Decision-Making within a Reasonable Time in Administrative Procedures

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Decision-making within a reasonable time derives from the right to a fair trial and the right to an effective remedy, according to the provisions of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the EU (CFREU). Although the use of the ECHR initially applied only to criminal and civil proceedings, the case law of the European Court of Human Rights (ECtHR) established the possibility of judicial control over the executive branch of the Contracting States. EU Member States exercise procedural autonomy in administrative procedures but the procedures can be assessed by the European Court of Justice (ECJ). The paper focuses on the application of the ECHR and the CFREU through the normative framework and analysis of the case law of the Court of Justice and the ECtHR. This jurisprudence is of the utmost importance for the application of

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decision-making in a reasonable time. The results contribute significantly to the awareness of the importance of respecting international human rights in administrative procedural law.

Keywords: decision-making, reasonable time, international human rights, administrative law

1. Introduction

The degree of respect of human rights is among the most important criteria for the classification of a democratic state and an important institute of international politics. A deference to human rights in administrative law stems from understanding administrative procedural law as an instrument of protection of human rights, since decision-making in administrative matters confronts the field of protection of (constitutional) rights of individuals and the need for effective enforcement of public interest.

The respect of human rights in administrative law and ensuring decision-making within a reasonable period of time leads to an increased accountability of the public sector, with a view to ensuring the fundamental concept of the rule of law, while the scope of individual rights in the administrative process represents an indicator of the intensity of protection of individuals with regard to the authorities, and hence the degree of democratic order.

Decision-making within a reasonable time in the field of administrative law process constitutes an international institute, which derives from the right to a fair trial and the right to an effective remedy, according to the provisions of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (CFREU).

This paper focuses on the exploration of the concept of decision-making within a reasonable time and on the analysis of decision-making within a reasonable time in the field of administrative law based on the presented normative framework and the case law of the Court of Justice and the European Court of Human Rights (ECtHR).

To achieve these objectives, the description method is used for the systematic presentation of the concept of decision-making within a reasonable time in the field of administrative law and case law via the study of Slovenian and international court cases, domestic and foreign legislation

and EU law, with an emphasis on the presentation of the legal basis of the study area, and domestic and foreign literature as a theoretical basis for the analysis carried out and the results given.

In accordance with the purpose and objectives, the paper is divided into four sections addressing the theoretical and substantive part, an introduction and conclusion. In the theoretical part, the main emphasis is on the definition of the basic concepts necessary to understand the work presented, namely the concept of reasonable time in the decision-making process. The substantive part is devoted to a detailed overview of the right of decision-making within a reasonable time in the field of administrative law and via the application of Art. 6 and 13 of the ECHR, the application of Art. 41, 42 and 47 of the CFREU, and the presentation of decision-making in Slovenian administrative procedures.

2. The Right to a Fair Trial and the Right to an Effective Remedy

The general right that one's personal matters in a procedure are dealt with in a reasonable time frame derives from the provisions of the ECHR, within the right to ensure judicial protection. In this sense, the Convention establishes two rights, namely the right to a fair trial and the right to an effective remedy.

The right to a fair trial is a guaranteed procedural right under Art. 6 of the ECHR (paragraph 1). According to Art. 6 of the ECHR: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (ECHR, Art 6/1). In the event that a country or a person believes that their right was violated, they may file a complaint with the ECHR (Art. 33 and 34).

The right to a fair trial is based on the right to an effective judicial protection, developed by the European Court of Justice and relating primarily to the decisions in cases of *Johnston*, *Heylens* and *Borelli*.[1]

The right to a fair trial consists of the right to a trial within a reasonable time and other guarantees from the pre-trial and criminal procedure.

[1] *Johnston v Chief Constable Of The Royal Ulster Constabulary*, 1986 ECJ C-222/84; *UNECTEF v. Heylens*, 1987 ECJ C-222/86; *Borelli v. Commission*, 1992 ECJ C-97/91.

The concept of a reasonable period of time has been developed by the jurisprudence of the ECHR, which does not establish an absolute deadline for resolving cases,[2] but depends on:[3]

- specific circumstances of the case,
- criteria of jurisprudence of the Court,
- complexity of the case,
- conduct of the applicant,
- conduct of bodies dealing with the matter, and
- importan ce of the authorities to the complainant.

The case law of the ECHR emphasises that the right to a trial within a reasonable period is of the utmost importance for the quality of the judicial system. Therefore, the ECHR obliges the Contracting States to organise their legal systems so as to meet the requirements of the first paragraph of Art. 6 of the ECHR, including reasonable length of the procedure.

Under Art. 13 of the ECHR: "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" (Art. 13). The right to an effective remedy requires of the states that national law, not only when it comes to constitutional rights, but whenever there is interference with the rights guaranteed by the Convention, ensures the appropriate remedy.[4]

According to the ECtHR the remedy must be "effective" not only in theory but also in practice,[5] whereby an effective remedy either prevents the alleged violation or its continuation, or provides appropriate redress (just satisfaction).[6]

[2] *Neumeister v. Austria*, 1968 ECtHR 1936/63

[3] *Buchholz v. Germany*, 1981 ECtHR 7759/77, par. 51, 61 and 63

[4] *Caligiuri et autres v. Italy*, 2014 ECtHR 657/10; *Grafescolo S.R.L. v. Moldavia*, 2014 ECtHR 1774/11; *Chirica v. Moldavia*, 2014 ECtHR 50905/08; *Cornea v. Moldavia*, 2014 ECtHR 22735/07; *Omelchenko v. Ukraine*, 2014 ECtHR 34592/06; *Panetta v. Italy*, 2014 ECtHR. 38624/07; *Nikolitsas v. Greece*, 2014 ECtHR 63117/09; *Guadagno and others v. Italy* 2014 ECtHR 61820/08; *Silver and others v. UK* 1983 ECtHR 7136/75.

[5] *Ilhan v. Turkey*, 2000 ECtHR 22277/93, see also previously mentioned cases.

[6] About just satisfaction see Art. 41 of the Convention. In the case of *Soć v. Croatia*, the ECtHR found a violation of Art. 13 of the ECHR because the complainant did not have access to interior (home) remedies that would provide appropriate redress in respect of alleged breaches of the procedures that have already been completed.

Among the characteristics required of an effective remedy, as set out by the ECtHR and the European Court of Justice[7] shall be considered:

- sufficient independence of the appellate body,[8]
- admissibility of redress and access to legal remedies for the parties to the proceedings,[9]
- power to review the factual and legal issues,[10]
- devolutionary effect of an remedy,[11]
- authorisation for the intervention and the impact on the validity of the contested act,[12] and
- suspensive effect of an appeal to prevent the continuation or enforceability of the impact or allow proper party reimbursement for incurred unlawful consequences.[13]

The case law of the ECtHR has for many years insisted on the idea that regulations embodied in Art. 6 and 13 of the ECHR overlap, although the requirements of Art. 13 of the ECHR are less stringent than the requirements under Art. 6 of the ECHR. Therefore in the case of the alleged violations regarding Art. 6 of the ECHR, the Court does not need to verify the violation of Art. 13 of the ECHR as well.[14]

Art. 13 of the ECHR obliges the signatory State to enable an effective remedy for violations of Art. 6 of the ECHR primarily at the national level. In the case of *Scordino*, the Court stated that: "The Contracting States have a certain margin of discretion in the way of implementation of Art. 13, but the introduction of an effective remedy is their obligation under the Convention."[15] Otherwise the affected party has no choice but to immediately file a complaint with the ECtHR.[16]

[7] *Rechnungshof v. Österreichischer Rundfunk*, 2003 ECJ C-465/0, par. 71; *Borelli v. Commission*, 1992 ECJ C-97/91, par. 68 and *Schmidberger v. Austria*, 2003 ECJ. C-112/00, par. 7.

[8] *Khan v. UK*, 2010 ECtHR 35394/97, par. 47; *Taylor-Sabori v. UK*, 2002 ECtHR 47114/99 par. 23 and 24.

[9] *Klass v. Germany*, 1978 ECtHR 5029/71, par. 69.

[10] *Silver v. UK*, 1983 ECtHR 7136/75, par. 115.

[11] *Peck v. UK*, 2003 ECtHR 44647/98, par. 113.

[12] *Aksoy v. Turkey*, 1996 ECtHR 21987/93, par. 95.

[13] *McFarlane v. Ireland*, 2010 ECtHR 31333/06, par. 108.

[14] *Kamasinski v. Austria*, 1989 ECtHR 9783/82.

[15] *Scordino v. Italy*, 2006 ECtHR 36813/97, par. 186-188.

[16] *Kudla v. Poland*, 2000 ECtHR 30210/96 par. 155 and 156.

In 2014, the ECtHR found violations of Art. 6 in 430 cases and violations of Art. 13 in 175 cases of the ECHR (HUDOC, 2014).

3. Application of Art. 6 and 13 of the European Convention on Human Rights in Administrative Law

Art. 6 of the ECHR provides the right to judicial decision-making within a reasonable time in the case of civil rights, civil obligations and criminal charges. In the case of violations of the right to a decision within a reasonable period of time, parties to a dispute must have access to an effective remedy in accordance with Art. 13 of the ECHR.

In the case of a violation of the ECHR, however, the Court cannot ignore the decision of the national authority, nor do the judgments themselves have a direct effect on the legal system of the respondent State (Zupančič, 2004: 11; Teršek, 2002: 5).

The direct application of the aforementioned provisions in an administrative procedure is most evident in the case of an administrative dispute, which follows a judicial procedure. The indirect effect of the aforementioned provisions of the ECHR has a major influence on administrative law as a whole, as they are recognised as a fundamental obligation of the state authorities to ensure the authority of the judiciary (in administrative proceedings, the authority of the executive branch) (Lampe, 2010: 283).

Although the use of the ECHR initially applied only to criminal and civil proceedings, the case law of the ECtHR[17] in conjunction with Art. 6 of the Convention established the possibility of judicial control over the executive branch of the Contracting States.

The concept of civil rights and obligations under the ECHR therefore also covers administrative affairs. In the case of Koenig,[18] the ECtHR paved the way for the expansion of the ECHR in the area of administrative jus-

[17] In the case of *Allan Jacobson v. Sweden*, 1989 ECtHR 10842/84, the Court ruled in the case of administrative proceedings related to the right to work, which was defined by the Court as a civil right.

[18] In the case of *König v. Germany*, 1978 ECtHR 6232/73, the Court pointed out that the concept of civil rights and obligations cannot be interpreted solely by reference to the national law of the respondent State.

tice and public law rights in order to guarantee equal legal protection of individuals in all signatory countries.

The definition of civil rights, according to the case law of the ECtHR, is independent of national legislation, based on the principle of autonomy.[19] The concept of autonomy of the Convention therefore covers all procedures that are critical for private rights and obligations, even if the proceedings relate to a dispute between individuals and public authorities.

The case law of the ECtHR establishes that the provisions of Art. 6 of the ECHR cover all procedures that are decisive for private rights and obligations,[20] regardless of the legislation which sets out how to decide on the matter, or the competence of the body which is responsible for the matter.

Whether a right or an obligation is (under national law) included in the system of public law, the ECtHR inspects the nature of these rights or obligations in accordance with the role in which the legal entity is exercising them and the conditions in which it wishes to implement them.

Therefore, for the use of the ECHR in administrative cases, a dispute must fulfil the conditions of an existence of a right (a civil right or obligation shall be the subject or one of the objects of the dispute) and the existence of a legal dispute (with the interpretation of legal dispute based on content rather than on form), which is real, serious and directly related to the right. When dealing with controversial issues, there must also be a close connection between the right and actual conflict.

In the case of *Allan Jacobsson*, the Court emphasised in par. 72: "In accordance with the case law of the Court, the concept of civil rights and obligations should not be interpreted solely by reference to the law of the respondent State ... 6-1. Art. shall apply without prejudice to the status of the parties, and the nature of the legislation which governs whether the character of the competent authority. It is sufficient that the solution to the conflict is decisive for private rights and obligations ..."[21]

In the case of *Pudas*, the Court ruled that the outcome of the national proceedings was in direct connection with the infringement of the appli-

[19] *Engel v. Netherlands*, 1976 ECtHR 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, par. 81: '' The terms of the ECHR are independent of the importance of the same or similar terms in the law of the State Party.''

[20] *Ringeisen v. Austria*, op. No. 2614/65 of 16.07.1971, par. 94: 2 »For the purpose of the first paragraph of Art. 6 (1) it is not necessary that both parties are natural persons.«

[21] *Allan Jacobsson v. Sweden*, 1989 ECtHR 10842/84.

cant's civil rights. The local authority in this case deprived the applicant of a license to drive a taxi, which was a public law decision, but had an impact on the applicant's business, which is in the domain of civil law.[22]

Furthermore, in the case of Sporrong and Lönnroth the dispute fell under national (Swedish) law in public law proceedings, however, the Court held that the dispute is about civil rights and applied the provisions of Art. 6 of the ECHR.[23]

In the *König* ruling, the Court emphasised in par. 89: "If the right shall be regarded as civil within the meaning of that term in this Convention shall be determined by reference to the material content and the impact of the effects of the right and not on its legal definition under the national law of the Member State ... In carrying out its supervisory functions, the court must take into account the object and purpose of this Convention, the national legal system and other systems of the Contracting States ..."[24]

In the case of *Le Compte, Van Leuven and De Meyer*, the Court ruled in par. 47: "With regard to the question whether the dispute relates to the aforementioned right, the Court considers that the civil rights and obligations of the object – or one of the subjects of dispute must be affected ..."[25]

Also in the case of *Benthem*,[26] the Court stated in par. 32: "a) ... Conformity with the spirit of the Convention requires that the word "contestation" (dispute) should not be "construed too technically" and should be "given a substantive rather than a formal meaning" ... b) ... The dispute may refer not only to the "actual existence of a ... right", but also to its scope and the manner in which it can be exercised ... c) ... the dispute must be of a genuine and serious nature ... d) ... disputes over civil rights and obligations covers all proceedings the result of which is decisive for [such] rights and obligations ... civil rights and obligations must be the object – or one of the objects – of the 'contestation' (dispute); the result of the proceedings must be directly decisive for such a right ..." (Katalinić, 2003: 133).

All rights determined by the government can therefore be defined as civil rights under the ECHR (for example, in expropriation proceedings, denationalisation, etc.). A judicial review of the governmental decision has to

[22] *Pudas v. Sweden*, 1987 ECtHR 10426/83.

[23] *Sporrong and Lönnroth v. Sweden*, 1982 ECtHR 7151/75 and 7152/75.

[24] *Konig v. Germany*, 1978 ECtHR 6232/73.

[25] *Le Compte, Van Leuven and De Meyer v. Belgium*, 1981 ECtHR 6878/75.

[26] *Benthem v. Netherlands*, 1985 ECtHR 8848/80.

be organised and guaranteed in accordance with the requirements of the ECHR, regardless of the civil nature of the right (Jerovšek, 1995: 723).

4. Application of Art. 41, 42 and 47 of the CFREU in Administrative Procedures

Art. 47 of the CFREU[27] also establishes the right to an effective remedy and a fair trial, which in case of violation of the rights and freedoms provided by the acquis, guarantees an effective remedy before a court, the right to a fair and public hearing, and a decision within a reasonable time by an independent and impartial court.

The aforementioned Art. 6 and Art. 13 of the ECHR have a direct impact on the definition of a reasonable period and an effective remedy as determined by the ECHR. The European Court of Justice (ECJ) describes an effective legal protection of fundamental rights as "a general principle of Community law, which is the foundation of constitutional traditions common to the Member States and enshrined in articles 6 and 13 of the European Convention on Human Rights and Fundamental Freedoms."[28]

Thus, the procedural protections developed by the ECJ are under the protection of fundamental rights and freedoms, as determined by the ECHR.

Moreover, the provisions of Art. 41 and 42 of the CFREU recognise the right to a good administration,[29] which provides any individual or legal person to have their case dealt with impartially, fairly and within a reasonable time frame. Additionally, one should have the right to be heard and access to data, while the administration should give reasons for their decisions based on pre-established administrative procedures.

The main provision on the governing principle of judicial review of administrative proceedings is Art. 263 of the Treaty on the Functioning of the European Union, which sets out four grounds for an annulment of an administrative act: lack of competence, infringement of an essential

[27] It has full legal effect with the entry into force of the Treaty of Lisbon on 1 December 2009, with an opt-out exception for Poland and the United Kingdom.

[28] *UNECTEF v. Heylens*, 1987 ECR 222/86, par.14.

[29] The institute of decision-making within a reasonable time in the field of administrative law relates also to the right to a good administration, based on the principles of the Council of Europe, the European administrative procedure, the CFREU, and the European Code of Good Administrative Behaviour.

procedural requirement, infringement of the Treaty or any rule of law that relates to its application, or a misuse of powers.

Therefore, in accordance with Art. 263 of the Treaty on the Functioning of the European Union, access to the ECJ is only possible if the EU act has a direct and individual impact on the applicant. Thus, if the administrative procedures in Member States are not related to EU law, they are conducted by national authorities in accordance with national procedural rules.

As is evident from the case law, the ECJ points out that the detailed procedural rules for the protection of rights held by persons in administrative proceedings arise from the legal system of each Member State according to the principle of procedural autonomy.[30]

In conducting administrative procedures the authorities should respect the substantive provisions embodied in EU law, however, the procedure itself only depends on the provisions of the Member States. In the absence of EU rules governing a particular issue, the domestic legal system of each Member State shall ensure the competence and the detailed procedural rules to safeguard the rights deriving from EU law.[31]

Although Member States can exercise national procedural autonomy in administrative procedures, the procedures can be assessed by the ECJ according to the principle of equivalence as well as the principle of efficiency.

Therefore, a Member State is obliged to establish such rules, which are not less favourable than those governing similar domestic actions and by which the exercise of rights conferred by EU law is not virtually impossible or excessively difficult.[32]

Among the most important procedural requirements that are subject to judicial review by the ECJ are the so-called rights of the defence. Most of the legal proceedings against administrative acts before the ECJ are the appellant claims of violation of their rights of defence by an administrative authority.

[30] *Kühne & Heitz v. Productschap voor Pluimvee en Eieren*, 2004 ECR C-453/00; see also *Unión de Pequeòos Agricultores v. Council*, 2002 ECR C-50/00, par. 38 and 39.

[31] *Upjohn Ltd. v. The Licensing Auth. established by the Medicines Act*, 1999 ECR C-120/97, par. 32; see also *Charalampos Dounias v. Ypourgos Oikonomikon*, 2000 ECR C-228/98, par. 58.

[32] *Arcor AG & Co. KG v. Germany*, 2006 ECR C-422/04, par. 57; see also *Meilicke v. Finanzamt Bonn-Innenstadt*, 2011 ECR C-262/09, par. 55.

The rights of the defence include the right to be heard (including the right of access to documents),[33] the obligation to state reasons, a reasonable length of the proceedings, confidentiality of written communications between lawyer and client[34] and the privilege against self-incrimination.[35]

The general principle of EU law, the principle of reasonable duration of the procedure, means that the administration must take a decision within a reasonable time.[36] Because it is impossible to determine precisely, a reasonable period refers to the period in which (depending on the specific circumstances of each case) the context and complexity of the case is assessed, together with the importance of the matter to the clients, and client – authority cooperation.[37]

The ECJ held that reasonable time limits (despite the autonomy of the administrative-procedural legislation) do not in practice prevent or significantly hinder the exercise of rights conferred by EU law.[38] The ECJ defines reasonable time in administrative law as one that does not conflict with the principle of equivalence (all rights in all Member States are provided in the same manner) nor the principle of effectiveness (procedural rules must not prevent substantive rules), and says that the provisions of national laws relating to the determination of the period must be sufficiently clear, precise and predictable in such a manner that individuals can gain knowledge of their rights and duties.

In the case of *Les Verts v. Parliament*, the ECJ emphasised that the EU is a community based on the rule of law; therefore its Member States and institutions cannot avoid a judicial review of its actions.[39]

[33] *Nederlandsche Banden-Industrie Michelin v. Commission*, 983 ECR 322/81, par. 7.

[34] *AM and S Europe Ltd. v. Commission*, 1982 ECR 155/79, par. 21.

[35] *Orkem SA v. Commission*, 1989 ECR 374/87, par. 35.

[36] *Certificatie Kraanverhuurbedrijf et al. v. Commission*, 1997 ECJ T-213/95 and T-18/96, par. 56; see also *Baustahlgewebe GmbH v. Commission*, 1998 ECJ C-185/95 P, par. 26 and further.

[37] *Certificatie Kraanverhuurbedrijf et al. v. Commission*, 1997 ECJ T-213/95 and T-18/96, par. 57.

[38] *Palmisani v. Istituto nazionale della previdenza sociale*, 1997 ECJ C-261/95 par. 28 and *Aprile v. Amministrazione delle Finanze dello Stato*, 1998 ECJ C-228/96 par. 19.

[39] *Les Verts v. Parliament*, 1986 ECR 294/83 par. 23; see also *Granaria B. V. v. Hoofdproduktschap voor Akkerbouwprodukten*, 1979 ECR 101/78, par. 5.

In the case of *Peterbroek*, the ECJ pointed out that the procedural norm of state law that would prohibit the ECJ from assessing conformity is an act contrary to European law and therefore cannot be taken into account.[40]

The most notable example of the jurisprudence of the ECJ in the field of administrative procedure is the Alger case, in which the Court developed the general principles of administrative procedure. In the case of Alger,[41] the ECJ stated that the right to a good administration (enshrined in Art. 41 and 42 of the CFREU) is a general principle which is common to the constitutional traditions of the Member States and which must be provided in each Member State.

5. Decision-Making in Slovenian Administrative Procedures

In some EU Member States the right to a decision within a reasonable time in the field of administrative law is constitutionally guaranteed, while others provide such provisions in the administrative procedural law (Statskontoret, 2005: 31). In some Member States, such as Latvia and Sweden, the right is not explicitly defined, but derives from the national case law.

Other countries, however, in principle distinguish between a general deadline for administrative affairs, which is most commonly expressed in the general law of administrative procedure, and time limits for emergency in special cases, which are set out in the sectoral legislation (Statskontoret, 2005: 32).

Instead of setting a general deadline or in combination with it, the legislation of certain Member States provides that the administrative authorities are, at the request of interested parties, obliged to communicate the estimated time of issue of the order (Finland, Spain, Estonia).[42]

The right of an individual, that the matter be dealt with within a reasonable time, is therefore formulated in many ways. The best guarantee of ensuring a reasonable time, however, is setting specific deadlines for administrative decision-making.

[40] *Peterbroeck, Van Campenhout & CeSCS v. Belgium*, 1995 ECR C-312/93.

[41] *Algera and others v. Assemblée commune*, 1957 ECR C-7/56.

[42] Art. 41 of the Estonian Law of Administrative Procedure provides that if an administrative act cannot be issued within the prescribed period, the administrative authority is obliged to communicate the likely timing of issuing the administrative act and the reasons for failure to comply with the prescribed time limits.

The Resolution of the European Parliament on deadlines for decisions in administrative matters[43] has highlighted the need for an administrative decision to be taken within a reasonable time and without delay. Time limits must be defined for each administrative procedure separately. However, where no time is specified, it should not be longer than three months from the date of the commencement of the procedure, if it was initiated ex officio or from the date of the request made by an interested party.

The average overall time limit for decisions in administrative law in the EU is one month in decisions on ordinary administrative matters, counting from the date the procedure was established, or from the date of receipt of a complete application (Statskontoret, 2005: 32).

In Slovenian administrative law, the right to a decision within a reasonable time is expressed in the General Administrative Procedure Act (GAPA) in articles 6-14, which provide the fundamental principles of administrative procedure. Furthermore, Art. 146 refers to the procedural rights of parties to the proceedings, while Art. 222 and 255 define the appeal if the decision of the first instance has not been issued.

Moreover, decision-making within a reasonable period of time is also mentioned in Art. 18 of the Decree on Administrative Operations, in the Civil Servants Act, which in Art. 13 stipulates the responsibility of a civil servant for a rapid and effective performance of all duties, and in the State Administration Act, which in Art. 5 stipulates that the administration is obliged to provide the fastest and easiest possible exercise of the rights and legal interests of individuals.

In order to ensure a reasonable period of time for decision-making in the administrative procedure, Art. 222 of the GAPA prescribes time limits within which the authority issues a decision or completes the decision-making process. At the first stage of decision-making, the period is either one or two months, depending on a special fact-finding procedure. At the second instance of decision-making, the statutory deadline for a decision is two months.

The Slovenian deadlines for decisions in administrative matters are in accordance with the notion of a reasonable deadline for a decision in administrative matters as determined by the ECHR and the CFREU, since they correspond with the principle of non-discrimination (the conditions for decision-making in the GAPA and the special administrative procedure

[43] Resolution of the European Parliament of 15 January 2013.

are precisely defined), and the principle of effectiveness (a 30 or 60 day time limit does not in practice significantly complicate the exercise of the rights of individuals), and constitute legally set reasonable deadlines for decision-making in administrative matters in Slovenia.

The current Slovenian legislation in the field of administrative law therefore precisely codifies a reasonable period of time in the GAPA. Extending deadlines, which are by nature non-extendable, is therefore illegal and leads to an unlawful extension of procedures (Sever, 2009: 20). The GAPA, however, does not stipulate any penalties for exceeding the instruction limits.

Nevertheless, the Constitutional Court takes the view that respect for instruction deadlines means respect for the constitutional right of equality before the law under the second paragraph of Art. 14 of the Slovenian Constitution, and the right to an equal legal protection under Art. 22 of the Constitution.

In case of violation of the Constitution, Art. 26 of the Constitution provides that everyone has the right to compensation for the damage suffered in respect of the provision of services or other activities of state authority, local authorities and holders of public powers by an unlawful act of a person or body that has performed such a function or activity.

Furthermore, provisions of Art. 135 of the Civil Servants Act also provide the right to compensation caused by work or in connection with the work of a civil servant to a third party.

There have been 540 Slovenian cases before the ECtHR regarding the violation of Art. 6 and/or 13 in the past 10 years. In 470 cases the ECtHR confirmed the violation of the aforementioned articles in judicial procedures.

There has not yet been a Slovenian case before either the ECtHR or the ECJ regarding a violation of the right to a decision within a reasonable time in administrative procedures, although in Slovenia administrative procedures for dealing with complaints often take a year or more (instead of the statutory period of two months) (Kovač, 2014: 49).

According to the Slovenian administrative inspection (MPJU, 2012), most violations of the GAPA derive precisely from non-compliance with the deadlines for decision-making, mostly in the constituent bodies (Inspectorate for the Environment and Spatial Planning, Surveying and Mapping Authority), of the administrative units and ministries (Ministry of the Environment and Spatial Planning).

Therefore, if the administrative authority does not act within the specified statutory time limits, it should be subject to liability with the possibility of claiming damages and filing a civil action against the State (Grafenauer, Breznik, 2009: 385).

Furthermore, an individual can turn to the ECJ to ensure a fair and impartial administrative process as established by the case law of the ECJ.

In Slovenia, the legality of final administrative acts is verified by legal proceedings before the Administrative Court, whereby an administrative matter becomes judicial (Constitution, Art. 157).

In case of violation of the right to a decision within a reasonable time before the Slovenian Administrative Court, the affected individual can file a complaint before the ECtHR in matters considered under national law as administrative. With the emergence of a dilemma, if it is the right of a civil nature, the ECtHR considers it in accordance with the previously mentioned criteria.

However, the ECtHR focuses solely on judicial litigation (whether it took too long), but not on the prior administrative procedure, whereby the effectiveness of current arrangements for the complainant and the entire legal system is questionable.[44] An effective remedy is not a remedy whereby the complainant cannot remedy the alleged violations.

Thus, in certain cases, the complainant may appeal to the ECtHR, even if he has not exhausted all legal remedies.[45] These are cases where there is settled case law on the legal system of the country, which is so inefficient that the individual has no chance of success (Teršek, 2002: 5; see also Galič, 2000: 337–338).

6. Conclusion

Individuals are turning to public authorities in order to exercise their rights and interests, thus it is important that administrative authorities conduct administrative procedures according to the international and statutory rules of administrative procedure.

[44] *Bottazzi v. Italy*, 1997 ECtHR 34884/97.

[45] In Art. 35, the ECHR sets out the criteria of admissibility of the appeal, namely , that the court may deal with the matter only after the exhaustion of all domestic remedies in accordance with the generally recognised rules of international law, and within six months from the date of adoption of the definitive decision under domestic law.

The paper explains that national authorities are obliged to respect the institute of decision-making within a reasonable time in the field of administrative law, which derives from the fundamental principles of international and constitutional values of human rights.

Although the use of the ECHR initially applied only to criminal and civil proceedings, the case law of the ECtHR in conjunction with Art. 6 of the Convention established the possibility of judicial control over the executive branch of the Contracting States.

Furthermore, according to EU law, Member States can exercise national procedural autonomy in administrative procedures and in accordance with the Treaty on the Functioning of the European Union, and access to the ECJ is only possible if the EU act is of a direct and individual concern to the applicant.

The paper elaborated how national administrative procedures can be assessed by the ECJ according to the principle of equivalence as well as the principle of efficiency.

Through the analysis of the institute of decision-making within a reasonable time in the field of administrative law on the basis of the case law of the EU Court of Justice and the European Court of Human Rights, the results of the paper contribute significantly to the awareness of the importance of this international institute in the field of administrative procedural law.

Ensuring decision-making within a reasonable time in the administrative procedure in accordance with respected international standards undoubtedly provides further legal certainty for individuals.

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DECISION-MAKING WITHIN A REASONABLE TIME IN ADMINISTRATIVE PROCEDURES

Summary

Decision-making within a reasonable time derives from the right to a fair trial and the right to an effective remedy according to the provisions of the European Convention on Human Rights and the Charter of Fundamental Rights of the EU (ECHR). Although the use of the ECHR initially applied only to criminal and civil proceedings, the case law of the European Court of Human Rights established the possibility of judicial control over the executive branch of the Contracting States. Although the EU Member States exercise national procedural autonomy in administrative procedures, the jurisprudence illustrates that procedures can be assessed by the European Court of Justice (ECJ). The article focuses on the application of the ECHR and the Charter of Fundamental Rights of the EU in the field of administrative law and administrative procedures through the presented normative framework and an analysis of the case law of the Court of Justice and the European Court of Human Rights (ECtHR) regarding the institute of decision-making within a reasonable time. The jurisprudence of the ECtHR and of the ECJ, which is presented throughout the paper, is of utmost importance for decision-making in a reasonable time in administrative law as the ECtHR has the sole jurisdiction of interpretation of the ECHR, and the ECJ has the sole jurisdiction of interpretation of the EU law. The results presented in the paper contribute to the awareness of the importance of respecting international human rights in the field of national administrative procedural law.

Keywords: *decision-making, reasonable time, international human rights, administrative law*

ODLUČIVANJE U RAZUMNOM ROKU U UPRAVNIM POSTUPCIMA

Sažetak

Odlučivanje u razumnom roku temelji se na pravu na pravično suđenje i pravu na učinkovito pravno sredstvo temeljem odredbi Europske konvencije o ljudskim pravima i Povelje o temeljnim pravima Europske unije. Premda se u početku EKLJP primjenjivala samo na kaznene i građanske postupke, sudska praksa Europskog suda za ljudska prava omogućila je i kontrolu izvršne vlasti zemalja koje su Konvenciju ratificirale. Premda države članice EU imaju autonomiju u pogledu regulacije upravnih postupaka, sudska praksa svjedoči da se i oni mogu podvrći nadzoru Europskog suda pravde. U radu je riječ o primjeni EKLJP i Povelje o temeljnim pravima EU u upravnom pravu i upravnim postupcima kroz analizu pravne regulacije i sudske prakse Suda pravde i Europskog suda za ljudska prava o odlučivanju u razumnom roku. Analizirana praksa obaju tih sudova je od naročite važnosti za odlučivanje u razumnom roku u upravnim stvarima budući da Europski sud za ljudska prava ima isključivu nadležnost interpretacije EKLJP, a Europski sud pravde isključivu nadležnost u interpretaciji prava EU. Rezultati ovog rada doprinose jačanju svijesti o važnosti poštivanja međunarodnih ljudskih prava u nacionalnom upravnom postupovnom pravu.

Ključne riječi: *odlučivanje, razumni rok, međunarodna ljudska prava, upravno pravo*