currently has effective remedies for a person to defend their rights by demanding compensation for damage caused by a violation of the criminal process. However, the ECtHR links these remedies to the developed practice of national courts, but not to the existing legal regulation. Such argumentation even allows us to state that, in the opinion of the ECtHR, Lithuanian legal regulation was and remains flawed and ineffective in the sense of Article 13 of the ECHR, and the situation is saved only by the practice of national courts.

The existence of the “finite list” in the Lithuanian legal regulation also raises doubts about its compliance with the requirements of EU law. In *Köbler, Francovich, Brasserie* and other cases, the Court of Justice of the EU (CJEU) established that the European Community Treaty itself prohibits Member States from establishing such legal regulation of state tort liability that would limit compensation for damage caused by a violation of EU law (Deards & Hargreaves, 2004, p. 92). Thus, when the legislator did not foresee a violation of Article 6 (1) of the ECHR in the “finite list”, this allowed a situation to arise in which Lithuanian legal acts do not provide for the right to compensation for damage caused by a violation of EU law. Legal doctrine also states that any limitations of a national mechanism are questionable as regards the effectiveness and completeness of protection (Baginska, 2017, p. 25).

In the analyzed context, one of the latest Lithuanian cases where a violation of Article 6 (1) of the ECHR was established was *Gančo v. Lithuania*. In this case, the ECtHR recognized that the criminal case was complex because it involved allegations of financial crimes and involved multiple suspects. However, the ECtHR noted that while the complexity of a case may justify a longer than average length of proceedings, it cannot justify long periods of inaction by the authorities. In those cases, if the process takes too long – for example, in complex cases where it is necessary to appoint and then wait a long time for the conclusions of experts or specialists – the authorities should take responsibility for this (*Gančo v. Lithuania*, 2021). It is necessary to emphasize that in the report of the Agent of the Government of the Republic of Lithuania before the ECtHR on the implementation of the decision in the aforementioned case, which was approved, only consistent judicial practice was indicated as a sufficient compensatory remedy, but not legal regulation (Representation and Agent of the Government, 2022).

3. Comparison of the Legal Regulation of Redress in European Countries

Despite the fact that all European countries guarantee the individual’s right to monetary compensation for damages suffered as a result of excessively long criminal proceedings, the locations of the legal remedies by which this right is realized in the legal system and their natures are quite different between countries.

Usually, norms protecting the right to the shortest possible duration of criminal trial are established in ordinary laws (e.g., CC or CPC). This is the case in: Austria, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Finland, Estonia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Norway, Serbia and Montenegro, Slovakia, Slovenia, Sweden, Spain, Switzerland, Ukraine, etc. Moreover, in most European countries the general obligation of the State to compensate for damage caused by the violation of the criminal process is established at the Constitutional level (e.g., in Germany, Poland, Lithuania, Latvia, Estonia, Croatia, and Iceland). In this way, the significance of said compensation is emphasized. There are countries where

special laws have been enacted to protect the right provided for in Article 6 (1) of the ECHR (e.g., Croatia, the Czech Republic, Italy, Poland, Portugal, Slovakia, and Slovenia). In addition, in some countries, as in Lithuania, some legal instruments intended to compensate for the damage caused by excessively long criminal proceedings are developed in case law.

In comparing the legal regulation of Lithuania with other European countries, it can be noted that the mentioned “finite list” of actions of the criminal procedure for which damages are compensated is not only established in the legal acts of Lithuania. However, in other countries, unlike in Lithuania, the demand for compensation for the actions of the criminal process which are not included in the “finite list” can be based on other legal instruments provided by the laws. For example, in Germany this is based on the “victim theory”; in France on “the theory of risk” and “the principle of equality of social burden”. In Poland, Estonia and Sweden, even when solving the issue of compensation for damages suffered in criminal proceedings regulated by special legal acts, there is an opportunity to refer to the general norms of tortious liability. It must be noted that the use of such legal instruments as the “victim theory”, “risk theory” and “principle of equal social burden” is limited, and is only applicable in exceptional cases. A person can rely on these exceptional norms only if the damage that they suffer is disproportionately large and was caused by actions in which society as a whole is interested (Šalčius, 2021, p. 80).

Thus, with such differences in the legal regulation of States, the question of whether or not the remedy for the excessive length of proceedings should be contained in specific legislation arises.

The analysis of the legal regulation of different European countries and the practice of the ECtHR allows us to state that the detail of legal regulation when adopting special laws is often determined by the decisions made by the ECtHR against the State. Those States which have been faced with, or are expecting to face, a significant number of applications before the Strasbourg Court on account of the excessive length of proceedings have introduced remedies for this problem through specific laws which supplement or amend the relevant codes of procedure, or equivalent legislation (Venice Commission, 2006).

For example, in the *Lukenda* case the length of proceedings in Slovenia was identified as a systemic problem, and the ECtHR encouraged the respondent State to either amend the existing range of legal remedies or add new remedies so as to secure genuinely effective redress for violations of the right to a trial within a reasonable time (*Lukenda v. Slovenia*, 2005). Following the judgment in the *Lukenda* case, the Slovenian Government established the Lukenda Project to address this problem and passed legislation in 2006 to this end. In later cases (e.g., *Korcnjak v. Slovenia*, 2007), the ECtHR expressed its satisfaction that the 2006 legislation addressed the problem, and required future applicants complaining of failure to deliver judgment in a reasonable time to use the remedies provided under the new legislation (Rainey et al., 2020, p. 308).

A similar situation occurred in Greece. Under pressure from the ECtHR, specific remedies were introduced providing just satisfaction for injury sustained due to excessive length of judicial proceedings. In three pilot judgments (*Nikolaos Athanasiou and Others v. Greece*, 2014; *Michelioudakis v. Greece*, 2012; *Glykantzi v. Greece*, 2012), the ECtHR held that the excessive length of proceedings constituted a structural problem and requested that the Greek state institute an effective domestic remedy within 1 year. The Greek authorities complied with the above judgments by enacting laws and introducing a specific compensatory legal remedy for just satisfaction in case of the “non-reasonable” length of judicial proceedings in criminal matters (Stribis, 2016, p. 148).

The ECtHR also found the Czech Republic in violation of Article 6 (1) of the ECHR as the country’s courts failed to comply with reasonable delays, and declared the lack of an effective national remedy (*Hartman v. Czech Republic*, 2003). This situation changed thanks to some amendments to legal regulation providing criteria on adequate satisfaction. The national court has to take into account the particular circumstances of the case, such as the entire length of the procedure, the complex nature of the procedure, the contribution of the victim to the delays, the conduct of public authorities, and the importance of an object of procedure for the victim. The criteria included in amendments of legal regulation mirrored the criteria applied by the ECtHR (Šturma & Bilkova, 2016, p. 39).

The large number of cases at the ECtHR and the systemic problems identified also influenced the adoption of special legislation aimed at compensation for damages caused by excessively long criminal proceedings in other European countries: e.g., Poland (Majewska, 2016); Italy (Mole & Harby, 2006, pp. 24–25), and Serbia (Kurtovic, 2020, p. 484). In subsequent cases, the ECtHR evaluated the adoption of such legal acts as effective remedies to protect the right to the shortest possible trial.

Lithuania faced a similar situation. As mentioned above, in the practice of the ECHR, Article 6.272 of the CC was not considered an effective remedy of defense in the sense of Article 13 of the ECHR due to its lack of legal certainty. Only in 2013 did the ECtHR state that the court practice which had been formed since 2007 had acquired sufficient legal clarity and therefore could be considered an effective remedy of legal defense in the sense of Article 13 of the ECHR. Thus, in Lithuania, unlike in the previously analyzed States, new legal acts which would be considered effective remedies of defense were not adopted. However, it cannot be said that such initiatives did not exist.

On 14 April 2011 the Ministry of Justice of the Republic of Lithuania registered a draft law which proposed supplementing Article 6.272 of the CC and supplementing the CC with a new Article: 6.2731. It was proposed to expand the existing legal regulation, providing that a person can claim compensation from the State not only due to an illegal conviction or the use of procedural coercive measures, but also due to the excessively long duration of the criminal process (CC Amendment Act, 2011). One of the reasons that led to the preparation of this draft law was the increasing number of decisions of the ECtHR against Lithuania which stated a violation of Article 6 (1) of the ECHR. Unfortunately, this draft law was never enacted.

Thus, the question remains as to whether in Lithuania, following the example of other European countries, it is necessary to return to the aforementioned initiative to change the law. Instead, should we be satisfied with the fact that the ECtHR considers established jurisprudence as an effective remedy for the protection of the right provided in Article 6 (1) of the ECHR?

In its report on the effectiveness of national remedies in respect of excessive length of proceedings, the Venice Commission stated that

specific laws present the matter of reparation in a detailed manner, and therefore have the advantage of clarity and comprehensiveness. They (are deemed to) address the root cause of the length-of proceedings problem, regulate in detail all matters, and contain the necessary explicit references to the case-law of the Strasbourg Court (notably as concerns pecuniary reparation). They may be more easily accessible to the public (and, in some cases, even to the courts) as well as to the instances of the Council of Europe. <...> The criteria for awarding moral damage and the general criteria for calculating material damage should be set out clearly and in detail, preferably in the law itself (Venice Commission, 2006).

In summary, it can be stated that, although the practice of Lithuanian courts has achieved sufficient legal clarity according to the ECtHR, taking into account the position of the Venice Commission and the practice of other European countries it can be assumed that the legal regulation of Lithuania should be improved. Lithuanian laws should enshrine the clear and unambiguous right of a person to compensation for material and non-material damage caused by excessively long criminal proceedings. The easiest way to do this is to remove from legal acts the “finite list” of criminal proceedings for which damages can be compensated. Such an amendment to the legal acts would not only comply with the recommendations of international institutions (e.g., the Venice Commission) and prevent questions about the existence of effective remedies for the protection of human rights in the future, but would also increase the consistency and clarity of the Lithuanian legal system.

Conclusions

1. Usually, the violation of the right to criminal proceedings within a reasonable time is compensated for either by reducing the sentence or by paying monetary compensation. The reduction of the sentence as a compensation for excessively long criminal proceedings is provided for in most European countries (e.g., Germany, Norway, Denmark, Hungary). Research has shown that the legal regulation and the court practice of the mitigation of punishment as a measure to compensate for the violation of Article 6 (1) of the ECHR in Lithuania corresponds to international legal acts and the practice of the ECtHR.

2. Meanwhile, the situation regarding monetary compensation when a violation of Article 6 (1) of the ECHR is established is slightly different. The special norm (Article 6.272 (1) of the CC) regulating the State's tortious liability for the damages inflicted in criminal proceedings provides a finite list of actions in criminal proceedings for which damages may be compensated. This finite list does not provide for a person's right to compensation for damages caused by excessively long criminal proceedings. Such legal regulation is criticized not only in the legal doctrine, but also in the jurisprudence of the international courts (the CJEU and the ECtHR) and the Constitutional Court of the Republic of Lithuania.

3. The abovementioned problem is solved through case law. Only in the ruling of 15 October 2013 did the ECtHR state that the judicial practice that began to take shape after the ruling of the Supreme Court of Lithuania on 6 February 2007, and which has been formed since, had acquired sufficient legal clarity and therefore could be considered as an effective remedy of legal defense – i.e., demanding compensation from the State for damages suffered due to the excessively long duration of criminal proceedings. It is clear that, according to the ECtHR, Lithuania currently has effective remedies for a person to defend their rights by demanding compensation for damage caused by a violation of the criminal process. However, the ECtHR links these remedies to the developed practice of national courts, but not to the existing legal regulation.

4. In the States analyzed in this article, compensation for damages for excessively long criminal proceedings is either established in special legal acts or is based on special theories (e.g., in Germany it is based on the “victim theory”; in France on “the theory of risk and “the principle of equality of social burden”). Taking into account the practice of other European countries and the position of The Venice Commission – which states that compensation for such damage should be enshrined in a legal act – it can be assumed that the legal regulation of Lithuania should be improved. Lithuanian laws should enshrine the clear and unambiguous right of a person to compensation for material and non-material damage caused by excessively long criminal proceedings. The easiest way to do this is to remove the “finite list” of criminal proceedings for which damages can be compensated from legal acts. Such an amendment of the legal acts would not only comply with the recommendations of international institutions and prevent questions about the existence of effective remedies for the protection of human rights in the future, but would also increase the consistency and clarity of the Lithuanian legal system.

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