Delayed justice in Greek administrative courts and lack of an effective domestic remedy—Comment on Interim Resolution CM/ResDH(2007)74

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Abstract

Drawing upon the Council of Europe Committee of Ministers’ Interim Resolution CM/ResDH(2007)74 on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy, the author highlights and analyses the problem of excessive length of proceedings and of a lack of effective domestic remedies, in violation of Article 6, paragraph 1, and of Article 13 of the European Convention on Human Rights, which is currently encountered in the majority of the 47 member States of the Council of Europe. A large number of such applications have been pending before or have already been adjudicated upon by the European Court of Human Rights. In Greece, as in other Council of Europe member States, the problem of ‘delayed justice’, especially in administrative courts, is a systemic one requiring large-scale legislative and other measures by the respondent state. The author argues that the European Court of Human Rights could systematically apply in these cases the ‘pilot-judgment procedure’ that was initiated by the Court in 2004, and usefully instruct and encourage the respondent State to promptly adopt measures, apart from effective domestic remedies, in order to tackle and eliminate the root causes of this chronic structural problem.

1. Introduction**

Article 6, paragraph 1, of the European Convention on Human Rights (hereinafter: ‘the Convention’) imposes on States the duty to organise their judicial systems in such a way that their courts can meet all of their requirements, including hearing cases within a reasonable time.¹ However, the problem of excessive (or unreasonable) length of proceedings in civil, criminal or administrative courts, in violation of Article 6, paragraph 1, of the Convention is currently encountered in the majority of the 47 member States of the Council of Europe, including Greece.

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** This article was completed in autumn 2010. On 21 December 2010 the European Court of Human Rights delivered its first pilot judgment against Greece in the case of Vassilios Athanasiou and Others concerning excessive length of proceedings in administrative courts. The Court highlighted the long-standing, structural nature of this problem and held that Greece was to introduce, without delay, an effective remedy or a combination of effective remedies at national level, within one year from the date on which its judgment would become final.

¹ See, among others, Wasserman v Russia (No. 2), Application no. 21071/05, European Court of Human Rights, Judgment of 10 April 2008, para.47.
Out of 1,625 judgments delivered in 2009 by the European Court of Human Rights (hereinafter: ‘the Court’) 449 (approximately 28%) concerned excessive length of proceedings.\(^2\) In 2010 the Council of Europe Committee of Ministers (hereinafter: ‘the CM’) reiterated 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’.\(^3\)

The most well-known State-source of such violations is probably Italy. For many years this has been the respondent State with the highest number of length-of-proceedings judgments (2,183 in 2009) pending before the CM for supervision of execution under Article 46, paragraph 2, of the Convention (CM DH (Human Rights) Meetings).\(^4\) In 2009 there was a total of 2,582 ‘length judgments’ under CM supervision, referring to leading cases showing grave, systematic problems in various Council of Europe member States.\(^5\)

In its Report to the CM in November 2006, the Group of Wise Persons\(^6\) expressed its concern at this situation, mentioning in particular that in 2005 this category of cases accounted for 25 per cent of all Court’s judgments.\(^7\) According to the same Group, ‘one of the reasons for this profusion of cases is the fact that the majority of States do not have domestic procedures for redressing the damage resulting from the length of proceedings’.\(^8\) It is striking that in 2006 the percentage rose to 36 per cent.\(^9\)

2. The systemic problem of excessive length of proceedings in Greek administrative courts

In September 2007, the Council of Europe Parliamentary Assembly’s Committee on Legal Affairs and Human Rights expanded its remit, in the context of monitoring and reporting on the execution of the Court’s judgments pertaining principally to systemic or structural human rights issues in Greece, adding the issue of excessive length of proceedings in administrative courts to that of conditions of detention.\(^10\) The Council of Europe Commissioner for Human Rights has

\(^2\) In 2008 out of 1,545 judgments, 456 (approximately 30%) concerned the same issue. See the Court’s Annual Reports 2009 and 2008, pp.141 and 133 respectively, at http://www.echr.coe.int.


\(^6\) The Group of Wise Persons was established by the Heads of State and Government of the Council of Europe member States at their Warsaw summit of 16–17 May 2005, in order to consider principally the ‘long-term effectiveness of the ECHR control mechanism’.


\(^8\) Report, see fn. 7, para.89.

\(^9\) 567 out of 1,560 violations, see European Court of Human Rights, Annual Report 2006, Strasbourg, 2007 statistics at p.120. See also Frédéric Edel, La Durée des Procédures Civiles et Pénales dans la Jurisprudence de la Convention Européenne des Droits de l’Homme, (2e édition) (Strasbourg: Conseil de l’Europe, 2007); L’Amélioration des Recours Internes avec un Accent Particulier sur les Cas du Délai Déraisonnable des Procédures (Strasbourg: Direction Générale des Droits de l’Homme (DGII), 2006).

also shown an increasing interest in this aspect of Greek justice. The problem of excessive length of proceedings in Greek administrative courts, especially in the Greek Supreme Administrative Court (Council of State), has been highlighted in both of the Commissioner’s Reports on Greece which were published in 2002 and 2006.\footnote{11 Council of Europe Commissioner for Human Rights, \textit{Follow-up Report on the Hellenic Republic (2002–2005)}, 29 March 2006, CommDH(2006)13, para.11 and 13; \textit{Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Hellenic Republic (2–5 June 2002)}, 17 February 2002, CommDH(2002)5, para.5.}

Greece effectively recognised the existence of a systemic problem by amending its Constitution in 2001, thus allowing the subsequent adoption of legislation for the redistribution of the administrative courts’ competence in order, notably, to alleviate the Council of State’s excessively loaded docket.\footnote{12 See Section III of appendix to CM Final Resolution ResDH (2005)65.} In 2009 and 2010 the acceleration of judicial proceedings remained on the list of priorities of the Greek Ministry of Justice. The Minister of Justice has actually acknowledged the gravity of the situation and the serious problems encountered by individuals who are, in effect, confronted with a denial of justice, noting at the same time the series of the Court’s judgments against Greece.\footnote{13 See the speech of the Greek Minister of Justice to the Parliament, 18 October 2009, at http://www.ministryofjustice.gr.}

It is to be noted that asylum cases constitute a special category which is particularly affected by the Council of State’s chronic time-related dysfunction, since under current Greek law the only remedy available for negative first instance asylum decisions is the application for annulment before the Council of State. Indeed in these cases timely justice is crucial for the asylum seekers’ lives, and the lives of their families’, given also the chronic structural deficiencies of the Greek refugee protection system.\footnote{14 See the Report on the human rights of asylum seekers in Greece by the Council of Europe Commissioner for Human Rights, CommDH(2009)6, 4 February 2009, and the Commissioner’s Third Party Intervention before the Grand Chamber of the European Court of Human Rights in the case of \textit{M.S.S v Belgium and Greece}, CommDH(2010)22, 31 May 2010.}

The CM is the Council of Europe’s decision-making organ and is responsible for supervising respondent States’ execution of the Court’s judgments under Article 46, paragraph 2, of the Convention.\footnote{15 See \url{www.coe.int/T/E/Human_Rights/execution}.} Since 1998, it has been dealing with cases regarding excessive length of proceedings in Greek administrative courts, in violation of Article 6, paragraph 1, of the Convention.\footnote{16 The issue of excessive length of proceedings in Greek civil and criminal courts has also been examined by the CM, see Final Resolutions ResDH (2005)64 and ResDH(2005)66 respectively.} In July 2005, the CM concluded its supervision of the execution of 15 such judgments or CM decisions against Greece dating from 1998 to 2003, taking stock of Greece’s adoption of a series of constitutional, legislative and other measures for the acceleration of the proceedings in administrative courts and, therefore, for the prevention of similar violations. The CM, even though it welcomed ‘the measures taken to prevent unreasonably lengthy proceedings before the Council of State and the administrative courts’, expressed, indirectly but clearly, a concern,

‘noting that certain other problems relating to the excessive length of proceedings before administrative courts have notably been highlighted in more recent judgments of the Court (see in particular \textit{Manios against Greece}, judgment of 11 March 2004), and are being addressed by the Greek authorities, under the Committee’s supervision.’\footnote{17 Committee of Ministers, Final Resolution ResDH (2005)65 18 July 2005, \textit{CM/Del/Dec(2005)933.}}
The CM’s concern about the effectiveness of the general measures adopted by Greece until that time proved to be well-founded. The following years brought about a serious increase of such applications against Greece before the Court and of relevant judgments by the latter. It is characteristic that, in 2006, out of the 55 judgments delivered by the Court against Greece, 32 concerned excessive length of proceedings, mainly in administrative courts. By June 2007, there were 85 such judgments solely concerning Greek administrative courts (especially the Supreme Administrative Court (Council of State) and the Athens Administrative (Appeal) Court), on the CM’s agenda under Article 46, paragraph 2, of the Convention.

This situation prompted the CM to adopt Interim Resolution CM/ResDH (2007)74, the first to concern the problem of excessive length of judicial proceedings in Greece. According to the CM Rules for the supervision of the execution of judgments and of the terms of friendly settlements, the CM may adopt an Interim Resolution in the course of its supervision of the execution of a judgment ‘notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution’. In practice, an Interim Resolution may combine all three of these basic ‘aims’, that is, provide information on the execution of a judgment (or of the terms of a friendly settlement), express the CM’s concern about the state of execution, and make suggestions in order to aid and prompt the respondent State to accelerate the execution process at national level.

It should be noted that the CM Rules also task the CM with giving priority to the supervision of the execution of judgments where the Court has identified what it considers to be a systemic human rights problem in accordance with CM Resolution Res(2004)3 on ‘judgments revealing an underlying systemic problem’. In this groundbreaking Resolution, the CM addressed to the Court an ‘invitation’ concerning, in effect, the latter’s own jurisprudential policy. Specifically, it invited the Court:

(i) as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;
(ii) to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the State concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.

Approximately one month after the adoption of this Resolution, the Court accepted the CM invitation and initiated a novel, pro-active jurisprudential policy through the so-called ‘pilot-
judgment procedure’ in the case of Broniowski v. Poland. Even though no definition of ‘systemic (or structural) problems’ in a national legal order has been established by the Court, one can infer from the Broniowski judgment that such problems may be discerned when, for example, there has been a ‘malfunctioning of [domestic] legislation and administrative practice…which has affected and remains capable of affecting a large number of persons’. The Grand Chamber made it clear that a ‘pilot judgment’ is ‘primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving problems at national level, thereby securing to the persons concerned the Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress and, at the same time, easing the burden on the Court which would otherwise have to take to judgment large numbers of applications similar in substance’.

The ‘pilot-judgment procedure’ indeed has the potential to give a new breath of life to the Court and consequently to the whole ECHR system. To date, the Court has used the pilot-judgment procedure sparingly. However, it is to be noted that in 2010 in the ‘length case’ of Rumpf v. Germany the Court applied the pilot-judgment procedure and, in addition, ordered the respondent State, among others, to ‘set up without delay, and at the latest within one year of the date on which the judgment becomes final… an effective domestic remedy or combination of such remedies’.

Arguably, the Court has not made use of this procedure in cases where this would also have been appropriate, such as the ones concerning excessively lengthy proceedings in Greek administrative courts. Inevitably, this has led to the production of a large number of relevant ‘clone judgments’. With regard to the significant number of relevant Court judgments against Greece, this omission has not prevented the CM from qualifying the problem as a grave structural, or systemic one. In addition, in 2010 the CM stressed that, given the very high numbers of ‘length cases’ arriving in the Strasbourg Court, this issue ‘represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention’.

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23 Broniowski v. Poland, Application no. 31443/96, European Court of Human Rights, Judgment of 22 June 2004. The case relates to the violation of the applicant’s right to the peaceful enjoyment of his possessions, in that his entitlement to compensation for property abandoned in the territories beyond the Bug River (the Eastern provinces of pre-war Poland) in the aftermath of the Second World War had not been satisfied. The Court found that the violation had originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the ‘right to credit’ (according to the terminology used by the Polish Constitutional Court) of Bug River claimants.

24 Broniowski v. Poland, para.189.


28 Application no. 46344/06, Judgment of 2 September 2010.


3. States’ obligation to provide effective remedies for excessive-length-of-proceeding violations

One of the major aims of CM supervision coincides with the major obligation of contracting States: to prevent the occurrence of violations or reoccurrence of similar violations of the Convention by adopting effective general measures such as legislative or regulatory amendments, changes of case law, or administrative practice. This, along with the individual victims’ (applicants’) integral reparation (restitutio in integrum) to the extent possible through individual measures, constitutes, in effect, the essence of the States’ duty of execution and of the CM’s supervisory exercise, under Article 46 of the Convention.  

The fulfilment of this aim, of high importance for the long-term effectiveness of the ECHR system, is, in practice, directly linked to the adoption by respondent States of effective domestic remedies, in accordance with Article 13 of the Convention. This also applies in cases concerning excessive length of judicial proceedings, as established in the ECHR system in 2000 by the judgment delivered by the Court’s Grand Chamber in the case of Kudla v. Poland. The Court stressed that:

The correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 paragraph 1 to hear a case within a reasonable time.

The existence of effective domestic remedies is crucial for respecting the international law principle of subsidiarity aimed, among other things, at avoiding the ‘internationalization’ of human rights complaints. In reaffirming their applicability in all types of Convention violations, the CM highlighted the vital importance of effective domestic remedies for the ECHR system and emphasised a general rule of thumb, namely that ‘it is for the member States to ensure that domestic remedies are effective in law and in practice, and that they result in a decision on the merits of a complaint and adequate redress for any violation found.’

Regarding effective domestic remedies for violations of Article 6(1) of the Convention for excessive length of proceedings, the Court has stressed that ‘[a] remedy is…effective if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred’. Even though it was initially hesitant, the Court proceeded to give some clear indications or guidelines as to possible measures that could qualify as effective remedies for this kind of violation.

For example, in the Scordino (No. 1) judgment, the Court, under the heading ‘Principles established under the Court’s case-law’, noted three basic forms that a remedy for excessively lengthy judicial proceedings may take:

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31 On the respondent States’ established obligation to adopt individual and general measures, apart from paying the just satisfaction that may be awarded by the Court, see CM Rule 6, para.2.
32 Kudla v. Poland, Application no. 30210/96, European Court of Human Rights, Grand Chamber Judgment of 26 October 2000, para.156.
33 See Article 35, para.1, of the Convention, which provides for the exhaustion of domestic remedies ‘according to the generally recognised rules of international law’ as a major criterion of admissibility of an individual application.
(1) acceleration of proceedings:

183. The best solution in absolute terms is indisputably, as in many spheres, prevention. The Court recalls that it has stated on many occasions that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time...Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. 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 does a compensatory remedy of the type provided for under Italian law for example.

184. The Court has on many occasions acknowledged that this type of remedy is ‘effective’ in so far as it hastens the decision by the court concerned... 

The main concern with accelerating proceedings is whether the victim will be obliged to engage in a new, separate set of proceedings that would be added to the already delayed ones. Consequently, this form of remedy will likely be effective only in national judicial systems which are not overburdened, and thus are still able to ensure speedy special proceedings that would, on their own, result in the acceleration or conclusion of the already pending ones.

(2) combination of acceleration of proceedings with other measures:

185. It is also clear that for countries where length-of-proceedings violations already exist, a remedy designed to expedite the proceedings—although desirable for the future—may not be adequate to redress a situation in which the proceedings have clearly already been excessively long.

186. Different types of remedy may redress the violation appropriately. The Court has already affirmed this in respect of criminal proceedings, where it was satisfied that the length of proceedings had been taken into account when reducing the sentence in an express and measurable manner ...

Moreover, some States...have understood the situation *perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation*....

Indeed, this form of redress has been introduced in countries such as Croatia, the Slovak Republic, and Poland, where Constitutional or Appeals Courts have, rather successfully, been given the power to order the acceleration or conclusion of the delayed proceedings. In the case of Croatia, the Constitutional Court must set a time limit and grant compensation to individuals for such delays. In contrast, an old procedure of the German Constitutional Court and a procedure before the Slovenian Supreme Court which had the power only to accelerate

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36 *Scordino v. Italy (No. 1)* at fn.27 above.
37 *Scordino v. Italy (No. 1)* at fn.27 above. Emphasis added.
proceedings without imposing deadlines or providing compensation was considered by the European Court to be ineffective.\(^{40}\)

(3) the awarding of compensation:

187. However, States can also choose to introduce only a compensatory remedy, as Italy has done, without that remedy being regarded as ineffective…

188. The Court has already had occasion to reiterate in the *Kudla v. Poland* judgment…that, subject to compliance with the requirements of the Convention, 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. It has also stressed the importance of the rules relating to the subsidiarity principle so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court’s opinion more appropriately, have been addressed in the first place within the national legal system.

189. Accordingly, where the legislature or the domestic courts have agreed to play their true role by introducing a domestic remedy the Court will clearly have to draw certain conclusions from this.

Where a State has made a significant move by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. It will, in particular, be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage—personal injury, damage relating to a relative’s death or damage in defamation cases for example—and rely on their innermost conviction, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases.\(^ {41}\)

This form of remedy seems to be the easiest ‘way out’ for States encountering chronic, structural problems in their judicial systems. However, the Court has laid down some strict standards, to which the compensatory redress should correspond, notably the following:

(a) the period in which the compensation is awarded should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable;

(b) legal costs should be modified, if necessary, in order to avoid unreasonable restrictions of the individual right to lodge an application for compensation;

(c) in the case of non-pecuniary damages, the amounts awarded should not be unreasonable, in particular the relevant decisions must be consonant with the legal tradition and the standard of living in the country concerned, and also speedy, reasoned, and executed very quickly.\(^ {42}\)


\(^ {41}\) *Scordino v. Italy* (No. 1) at fn.27 above.

\(^ {42}\) *Scordino*, para.195-207. The Court in this case (para.214) found the compensation awarded by the Italian court as unreasonable: ‘With regard to the amount awarded, it would appear that EUR 2,450 for a delay of three and a half years amounts to applying a rate of EUR 700 per annum, that is, EUR 175 for each applicant. The Court observes
Similarly to the Court, the CM stressed, in its Interim Resolution (2007)74 on Greek administrative courts that, irrespective of which remedy a respondent State may opt for, there always remains a State obligation ‘to pursue with diligence the adoption of general measures required to remedy the underlying systemic problem of excessive length of proceedings’. In other words, the prevention of this kind of violation by promoting and establishing an efficient national judicial system by legislative or other appropriate measures should always remain a State’s priority.

This principle seems to have been accepted also by Greece, which in 2008 adopted a new Law (3659/2008) for the ‘improvement and acceleration of proceedings before administrative courts’. The main measures as summed up by the CM in 2009 are the following:

- The notion of the so-called ‘model trial’ was introduced into the Greek Code of Administrative Procedure. The ‘model trial’ concept empowers the Commissioner General before the administrative courts to require that cases raising very important legal questions and repetitive cases are heard as a matter of priority. Decisions must be delivered within 8 months of the hearing. This deadline may only be extended for two months and only in serious and exceptional circumstances. Failure to comply with this deadline will result in replacement of the judge responsible for the delay, whose disciplinary responsibility is engaged.
- Hearings may only be adjourned once either at the applicant’s request or ex officio by the court and for serious reasons.
- No judicial appeal is admissible if the administrative remedies have not been exhausted. Appeals which are manifestly inadmissible or have no legal basis will from now on be considered and, if need be, dismissed following simplified proceedings before a chamber of the Council of State.
- A limitation of the administrative courts’ jurisdiction is provided for when the amount at issue exceeds a certain sum (20,000 Euros).
- All provisions providing procedural prerogatives for the State or public-law corporations in relation to stays of execution of judgments before they became final, have been revoked. Also, enforcement of judgments against the State takes place in the same conditions as against a private individual.
- Furthermore, the new Law has transferred to the administrative courts a number of cases which previously came within the Council of State’s jurisdiction, to relieve it when possible.
- Finally the new Law provided for the creation of 74 new posts of judges.

21. The Greek authorities have submitted to the CM that the implementation of these new measures were expected to result in reducing the duration of proceedings before administrative courts by at least a year. As a consequence, the average length of first-instance proceedings would not exceed two years and those before the appeal courts would not exceed one year. Following the limitation of the Council of State’s jurisdiction, the number of cases brought before it would be reduced to 800 cases a year, which represents 10% of the cases brought before

that this amount is approximately 10% of what it generally awards in similar Italian cases. That factor in itself leads to a result that is manifestly unreasonable having regard to its case-law.’ See also Wasserman v. Russia (No. 2), cited above, Vidas v. Croatia, Application no. 40383/04, European Court of Human Rights, Judgment of 3 July 2008.

22. As to the provision of effective domestic remedies, Greece in 2007 appeared to have decided to opt for the third (compensatory) form of remedies mentioned above. It is noted that the first Greek length-of-proceedings case in which the Court found a violation of Article 13 was the Konti-Arvaniti, a judgment delivered on 10 April 2003 (final on 10 July 2003), concerning excessively lengthy proceedings in Greek civil courts. A relevant draft law which had been prepared in 2007, entitled ‘Compensation of litigants due to excessively lengthy judicial proceedings’ had not been adopted by mid-2010. It provided, in fact, for a domestic remedy in the form of compensation in cases of excessive length of proceedings, at any stage whatsoever, before administrative, civil or criminal courts.

4. Concluding observations

Justice delayed is justice denied. The continuous loading of the Strasbourg Court with ‘length cases’ from Council of Europe member States is indicative of the national systems’ failure to deliver justice in time. Also, it is an indication of their serious weakness in implementing fully and effectively the relevant Court’s judgments which from 1998 to 2008 reached 3,403 (out of a total of 8,172 judgments). This situation undeniably constitutes a serious blow to the credibility of both the national judicial systems and that of the Court. A systematic use by the Court of the pilot-judgment procedure in ‘length cases’ could certainly assist member States in tackling excessive delay in their systems of justice in an efficient manner.

One cannot avoid noting that the vast majority of the violations in the 85 cases covered by the above Interim Resolution originate in excessively lengthy proceedings in specific Greek administrative courts, principally, the Supreme Administrative Court (Council of State) and the Athens Administrative (Appeal) Court. Hence, specific attention and measures should be directed at effectively coping with the situation and the root causes of the violations in these particular courts which have been well known for their heavily burdened dockets, as has been noted by the Council of Europe Commissioner for Human Rights.

Indeed, one should not lose sight of the fact that increased litigation before administrative courts, especially those based in a State’s capital, or big urban areas, originate usually in socio-political backgrounds which are disadvantaged due to the chronic dysfunction of the central administration and to subsequent, emerging disputes between State and individuals. Thus, measures aimed specifically at the long-term effectiveness of administrative justice should be

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45 Hence its inclusion, along with four other similar judgments, in the present Interim Resolution.
46 See Court’s Annual Report 2008, p.139.
48 See the Human Rights Commissioner’s 2002 and 2006 Reports on Greece, cited at fn.8.
49 So far as Greece is concerned see, among others, Greek Ombudsman, Department for the Relations between State and Citizens, Annual Report 2006, Athens, National Printing Office, 2007, available at http://www.synigoros.gr (in Greek) at 164, where the Greek Ombudsman refers to an existing national ‘political culture’ in which a non-accountable State (central administration) seems to thrive. Also in the Greek Ombudsman’s Annual Report 2008, at 91, reference is made to a Greek administration that is ‘defensive and introspective’ vis-à-vis both the society at large and the individual citizens that the administration should serve.
based on a wide, non-legalistic purview and serious, in-depth examination of the socio-political reality and the needs of the State concerned. In addition, alternative ways of solving such disputes should be further developed and promoted by States and other institutional stakeholders.\textsuperscript{50}

The problem of excessive length of judicial proceedings seems set to remain on many European States’ and on the Court’s own agenda for years to come. Delayed justice, especially in the area of administrative law, is undeniably a complex phenomenon, not of a strictly legal nature but also of a socio-political one, since it relates directly to the socio-political history, values, and development of each individual State and its own administration. European States should thus remain alert and cope with excessively lengthy proceedings in a holistic manner, looking seriously into the root causes of the problem and considering evolving European legal standards, while also learning from other States’ ‘good practices’.\textsuperscript{51} The Court, especially through its pilot-judgment procedure, and competent organs of the Council of Europe, such as the CM, certainly serve as useful pathfinders for all States concerned in this toilsome journey ahead.


\textsuperscript{51} See also \textit{Guide to Good Practice} accompanying above-mentioned CM Recommendation (2010)3.
Interim Resolution CM/ResDH(2007)74
on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy

(Adopted by the Committee of Ministers on 6 June 2007, at the 997th meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as “the Convention” and “the Court”),

Having regard to the large number of judgments of the Court finding Greece in violation of Article 6, paragraph 1, of the Convention on account of the excessive length of judicial proceedings before administrative courts, in particular before the Supreme Administrative Court (Council of State) (see Manios group of cases in Appendix to this resolution);

Having regard to the fact that in many of the above cases as well as in cases concerning civil courts (see the Konti-Arvaniti group in Appendix), the Court also found that there had been a violation of Article 13 of the Convention as the applicants had no effective domestic remedy whereby they might enforce their right to a “hearing within a reasonable time”, as guaranteed by Article 6, paragraph 1, of the Convention;

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations, as well as to adopt general measures preventing new violations of the Convention similar to those found, including provision of effective domestic remedies against possible violations;

Stressing the importance of rapid adoption of such measures in the cases at issue as they reveal structural problems giving rise to a large number of new, similar violations of the Convention;

Recalling that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law;

Recalling furthermore the Committee of Ministers’ Recommendation to member states Rec(2004)6 regarding the need to improve the efficiency of domestic remedies;
Measures to accelerate proceedings before administrative courts

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (restitutio in integrum), having invited them in particular to accelerate, as far as possible, the proceedings which were still pending after the findings of violations by the Court;

Welcoming the subsequent termination of proceedings before the Council of State in the cases of Kabetsis, Kaskaniotis, Makedonopoulos, Moïsidis and Tsantiris, which were pending at the time of the Court’s judgments;

Recalling the constitutional, legislative and other reforms adopted so far by the authorities in order to remedy the problems related to the excessive length of proceedings in administrative courts (see Final Resolution ResDH(2005)65 concerning cases of excessive length of proceedings before administrative courts (Pafitis and other cases);

Noting with concern, however, that the European Court continues to find violations of Article 6, paragraph 1, due to excessively lengthy proceedings before Greek administrative courts, in particular before the Council of State;

Considering therefore that further general measures are required to comply with the Court’s judgments;

Noting with interest the new draft law which has been prepared and is entitled “improvement and acceleration of administrative court proceedings”, currently pending before Parliament, which in particular imposes limitations on the possibilities for parties to request and obtain adjournments of hearings, provides the possibility of services to be effected on behalf of an individual party by court clerks’ offices and provides strict deadlines within which administrative court judges should deliver their judgments after the hearings;

Measures to set up an effective domestic remedy

Noting with concern that the problem of lack of effective remedy, highlighted for the first time in the Konti-Arvaniti case mentioned above in 2003, still remains unresolved;

Welcoming the work accomplished by the Greek authorities leading to the preparation of a draft law entitled “Compensation of litigants due to excessively lengthy judicial proceedings”, which provides for a domestic remedy in the form of compensation in cases of excessive length of proceedings, at any stage whatsoever, before administrative, civil or criminal courts;

Stressing however that the creation of the new domestic remedy will not obviate the obligation to pursue with diligence the adoption of general measures required to remedy the underlying systemic problem of excessive length of proceedings in Greece, notably of the proceedings before the administrative courts and the Council of State,

URGES the Greek authorities, in view of the gravity of the systemic problem at the basis of the violations:

- to accelerate the adoption of the new draft legislation aimed at the acceleration of proceedings before all administrative courts and to envisage additional
measures such as further increase of the posts of judges and of administrative staff in these courts and further improvement of their infrastructure;

- to make all possible efforts to accelerate the adoption of the new draft legislation providing for a remedy and to ensure that this is implemented in accordance with the requirements of the Convention and the case-law of the Court;

DECIDES to resume consideration of these cases, at the latest, at its 1013th meeting (3-5 December 2007) (DH).

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**Appendix to Interim Resolution CM/ResDH(2007)74**

- 85 cases of excessively length of proceedings concerning civil rights and obligations before administrative courts (and the lack of an effective remedy)

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