Civil Procedure Review
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Should Procedural Legislation Regulate the Length of Judicial Proceedings? Evaluating European Practices and Experiences in Judicial Time Management

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Abstract: Comparative research shows that many countries experience the problem of slow and ineffective civil litigation. When duration of court proceedings becomes a political issue, governments must act. While several reform strategies are possible, not every one of them is equally appropriate. In this paper, it will be shown that the simplest response – to fix procedural timeframes by procedural legislation – is usually the least effective, although it is still popular among legislators seeking a quick and easy fixing of the problem. The first part of this paper explains why this is the case, analyzing challenges that the policies of fixing judicial timeframes by procedural legislation are faced with. The analysis follows the emerging European standards regarding procedural timeframes as defined by 'soft' sources of law: by case law of the ECtHR on human right to a trial within reasonable time, by the work of the CEPEJ and by recently adopted model European civil procedural legislation. On the other hand, experiences of various countries demonstrate that different ways to deal with the slowness of civil justice exist that are subtler and more complex, but better adjusted to the needs and more promising in the end result. Among such experiences, in the second part of this paper the

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practice in some European countries is presented. The approach to procedural timeframes in Germany, the Netherlands, Italy and Croatia show a variety of more or less successful means of judicial time management that can serve as examples of what (not) to do.

Keywords: civil justice, civil and commercial litigation, length of proceedings, judicial time management, fixing procedural timeframes

I. INTRODUCTION

This paper analyses the best practices in time management of civil and commercial court cases. The backdrop of the question indicated in the title is twofold. It arises out of two seemingly contradictory developments.

First, some countries on European continent (and even more of them in Asia) still address the length of judicial proceedings in a simple and apparently logical way: by fixing the maximum amount of time within which the procedure before the courts of various instances should be completed. This used to be the approach in countries like China, Russia or other former Soviet countries. Several of these countries are now re-examining their approach, seeking to soften or abandon the existent legislative limitations.[2]

But, second development is present in the countries which have previously not prescribed the legislative limits to duration of judicial proceedings. One of them is Croatia. As the latest EU member, Croatia has been faced for several decades with almost endemic problem of lengthy court proceedings. In the latest attempt to improve the situation, the government announced that it will address the length of proceedings by introducing fixed timeframes for duration of proceedings before the courts of all instances. A brief explanation of the situation in Croatia is contained in the second part of this paper.

To assess such and similar approaches to time management of court proceedings, the research questions asked in this paper are:

Do fixed procedural timeframes provided by applicable procedural legislation effectively contribute to shortening of the actual length of judicial proceedings in contentious civil and commercial cases? Does such general fixing have an impact on quality of justice delivery? Is it among the best European practices of time-management in civil justice?

In answering these questions, this chapter will start with the identification of main challenges and dilemmas, which will be formulated as questions that will further be analyzed. The analysis will take into account the best European practices and positive and negative experiences of selected EU countries.

2 Parts of this paper are based on the author's research undertaken for the reform of commercial and administrative justice in Azerbaijan for the purpose of evaluating its present approach to fixed procedural timeframes.

i. Challenges regarding policies of fixing judicial timeframes by procedural legislation

Fixing the maximum time needed to process court cases may put some pressure on judges and other competent bodies and persuade them to act in a swifter manner. It can also form expectations on the side of the users regarding timing of judicial procedures, stages of procedures or procedural steps. It can also be the reason to implement sanctions against the actors in the proceedings that do not comply with the prescribed time limits.

There are however significant challenges which affect the usefulness and sensibility of timeframe determination on the general level. Before entering into their examination, a general fixing of procedural timeframes needs to be contrasted to a conventional approach of procedural legislation to procedural timeframes.

From the procedural perspective, it is common in all legal systems to determine legal timeframes for specific actions taken during judicial proceedings. Such steps are in particular related to timeframes for submitting defendant's answer to the statement of claim, to file appeals and other means of recourse against judgments, or to put forward particular procedural or other requests (e.g. set-of requests or request for restoration and extension of deadlines). Mainly, such timeframes relate to the actions which are expected from the parties and their lawyers. The law often provides certain latitude in determination of such timeframes, allowing judges to fix them within certain limits according to the nature of a concrete case. Based on whether timeframes are fixed by law, or whether there is some flexibility on the side of the court and the parties to adjust them, the procedural typology distinguishes *legal* and *judicial* timeframes.

However, both types of timeframes operate at a micro-level and do not have a function to determine the overall duration of the court proceedings before particular court instances.

Less often, procedural legislation sets timeframes for the steps that are due to be undertaken by courts and judges. For instance, the law can stipulate timeframes within which it is expected to deliver the final judgment after closure of the main hearing. If the action is not taken within the provided timeframe (e.g. if the court fails to issue its judgment within the stipulated deadline), the consequence is generally not the inability to undertake the same action later. As there is no preclusion regarding the possibility to fulfill the obligation after the set timeframe, these timeframes are in procedural doctrine classified as *instructive* timeframes.

The research question of this chapter relates however to the legislative attempts to stipulate the total time needed to process cases assigned to courts of law. The object of examination are cases of civil and commercial nature, but the same approach can be employed in respect to other judicial cases of some level of complexity, including cases decided before administrative and other specialized tribunals.

The typical challenges with inflexible fixing of legislative timeframes for overall duration of cases can be divided in four groups, depending on the nature of challenge. The challenges may be regarding:

- conceptual effectiveness of the fixed legislative timeframes,
- appropriateness of their length,
- efficiency of their implementation, and
- compliance with rule of law standards.

a) Conceptual challenges to effectiveness of legislative fixing of judicial timeframes

As to the conceptual effectiveness challenges, they arise from the set goals of legislative intervention into timing of the judicial process. Such goals include securing appropriate and foreseeable time to obtain judicial protection of lawful rights and interests, and avoiding violations of the right to a fair trial within a reasonable time. Main challenges in this respect are the following:

1. From the perspective of users, what matters the most is the total time needed to obtain judicial relief. They are not so much interested in the length of particular technical stages. The parties desire a quick remedy in case of violation of their substantive rights. But, legislative fixing of overall procedural duration regularly deals with a single instance of judicial process only (first instance proceeding or appeal proceedings), so the total time of judicial case processing can still be excessive when time is added up. This happens in particular if the outcome of the procedure before higher courts can be a remittal to the first instance and retrial by the first instance. If this can happen more than once, it is certain that the procedural duration will be unacceptable to the user, no matter whether procedural duration before individual courts was appropriate or not.
2. Fixing legislative timeframes for distinct judicial stages disregards the duration of the process that precedes commencement of court litigation. Such pre-action stages can be within the responsibility of the state judicial or other bodies and may protract the time needed to start resolving the underlying issues of the parties. Pre-action steps include e.g. mandatory negotiation or mediation proceedings, official inquests or mandatory steps before commencing litigation.
3. Fixing legislative timeframes for litigation regularly does not include necessary steps which follow court decisions to secure effectiveness of legal protection. Typically, such steps include the process of enforcement of court decisions which may on its own be lengthy and difficult.

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ISSN 2191-1339 – www.civilprocedurereview.com

4. Finally, effectiveness of legal protection is not the only goal in any judicial process. As judicial process needs to conform to adequate quality standards, fixed legislative timeframes may force the adjudicators to lower the quality standards and thereby cause dissatisfaction of users. Inadequate quality of decision-making can in the end contribute to length of proceedings as low-quality judgments are more likely to be appealed and returned for rehearing.

b) Challenges regarding appropriateness of the fixed legislative timeframes

The second category of challenges relates to the question whether uniform legislative standards for maximum duration of the judicial process have been set properly to deal with varying complexity of situations which can contribute to litigation being longer or shorter. These challenges include the following:

1. As cases differ by their complexity, the stipulated timeframes can be too long for simple and too short for more complex cases (complexity being caused either by the complexity of issues or participation of multiple parties on each side).
2. As some cases may be decided on the basis of evidence and other on the basis of parties' dispositions, normal timing of uncontested cases differ dramatically from the timing of contested cases.
3. As the resolution of contested cases may require different sources of evidence, there may be huge variations in the time needed to take the evidence properly (documentary evidence regularly requiring much less time for presentation and evaluation than for the evidence presented by witnesses and experts). In particular, the need to provide one or more expert opinions can be a significant cause of delay in the process.
4. External factors like efficiency of means for service, transmission and delivery of documents and similar communication issues may create bottlenecks and increase duration in a number of cases. Cases where electronic means of communication are used effectively may require different standards of timing as compared to those where conventional means of communication (e.g. postal service) are used.
5. International and cross-border element in court cases can protract proceedings due to additional time needed to locate the litigants, serve the process abroad or deliver documents. Taking of evidence in such a setting can also require more time, especially if witnesses need to travel internationally or if documents or expert opinions need to be provided outside of the home country.
6. Procedural provisions that give control of the process to the parties (adversarial principle) may contribute to the length of proceedings and make difficult the assessment of appropriate duration, especially if the court does not have

at its disposal effective means of sanctioning the abuse of process, sufficient to suppress vexatious strategies and secure loyal and effective cooperation by the parties, witnesses and experts.

7. Cultural elements, such as the ability to plan the proceedings and willingness to tolerate delays and use the available sanctions (especially against professional participants such as lawyers) also play a role in the (in)ability to determine appropriate time limits.
8. If, in order to take care of all eventualities, the law provides timeframes which are too lengthy, their effectiveness and the reason for their introduction may be jeopardized. Ultimately, maximum timeframes set at a too long interval can be perceived as appropriate even in simpler cases and thereby cause an increase in average duration of cases. If, on the other hand, the timeframes are set shorter, challenges regarding their implementation can occur (see below, the following point).

c) Challenges regarding implementation of stipulated timeframes

If the law provides timeframes for completion of court cases in an imperative manner, the public understanding and expectations are that these timeframes need to be observed in all cases. But, if due to various factors described *supra* the prescribed time is exceeded in a fair share of cases (depending on how ambitiously the time limits are determined), the following challenges occur:

1. If timeframes fixed by legislation turn to be impossible to implement in many cases, the public trust in judiciary and the government is negatively affected. The society expects effective government and courts that obey the law. Rule of law is gravely undermined if public perceives that courts themselves violate legal provisions regulating their work. Trust in government also suffers if government cannot secure the implementation of proposed and duly enacted legislation.
2. Selective implementation of timing standards (some cases being litigated pursuant to set time limits, other cases not) may additionally raise concerns about discrimination and eventually even raise suspicion of corruption.

d) Challenges regarding compliance with the rule of law standards

No requirement on working methods and outputs can be fully satisfied without effective sanctions. Duration of civil proceedings is determined by the actions of judges, parties and their lawyers, as well as by a number of external factors, including proper functioning of judicial administration. But the ultimate responsibility for proper organization of judicial proceedings and for securing that both parties and their lawyers fulfill their procedural obligations rests with the court, i.e. with the judges entrusted with case management in individual cases. However, using some forms of sanctions

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ISSN 2191-1339 – www.civilprocedurereview.com

against judges to secure observance of fixed procedural timeframes may run against the principles of rule of law which require respect for judicial independence. Here are some of such challenges:

1. The sanctions for violation of provided fixed procedural timeframes cannot influence validity of concrete procedure and its outcome and can only be connected with external consequences. These consequences may either relate to judicial administration, such as judicial performance assessment, or to a response to inappropriate judicial work via disciplinary sanctions.
2. Disciplinary sanctions for judges whose cases more often protract over the legislative limits could give rise to initiation of disciplinary proceedings for violation of professional standards. Sanctions could range from admonition to monetary sanctions or even dismissal from office. Since these sanctions are generally connected with alleged improper management of individual cases, they can be seen as sanctions for matters that fall within the autonomy of judicial tribunal in organizing adjudication of concrete cases (violation of substantive independence in decision-making). But, as disciplinary proceedings usually pose a high threshold of evidence for convictions and need precise definition of offences, they are rarely utilized, and even less often result in concrete sanctions.
3. Failure to observe fixed legislative provisions can be a reason for low assessment of judges in the process of evaluation of their work. Negative assessment can have an adverse impact on the possible promotion and further progress in judicial career. However, even though such assessment may be undertaken by the peers (judges who work in judicial administration), it can also violate internal independence of judges (individual right of the individual judge to rule on matters under his/her jurisdiction). If the evaluation is undertaken by bodies of executive (ministries of justice etc.) it may be viewed as a violation of separation of powers and corporate independence of judiciary.

ii. European standards for procedural timeframes

a. European Human Rights Convention and case-law of the ECtHR

The most important European source for the understanding of the minimum standards related to judicial timeframes common to all European judiciaries is Art. 6(1) of the European Human Rights Convention (ECHR). Art. 6(1) ECHR has multiple facets, but for the purpose of discussion on regulating procedural length it provides the following rights:

- Right to judicial proceedings within reasonable time;
- Right to judicial proceedings that are fair;
- Right to judicial proceedings before an independent and impartial tribunal.

All three rights are mutually connected and must be simultaneously guaranteed in both civil and criminal proceedings (for the purposes of Art. 6(1) ECHR, commercial matters belong to civil limb of that article). This means that a proper balance should be found, providing judicial proceedings that are at the same time reasonably swift, but also of sufficient quality to safeguard fairness of the proceedings, and without compromising independence and impartiality of the judicial formation that is competent by law to decide the individual case.

The understanding of the 'reasonable time' notion has been explained in case law of the European Court of Human Rights (ECtHR). As violations of the reasonable time requirement of Art. 6(1) ECHR belong to some of the most frequent violations established before the ECtHR, there are many cases which have explained the approach of the Court to the length of proceedings, as well as its criteria for finding (or not finding) the violation of the reasonable time requirement.

With respect to determination of the length of the proceedings, the Court's case law further established what is the period under consideration. The starting point of the relevant period normally begins when the action is instituted before the competent court, but it can also begin earlier if an application to administrative authority or certain preliminary steps were a necessary preamble to the proceedings. The end of the relevant period is not the completion of procedure before individual court instances (the courts of first instance). Instead, the ECHR always considers the integral duration, i.e. the whole proceeding in question, including appeals and up to the final decision which disposes of the dispute. In ECHR case-law, it is often repeated that the reasonable-time requirement applies to all stages of the legal proceedings aimed at settling the dispute, not excluding stages that follow after issuance of the judgment on the merits.[3]

If forcible enforcement of a judgment is needed for the effectiveness of court judgments, the time needed to execute a judgment is also considered an integral part of the proceedings for the purposes of calculating the relevant period. If further proceedings after completion of litigation, such as constitutional complaints to the Constitutional Court, are available and have a capacity of affecting the outcome of the dispute, the length of such proceedings are also considered.

The ECtHR has never given an exact and inflexible quantification of the (un)reasonable time, either for the individual instances or for the entire length of the proceedings. Instead, it has made clear that the reasonableness of the length of proceedings that comes within the scope of Article 6 § 1 must be assessed in each case according to its particular circumstances.[4]

3 On the ECtHR approach to reasonable time of judicial proceedings, see: ECtHR Guide on Article 6. Right to a fair trial (civil limb), Strasbourg, 2021, pp. 96-102 (https://echr.coe.int/Documents/Guide_Art_6_ENG.pdf); van Dijk, P. et al., Theory and Practice of the European Convention on Human Rights, Intersentia, 2018 (5th ed.), pp. 497-654.

4 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII.

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ISSN 2191-1339 – www.civilprocedurereview.com

The criteria applicable to assessment of length of proceedings from the ECtHR case-law are the following:

- The whole of the proceedings must be taken into account (i.e. not only the first instance, but also appeal proceedings) meaning that 'although the length of each stage of the proceedings … might not be considered unreasonable as such, the overall duration may nonetheless be excessive'[5]
- Complexity of the case is relevant for the assessment (complex cases needing legitimately considerably longer time). Elements of complexity include participation of multiple parties, difficulties in obtaining evidence, complexity of factual issues, scarcity of precedents at a national level, lack of clarity and foreseeability in the domestic law or a need to address EU law issues[6]
- Assessment of length of proceedings takes into account the conduct of the applicant (if the applicant has contributed to the length, this is relevant for the overall assessment, but also whether the court had options to react appropriately). Applicant needs to show diligence in carrying out the procedural steps relating to him, avoid delaying tactics and litigious behavior and use available tools for shortening the proceedings. But, on the other hand, applicant is not required to actively cooperate with the judicial authorities, and cannot be blamed for making full use of the remedies available to him under domestic law;
- The conduct of the competent authorities, both judicial and non-judicial (if their conduct can be attributed to the State and has contributed to the length) is taken into account. The conduct attributable to the State includes defects in procedural law, failure to take steps to remedy delays caused by other reasons, as well as the failure to organize the judicial system in a way that enable expeditious processing of cases;
- Assessment of length of proceedings also takes into account what was at stake for the applicant. Particular diligence is expected in cases dealing with civil status and capacity of parties; in child custody, parental responsibility and contact rights cases; in certain employment disputes, and in cases where the applicant is a person who suffers from an incurable disease and has reduced life expectancy.

The length of proceedings approach of the ECtHR is the topic of regular systematic reports issued by the European Commission for the Efficiency of Justice (CEPEJ).[7] Such reports serve to identify certain general lessons that can be learned from the case-law

5 *König v. Germany, 28 June 1978,* § 98, Series A no. 27.

6 See *Katte Klitsche de la Grange v. Italy*, 27 October 1994, § 55, Series A no. 293-B; *Papachelas v. Greece* [GC], no. 31423/96, § 39, ECHR 1999-II; *Humen v. Poland* [GC], no. 26614/95, § 63, 15 October 1999; *Satakunnan Markkinap rssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 212, 27 June 2017.

7 Calvez F./Regis N., Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Right, 3rd edition, CEPEJ Studies No. 27, Strasbourg, 2018.

of the Court in length of proceedings cases. Both from ECtHR case law, and from the publications which analyze it, one cannot infer that cases conducted before civil or commercial courts would generally fall within any specially urgent category of cases, though the nature of such disputes and the concrete circumstances of the case may require more or less speed in case-processing. In any case, the jurisprudence related to Art. 6(1) ECHR does suggest that reasonableness of the procedural timeframes cannot be fixed in absolute terms as it depends on many factors that need to be analyzed within the context of the whole proceedings, evaluating whether effective legal protection was awarded to the parties within a time which was appropriate.

While no fixed timeframes have been formulated in the ECtHR case-law, the synthetic analysis[8] suggests that

- [t]he total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases has generally been regarded as reasonable;
- in complex cases, the Court may allow longer time, but pays special attention to periods of inactivity which are clearly excessive, but the longer time allowed is however rarely more than five years and almost never more than eight years of total duration' (in all levels of case-processing);
- in the so-called priority cases in which a particular issue is at stake, the court may depart from the general approach, and find a violation even if the case lasted less than two years by level of jurisdiction.

b. *CEPEJ work on procedural timeframes*

A further development of the standards developed by the ECtHR is to be found in the work of the Task Force of the CEPEJ on timeframes of judicial proceedings (later renamed to Working Group of the CEPEJ SATURN). From the establishment of the CEPEJ, this work was guided by the CEPEJ Framework Programme entitled '*A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe*'.[9]

Applying what has been identified as 'a fresh approach' to the issue of the length of judicial proceedings, the CEPEJ Framework Programme (CEPEJ-FP) emphasizes that the ECtHR only sets a 'lower limit' and should not be considered as an adequate outcome. The adequate outcome should not be the 'reasonable time' (which of course should not be transgressed) but the optimum time, defined as the time which 'satisfies at

8 See Filatova, M., Reasonable Time of Proceedings: Compilation of Case-Law of the ECtHR, Council of Europe, Strasbourg, 2021, p. 51 ff (see https://rm.coe.int/echr-reasonable-time-of-proceedings-compilation-of-case-law-of-the-eur/native/1680a20c21).

9 CEPEJ Framework Programme – "A new objective for judiciary: the processing of each case within an optimum and foreseeable timeframe" (CEPEJ(2004)19 Rev with Addendum 3, 21 July 2004 (http://rm.coe.int/commission-europeenne-pour-l-efficacite-de-la-justice-cepej-a-new-obje/16807474de); see also Jean, J.P., Gurbanov, R., High quality justice for all member states of the Council of Europe, CEPEJ Studies No. 22, Strasbourg 2015 (https://www.csm.org.pt/wp-content/uploads/2018/12/CEPEJ_Study22_ENG.pdf.pdf), pp. 46-50.

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ISSN 2191-1339 – www.civilprocedurereview.com

the same time the society and the parties'. For this purpose, three essential principles are set forth: the principle of balance and overall quality, the need of having efficient measuring and analysis tools defined by the stakeholder' consensus and the need to reconcile all the requirements contributing to a fair trial.[10]

Among the lines of action recommended by the CEPEJ, none of the lines suggest legislative fixing of procedural timeframes. Rather, what is suggested is 1) acting on resources; 2) acting on the quality of legislation; 3) improving the foreseeability of the timeframes; 4) defining and monitoring standards for an optimum timeframe; 5) improving statistical tools and developing information and communication strategies; and 6) identifying pilot-courts concerning the reduction of length of proceedings.

In respect to regulation of timeframes in the individual proceedings, it is suggested to *allow adjustment of timeframes* (Line of Action 7). Instead of fixing inflexible timeframes by legislation, a better approach is to combine two tools:

1. Mandatory provision of *information* to individuals on the foreseeable timeframe of the type of case in which they are the parties; and
2. Allowing the judge and the parties to jointly determine the timeframe and the calendar for their individual case, thus assuming a joint responsibility of all stakeholders in the process that the agreed timeframes be upheld in the course of the proceedings.

In the implementation of the Framework Programme, the bodies of the CEPEJ have adopted a number of documents which further elaborate on the above principles and lines of action.[11] The CEPEJ guidelines, checklists and guides in the field of judicial time management include in particular:

- CEPEJ Time management checklist[12]
- Compendium of best practices on time management of judicial proceedings[13]
- SATURN Guidelines for judicial time management[14]; and
- Implementation Guide 'Towards European Timeframes for Judicial Proceedings'.[15]

In respect to quantification of the judicial timeframes, the CEPEJ Implementation Guide attempted to provide a flexible guidance with respect to what is considered to be appropriate timeframes in European national judiciaries. The timeframes which are provided in the Implementation Guide are described as:

10 CEPEJ Framework Programme, p. 7.

11 See more at https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management.

12 CEPEJ(2005)12Rev. (http://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-time-managemen/168074767d).

13 CEPEJ(2006)13 (https://rm.coe.int/16807473ab).

14 CEPEJ(2018)20R (https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81).

15 CEPEJ(2016)5 (https://rm.coe.int/16807481f2).

- Flexible tools that have to be customized in each specific context;
- Guidance which has no prescriptive force;
- Indication of timeframes which can serve as 'a fundamental lighthouse to develop timeframes at the national and local levels, and to start building a shared vision of common expectations across Europe';
- Targets that are set for normal and priority cases separately, also taking into account the amount of complex cases, for which a special 5-10% buffer is included;
- Timeframes distinguish different categories of cases (e.g. A, B, C and D), connected to different types of cases (e.g. commercial litigation, payment orders, bankruptcy etc.).
- Standards which need to be in close relationship with monitoring of the age of pending and completed cases (for which additional examples are provided), including diagnosis of the current situation, setting timeframes for individual courts based on the diagnosis, and monitoring of the timeframes.

While the Implementation Guide was developed with a view to be useful in particular in countries which experience difficulties in securing swift adjudication, the proposed timeframes as basic reference to values regarded to be acceptable in Europe start in the A category with the 6 month period for urgent priority cases, and continue with 18 month period for 90-95% of regular (normal) cases, with 5-10% of complex cases pending over that period. For categories B, C and D, the targets are higher (12 months for urgent contentious civil and administrative cases, and 24-36 months for 90-95% of normal cases).

c. ELI-UNIDROIT European Rules of Civil Procedure (2020)

An attempt to draft a model civil procedural code which would correspond to best European practices was the object of a comprehensive project led by the European Law Institute (ELI) and the International Institute for the Unification of Private Law (UNIDROIT). The project lasted full seven years (between 2013 to 2020) and resulted in adoption of a full model procedural code in September 2020. The purpose of ELI-UNIDROIT Rules was to develop detailed rules of civil procedure that could be adopted by all European countries wishing to improve their procedural legislation. While drafting the Rules, ELI-UNIDROIT considered existing legal instruments at EU level, European legal traditions, and current legal developments in Europe, seeking to produce a framework of reference and source of inspiration for legislators and policymakers.[16]

For the purposes of this study, it should be noted that ELI-UNIDROIT model also does not provide any fixed timeframes, either for civil procedure in general or for specific types of cases. Instead, it contains rules emphasizing the joint and shared proce-

16 See ELI – Unidroit Model European Rules of Civil Procedure. From Transnational Principles to European Rules of Civil Procedure. Edited by European Law Institute and UNIDROIT, Oxford University Press, 2021.

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ISSN 2191-1339 – www.civilprocedurereview.com

dural obligation of the court and the parties (as well as of their lawyers) to promote effective management of the proceedings.

The duty of loyal collaboration in dispute resolution includes 'the proportionate management of future proceedings'.[17] This relates to determination of timetables or procedural calendar for the individual stages of proceedings.[18] The option to consider timetable of future steps between the parties exists even prior to commencement of the proceedings.[19] But, after filing the suit, it is a mandatory step during preparatory proceedings. At the early case management hearing (in principle, the first preparatory hearing in the proceedings), the court should, upon consultation with the parties set a timetable or procedural calendar with deadlines for parties to complete their procedural obligations; set the timetable for a final hearing; and the possible date by which judgment will be given.[20] In the commentary, this method of time management of the proceedings is singled out as 'the most effective approach to scheduling proceedings.'[21] The determined timetable is not inflexible, as it may be revised and, if so needed, revised during the course of the proceedings.

d. Practice in selected EU countries

Very few European countries have fixed legislative timeframes for the duration of civil proceedings.

In Germany, the Code of Civil Procedure (ZPO) does not regulate either the overall duration or the duration of procedural stages (e.g. for the first-instance or appellate proceedings). Otherwise, civil jurisdiction in Germany is divided between the lower first-instance courts (local courts, *Amtsgerichte*) and the higher first-instance courts (district courts, *Landgerichte*). The local courts generally decide on civil disputes in cases up to 5.000 EUR amount in dispute where a sole judge is competent to decide, while district courts rule in cases of all amounts, employing regularly a panel of three judges.

The average length of civil proceedings in 2020 was, according to German Federal Bureau of Statistics[22]:

- 5.4 months before local courts (8.4 in proceedings which ended with a judgment on the merits); and
- 10.5 months before district courts (13.4 months in proceedings which ended with a judgment on the merits).

17 See Rule 51(1).

18 See ibid., Rule 49(4).

19 Rule 51(3).

20 Rule 61(3).

21 Commentary to Rule 61, p. 4.

22 See DeStatis, *Rechtspflege Zivilgerichte* 2020 (https://www.destatis.de/).

Still, German civil justice is considered to be fairly expeditious in comparison to many other jurisdictions in Europe. In Austria, according to the statistical monitoring of the litigious cases in 2016, the civil proceedings before the lower courts (*Bezirksgerichte*) had a median length of proceedings of 6 months, and the proceedings before higher courts of first instance (*Landesgerichten*) about 13 months. About half of the litigation cases before the first instance courts lasted less than 6 months, and only 2.3 percent of litigation lasted longer than 3 years.[23]

In the Netherlands**,** the primary source for civil procedure is the Code of Civil Procedure. The Code itself does not provide for any specific timeframe for the total duration of the proceedings. It does not even provide specific periods (timeframes) for

- submitting pleadings;
- scheduling hearings; or
- rendering a judgment after closing the debate.

There is an exception for the scheduling of the hearing in case of a petition for interim measures in divorce cases. These hearings should be scheduled within three weeks, but there is no sanction and in practice they are scheduled within two months.

This does not mean that Dutch courts are slow. Orders for payment in small claims cases for instance are issued two weeks after submission of the writ of summons to the courts.

While the CCP does not provide specific deadlines for case management purposes, the Dutch courts use for that purpose Uniform Procedure Regulations (UPR), drafted and enacted by the courts themselves, which are the same for all the courts involved. These UPR's are tailored for specific procedures, like commercial cases, family cases or small claim cases. In these UPR's the timeframe for the submission of pleadings is strictly regulated. The usual period allowed is six weeks, which can be extended in exceptional circumstances only. These time limits are applied in a very strict way. Non-compliance means that the party concerned is deprived of the right to submit that pleading. There is however no general legislative provisions on the total duration of either commercial or civil cases. For general time management in the courts, another, more flexible method is used.

All courts in the Netherlands are under the organizational and financial supervision of the Council of the Judiciary. This Council sets a long list of targets for every court. If these targets are not met, the Council may take measures. These targets are usually published only internally. According to available sources, for civil litigation, the target in first instance for commercial cases was set such that 90 % of the cases should be completed within 2 years and 70 % of the cases within 1 year. In appeal the same targets apply. According to reports of the Council of Judiciary, these targets

23 See Austrian Ministry of Justice information on length of proceedings at https://www.justiz.gv.at/home/justiz/daten-und-fakten/verfahrensdauer.1e7.de.html.

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ISSN 2191-1339 – www.civilprocedurereview.com

were met up to 90% in 2016, and up to 87% in 2020 (the latter decrease being attributed to corona crisis).

As to actual time measurement of court proceedings in the Netherlands, in 2016-2018 period, the average duration of commercial litigation for cases with the amount in dispute between 10 and 100 thousand euros was 166 days in first instance, and 501 days upon appeal; for cases between 100 thousand and 1 million euros, average length was 346 days in first instance and 592 days upon appeal. Commercial disputes in cases with an amount in dispute between 1 and 10 thousand euros lasted in the first instance in average only 52 days.

In Italy**,** there are also no fixed timeframes for the length of judicial proceedings. The CCP provides for deadlines applicable to the activities that the parties are supposed to perform (e.g., lodging their pleadings or summoning the adversary), but no rules establish a fixed timeframe for the duration of proceedings. It is pointed to the fact that in Italy not only complexity of cases or the quantity of evidence may be different, but also the caseloads and the organization of courts are divergent in different parts of the country (Northern and Southern Italy being two different worlds, even as far as the administration of justice is concerned).

On the other hand, Italy has major problems with excessive delays in civil cases which have not been successfully handled by past reforms. At present, a new extensive bill is pending before the Parliament, since the availability of the so-called EU Recovery Plan is conditional upon the improvement of the performance of Italian judicial system.[24] The new bill promises to reduce the length of Italian civil proceedings, which was in 2018 in average:

- 1270 days in ordinary procedure before the courts of first instance;
- 472 days in summary procedure before a sole judge;
- 1296 days for appeal proceedings;
- 681 to 725 days in various labor disputes.

From 2013 to 2021, the number of civil disputes pending before Italian courts of first instance for more than 3 years has been reduced from 646.146 to 339.213.

One of the rare examples of jurisdictions that are introducing limitations to the overall length of proceedings is Croatia**.** Similarly as Italy, Croatia has also been one of the countries which was on many occasions found liable for violations of the human right to a trial within reasonable time.[25] As the previous reform attempts were without

24 See https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32020H0826(12)&from=IT.

25 More in Uzelac, A., Accellerating Civil Proceedings in Croatia - A History of Attempts to Improve the Efficiency of Civil Litigation, C.H. van Rhee (ur.), History of Delays in Civil Procedure, Maastricht, 2004., pp. 283-313; Uzelac, A., Legal Remedies for the Violations of the Right to a Trial Within a Reasonable Time in Croatia: In the Quest for the Holy Grail of Effectiveness, Revista de Processo, 35:180/2010, pp. 159-193.

major results, the latest reform of civil procedure announced that the duration of civil litigation will be generally limited by fixing appropriate timeframes in the amended Code of Civil Procedure.

However, the approach of the draft CCP amendments of 2022 is a combination of flexible and collaborative time management and the setting of the ultimate procedural timeframe. Thus, along the lines of the ELI-UNIDROIT European Rules of Civil Procedure, the legislative proposal which is currently discussed introduces a mandatory setting of procedural timetable (procedural calendar) at the very beginning of the proceedings, during the first preparatory hearing. Such a timetable would be determined by the court after having consulted the parties.

Yet, another rule which would put limitation to procedural timetable is the provision commanding that the planned duration of the first instance proceedings should not exceed 3 years. While this seems to be long, according to a recent research[26] the litigious civil cases resolved by a judgment on the merits in 2015-2019 period lasted in average 597 days, with about 15% of cases lasting longer than three years (sample maximum duration being 2453 days or almost seven years in the first instance).

Croatian practice also reveals problems with the effectiveness of the fixed procedural timeframes. While no fixed procedural timeframe exists regarding general rules of civil procedure, in certain cases regarded as priority cases the special legislation provided for fixed maximum timeframes for particular steps and stages of the proceedings. Two such examples are labor disputes and certain family disputes.

Under special rules for labor disputes, the court needs to convene the main hearing in work dismissal and collective labor cases within 30 days from receipt of the written answer to the statement of claim. The whole first instance proceedings in labor disputes must be completed within six months from the filing of the statement of claim (Art. 434/2-4 CCP). In second instance, in labor cases the appellate court needs to decide the appeal within 30 days from the receipt of the appeal (Art. 434/5 CCP).

Similarly, in disputes regarding personal status (divorce cases, establishment of paternity and deprivation of legal capacity) the first hearing should take place within 15 days from filing the suit. Provisional measures in child custody and personal contacts' cases must be issued within 30 days from commencement of the proceedings, and the appellate courts need to pronounce its decision in urgent family cases within 30 days from the receipt of the appeal (see Family Act, Art. 347).

However, the ambitious time limits set by Croatian legislation in labor and family cases are rarely met. Separate family cases statistics is currently not available, but according to a recent survey conducted by the Ministry of Justice, average duration of proceedings in labor disputes was 708 days in 2019 and 638 days in 2020. In 2019,

26 Doctoral dissertation of J. Brozović, Priprema i organizacija raspravljanja u parničnom postupku (Preparation and organization of hearing in civil litigation), Zagreb 2020. (Zagreb Faculty of Law).

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ISSN 2191-1339 – www.civilprocedurereview.com

only 17% of labor cases were completed in less than 6 months (in 2020 this percentage was 23%). In comparison, the data on average duration of resolved commercial litigation cases (where no comparable rules exist) show only slightly longer values (748 days length in 2019 and 1204 days in 2020; 18% and 11% of cases completed within 6 months). Thus, it seems that the fixed legislative timeframes are simply ineffective and generally ignored in practice.

e. Conclusions

The research questions asked about procedural timeframes in this chapter were:

Do fixed procedural timeframes provided by applicable procedural legislation effectively contribute to shortening of the actual length of judicial proceedings in commercial cases? Does such general fixing have an impact on quality of justice delivery? Is it among the best European practices of time-management in commercial cases?

The examination of challenges, best European practices and national practice in selected countries showed that:

1. Inflexible legislative fixing of timeframes within which litigation (commercial or other) should be completed brings a number of difficulties and challenges.
2. Such fixing is partly incompatible with the standards and approaches of the European standard-setting bodies (ECtHR, CJEU, CEPEJ).
3. Very few developed jurisdictions of the EU employ such or similar legislative techniques to regulate the length of proceedings.
4. In countries that have such or similar legislative limitations, their practical value is limited as they are often disregarded and are rarely combined with effective sanctions (the latter potentially violating the standards of judicial independence).
5. Short timeframes for cases in which complexity and other factor contribute to length of proceedings have the potential to significantly reduce the quality of judicial process and its outcome.
6. Thus, the practice of legislative fixing of timeframes for first- and second-instance commercial court proceedings in litigious case does not correspond to best practices of time management in commercial cases.

As an alternative to legislative fixing of the procedural timeframes, a much better avenue is to set internal targets on the desired average timing and percentage of cases which should be regularly completed within a certain period. The advanced European jurisdictions (e.g. the Netherlands) follow the approach suggested in the CEPEJ time management tools and closely monitor duration of different types of proceedings. While the time management of individual cases stays within the jurisdiction of the individual judges and judicial panels, who have the authority to determine, in

consultation with the parties, the procedural timetable best suited to the concrete circumstances of the case, the responsible bodies of judicial administration (courts and judicial councils) agree on internal targets which set the horizon of expectations and monitor whether these targets are being met. Such targets, as suggested in the SATURN guides and time management tools, distinguish different types of cases, set priorities and take into account the occurrence of complex cases and other external factors. If targets are not being met, a thorough analysis of reasons should be made and an appropriate collective action to remedy the causes must be undertaken. But this needs more efforts and a different methodology than simple change of applicable procedural laws. This is also the reason why the sirens' tune of simple legislative fixes is likely to continue sounding in the corridors of many national ministries of justice.

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