Judgment 201302106/2/A2

Date of judgment	Wednesday 23 October 2013
Against	The State of the Netherlands and the State Secretary for Security and Justice
Type of proceedings	Appeal
Area of law	General Chamber – Appeal – Compensation for damage

ADVISORY OPINION

201302106/2/A2
23 October 2013

State Councillor Advocate-General R.J.G.M. Widdershoven

Hearing of 12 September 2013

Advisory opinion in the appeal by:

[appellant A], [appellant B], [appellant C], [appellant D] and [appellant E], all of Turkish nationality, appellants, attorney: M.M. Altena-Staalenhoef,

against the judgment of the District Court in ’s-Hertogenbosch (read: East-Brabant District Court) of 1 February 2013 in case no. 12/14453 in the proceedings between:

[appellant A], [appellant B], [appellant C], [appellant D] and [appellant E], all of Turkish nationality, jointly referred to as the petitioners,

and the State of the Netherlands (the Minister of Security and Justice) and the State Secretary for Security and Justice.

The case involves the appeal by [appellant A], his wife and children against the judgment of the District Court in ’s-Hertogenbosch (East-Brabant District Court) of 1 February 2013, in which their claim for compensation for damage due to a breach of the ‘reasonable period’ requirement was rejected. By letter of 16 May 2013, the president of the Administrative Jurisdiction Division of the Council of State, J.E.M. Polak, asked me to write an advisory opinion in this case, pursuant to Section 8:12a of the General Administrative Law Act. The case is being heard by a multi-judge panel within the meaning of Article 8:10a, fourth paragraph, of the General Administrative Law Act. Firstly, this opinion advises the panel to adopt a uniform reasonable period of four years for the hearing of non-punitive cases. Two options are presented for the reasonable periods for the separate phases of a case: option A, which would allow six months for handling an objection, 18 months for the appeal in first instance and 24 months for the final appeal; and option B, which would allow eight months for handling the objection, 20 months for the appeal in first instance and 20 months for the final appeal. The advisory opinion expresses a slight preference for option A. Secondly, it is argued in the opinion that the length of proceedings to obtain a preliminary ruling by the European Court of Justice may be deducted from the total period taken to handle a case in determining whether the reasonable period has been exceeded, even in cases that have been stayed by a judge because of a request for a preliminary ruling made in another case. The maximum period that can be deducted is the period from the date on which the question is referred to the European Court of Justice until the date on which it issues its ruling. Furthermore, it should only apply if the reply to the request for a preliminary ruling is reasonable given the scope of the proceedings in the pending case and only

from such time as the judge staying the case has notified the parties of the decision and the reasons for it.

1. Facts and course of the proceedings

1.1 On 22 December 2005, [appellant A] applied for a residence permit with the restriction ‘work as a self-employed person’. The application related to [pizzeria] in Amsterdam, which, according to an extract from the trade register of the Chamber of Commerce for Amsterdam dated 11 May 2006, had been run by [appellant A] since 1 October 2005. On 22 December 2005, his wife and three children applied for residence permits as dependents subject to the restriction ‘family reunification with [appellant A]’. [Appellant A] and his family have Turkish nationality. [Appellant A] entered the Netherlands at some point and has never possessed a valid residence permit. Two earlier applications for a regular residence permit for a specific period with the restriction ‘work in salaried employment’, on 8 September 2003 and 22 December 2003, were not granted for various reasons (see footnote 1). [Appellant A], his wife and children will be referred to hereinafter as [appellant A] et al. In response to the application on 22 December 2005, the Immigration and Naturalisation Service (IND) wrote to [appellant A] et al. on 12 January 2006 inviting them to submit their applications in person at the IND office in Hoofddorp at 1 p.m. on 30 January 2006. The letter mentioned that the charges to be paid for handling the applications – amounting to 433 euro for [appellant A] and 188 euro each for his wife and the children –would have to be paid in cash or with a debit card on 30 January 2006. [Appellant A] et al. had not complied with this requirement by 1.00 p.m. on 30 January 2006. On the grounds of Article 4:5 of the General Administrative Law Act, they were informed verbally that they could rectify this omission and still pay the charges due on the spot in cash or with a debit card. At the time, this procedure was laid down in the Aliens Act Implementation Guidelines (Amendment) Decree 2005/21 [*Wijzigingsbesluit Vreemdelingencirculaire*], and is known as the ‘immediate sanction’ policy. Because they failed to avail of this opportunity, or failed to so in time, by decision of 30 January 2006 the Minister for Immigration, Integration and Asylum (hereinafter: the Minister) declared that the handling of the applications had been suspended because the charges had not been paid. [Appellant A] et al. were taken into custody on the same day.

1.2 By letter of 30 January 2006, [appellant A] et al. lodged an objection to the decision to discontinue the handling of their applications of 30 January 2006. This objection was supplemented in a letter dated 20 March 2006. They argued that the Minister should have given them a reasonable period within which to rectify the omission and pay the charges before discontinuing the handling of their applications.
On 14 February 2006, [appellant A] et al. filed a request for provisional relief against the threatened deportation. On 16 February 2006, the preliminary relief judge of The Hague District Court, sitting in Zwolle (see footnote 2), denied this request, because, according to the judge, there were no grounds for assuming that consideration of the applications had been wrongly discontinued and therefore the objections had no reasonable chance of success. On 17 February 2006, The Hague District Court dismissed the appeal against the detention by the individual concerned, because, by not leaving the country after earlier negative decisions and starting a business without a residence permit, he had himself taken the risk that he and his family would be placed in aliens detention (see footnote 3). On 27 February 2006, [appellant A] et al. were deported to Turkey, where they are still living.
By decision of 14 November 2006, the Minister, referring to the judgment of the preliminary relief judge of 16 February 2006, dismissed the (supplemented) objection of [appellant A] et al. The parties concerned filed an appeal against that decision with the District Court on 11 December 2006. That appeal was received on 13 December 2006.

1.3 In letters dated 26 August 2008 and 23 March 2009, [appellant A] et al. asked the District Court why their case had not yet been dealt with and when the hearing of the case could be expected. It was only in a letter dated 6 July 2009 that the District Court informed [appellant A] that his case had been adjourned in connection with the request for a preliminary ruling by the European Court of Justice (ECJ) that the Administrative Jurisdiction Division of the Council of State (hereinafter, the Division or AJD) had submitted in its judgment of 11 May 2006 in case C-242/06 (Sahin) concerning – in brief – the possible incompatibility of the charges levied in the Netherlands for residence permits for Turkish nationals with Article 13 of Decision no. 1/80 of the Association Council (see footnote 4). The ECJ issued its judgment in this case on 17 September 2009, declaring in law that:

"Article 13 of Decision No 1/80 of 19 September 1980 by the EEC-Turkey Association Council established by the Association Agreement between the European Economic Community and Turkey, must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation which makes the granting of a residence permit or the extension of the period of validity thereof conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals."

In response to this judgment, by decision of 30 October 2009 the minister revoked the decision of 14 November 2006 on the objection. [Appellant A] et al. withdrew their appeal to the District Court by letter of 23 November 2009.

1.4 The Minister made a new decision on the objections of [appellant A] et al. on 12 March 2010. According to that decision, the failure to pay the charges in time was no longer being invoked against them because it had emerged that the charges owed had meanwhile been paid (see footnote 5). Nevertheless, the Minister found that the application for a residence permit by [appellant A] had been correctly rejected because he was not in possession of a valid provisional residence permit, which, according to the Minister, was necessary in this case because – in brief - [appellant A] had not submitted a business plan and it was therefore impossible to establish, in light of the points system adopted by the Minister of Economic Affairs in this context, that the activities he intended to carry on as a self-employed person served a fundamental economic interest of the Netherlands (see footnote 6). Since [appellant A] was not being granted a residence permit, the other family members had no dependent right of residence on the grounds of family reunification. [Appellant A] et al. appealed against this decision on 6 April 2010. Additional grounds of appeal were submitted by letter of 6 May 2010. The Hague District Court, sitting in Amsterdam (see footnote 7), upheld the appeal in a judgment of 29 October 2010 by reason of the fact that the points system adopted by the Minister of Economic Affairs was contrary to Article 41, first paragraph, of the Additional Protocol to the Agreement establishing an Association between the EEC and Turkey of 23 November 1970.

1.5 By decision of 31 January 2011, the Minister again rejected the objections of [appellant A] et al., because [appellant A] did not comply with the requirement of possession of a provisional residence permit. In the Minister's opinion, a provisional residence permit was necessary because the presence of the individual concerned had not been shown to serve a fundamental economic interest of the Netherlands. As a result of the rejection of [appellant A]'s objection, the other family members could not be granted a dependent right of residence (on the grounds of family reunification).
[Appellant A] et al. appealed against the decision on the objection on 24 February 2011. In the supplementary notice of appeal of 25 March 2011, they complained, among other things, about the length of the procedure.

The Hague District Court, sitting in ’s-Hertogenbosch, rejected the appeals in a judgment on 20 January 2012 (see footnote 8). According to the district court, [appellant A] no longer had an interest in a judicial decision on the legitimacy of the disputed decision since the residence permit he had requested, subject to the restriction ‘work as a self-employed person’, related to a pizzeria that no longer existed. He could therefore not accomplish what he intended to achieve with the appeal, i.e., being able to operate the pizzeria. The other plaintiffs also had no interest in a judicial decision because of the dependency of their request.
In fact, the District Court did not declare the appeal by [appellant A] et al. inadmissible on procedural grounds (but rather dismissed the appeal on its merits), because the plaintiffs did have an interest in the District Court’s decision on the part of the appeal relating to their request for compensation for the intangible damage they claimed to have sustained due to the breach of the reasonable period. Because it was unclear in this context to what extent the period for which the case was adjourned by the District Court because of the Division’s request for a preliminary ruling in case C-242/06 (Sahin, see § 1.3) could be ‘deducted’ from the total length of the handling of the case, the District Court could not make a final ruling on compensation in the case. It therefore ruled that the investigation would be reopened to prepare for a further ruling on the request for compensation in connection with the possible breach of the reasonable period.
[Appellant A] et al. did not appeal against the District Court’s judgment of 20 January 2012 and the rejection of their request for a residence permit has therefore become final.

1.6 On 1 February 2013, the District Court in ’s-Hertogenbosch (Oost-Brabant District Court) rendered judgment in the proceedings for compensation (see footnote 9). In its judgment, the court argued, referring to the Division’s judgment of 4 March 2009 (see footnote 10), that in a case such as the present one comprising an objection procedure and an appeal, three years can be taken as a guideline for the reasonable length of the proceedings. The total length of the proceedings from the receipt of the notice of objection on 30 January 2006 until the judgment on 20 January 2012 was six years. It then found as follows.

"However, the court regards the fact that this court, sitting in Amsterdam, stayed the hearing of the very first appeal for some time pending the reply to a request for a preliminary ruling, as justification for the lengthy period taken to handle that appeal (a total of almost three years from the date of the filing of the notice of appeal by the applicants on 13 December 2006 until the date of the withdrawal of the relevant appeal by letter of 23 November 2009). Given that the proceedings before the ECJ involved a request for answers to questions that were also relevant in the petitioners’ case, the court sees no reason to doubt the correctness or reliability of the information that was provided about this matter by the clerk of the District Court at the time. The court further notes that the request for a preliminary ruling had already been made on 11 May 2006, in other words before the petitioners filed their appeal. The ECJ’s judgment followed on 17 September 2009. Shortly afterwards, the respondent revoked the (first) decision on the objection. The entire period the proceedings are stayed will be disregarded in determining whether a reasonable period was exceeded. The court feels this conclusion is supported by judgments of the Supreme Court of 9 April 2010 (LJN: BJ8465) and of the Division of 21 November 2012 (LJN: BY3698)" (see footnote 11).

The District Court then concluded that the proceedings, with the exception of the aforementioned period of three years, took three years. Because it was permissible for the proceedings to take three years, there were no grounds for awarding the compensation sought.

1.7 [Appellant A] et al. filed an appeal against this judgment with the Division on 5 March 2013. The Division’s president asked me to write the advisory opinion in this case. For the questions that were posed, see § 2 of the opinion. In the notice of appeal [appellant A] et al. argued that the District Court wrongly found that ‘there was justification for the breach of the reasonable period because

the District Court correctly stayed the hearing of the case due to the fact that on 11 May 2006 the Division had requested a preliminary ruling by the Court of Justice regarding the requirement for Turkish nationals to pay charges'. In support of this ground of appeal, first and foremost they noted that they were only informed by the District Court of this reason for staying the case on 6 July 2009, although they had asked in vain for an explanation in letters on both 26 August 2008 and 23 March 2009. According to them, there was also no need whatsoever in the case of [appellant A] et al. to await the answers to the questions that had been referred., firstly because the questions related to charges for the extension of a residence permit while [appellant A]'s case concerned the granting of such a permit. Secondly, [appellant A] et al. did want to pay the charges on 30 January 2006, but were unable to do so because of the 'immediate sanction' policy (see § 1.1). Their (postponed) appeal concerned the question of whether or not the 'immediate sanction' policy was applied correctly. Since the request for a preliminary ruling consequently had no relevance to [appellant A] et al.'s case, their case was wrongly stayed at the time and there is now no reason to deduct the three years that the preliminary ruling proceedings lasted from the total length of the hearing of their case. Accordingly, their case has taken far longer than the permitted three years.
In a letter of 24 April 2013, the Minister declared the appeal unfounded and confirmed the disputed judgment. According to the Minister, the District Court rejected the request for compensation on valid grounds. In a letter of 9 July 2013, the Council for the Judiciary, as representative of the State of the Netherlands, also endorsed the challenged ruling and saw no reason to adopt an alternative position in the arguments put forward by the attorney for the individuals concerned.
Finally, a reaction to the request for an advisory opinion was given on behalf of the Minister of Security and Justice and the Council for the Judiciary by letter of 2 September 2013.

1.8 The case was heard at a hearing of the Division on 12 September 2013 by a full-bench panel within the meaning of Article 8:10, fourth paragraph, of the General Administrative Law Act. The attorney for [appellant A] et al. (appellants) was Ms M.M. Altena-Staalenhoef. The attorney for the State Secretary for Security and Justice (other party) was Mr A.L. de Mik. The attorneys for the Minister of Security and Justice (other party) were Mr A. Dingemanse, Ms F.B.Chr. Creemer, Ms E.C. Pietermaat and Ms F.E. de Bruijn.
I attended the hearing in my capacity as Advocate General and questioned the parties.

2. The request for an advisory opinion

2.1 By letter of 16 May 2013 the president of the Administrative Jurisdiction Division asked me to write an advisory opinion in the case, pursuant to Section 8:12a of the General Administrative Law Act, and sent me the entire contents of the file in the Division's possession. On the same date, the parties were informed by letter that the case has been referred to the full-bench panel as referred to in Section 8:10a, fourth paragraph, of the General Administrative Law Act and that the case had prompted the request that I write an advisory opinion. A copy of the letter to me was enclosed with the letter to the parties. In addition to the request to write an advisory opinion, the letter to me contained a brief description of the dispute, including a summary of the judgment of the district court of 1 February 2013 as described in § 1.6 above, and further mentioned that in their appeal the appellants were challenging the failure to count the three years for which the case was stayed by the district court (because of the request for a preliminary ruling by the ECJ) in determining whether the reasonable period was exceeded. It then formulated the specific question, which is presented in full below.

> In light of the disputed judgment, in the interests of legal uniformity you are asked to review the diverse case law of the Division, the Central Appeals Tribunal, the Trade and Industry Appeals Tribunal and the Supreme Court with regard to what period can be regarded as reasonable in non-punitive cases. The advisory opinion should in any case consider the

question of what periods the aforementioned bodies should regard as reasonable for handling the various phases of proceedings and proceedings as a whole - both in cases comprising an objection procedure and an appeal to a single judicial body and in cases comprising an objection procedure and appeals to two judicial bodies - in light of the case law of the European Court of Human Rights with respect to breaches of the reasonable time as prescribed in Article 6 of the European Convention on Human Rights, if the highest administrative courts were to adopt a uniform approach in the wake of this case. Issues that should be considered are whether the same period should be adopted for all types of cases or whether there could or should be differentiation, and, in the latter case, on the basis of what criterion or criteria should differentiation apply. In that context, the importance of an effective and practical system for legal practice should also be considered. The relationship with the periods that are currently uniformly adopted in cases involving a 'criminal charge' should also be addressed.

2.2 Because this is the first advisory opinion delivered pursuant to the new Article 8:12a of the General Administrative Law Act, I feel it is essential to briefly address my position and the nature of the advisory opinion delivered on the grounds of this article.
As you are aware, since the entry into force of Section 8:12a of the General Administrative Law Act on 1 January 2013, the president of the Division, the president of the Central Appeals Tribunal and the president of the Trade and Industry Appeals Tribunal can ask a member of those bodies to write an advisory option in cases that are being heard by a multi-judge or full-bench panel of that body (see footnote 12). As those bodies have announced, they have decided that only two persons, Mr. L.A.D. Keus (Advocate-General to the Supreme Court) and myself, Professor R.J.G.M. Widdershoven (Professor of European Administrative Law at the University of Utrecht), will be asked to deliver advisory opinions for their bodies (see footnote 13). Both individuals have meanwhile been appointed as Extraordinary State Councillors in the Administrative Jurisdiction Division and as deputy justices in the Central Appeals Tribunal and the Trade and Industry Appeals Tribunal. They will not serve as judges in cases heard by those bodies. Although the position does not exist in law, in practice they will generally be referred to as 'Advocate General'. To highlight the fact that they are acting in their position as state councillor or justice, respectively, it has been decided that, depending on the body for which they write an advisory opinion, they will be referred to as State Councillor Advocate General or Justice Advocate General. Since this advisory opinion has been written at the request of the president of the Council of State's Administrative Jurisdiction Division, in this matter I am acting as State Councillor Advocate General.

2.3 The purpose of the advisory opinions is to promote legal uniformity and the development of administrative law and they will be requested in cases that give rise to important points of law in that context. Points of law relating to legal uniformity – as in this case – will usually be requested by a 'full-bench panel' with five members, who are also members of the relevant appeal bodies and possibly also of the Supreme Court. To this end, the president of the Administrative Jurisdiction Division of the Council of State (J.E.M. Polak) and the presidents of the Central Appeals Tribunal (Th.G. Simons) and the Trade and Industry Appeals Tribunal (R.F.B. van Zutphen) have been appointed as deputy justices or Extraordinary State Councillors, respectively, in the other bodies. The vice-president of the Supreme Court (M.W.E. Feteris) has been appointed as Extraordinary State Councillor in the Administrative Jurisdiction Division. The present case is being heard by a full-bench-panel, whose members are J.E.M. Polak (president), Th.G. Simons, R.F.B. van Zutphen, M.W.E. Feteris and P.J.J. van Buuren.
Advisory opinions are requested and relate to points of law. The State Councillor or Justice Advocate General can therefore confine his opinion to the question or questions asked and in principle does not have to consider the application of that opinion to the facts of the case in which the opinion has been requested. To that extent, the advisory opinion is somewhat similar to that of an Advocate

General at the Court of Justice of the European Communities in proceedings to obtain a preliminary ruling. The questions posed can in fact be quite broadly formulated – as is also apparent from the question in this case – and the State Councillor or Justice Advocate General also has the discretion to consider legal issues that, strictly speaking, fall outside the scope of the question but which he feels are important to the case and the problem raised by it. Nor is he 'prohibited' from providing advice about the application of his viewpoint to the case in question. The advisory opinion informs the judicial body, but is not binding on it (Article 8:12a, eighth paragraph, General Administrative Law Act).

2.4 The main question in this case relates to the possibility of creating uniformity in the decisions of Dutch administrative courts with regard to the periods that can be regarded as reasonable in non-punitive cases in light of the case law of the European Court of Human Rights (ECHR) concerning Article 6 of the European Convention on Human Rights. This concerns the periods for the various phases that can make up legal protection proceedings in administrative law as well as the period for the proceedings as a whole, and a distinction has to be made between cases that comprise an objection procedure and an appeal to a single judicial body and cases that comprise an objection procedure and appeals to two judicial bodies. This aspect is discussed in detail in § 3.
Moreover, the case – as well as the description of it in the letter from the president – gives cause to address the question of the extent to which the length of proceedings to obtain a preliminary ruling by the Court of Justice of the European Communities may be disregarded in determining whether a 'reasonable period' has been exceeded in proceedings before a Dutch administrative court. There is all the more reason to consider this question because in some respects it is not addressed uniformly by the various judicial bodies. This aspect is discussed in § 4.

3. Should a uniform reasonable period be prescribed in non-punitive cases?

Introduction and structure

3.1 This section discusses the possibility of harmonising the practice of the Dutch administrative courts in terms of the periods that can be regarded as reasonable in non-punitive cases. Before turning to that issue, I will first outline the general context of the questions I have to address, the doctrine of a 'reasonable period' (see footnote 14). This context is also relevant for the second question (which is discussed in § 4). The specific question of whether a uniform definition can be prescribed is discussed from § 3.8 onwards.
In describing the general context, the emphasis is on the case law of the ECHR that is relevant for administrative law, but the relevant Dutch case law will also be mentioned in the discussion of subjects that were not raised in the questions (see footnote 15), (see footnote 16).

3.2 The case law of the ECHR relates to the 'reasonable time' requirement in Article 6 of the European Convention on Human Rights (hereinafter: Human Rights Convention), on the one hand, and to the right to an effective remedy laid down in Article 13 of the Human Rights Convention in relation to (the threat of) a reasonable time being exceeded. Article 6, first paragraph, first sentence, of the European Convention on Human Rights reads:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13 of the Human Rights Convention reads:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The right to a hearing within a reasonable time and the right to an effective remedy are also laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Pursuant to Article 51, first paragraph, of the Charter, both guarantees apply to the member states 'when they are implementing Union law'. Up to now, there has been no judgment of the ECJ in which the significance of these rights for the member states has been considered in relation to the reasonable period requirement. No further attention will be devoted to these provisions of the Charter. Pursuant to Article 14, third paragraph, under (c) of the International Covenant on Civil and Political Rights (ICCPR), in the determination of any criminal charge against him, everyone is entitled 'to be tried without undue delay'. This article will also be disregarded below because it plays no role in the debate about a reasonable period and also has a more limited scope than Article 6 of the Human Rights Convention, since it does not relate to the determination of civil rights and obligations.

Outline of the case law on a 'reasonable period'

3.3 Article 6 of the Human Rights Convention – and therefore also the 'reasonable time' requirement – is, at least on the grounds of the provision itself and the case law of the ECHR, only applicable to disputes relating to the determination of civil rights and obligations or the validity of a prosecution ('criminal charge'). Strictly speaking, administrative law disputes are only protected by Article 6 of the Human Rights Convention if the decision being challenged falls within one of those categories. In case law extending over many years, the ECHR has steadily 'stretched' both categories, so that the adjudication of a growing number of decisions must also meet the 'reasonable time' requirement under the Convention (see footnote 17). Importantly, the imposition of a punitive administrative sanction - which in any case includes an administrative fine - qualifies as a 'criminal charge' within the meaning of Article 6 of the Human Rights Convention (see footnote 18).
For all other decisions, however, the definition applied in Strasbourg is no longer relevant for the Netherlands, because the Dutch administrative courts have ruled that the principle of legal certainty, as a generally accepted legal principle that also underpins Article 6 of the Human Rights Convention and applies within the national legal system separately from that treaty provision, requires that disputes that do not - according to the established case law of the ECHR - involve the determination of civil rights and obligations, such as disputes about the admission, residence and deportation of immigrants and tax assessments (see footnote 19), must also be decided within a reasonable period (see footnote 20). Because this requirement is based on a legal principle underpinning Article 6 of the Human Rights Convention, in fleshing out that requirement the administrative courts follow the case law of the ECHR relating to disputes concerning the determination of civil rights and obligations. In short, the 'reasonable time' requirement in Article 6 of the Human Rights Convention and all of the case law of the ECHR regarding that requirement apply to every administrative law dispute.

3.4 In its case law on possible violations of the reasonable time requirement in national legal protection proceedings, the ECHR always first establishes when the relevant period starts and ends. In cases in which the determination of civil rights and obligations arises, the point at which the period starts (*dies a quo*) is generally the moment when a dispute arises between the citizen and the government (see footnote 21). This can be the moment when a citizen files an appeal with a judicial body. If the judicial proceedings must be preceded by a mandatory administrative procedure, the reasonable period commences at the moment that the preliminary procedure is instituted (see footnote 22). For Dutch administrative law, this generally means that the period commences – unless an appeal lies directly to an administrative court – on the date that a notice of objection is

filed. In cases involving the determination of the validity of a 'criminal charge', the starting point is the time of the 'charge', that is 'the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence', whereby the individual's situation 'has been substantially affected' (see footnote 23). Translated to punitive administrative law, that is the moment when the administrative body performs an action in relation to the citizen from which the latter can draw the conclusion that the body will impose a fine (see footnote 24). That moment therefore precedes the filing of the notice of objection; it is generally the date of the notification of the fine.
The end of the reasonable period (*dies ad quem*) is the moment when the dispute is finally concluded and the individual's legal position has been definitively established (see footnote 25). Applied to Dutch administrative law, that may be the moment when the court makes a final and irrevocable decision in the case – if necessary after first giving the administrative body an opportunity to remedy any defects in its decision – by rejecting the appeal, setting aside the decision but allowing the legal consequences to stand or making its own adjudication in the case itself. In the event of an appeal and/or an appeal to the Supreme Court, these proceedings and any proceedings after a case has been referred back also count in determining the reasonable period. If the court sets aside a decision and instructs the administrative body to make a new decision, the period required to make that new decision, as well as any further proceedings before the courts (on appeal or otherwise) and any new proceedings arising from those further proceedings also count. The relevant period for determining whether a reasonable period has been exceeded ends only when the decision is no longer being challenged or – if it has been – the court has made a final and irrevocable decision in the dispute and the individual's legal position has been determined definitively.

3.5 When the beginning and end of the relevant period have been established, the question arises of whether a reasonable period has been exceeded. The ECHR assesses this question on the basis of the circumstances of the case, where (translated to administrative law) the following factors are relevant: the complexity of the case, the manner in which the case has been dealt with by the administrative body and the court, the conduct of the complainant during the entire proceedings, the nature of the measure, and the interest of the complainant that is affected (what is at stake?) (see footnote 26). The ECHR assesses the duration both of the entire proceedings and the individual elements. In that context, it is possible for the reasonable period for the proceedings as a whole to be exceeded, even though the individual components (although lengthy) have not been unreasonably lengthy (see footnote 27). Conversely, it is possible for the excessive length of a particular stage of the proceedings to be compensated for by the prompt handling of another component (see footnote 28). This possibility of compensation is also applied by the Dutch administrative courts (see footnote 29). Furthermore, a general rule is that the number of bodies is also relevant for assessing what constitutes a reasonable period for the entire proceedings, in the sense that the greater the number of bodies that have considered the dispute, the less likely the ECHR is to find that the reasonable period has been exceeded (see footnote 30).
The ECHR does not adopt fixed reasonable periods for entire proceedings or for individual components of them, but chooses to assess each individual case on the basis of the aforementioned factors. Reviewing the abundant case law (see footnote 31), what stands out is that with regard to a reasonable period the ECHR does not make a distinction between 'ordinary' (civil rights) proceedings and proceedings in which a 'criminal charge' is brought (see footnote 32). However, it may be necessary for a case to be handled particularly expeditiously because of the importance of the case to the complainant, for example in employment and pension cases (see footnote 33). Another remark that can be made is that the fact that the statutory period for making a decision has been exceeded does not necessarily mean that a reasonable period has been exceeded (see footnote 34), although short deadlines in national law could be evidence of the importance the legislature attaches to speedy adjudication (see footnote 35).

Despite the case-by-case approach, Feteris made a well-argued attempt to discern a certain consistency in the case law of the ECHR in his annotation of the Dutch Supreme Court's judgment of 22 April 2005, reported in BNB 2005/338 (see footnote 36). As regards the individual components of proceedings, after analysing a selection of judgments by the ECHR, which, according to him, 'could serve as a benchmark', he concluded (see footnote 37):

> "Although this case law is not based on fixed periods, in my view it suggests that as a rule the ECHR accepts a period of two years for a single body. My impression is that the court only starts to frown at a period of between two and two-and-a-half years for a single body. However, this cannot be regarded as a general rule. As I already said in point 10 (of his annotation - RW), the other circumstances of the case also play a role."

That last point is correct, because the ECHR case law cited by him shows that two years for a single body can still be unreasonably long if the case is not complex or the case has remained at a standstill for a lengthy period during that time. At the same time, the ECHR has sometimes permitted periods longer than two years for each body for reasons of complexity, because of the expeditious nature of the next phase of the proceedings or without giving further reasons. Despite these qualifications, Feteris' analysis does – in my view – provide a basis for his conclusion that, as a rule, two years for a single body is acceptable and a body that takes longer than two years is entering the danger zone.
As regards a reasonable period for the proceedings as a whole, Feteris' analysis does not produce any general conclusion (see footnote 38). From the case law cited by him, a very tentative conclusion could be that, as a rule, four years is acceptable for two bodies, and six years if three judicial bodies are involved, and that, as a rule, more than five years is too long for proceedings involving two bodies. Here too, however, the circumstances of the case play an important role.
An additional point to be made is that the ECHR has seldom commented on a reasonable period for a mandatory administrative procedure preceding an appeal to the court. To my knowledge, it only did so in the case of Schouten and Meldrum vs. the Netherlands, in which the ECHR found the length of the procedure for making an appealable decision – which was fairly complex – to be in breach of the reasonable time requirement at one year and nine months (Schouten) and one year and five months (Meldrum) (see footnote 39).

3.6 Until the case of Kudla vs. Poland, the ECHR confined itself to making a decision on the possible violation of the reasonable time requirement in the specific case (see footnote 40). In the Kudla case, for the first time the ECHR found that the member states are required, on the grounds of Article 13 of the Human Rights Convention, to provide an effective remedy for challenging violations of the reasonable time requirement. In Kudla and subsequent case law, the ECHR then determined that although its preference was for a preventive remedy that would prevent violations of the reasonable time requirement, a member state could also opt, as 'second best', for an exclusively compensatory remedy (see footnote 41), (see footnote 42).
To qualify as an effective compensatory remedy within the meaning of Article 13 of the Human Rights Convention, the remedy must relate to every phase of the proceedings, including a prior mandatory administrative procedure (see footnote 43), which, as a rule, is the objection procedure in the Netherlands. In criminal cases – and hence also in the case of punitive decisions – the logical form of compensation is mitigation of the sanction/fine that is imposed (see footnote 44); otherwise, compensation is provided by awarding damages. This compensation should not only be for pecuniary loss, according to the ECHR, but also non-pecuniary damage. In that context, there is a strong, but rebuttable, presumption that unreasonably lengthy proceedings will occasion non-pecuniary damage for the complainant in the form of 'anxiety, inconvenience and uncertainty' (see footnote 45). As regards the amount of compensation for non-pecuniary damage, the point of departure is the amount of compensation that a complainant would have received in Strasbourg on the grounds of Article 41 of the Human Rights Convention, but the ECHR does allow the member

states a certain leeway. However, the compensation awarded under the remedy must be 'not unreasonable' compared with the ECHR's standards and must be in line with 'legal tradition' and the standard of living in the country concerned (see footnote 46). Other factors in assessing the compensation are the effectiveness of the remedy and the availability of expedited or preventive remedies.
To be effective, the consequences and the criteria for the admissibility of the remedy must be clear (see footnote 47). If there is very little case law on the availability of the remedy or if the highest court has not yet recognised it, this requirement is not met. The remedy must also be effective and accessible, so the costs of securing it must not be excessive (see footnote 48). Simpler procedural requirements and lower costs could also help lower the threshold. Naturally, the proceedings for the remedy itself must not be unreasonably lengthy. In that context, the ECHR has found that a period of four months for a decision on compensation is short enough to be regarded as effective (see footnote 49). Furthermore, the period within which the compensation is paid must, in any case, not exceed six months from the moment that it becomes due (see footnote 50).
If a national remedy meets these requirements, it must be exhausted before a complainant can bring proceedings before the ECHR (see Article 35 of the Human Rights Convention). Furthermore, the complainant is only a 'victim' within the meaning of article 34 of the Human Rights Convention if the legal remedy is insufficiently effective.

3.7 In the Netherlands, since 2008 the highest administrative courts have made serious efforts to develop an effective remedy to compensate for violations of the reasonable period requirement in non-punitive cases (see footnote 51), having been more or less compelled to do so because the legislature failed to take any action.
The remedy concerned relates to violations of the reasonable period requirement both by the administrative body and by the court (see footnote 52). If the court suspects, on the grounds of its rules of thumb – which are discussed in detail below – that a reasonable period has been exceeded and that this violation can be attributed in part to the judicial proceedings (see footnote 53), it will reopen the investigation on the basis of an interpretation of Section 8:73 of the General Administrative Law Act in accordance with the Convention, and treat the State of the Netherlands as a party to the proceedings pursuant to Article 8:26 of that act. In the subsequent proceedings for compensation, the court will determine whether the reasonable period has actually been exceeded (and whether there was any justification for it) and, if so, will determine the damages to be paid by the administrative body (for violations in the administrative phase) or by the State (for violations by the court). In determining the amount of non-pecuniary damage, there is a – rebuttable – legal presumption that the litigant has actually suffered 'anxiety and frustration' as a result of the violation. The standard rate of compensation adopted by the administrative courts is 500 euro for every six months by which the reasonable period was exceeded, rounded off upwards.
In 2010, the former Minister of Security and Justice was still planning to enact the remedy developed by the courts in statute and, to that end, published a draft version of an amendment to the General Administrative Law Act for consultation (see footnote 54). According to the current Minister of Security and Justice, however, the method of awarding compensation for violation of a reasonable period established by the case law of the administrative courts is satisfactory and there is no longer any urgent need to produce legislation. The statutory regime announced earlier is therefore no longer included in the ministry's legislative programme (see footnote 55).

General 'rules' for a reasonable period: the situation at the time of this advisory opinion

3.8 In the context of the remedy in non-punitive cases described above, the Dutch administrative courts do not assess whether the reasonable period requirement has been violated on a case-by-case basis according to the factors specified by the ECHR (the complexity of the case, the manner in which the case has been handled by the administrative body and the court, the complainant's

conduct during the proceedings, the interests of the complainant), but rather they adopt general rules or principles for what constitutes a reasonable period for the proceedings as a whole and for the various components. These general rules apply except in exceptional circumstances, usually the factors adopted by the ECHR. Accordingly, these factors serve as a corrective mechanism.
The choice to use 'standard periods' also in non-punitive cases has undoubtedly been inspired by the case law of the Supreme Court relating to reasonable periods in cases involving (punitive) tax penalties. In its judgment of 22 April 2005 (see footnote 56), the Supreme Court already laid down 'general principles and rules' for assessing a reasonable period for the components of proceedings, 'which it will follow in future cases involving tax penalties'. Accordingly, the tax chamber followed in the footsteps of the Supreme Court's criminal chamber, which had formulated similar rules and principles for (components of) criminal proceedings in its judgment of 3 October 2000 (see footnote 57).

3.9 There is little or no criticism in the literature of the choice by the administrative courts to use general rules and principles in determining whether a reasonable period has been exceeded, nor is it questioned in this advisory opinion. In response to the Supreme Court's judgment of 22 April 2005, Feteris argued (see footnote 58):

"The adoption of rules of thumb by the Supreme Court simplifies the application of the law, and will lead to greater uniformity. That is definitely an advantage."

In response to the same judgment, Schreuder-Vlasblom commented as follows (see footnote 59):

"On this point the line taken by the Supreme Court in its judgment of 22 April 2005 is preferable (to the case-by-case approach taken by the ECHR - RW). In the interests of certainty about the length of a reasonable period, it chooses to base itself on indicative periods: two years for an objection and an appeal in first instance, two years for an appeal and (…) two years for an appeal to the Supreme Court. In the Supreme Court's approach, the factors adopted by the ECHR do not determine the reasonableness of the time actually taken for proceedings, but the decision on whether the violation of a *prima vista* reasonable period is justified by exceptional circumstances. That is a far less open question. Accordingly, the managers of the process (courts and administrative bodies - RW) have a fixed point of reference."

At the same time, there is a potential conflict between the general approach of the administrative courts and the ECHR's case-by-case approach, since the adoption of general rules could cause the court to lose sight of the circumstances of the case. Although the factors adopted by the ECHR do serve as a corrective mechanism in the approach taken by the administrative courts in establishing a violation of the reasonable period requirement, that mechanism must also actually be used where necessary. In that context, I refer with approval to the opinion of Advocate-General Wattel in the frequently cited judgment of the Supreme Court of 22 April 2005 (see footnote 60), who said of the application of the rules of thumb:

"These rules of thumb can or should be departed from on the basis of the familiar criteria (the complexity of the case, the conduct of the suspect, the conduct of the authorities, what is at stake, the total duration of the proceedings and of each component, periods of inactivity) if it is not a case involving a more or less average penalty. That can cut two ways: it could also mean that although the proceedings have remained within the limits set by the rules of thumb, they would still have exceeded a reasonable period if it was a straightforward case or it can be shown that there were inexplicably lengthy periods of inactivity."

Finally – although it is obvious – in determining the 'standard periods', the administrative courts must take account of the factors that the ECHR regards as relevant for assessing a reasonable period and in the large majority of cases the length of that period must be consistent with the case law of the ECHR.

3.10 There is some criticism in the literature of the fact that – as will be shown below – in non-punitive cases the highest administrative courts do not follow the same line, either as regards what constitutes a reasonable period for the entire proceedings or as regards the periods adopted for individual components. Barkhuysen and Van Ettekoven, for example, have this to say in that context (see footnote 61):

"An observation that needs to be made, in any case, is that the highest courts do not follow the same line, either as regards the total period or as regards the periods for individual components. The periods adopted by the Division for an objection and an appeal to the district court are longer than those adopted by the Central Appeals Tribunal. The discrepancy between the Division and the Central Appeals Tribunal is difficult to explain on the basis of the nature of the dispute and the interest of the litigant. The case before the Central Appeals Tribunal concerned a benefit and the Tribunal itself remarked that the individual concerned had a substantial interest in obtaining certainty about his situation as a benefit claimant. (….) Why an alien would not have a similar interest, or only to a lesser extent, is unclear. In short, even in similar areas, the courts do not follow the same line."

More recently, Van Ettekoven et al. found the differences between the highest courts in non-punitive cases to be "an area of concern from the perspective of the desire – also of the administrative courts – for uniformity in the law" (see footnote 62). It is that concern that this advisory opinion addresses.

3.11 Before coming to that, I will first review the rules of thumb adopted by the highest administrative courts to assess what constitutes a reasonable period for handling the entire proceedings and the elements of the proceedings in punitive and non-punitive cases (see footnote 63). That encompasses both cases in which, after an objection, appeal lies to two judicial bodies, and cases in which – insofar as those cases are heard by that administrative court – one of the highest administrative courts decides in first and sole instance.

Supreme Court

In its judgment of 10 June 2011, which concerned a non-punitive tax dispute, the Supreme Court ruled for the first time on what is a reasonable period for hearing a case in first instance (including an objection) and on appeal. It found as follows (see footnote 64):

"In assessing the question of whether a reasonable period was exceeded, the principles laid down in the judgment of the Supreme Court of 22 April 2005, no. 37984, LJN AO9006, BNB 2005/337, must also be followed in tax disputes." The principles laid down in that judgment, which involved a punitive case, were as follows. "For the hearing of the case in first instance, the principle must be that it has not occurred within a reasonable period if the district court has not rendered judgment within two years of the start of that period, unless there are exceptional circumstances (..).This period therefore includes the duration of the objection phase. For the hearing of the case on appeal, the principle is that the court of appeal, barring exceptional circumstances (…), must render judgment within two years of the remedy being instituted."

In its judgment of 22 March 2013, the Supreme Court explained how the period of two years from the date of receipt of the objection to the judgment of the district court is broken down between the administrative body and the court in non-punitive tax cases (see footnote 65):

"3.4.3 In cases where the objection and the appeal phase have together taken so long that the reasonable period has been exceeded, the court must, with a view to awarding compensation for the intangible damage that has been caused by the length of time that has lapsed, assess how the excessive period should be attributed to the objection phase and the appeal phase, since that will determine to what extent the intangible damage is attributable to the administrative body or to the judiciary.

3.4.4. In the allocation referred to in § 3.4.3 above, the general rule in tax cases is that the objection phase has lasted unreasonably long to the extent that it takes longer than six months and the appeal phase if it takes longer than 18 months (see Central Appeals Tribunal 26 January 2009, no. 05/01789, LJN BH1009, AB 2009/241). This rule applies except in exceptional circumstances, which would mainly be exceptional circumstances as referred to in § 4.5 of the Supreme Court's judgment of 22 April 2005, no. 37984, LJN AO9006, BNB 2005/337."

Finally, the Supreme Court's judgment of 9 August 2013 should be mentioned (see footnote 66), because in it the court makes it clear that the six-month period for the objection phase also applies in cases,

"in which the inspector was obliged, on the grounds of Article 25, paragraph 1 of the General Tax Act (text up until 2008), to make a decision within one year of receipt of the notice of objection."

When the Supreme Court rendered this judgment, Article 25, paragraph 1 of the (old) General Tax Act, under which the maximum period for making a decision on an objection was one year, had already been repealed on 1 January 2008, because since 1 January 1997 the tax authorities had adopted the period laid down in Section 7:10 of the General Administrative Law Act as its target for making decisions and, in principle, no longer availed of the longer period of one year (see footnote 67).

Central Appeals Tribunal

In its judgment of 26 January 2009, the Central Appeals Tribunal found as follows with respect to the reasonable period for proceedings comprising an objection and appeals to two judicial bodies (see footnote 68):

"In the Tribunal's opinion, a reasonable period for proceedings involving three bodies in cases such as this has in principle not been exceeded if those proceedings as a whole did not take longer than four years. In reaching that conclusion, the Tribunal takes into account the fact that the interested party has a substantial interest in certainty about his situation with respect to his benefits.

In cases like this, if the entire proceedings have taken longer than four years, for each body it then has to be considered whether it took longer than was justified to handle the case, on the understanding that the proceedings in each of the bodies should, in principle, be completed within the following periods: the objection in six months, the appeal in first instance in 18 months and the final appeal in two years. Furthermore, the proceedings will generally not have taken too long in the judicial phase as a whole if it has not taken more than three-and-a-half years (see the Tribunal's judgment of 12 November 2008 (LJN BG5163)."

In its judgment of 9 April 2009, the Central Appeals Tribunal found as follows with regard to proceedings involving two bodies (see footnote 69), i.e. an objection and an appeal to the Tribunal in first and sole instance:

"The reasonable period for proceedings before two bodies in cases like this is (….)in principle not exceeded if those proceedings as a whole have not taken longer than two-and-a-half years. If, in cases like this, the total proceedings have taken longer than two-and-a-half years, for each body it then has to be considered whether it took longer than was justified to handle the case, on the understanding that the proceedings in the various bodies should, in principle, be completed within the following periods: the objection in six months and the appeal in two years."

Finally, it is interesting to note the Tribunal's position with respect to the longer statutory period for making a decision on objections in provisions such as Article 43 of the Benefit Act for Victims of Persecution 1940-1945 (see footnote 70). In derogation from Article 7:10 of the General Administrative Law Act, under this act the period for making a decision on an objection is 13 weeks, calculated from the day after the date on which the period for submitting an objection has expired, a period that can be extended once by up to 4 weeks in exceptional circumstances. If the interested party is established abroad, each of these periods is extended by 8 weeks, so that the maximum period for making a decision is 21 weeks and the maximum period by which it can be extended is 12 weeks. In its case law, the Tribunal ruled that these longer statutory periods for making a decision were not a reason for it to adopt a period longer than the standard period of six months for the handling of claims based on the Benefit Act for Victims of Persecution 1940-1945 in general. In support of that conclusion, in its judgment of 9 December 2009, in which the interested party was living abroad (Belgium), the Tribunal found as follows (see footnote 71):

"First, it takes into account that the fact that in Article 43 of the Benefit Act for Victims of Persecution 1940-1945 the legislator allowed for a longer period than six months for handling claims in some situations does not automatically mean that a longer period is justified for every decision on a claim under the Benefit Act for Victims of Persecution 1940-1945. In addition, the Tribunal sees no reason to regard a longer period than six months for handling claims as justified for the situations referred to in the previous sentence in general. It notes that according to its established case law it has discretion to decide in every individual case whether, given the circumstances of the case, a period longer than six months for handling a claim is justified, in which case the criteria mentioned in § 5.1 (meaning the well-known criteria of the ECHR, the complexity of the case, etc - RW) could play a role. In the situation for which the legislature allows a longer period to make a decision, such circumstances are perhaps more likely to arise. However, the Tribunal finds that such a situation does not arise in the present case, since the judges in chambers apparently saw no reason to extend the period for making a decision. In the present case, the Tribunal sees no reason to regard a period longer than six months for handling the claim as justified."

The Tribunal follows the same line in a judgment of 8 November 2012 (see footnote 72), in which the interested party was (probably) established in the Netherlands and in which the Tribunal again saw no reason to regard a period longer than six months for handling a claim as justified. In another judgment of 8 November 2012 (see footnote 73), which involved an interested party living in the United States, the Tribunal found that the conduct of the individual concerned during the objection phase did provide grounds for extending the period allowed for handling a claim, because he had neglected to submit the documents requested from him to the respondent. In this case, the total period for handling the claim was extended by the length of time by which the respondent suspended the deadline for making a decision on the objection by virtue of Article 4:15 of the General Administrative Law Act.

The Administrative Jurisdiction Division of the Council of State

The rules of thumb for what constitutes a reasonable period adopted by the AJD for proceedings involving an objection and appeals to two judicial bodies can be found in its judgment of 24 December 2008 (see footnote 74):

"For cases like this, in principle the Division regards a total length of the proceedings of not more than five years as reasonable, on the understanding that the objection may not take more than one year, the hearing of the appeal in first instance not more than two years and the hearing of the final appeal not more than two years. The aforementioned criteria (…) may under certain circumstances be a reason to regard a breach of this period as justified".

These periods are also adopted in regular immigration cases (see footnote 75). In asylum cases, in which there is no objection procedure, a period of four years is adopted: two years for the district court and two years for the appeal to the Division (see footnote 76).

If the proceedings consist of an objection procedure and an appeal to one judicial body, in principle, the Division regards a period not exceeding three years as reasonable (see footnote 77), in which case the handling of the objection may take a maximum of one year and the handling of the appeal by the Division a maximum of two years.

For proceedings involving decisions that are prepared in accordance with Chapter 3.4 of the General Administrative Law Act and against which appeal lies in first and sole instance to the Division, the point of departure is that a reasonable period has been exceeded if the Division renders judgment more than two years after the appeal is filed (see footnote 78). For proceedings relating to the adoption of a zoning plan, which, under the 'new' Spatial Planning Act, are also prepared in accordance with Chapter 3.4 of the General Administrative Law Act, and where appeal lies directly to the Division in first and sole instance, a reasonable period of two years after the filing of the appeal also applies (see footnote 79).

Under the regime of the 'old' Spatial Planning Act, which provided for the approval of the zoning plan by the provincial executive and appeal in first and sole instance to the Division, the Division found that, in principle, a total period of three years was reasonable, with a maximum period of one year for the approval stage and a maximum of two years for the appeal (see footnote 80).

Trade and Industry Appeals Tribunal

In non-punitive cases within the competence of the Trade and Industry Appeal Tribunal, as a rule proceedings to safeguard legal rights comprise an objection and an appeal in first and sole instance to the Tribunal. The reasonable periods adopted by the Tribunal are formulated in a judgment of 25 June 2009 (see footnote 81):

"In cases like this, which concern the legitimacy of measures connected with the outbreak of an infectious animal disease, in the Tribunal's opinion, in principle a total length of the proceedings - for the handling of the objection and then the appeal to the Tribunal - of three years can still be regarded as reasonable. This finding is based on the hearing of the objection taking a maximum of one year and the handling of the appeal no longer than two years."

In that case the periods seem to have been tailored to the specific case. However, the Tribunal also applied the relevant periods – one year for an objection and two years for an appeal to the Tribunal – in cases involving a decision purely relating to damages, a declaration concerning an investment allowance, a product board levy, the certification of pesticides, administrative enforcement in the context of the Animal Health and Welfare Act, and in proceedings for damages in connection with violation of the reasonable period requirement in a case relating to the Animal Health and Welfare Act (see footnote 82). In other words, they can be regarded as standard periods. The Tribunal only adopts alternative periods for specific categories of cases (see footnote 83).

I found no instances in the case law of the Trade and Industry Appeals Tribunal where the Tribunal expressed a view on the standard periods that apply in non-punitive cases in which the proceedings comprise an objection and judicial rulings by two bodies (see footnote 84). In the literature, because the Tribunal adopts the same periods as the Division for decisions which are open to an objection and an appeal in first and sole instance – one year for the objection and two years for the appeal to the Tribunal – it is assumed that for decisions which are open to an objection and an appeal to two bodies the Tribunal will also follow the line taken by the Division. That is also my assumption below. In that case, the total reasonable period is five years – one year for an objection and two years for both the district court and the Tribunal itself.

Resumé on non-punitive cases
To sum up, it can be stated that the Supreme Court and the Central Appeals Tribunal are in agreement on non-punitive cases in which, following an objection, appeal lies to two judicial bodies, i.e., six months for the objection, 18 months for the appeal in first instance and two years for the final appeal (a total of four years). The standard periods adopted by the Division and the Trade and Industry Appeals Tribunal in such cases is one year for the objection, two years for the appeal in first instance and two years for the final appeal (a total of five years).
In cases where after an objection, appeal lies to the Tribunal in first and sole instance, the Central Appeals Tribunal adopts the standard periods of six months for the objection and two years for the appeal in first and sole instance (a total of two-and-a-half years). The Division and the Trade and Industry Appeals Tribunal adopt the standard periods of one year for the objection and two years for the appeal in first and sole instance (a total of three years). In cases where there is no objection procedure, as court of first and sole instance the Division adopts a standard period of two years. If an appeal lies to two judicial bodies (without an objection), the standard periods for the Division are two years for the hearing at first instance and two years for the final appeal (a total of four years).

3.12 As mentioned in § 2.1, the president of the Division has also asked me to review the relationship between the desirable periods in non-punitive cases and 'the periods that are currently uniformly adopted in cases involving a "criminal charge"' in this advisory opinion. I will therefore also briefly discuss those latter periods.
The standard for the reasonable period in punitive cases is laid down in the previously mentioned judgment of 22 April 2005, in which the Supreme Court found as follows (see footnote 85):

"The point of departure for the hearing of the case in first instance must be that it has not occurred within a reasonable period if the district court has not rendered judgment within two years after that period has commenced, except in exceptional circumstances (...). This period therefore includes the duration of the objection phase. The point of departure for the hearing of the appeal in the case be that the court of appeal, except in exceptional circumstances (…) must render judgment within two years of the appeal being filed."

This line has been adopted by the Central Appeals Tribunal, the Division and the Trade and Industry Appeals Tribunal (except in competition cases), referring to the Supreme Court's judgment (see footnote 86). They therefore also apply a total reasonable period of four years, with a maximum of two years for the proceedings up to the judgment of the district court and two years for the appeal. The 'initial phase' starts at the moment that a 'criminal charge' is brought. As already mentioned in § 3.5, that is generally the moment of the notification of a fine. It is also noteworthy that the administrative courts do not make any further distinction between the administrative phase and the appeal to the district court in punitive cases. As a rule, it is also unnecessary to do so, because a breach of the reasonable period in these cases leads to a reduction of the (punitive) administrative fine, in which case the body to whom the breach can be attributed – the administrative body or the court – is irrelevant.

In competition cases, the Trade and Industry Appeals Tribunal generally departs from a reasonable period of two years up to the time of the judgment of the district court and makes a distinction between regular and accelerated proceedings. In regular proceedings, the total reasonable period is five-and-a-half years (see footnote 87): two years for the administrative body, 18 months for proceedings before the district court and two years for the appeal to the Tribunal (see footnote 88). In the accelerated proceedings, the total period is five years: 18 months for both the administrative body and the district court and two years for the Tribunal. The reasons given for these longer periods are as follows:

"In general, proceedings relating to compliance with Article 6 of the Competition Act can be regarded as complex. (…) The diversity and the relatively unique nature of proceedings relating to compliance with Article 6 of the Competition Act mean, in the view of the Tribunal, that it cannot be adopted as a general principle that a reasonable period is exceeded if no judgment has been rendered by the district court within two years of this period commencing."

Finally, I want to mention the principles in criminal cases adopted by the Supreme Court's criminal chamber in its benchmark judgment of 3 October 2000 (see footnote 89). In that case, the Supreme Court found as follows.

"As regards the hearing of the case in first instance, the principle must be that the hearing of the case must have been completed with a final judgment within two years of the commencement of the period whose reasonableness has to be assessed, unless there are exceptional circumstances. However, exceptions must to be made for cases where:

a. the suspect is being held in pre-trial detention in connection with the case, and/or
b. juvenile criminal law applies.

Such cases must be dealt with in first instance within 16 months, unless there are exceptional circumstances.

The same arguments apply to the hearing on appeal. Barring exceptional circumstances, the proceedings in this phase of the case must be completed with a final judgment within two years of the filing of the appeal, and within 16 months if the suspect is being held in pre-trial detention and/or juvenile criminal law applies."

It is clear from this judgment that the Supreme Court's criminal chamber already opted for standard periods of two years up to the judgment of the district court and two years for the appeal in 2000. It is entirely possible that it was this that inspired the judgment of the Supreme Court's tax chamber of 22 April 2005 – and hence also the case law of the other highest administrative courts. According to Jansen, it is plausible that the background to the critical limit of two years adopted by the criminal chamber lies in Strasbourg (see footnote 90). In that context, he refers to the ruling of the European Commission for Human Rights, which was confirmed by the Committee of Ministers, in the case of Marijnissen vs. Nederland in 1984 (see footnote 91), in which the Commission found that the proceedings on appeal (before the court of appeal), which had taken slightly longer than 24 months, could not stand critical review.
In later judgments, most importantly in its judgment of 17 June 2008 (see footnote 92), the Supreme Court has reformulated and partially amended the rules and principles for breaches of a reasonable period in criminal cases, but the standard reasonable periods for the hearing at first instance and on appeal have not been changed.

Towards uniform reasonable periods in non-punitive cases

3.13 The question that now needs to be answered is whether the highest administrative courts should also adopt uniform reasonable periods in non-punitive cases, and if so, what those periods

should be. As far as the first part of this question is concerned, in a letter dated 2 September 2013 on behalf of the Minister of Security and Justice and the Council for the Judiciary, it was noted as follows:

"First and foremost, the Minister is of the opinion that the case law of the administrative courts makes adequate provision for the awarding of compensation for violations of a reasonable period. (…) Nevertheless, the Minister is in favour of further uniformity. There does not seem to be any convincing justification for the existing discrepancies between the various bodies. (…)

In the pursuit of harmonisation, the Minister's priority is to develop a system that is easy to adopt by legal practitioners. It is in the interests of the public, the government and the judiciary that, if a reasonable period has been exceeded, compensation should be offered as soon as possible. That means – according to the Minister – that separate proceedings on (the amount of) compensation should be avoided as far as possible. (...)

From that perspective, the Minister therefore has some reservations with regard to any further or alternative form of differentiation, compared with the current situation in the case law, based on the type of case. In the case law, violation of a reasonable period is assumed to cause anxiety and frustration. In the Minister's view, it would not then be appropriate, separately from the facts and circumstances of the individual case, to determine the reasonable period for handling a case on the basis of the type of case. In the Minister's opinion, there is no real justification for such differentiation. (…)"

I agree with this position and the arguments given. I also believe that the highest administrative courts must opt for uniform reasonable periods in non-punitive cases. That conclusion is dictated, in the first place, by the interests of the uniformity of law. By adopting uniform periods citizens (and their legal advisers), administrative bodies and courts will know what periods apply in administrative law as a whole. Secondly, and by extension, further uniformity will help simplify the system, which is very important for legal practice. Thirdly, and lastly - and perhaps the most important reason for uniformity - there is no persuasive justification for the current differentiation. My argument for that last assertion is as follows.

The current differentiation is connected exclusively with the competent highest court. If it is the Supreme Court or the Central Appeals Tribunal, the period is six months for the objection proceedings and 18 months for the appeal in first instance. If it is the Division or the Trade and Industry Appeals Tribunal, the period is one year for the objection and two years for the appeal in first instance. All of the tribunals apply a period of two years for the final appeal to the highest tribunal. For proceedings involving an objection and an appeal in first and sole instance to one of the tribunals, the Central Appeals Tribunal applies a period of six months for the objection, and the Division and the Trade and Industry Appeals Tribunal a period of one year. As regards the appeal to a court in first and sole instance, a period of two years applies for every tribunal. Naturally, there is no justification whatsoever for this distinction depending on the highest court.

Nor, in my opinion, can this justification be found in the type of case (see footnote 93). To give a few examples, cases concerning subsidies before the Division and the Trade and Industry Appeals Tribunal and cases concerning allowances before the Division are very similar in terms of complexity to the cases relating to tax and social security heard by the Supreme Court and the Central Appeals Tribunal. The immigration cases heard by the Division are similar to the social security cases dealt with by the Central Appeals Tribunal, both in terms of complexity and as regards the interests of the individual concerned (what is at stake?) (see footnote 94). And finally, there is no fundamental difference – also according to the case law of the ECHR – in terms of complexity or what is at stake between non-punitive and punitive cases (see footnote 95), while for the latter, a total reasonable period of four years applies for all administrative courts, including the Division and the Trade and Industry Appeals Tribunal. I will return to this last point in § 3.14 below.

The only difference between cases before the Central Appeals Tribunal and Supreme Court, on the one hand, and the Division and the Trade and Industry Appeals Tribunal, on the other, is that the financial cases decided on by the Central Appeals Tribunal and the Supreme Court almost always involve disputes between two parties, while disputes involving the organising function of administrative law on which the Division and the Trade and Industry Appeals Tribunal adjudicate more frequently involve three or more parties. In my opinion, however, this possible difference in the number of parties involved does not justify differentiating with regard to the issue of a reasonable period for the following reasons. First, the fact that three or more parties may appear in various types of cases heard by the Division and the Trade and Industry Appeals Tribunal does not mean that it actually does occur in all cases and/or in all the bodies that handle a case. Even a potential three-or-more-party dispute could in fact also be contested by just two parties. Furthermore, the number of parties involved can fluctuate during the course of the proceedings; for example, there will generally be fewer parties to an appeal than during the objection phase. Second, the interests of third-party litigants in an actual three-party dispute often concur with those of one of the other parties in the case, and to that extent the complexity of the case is little or no greater than that of a two-party dispute. Third, insofar as the parties do not have parallel interests, the complexity of the case depends mainly on the number of third parties involved and the variety of the grounds put forward by them. That provides no justification for a longer period for all cases in which more than two parties can appear. A further point to be made is that the application of the criterion of (possible) ‘three-or-more-party disputes’ does not meet the desire – as expressed in the question posed to me and supported by the Minister of Security and Justice and the Council for the Judiciary, as shown in the passages cited above from the letter of 2 September 2013 – to create an effective and straightforward system.
Naturally, the above does not mean that the court could not adopt a longer reasonable period than the uniform period I propose below in a specific three-or-more-party dispute. The option exists – for example, due to the complexity of the specific case – and the factors enunciated by the ECHR allow for it. Furthermore, in my view it is also conceivable that a judicial body – following the line adopted by the Trade and Industry Appeals Tribunal in competition cases (see section 3.12) – would choose to adopt longer standard reasonable periods in a specific area where cases are almost always particularly complex, although I cannot name a single area of law where that would apply as a general rule.

3.14 Having established that the administrative courts should also adopt uniform reasonable periods in non-punitive cases, it now has to be determined what those periods should be, starting with the period for the objection proceedings and appeals to two judicial bodies. To start with, in my view the period of four years adopted by the Supreme Court and the Central Appeals Tribunal, and probably also the period of five years adopted by the Division and the Trade and Industry Appeals Tribunal, could pass the test of ECHR case law (see footnote 96). As I mentioned in § 3.5, as a rule the ECHR seems to accept a period of two years as reasonable for a judicial body; for preliminary administrative procedures – in light of the Schouten and Meldrum case – a period of 18 months is unreasonably long, but a period of one year might be possible. A certain reservation has to made about this assertion, because the ECHR does not use fixed reasonable periods. I would also note that there are other views about the reasonableness of the period of five years adopted by the Division. For example, Tak regards this period as ‘arbitrary and contrary to European case law’ (see footnote 97).
Although five years for the proceedings on an objection and hearing by two judicial bodies is probably not in conflict with Article 6 of the Human Rights Convention, I still believe there are good reasons for choosing a uniform period of four years. First, it is a ‘safer’ choice in light of the Human Rights Convention. Although a total period of five years for hearing a case might pass the test of the ECHR, especially in less complex cases it would be at the limits of what the ECHR would find acceptable. In light of that, it is not logical to choose a uniform period of five years for all cases –

including cases before the Supreme Court and the Central Appeals Tribunal. If one wanted to do that, those courts would have to adopt a shorter period in quite a large number of less complex cases. That would not make the system any simpler.
Second, this choice is dictated by the interests of the parties. From their perspective, a uniform reasonable period of four years is still not really short, although it is significantly shorter than the period of five years currently employed by the Division and the Trade and Industry Appeals Tribunal. In that context, reference can also be made to the risk identified by Schreuder-Vlasblom that a tardy tribunal – which, in her view, is already the case if proceedings before a judicial body take longer than a year – 'quickly loses its functionality as a dispute-resolving body in a changing, fairly high-paced society like ours' and 'almost comes down to too little too late' (see footnote 98). This correctly identified risk is another reason for preferring a total reasonable period of four years over a period of five years. However, I do not opt for a reasonable period of one year for a judicial body because – as Schreuder-Vlasblom also stated – that requirement goes beyond the 'lower limit' set by the ECHR (see footnote 99). Nevertheless, the completion of proceedings before a judicial body within a year is desirable from a social perspective.
A third reason for adopting a uniform period of four years in non-punitive cases is that it corresponds with the uniform period in punitive cases, although it is important to note that in punitive cases the relevant period commences sooner. The periods should correspond because – as noted in § 3.13 –there is no fundamental difference between punitive and non-punitive cases in terms of their complexity or the interests of the parties. Furthermore, the choice of a uniform period of five years in non-punitive cases in tax law, where the tax penalty is usually linked to the tax assessment, would mean that two reasonable periods apply for handling a case in the same proceedings: five years for the non-punitive assessment and four years for the tax penalty. That is not only impractical, but is also scarcely defensible. That problem could naturally be resolved by also adopting a uniform period of five years in all punitive cases in administrative law, but that would involve the administrative courts abandoning the present, carefully considered choice of a uniform period of four years and increase the risk of conflicts with the ECHR. This option is also undesirable from the perspective of uniformity with criminal law. As mentioned in § 3.12, the Supreme Court regards a total period of four years for a ruling on the facts in first instance and on appeal as reasonable in criminal cases. Another point to be made here is that I can think of no justification for the total reasonable period in punitive and non-punitive cases (in general) in administrative law being one year longer than in criminal cases.
Finally, I would once again point out that in specific cases (or even generally) the administrative courts can depart 'upwards' from the uniform reasonable period of four years on the basis of the factors specified by the ECHR. As mentioned in § 3.13, one reason for this might be that the case is a very complex three-or-more-party dispute. Naturally, the courts could also depart 'downwards' from the uniform period, for example in cases for which the legislature has stipulated a maximum period for a judicial decision (see footnote 100), because these periods provide an indication of what is regarded as 'reasonable' in the Netherlands (see footnote 101). In that context, I would point out that according to the established case law of the ECHR, exceeding such a statutory period for a making a decision does not in itself mean that a reasonable period has also been exceeded (see footnote 102). Accordingly, there is no compelling reason to adopt a shorter reasonable period in these cases on the grounds of the Human Rights Convention.

3.15 The final question that needs to be addressed is how the reasonable period of four years in non-punitive cases that I propose should be divided among the three instances: the objection, the appeal in first instance and final appeal. The only guidance – which is scarcely normative – for answering this question in the case law of the ECHR is that the reasonable period for a single judicial body must not be longer than two years (see § 3.5). This choice is also in fact not determined by the law, but by other factors. I will therefore now outline two options with their pros and cons.

The first option (option A) is the formula that is currently applied by the Supreme Court and the Central Appeals Tribunal: six months for the objection, 18 months for the appeal in first instance and two years for the final appeal. The advantage of this option is that it is already applied by two of the highest administrative courts and corresponds closely with the individual periods adopted by all of the highest administrative courts in punitive cases.

An objection to option A – and one that is sometimes voiced by the district courts – is that the reasonable period for the district courts in first instance would be shorter than for the appeal courts. The ECHR does not make any such distinction between the two instances, and the distinction is perhaps a little strange, since the issues in dispute will usually have been defined more clearly by the time the case is heard on appeal. On the other hand, however, it could be argued that the distinction can be explained by the different positions occupied by the two bodies in the legal system. The purpose at first instance is to provide citizens with a judicial decision on their case relatively quickly. This is less of a factor on appeal, when reflection on the case is paramount (see footnote 103). In view of this, one could regard a difference between the reasonable period for district courts and appeal courts as justified.

In option A, the uniform reasonable period for the proceedings on the objection would be six months. As a rule, this period – partly in view of the statutory period of six weeks for making a decision on an objection under Section 7:10, first paragraph, of the General Administrative Law Act (if no advisory committee as referred to in Section 7:13 of the General Administrative Law Act has been established) or 12 weeks (if it has), with the possibility of postponing the decision by six weeks (Section 7:10, third paragraph, of the General Administrative Law Act) – is certainly not too short. For certain decisions, on which the Central Appeals Tribunal or the Supreme Court rules in final instance, there is a significantly longer statutory period for making a decision than the period stipulated in Section 7:10 of the General Administrative Law Act. As mentioned in § 3.11, up to now neither of the highest courts has found these longer statutory periods for making a decision to be a reason for departing from their standard period of six months for handling an objection to a decision in general (see footnote 104). As far as I am aware, such longer statutory periods for making a decision on an objection do not arise in cases that come before the Division and the Trade and Industry Appeals Tribunal. The question that might arise for decisions by these bodies is to what extent a reasonable period of six months for an objection could be problematic in cases where an advisory committee as referred to in Section 7:13 of the General Administrative Law Act has been established, and in which a large number of interested parties have made objections. Naturally, a statutory period of 12 weeks for making a decision (with the possibility of postponement by six weeks and further delay subject to the conditions set out in Section 7:10, fourth paragraph of the General Administrative Law Act) also applies in those cases. By virtue of Section 7:10, first paragraph of the General Administrative Law Act the period for making a decision commences on the day after the date on which the deadline for filing a notice of objection has expired and is suspended from the day on which any of the parties that filed an objection is requested to remedy an omission as referred to in Section 6.6 of the act. However, for every interested party the relevant period for determining a reasonable period commences at the moment that the relevant interested party has lodged an objection and that moment can, under certain circumstances, precede the commencement date of the period for making a decision by a significant number of weeks (see footnote 105). In such a case, it may be difficult to comply with the reasonable period of six months with respect to interested parties that have quickly filed an objection.

The potential difficulty of compliance does not mean it is impossible, however. Furthermore, the court can in a specific case, on the grounds of the factors specified by the ECHR – for example, the complexity of the case – allow a longer reasonable period than six months for handling the objection. Finally, it is conceivable that the Division or the Trade and Industry Appeals Tribunal – following the line taken by the Trade and Industry Appeals Tribunal in competition cases (see § 3.12) – might choose in general for a longer standard reasonable period than six months in an area where the cases are almost always extremely complex in the objection phase.

3.16 To address the potential objections referred to above, another option (option B) might be considered. In that option, the four years would be divided as follows (see footnote 106): eight months for the objection, 20 months for the appeal in first instance and 20 months for the final appeal. In this option, therefore, the total length of the proceedings would not be divided into periods of six months or multiples thereof, which might take some getting used to in the beginning. With this option, the reasonable period for handling an objection would be slightly longer, which would largely eliminate the problems referred to in § 3.15. Naturally, a possible objection to this is that eight months is a very long time for the many 'regular' objection procedures. Another possible advantage of option B is that the same reasonable period would apply for the appeal in first instance and the final appeal. On the other hand, one could argue that 20 months for a final appeal is perhaps too short for the necessary reflection.
Option B has two consequences that one might find objectionable. In the first place, the periods in this option differ from the standard periods currently adopted by all the highest administrative courts in non-punitive cases and that could, at least in the beginning, lead to problems in their application. Secondly, the periods in option B differ from the standard periods applied by all of the highest administrative courts in punitive cases, which complicates their application and could, in tax disputes, lead to the undesirable situation that different reasonable periods apply in the same case (see point 3.14). In light of that, choosing for option B would have to lead to a reconsideration of the standard periods in punitive cases. A total period of 28 months would then apply for the proceedings up to and including the district court, and 20 months for the final appeal. However, this would mean that the periods differ from those in criminal cases and that is less desirable from the perspective of uniformity with criminal law.

3.17 As already mentioned, the choice between the two options is not based in law and I will therefore leave it to the full-bench chamber. Ultimately, my slight preference is for option A, since that option corresponds with the current practice of two of the highest administrative courts (Supreme Court and Central Appeals Tribunal) in non-punitive cases and of all the highest administrative courts and the criminal courts in punitive cases. I could also live with option B, however, since it would slightly ease the pressure on some objection procedures and, in principle, I am in favour of equal treatment of appeals in first instance and final appeals.

3.18 The reasonable period in cases comprising an objection procedure and appeal to one judicial body depends in part on the choice that the chamber makes in relation to § 3.17. If the chamber chooses option A, the reasonable period for objection procedures in those cases would be six months, with a reasonable period of two years for the appeal in first and sole instance. On this latter point, my choice is for the reasonable period for appeal in option A, because of the special care required for a judgment in first and sole instance.
If the chamber chooses option B, in these cases the periods would be eight months for the objection and 20 months for the appeal in first and sole instance.

3.19 The above leads to the following conclusion: the administrative courts should adopt a uniform reasonable period of four years for handling non-punitive cases. As regards the distinct phases of the proceedings, two options have been presented: option A, in which there would be six months for an objection, 18 months for an appeal in first instance and 24 months for a final appeal; and option B, in which there would be eight months for an objection, 20 months for an appeal in first instance and 20 months for a final appeal. I have a slight preference for option A. If the full-bench panel chooses this option, the reasonable period for hearing cases comprising an objection and an appeal in first and sole instance should be 2 years and 6 months, with six months for the objection and two years for the appeal.

4. The reasonable period and requests for preliminary rulings

Background and structure

4.1 In the disputed judgment, in establishing whether a reasonable period had been exceeded the district court totally disregarded the period for which it had stayed the appeal against the original decision on an objection of 14 November 2006 pending the reply to a request for a preliminary ruling made by the Division to the ECJ in its judgment of 11 July 2006 in case C-242/06 (Sahin, see § 1.3). According to the district court, that was a period of almost three years, from the date of the filing of the appeal by the petitioners on 13 December 2006 up to the date of the withdrawal of the appeal by letter of 23 November 2009. The appeal was withdrawn after the Minister had revoked the original decision on the objection in a decision of 30 October 2009 following the ECJ's judgment in the Sahin case.
In the present case, the appellants argue that the district court should not have disregarded the period of three years because there was no need to await the replies to the request for a preliminary ruling in the case of [appellant A] et al. Furthermore, they were only notified of this ground for staying the proceedings by the district court on 6 July 2009. The respondents agree with the district court's ruling. See § 1.7.

4.2 In this part of the advisory opinion I will address the question of the extent to which the duration of preliminary ruling proceedings can be disregarded by the national court in determining whether a reasonable period has been exceeded in the national proceedings. This question will be discussed first for the situation where the request for a preliminary ruling is made in national proceedings in which the reasonableness of the period of those proceedings is being assessed. I will then discuss the situation – which arises in the case of [appellant A] et al. – in which the national court has stayed the case because a preliminary ruling has been requested in another case that may be relevant for the case that is being stayed. Finally, from § 4.15 onwards, I will apply the conclusions to the case of [appellant A] et al.

Attribution of the length of preliminary ruling proceedings to the case in which the questions were referred

4.3 According to established case law, the ECHR must ignore the time taken to obtain a preliminary ruling in national proceedings in determining whether a reasonable period has been exceeded in those proceedings. This position was adopted for the first time in the case of Pafitis vs. Greece, and has since been repeated in the cases of Koua Poirrez vs. France and Mathy vs. Belgium (see footnote 107). The most detailed reasoning of this position was given by the ECHR in the Pafitis case, in which it found as follows.

"95. As regards the proceedings before the Court of Justice of the European Communities, the Court notes that the Athens District Court decided on 3 August 1993 to refer a question to the Court of Justice, which gave judgment on 12 March 1996. During the intervening period the proceedings in the actions concerned were stayed, which prolonged them by two years, seven months and nine days. The Court cannot, however, take this period into consideration in its assessment of the length of each particular set of proceedings: even though it may at first sight appear relatively long, to take it into account would adversely affect the system instituted by Article 177 of the EEC Treaty and work against the aim pursued in substance in that Article. […] 97. […] The delays due to the above three factors (one of those factors was the suspension of the proceedings by the Athens District Court to refer the question - RW) were therefore beyond the jurisdiction of the domestic courts in general and the Supreme Administrative Court and the Athens District Court

in particular. The Court will accordingly take into consideration only the delays that the latter could, in one way or another, have avoided or reduced."

These considerations show that the most important reason for the ECHR to disregard the period of preliminary ruling proceedings is that to include it would have an adverse effect on the system of requests for preliminary rulings as currently laid down in Article 267 of the Treaty on the Functioning of the European Union (TFEU). The ECHR does not say what adverse effects it has in mind, but one factor was probably that an alternative position could lead to national courts, in order to avoid exceeding a reasonable period, refraining from requesting preliminary rulings in cases where they are required to refer questions on the grounds of Article 267 TFEU. This would endanger the objective of the preliminary rulings procedure – which is to ensure that Union law has the same effect under every circumstance in every EU member state and avoid differences of interpretation of the Union law to be applied by the national judicial bodies (see footnote 108). Another factor in the ECHR decision– at least as I understand it from consideration 97 in the Pafitis case – is that the preliminary ruling proceedings were beyond the 'jurisdiction' of the Greek courts and they had no possibility of influencing the length of those proceedings. As the Central Appeals Tribunal correctly noted in a judgment of 14 December 2012 (see footnote 109), an additional point is that the national court has no insight into the proceedings before the ECJ and is therefore incapable of ascertaining whether those proceedings have been completed within a reasonable time (see footnote 110).

The period that should be disregarded, according to the ECHR in the Pafitis case, was the period from the day when the Greek court referred a question to the date on which the European Court of Justice issued its judgment. This is also the period adopted in the Koua Poirrez and Mathy cases.

4.4 The effect of the ECHR's ruling is that the time devoted to preliminary ruling proceedings is actually at the litigant's expense and that his right to a hearing within a reasonable time must yield to the proper functioning of the preliminary ruling proceedings, even though it is difficult to hold the litigant responsible for the creation of proceedings which, although essential for the uniformity of Union law, can also cause unreasonable delays in the administration of justice. Furthermore, the litigant has no influence whatsoever on the decision to refer questions for a preliminary ruling (a decision reserved exclusively to the national court). Criticism of the judgment in the Pafitis case to that effect has also been expressed in the literature (see footnote 111). In view of the Koua Poirrez and Mathy cases, however, that criticism has not caused the ECHR to abandon the line taken in Pafitis.
It is also noteworthy that even in the Koua Poirrez and Mathy cases – which date from after the cases concerning the need for an effective remedy for breaches of a reasonable period referred to in § 3.8 – the ECHR did not regard it as relevant that the litigant has recourse to an effective remedy within the meaning of Article 13 of the Human Rights Convention against possible breaches of a reasonable period in the preliminary ruling proceedings at European level. That point is made in the aforementioned judgment of the Central Appeals Tribunal of 14 December 2012 (see footnote 112), in which the Tribunal, with reference to the ECJ's judgment of 16 July 2009 in case C-385/07 P (Der Grüne Punkt) (see footnote 113), which related to a breach of the reasonable period by the Court of First Instance in a competition case, found as follows:

"In its judgment of 16 July 2009, case no. C-385/07P (Der Grüne Punkt), the ECJ found that the right to a hearing within a reasonable time, as laid down in Article 6 of the Human Rights Convention, is a general principle of Community law, which has since been reaffirmed in Article 47 of the Charter of Fundamental Rights of the European Union. In that judgment, the ECJ found that the case had not been handled by the Court of First Instance within a reasonable time, which could provide grounds for a claim for compensation against the (then) European Community. In this

context, it is relevant that the recourse to the ECJ to claim compensation in connection with a breach of a reasonable period by the ECJ was (also) open to the petitioners on the grounds of Article 268 of the TFEU in conjunction with Article 340, second paragraph of the TFEU. The petitioners failed to substantiate that this avenue, which was referred to by the ECJ itself in the Der Grüne Punkt judgment, was not an 'effective remedy'."

Whether – as the Central Appeals Tribunal suggests – the right of action for compensation before the Union court is genuinely an effective remedy against breaches of a reasonable period by the ECJ in preliminary ruling proceedings, does not need to be addressed here (see footnote 114). In light of the case law of the ECHR, it makes no difference to the non-attribution of the preliminary ruling proceedings to the length of the national proceedings, since the ECHR has rejected the attribution of this period for the reasons mentioned in § 4.3 and has therefore not made this 'exclusion' dependent on the availability of an effective remedy at European level. Naturally, that is not to say that it would not be desirable for such a remedy to be recognised at Union level, but that is a question that needs to be addressed by the ECJ in Luxembourg, under pressure from the ECHR or otherwise. In my view, however, the existence of this remedy is not decisive for disregarding the duration of the preliminary ruling proceedings in the national proceedings.

4.5 The conclusion from the above is that, according to the ECHR, in the national case in which the preliminary ruling was requested, the length of the preliminary relief proceedings does not 'count' in determining a reasonable period for the proceedings in that national case. The period that can be disregarded in the national proceedings in these cases is the period from the day the question is referred until the day of the ruling by the ECJ. This is also the line followed by the administrative courts in the Netherlands (see footnote 115).

Attribution of the duration of preliminary ruling proceedings in cases that are stayed pending a preliminary ruling requested in another case.

4.6 As already noted in § 4.1, in the case of [appellant A] et al. the district court stayed the case because of a request for a preliminary ruling submitted by another court, the Division, in another case, but the reply to which was deemed relevant for the appellants' case. This raises the question of whether preliminary ruling proceedings can also be automatically disregarded in determining a reasonable period for the national proceedings in such a case.
The ECHR has not issued a ruling on this question because no such case has ever arisen before it. The Dutch administrative courts have been confronted with this issue quite regularly and all apply the line taken by the ECHR in the Pafitis case by analogy. In this situation, therefore, the time taken to obtain a preliminary ruling is also not counted in determining whether a reasonable period has been exceeded, at least to the extent that it 'is reasonable' to await the preliminary ruling in the case that is being stayed (see footnote 116). This case law covers both the situation where the referring judge has personally stayed other cases for which the preliminary ruling is relevant, and the situation where a judicial body –a district court, for example – has stayed cases because the questions referred by another judicial body – the Division, for example – are relevant for the cases that are being stayed (see footnote 117). The latter category also covers the situation where a case is stayed because of a question referred by a court in another member state (Germany) (see footnote 118). In that event, the time taken to obtain a preliminary ruling is also not taken into account.

4.7 Insofar as the Dutch administrative courts seek support for their position in the case law of the ECHR, reference is made to the Pafitis and Mathy cases. Although, strictly speaking, neither case relates to the situation in which a case is stayed because of a request for a preliminary ruling in another case, I consider this analogous application by the administrative courts to be correct, because, in my view, the reasons given by the ECHR in the Pafitis case for disregarding the duration

of preliminary ruling proceedings in determining whether a reasonable period has been exceeded in the national proceedings apply equally to that situation.
In that situation, not to disregard the length of the preliminary ruling proceedings could also negatively affect the system of preliminary rulings, since it might prompt a national court not to stay a case pending a relevant preliminary ruling in another case because of the risk that the reasonable period will be exceeded, and instead dispose of the case on the grounds of national law which might, in light of the question that has been referred, be contrary to Union law. That would threaten the objective of the preliminary ruling procedure – to ensure that Union law always has the same effect under all circumstances and in every member state of the Union (see § 4.3) – and its effectiveness. Moreover, in this situation the national court also has no influence whatsoever on the pace at which the ECJ handles a request for a preliminary ruling nor any insight into the proceedings at the ECJ, and is therefore incapable of assessing whether those proceedings will be completed within a reasonable period.
Finally, I would point out that to take a different view would create the danger that national courts would then, in order to avoid being 'sanctioned' by the ECJ for a breach of a reasonable period, refer all cases that are currently stayed – and there are sometimes hundreds of them – to the ECJ, since in that case, on the grounds of the Pafitis case, the duration of the preliminary ruling proceedings will be disregarded. Naturally, such a situation would not benefit anybody.

4.8 My view that the 'exclusion' of preliminary ruling proceedings in determining whether a reasonable period has been exceeded is also correct in cases that are stayed pending a request for a preliminary ruling in another case is not altered by the fact that the complainant in this situation very probably has no effective remedy against a breach of a reasonable period in the preliminary ruling proceedings at Union level.
At least, I feel it is inconceivable that the ECJ will hold the European Union liable, on the grounds of Article 268 TFEU in conjunction with Article 340, second paragraph TFEU, for damage caused as a result of the excessive length of preliminary ruling proceedings where cases have been stayed (correctly or otherwise) by a national court because of questions referred in another case, since the ECJ would then also have to rule on the actions of the national court, which is inappropriate in light of the strict separation of jurisdiction between the ECJ and national courts in cases for damages (see footnote 119). However, as already mentioned in § 4.4, disregarding the duration of preliminary ruling proceedings in determining whether a reasonable period has been exceeded in national proceedings does not depend on the existence of an effective remedy at Union level.

4.9 Given the above, in my view the Dutch administrative courts are justified in ignoring the duration of preliminary ruling proceedings in determining whether a reasonable period has been exceeded even in cases that are stayed because of a request for a preliminary ruling in another case.
As already mentioned in § 4.6, this only applies if waiting for the decision in the preliminary ruling was 'reasonable' given – as I would put it – the scope of the proceedings or the legal dispute in the case that has been stayed. That would be determined mainly by the (factual) grounds put forward, but also encompasses any *ex officio* 'activities' of the judge, the *ex officio* addition of a cause of action and the *ex officio* review against provisions of public policy. If, in light of the scope of the proceedings, the questions referred are irrelevant for the case, it is not reasonable to wait for the decision in the preliminary ruling (see footnote 120). In that case, the time taken by the ECJ to handle the request for a preliminary ruling will not be disregarded in the national proceedings.

4.10 If a case is stayed because of a request for a preliminary ruling by another judge, determining the precise period that the court ordering the stay in the proceedings can attribute to the preliminary ruling proceedings – and can disregard in determining whether there has been a breach of a reasonable period in the national proceedings – is less straightforward than one might imagine at first glance. There are differences in the approach taken between (and sometimes within) the

judicial bodies in determining both when the relevant period starts and when it ends. To illustrate this, a number of judgments of Dutch administrative courts are mentioned below.

In a judgment of 14 December 2012, the Central Appeals Tribunal assumed that in cases that are stayed in connection with a request for a preliminary ruling by the Tribunal in another case, the period from the date of the transmission of the request for a preliminary ruling to the ECJ up to and including the date of receipt of the ECJ's judgment should be disregarded (see footnote 121). In consideration 2.4 of the judgment, this principle is expressed as follows: "This is the period from the date of transmission of the request for a preliminary ruling to the Court on 1 November 2007 up to and including the date of receipt of the Court's judgment on 26 May 2011."

In a judgment of 9 April 2009, the Central Appeals Tribunal disregarded the period from the filing of an appeal until receipt of the ECJ's judgment (see footnote 122). This was a case that had been stayed because the Tribunal had requested a preliminary ruling in another case. Remarkably, the date of the judgment in which the questions were referred was later than the date on which the appeal was filed in the case that was stayed. In this instance, therefore, the period from the filing of the appeal until the decision to refer the questions was also attributed to the preliminary ruling proceedings.

The judgment of the Trade and Industry Appeals Tribunal of 25 June 2009 (see footnote 123) relates to a case that was stayed because the Tribunal had requested a preliminary ruling in other cases. From the dates mentioned in the judgment it can be concluded that the period that was disregarded commenced at the time the parties were notified that their case had been stayed on 23 April 2002 – which was more than eight months before preliminary rulings were requested in the other cases on 7 January 2003 – and ended when the Tribunal's judgment in the cases in which the preliminary rulings were requested was sent to the parties in the case that had been stayed. In this case, therefore, both a period prior to the request for a preliminary ruling and a period after receipt of the ECJ's judgment were attributed to the preliminary ruling proceedings.

From a ruling by the Division of 21 November 2012 it can be concluded that the period from the notification that the case has been stayed in connection with a request for a preliminary ruling by the Division in another case until receipt of the ECJ's judgment was disregarded (see footnote 124). A preliminary ruling was requested in another case on 29 July 2009. On 17 December 2009, the appellant was notified that his appeal (which dated from February or March 2009) had been stayed in connection with the request for a preliminary ruling. In this case, therefore, the period that was disregarded was not the entire duration of the preliminary ruling proceedings, but the part of the proceedings after the appellant had been notified of the reasons for staying the case.

In a judgment of 30 June 2010, the Division ruled in another case that the district court could not disregard the duration of preliminary ruling proceedings in another case in determining whether a reasonable period had been exceeded (see footnote 125). One of the reasons given was that "it has not been shown that the district court notified Zadkine of its decision to stay the case because of the questions referred to the ECJ by the Division, as a result of which Zadkine did not have an opportunity to inform the court of its views regarding that decision."

In a number of judgments by district courts it has been assumed that the duration of preliminary ruling proceedings that should be disregarded only ends at such time as the national court has issued a judgment in the case in which the preliminary ruling was requested. In a judgment of 16 October 2012 Arnhem district court gave the following reasons for this (see footnote 126):

"Contrary to what the plaintiff's attorney has argued, the district court sees no reason to add only 15 months rather than 23 months to the reasonable period of two years in connection with the preliminary ruling proceedings, since following the judgment of the European Court of Justice of 11 June 2009 (cases C-155/08 and C-157/08, LJN: BI8987) the district court also had to await the judgments of the Supreme Court of 26 February 2010 (nos. 43050bis and 43670bis, LJN: BJ9092 and BJ9120). After all, in light of the Supreme Court's law-shaping role, the judgment rendered by the Supreme Court in response to the ECJ's judgment was also of decisive importance for the decision in the dispute."

The differences in the case law outlined above are not easy to explain. It is not clear why periods prior to the referral of questions and after receipt of the ECJ's ruling are attributed to the preliminary ruling proceedings in some cases, but not in others, in establishing whether there has been undue delay in the national proceedings. Accordingly, a proposal for a uniform approach is made below.

4.11 An important aspect of this approach is the position taken by the ECHR in the Pafitis case in the situation where the case is stayed pending a request for a preliminary ruling in the same proceedings. In that situation, the period that can be disregarded in determining whether a reasonable period has been exceeded in national proceedings is the period from the day of the referral of questions to the ECJ up to the date of the ECJ's judgment. It is apparent from this position that the time needed to prepare a request for a preliminary ruling (and if necessary to consult the parties) will not be disregarded. The same applies for the period needed to 'translate' the preliminary ruling into a final judgment by the national court. Both periods are therefore attributable to the national proceedings in determining whether there has been a breach of the reasonable period requirement, which is logical, in my view, since the length of those two periods is determined by the national court.
In my opinion, that should also be the point of departure in situations where a case is stayed because of a request for a preliminary ruling in another case. The maximum period that can be disregarded in determining whether a reasonable period has been exceeded is therefore the period from the date of the request for a preliminary ruling to the date of the ECJ's judgment.
There are two reasons for adopting this point of departure. In the first place, in my view it is logical that since in this situation the duration of the preliminary ruling proceedings should be 'excluded' by analogy with the Pafitis case (see § 4.7), the limits of that case as regards that 'exclusion' should also apply by analogy. Failing to do that would mean that the period to be disregarded would be shorter in the case in which the request for a preliminary ruling was made than in the cases that are stayed because of that request. That does not seem really defensible to me. Secondly, also in this situation it is the national courts that determine the length of the period preceding the request for a preliminary ruling and the period following the preliminary ruling.

4.12 The point of departure formulated above means that the 'excluded' period can never commence earlier than the date of the request for the preliminary ruling (see footnote 127). That applies even if the case was stayed earlier (and the parties were informed of the postponement) because the judicial body was preparing a request for a preliminary ruling in another case. However, the period can commence (significantly) later than the date of the referral of questions, and automatically will do so in cases that are only brought before the judicial body after it has requested the preliminary ruling. Furthermore, in my view the general rule should be that the 'excluded' period only commences at such time as the court staying proceedings has notified the parties in writing that the case is being stayed because of a request for a preliminary ruling in another case. I will return to this in § 4.13.
On the other hand, this point of departure means that the 'excluded period' ends on the date of the decision by the ECJ in the preliminary ruling proceedings. In making that assertion I am not

forgetting that cases will also be (further) stayed after that ruling because the judge ordering the stay is waiting for the court that requested the preliminary ruling to make a decision on the basis of that ruling. Such further stays may certainly be required, since decisions by the ECJ can leave room for interpretation and that interpretation is first and foremost a matter for the referring (usually the highest) judicial body. It is therefore certainly justifiable for lower courts to await the judgment of that court, as was the case in the aforementioned judgment of Arnhem district court of 16 October 2012 (see footnote 128). In my view, however, that does not mean that this period can automatically be disregarded in determining whether a reasonable period has been exceeded.
My opinion that the phases before and after preliminary ruling proceedings should not be disregarded in determining whether there has been undue delay in national proceedings does not in fact mean that a reasonable period will automatically have been exceeded - partly because of the duration of those two phases – if the length of the proceedings exceeds the standard periods referred to in § 3. After all, it is conceivable that the length of the proceedings can be justified by the exceptional circumstances of the case, for example the complexity of the case. However, whether that is the case has to be determined on the basis of the circumstances of the specific case.

4.13 If a case is stayed because questions are referred for a preliminary ruling in the case itself, the parties are aware of the referral and that the case has been stayed (and the reasons for it). That does not apply in the situation where a case is stayed because of a request for a preliminary ruling in another case, unless they are notified by the judicial body ordering the stay. Until then, the case is in abeyance for reasons unknown to the parties and they face uncertainty about the further course of the proceedings in the case and, in terms of a 'reasonable period, 'anxiety and frustration' about the course of the proceedings. In my view, therefore, the period of the preliminary ruling proceedings should only be disregarded from the time that the judge staying the proceedings has notified the parties in writing that the case has been stayed because of the request for a preliminary ruling in another case. The parties will then know that their case has been stayed and until when (i.e., until the ECJ has issued a preliminary ruling) and to that extent will no longer suffer 'anxiety and frustration'.
The line proposed here was followed by the Division in the aforementioned judgments of 21 November 2012 and 30 June 2010 (see footnote 129). In the latter judgment, the Division pointed out, correctly in my view, that such notification also enables the parties to inform the judicial body of their views regarding the staying of the proceedings, since they then have an opportunity to argue that the questions referred in another case are not relevant for the hearing of their own case. Although the views of the parties on this point will not necessarily be decisive, this creates an additional safeguard against cases being stayed where it might not be justified.

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4.14 The above leads to the following conclusions:

- The duration of preliminary ruling proceedings before the European Court of Justice should be disregarded in assessing whether a reasonable period has been exceeded in national proceedings. That applies both for cases in which questions have been referred to the ECJ and cases that are stayed because questions have been referred to the ECJ in another case. In the latter case, however, the postponement must be 'reasonable' in the sense that the questions are relevant for the adjudication of the case that is stayed in light of the scope of the proceedings (legal dispute).
- In cases in which the preliminary ruling is requested, the period that can be disregarded commences on the day of the judgment in which the questions are referred to the ECJ and ends on the day of the ECJ's judgment.
- In cases that are stayed because questions have been or are being referred in another case, the period that can be disregarded commences when the parties, after the questions have been

referred, have been notified in writing of (the reasons for) staying their case. The period ends on the day of the ECJ's ruling.

Application of these rules in the case of [appellant A] et al.

4.15 In the case of [appellant A] et al., the district court disregarded the period from 13 December 2006 (the date on which the notice of appeal by [appellant A] et al. was received by the district court) until 23 November 2009, the date on which the appeal was withdrawn, in determining whether there had been undue delay in the proceedings because of the request for a preliminary ruling by the Division in its judgment of 11 May 2006 in case C-242/06 (Sahin). The appeal was withdrawn after the Minister had revoked the original decision on the objection by decision of 30 October 2009 in response to the ECJ's ruling of 17 September 2009 in the Sahin case. [Appellant A] et al. were in fact only notified by the district court that their case had been stayed by reason of the request for a preliminary ruling in the Sahin case by letter of 6 July 2009, having written to the district court on 26 August 2008 and 23 March 2009 asking why their case had not yet been dealt with.
To decide whether, in light of the views I expressed earlier, the district court acted correctly, it first has to be determined whether it was reasonable for the district court to stay the case pending a ruling on the questions referred by the Division in the Sahin case because, given the scope of the proceedings in [appellant A] et al.'s case, , those questions were relevant for that case. According to the district court they were, but it gave no reasons for that finding in its judgment.

4.16 A simple, and in my view entirely defensible, answer on this point is that the Sahin case had no relevance for the case of [appellant A] et al., because in the Sahin case – as mentioned in § 1.3 – the issue was the possible incompatibility of the charges levied by the Netherlands on a Turkish worker for the extension of a residence permit with Article 13 of Decision No. 1/80 of the Association Council, whereas [appellant A] et al. were appealing against the 'immediate sanction' policy with respect to the payment of the charges (see §§ 1.1 and 1.2). In that context, [appellant A] et al. had already argued during the objection proceedings that the Minister should have allowed them a reasonable period to remedy the omission and pay the charges before suspending the handling of the applications. They reasserted this position later in the proceedings, for example in the notice of appeal in the present case, in which they argued, in so many words, that the appellants did want to pay the charges but were not given an opportunity to do so because of the 'immediate sanction' policy. The Sahin case was irrelevant for a decision on this particular ground of appeal.
In my view, this reasoning is in line with the case law of the Division concerning the scope of proceedings, according to which the grounds put forward by the appellant are, in principle, decisive for that scope. If one follows the Division, the district court was wrong to stay the case of [appellant A] et al. and the period of the postponement is not attributable to the preliminary ruling proceedings, in which case that period cannot be disregarded in assessing whether a reasonable period was exceeded in the national proceedings.

4.17 It is conceivable, however, that the chamber will take a different line on this point and find that, on the grounds of Article 8:69, second paragraph of the General Administrative Law Act, the district court should have considered the issue raised in the Sahin case – to what extent does Article 13 of Decision No. 1/80 prevent the levying of charges on Turkish nationals like [appellant A]? – in its assessment by supplementing the cause of action *ex officio*. After all, the case of [appellant A] et al. concerns the levying of charges and if it were to be found in the Sahin case that levying those charges was unlawful the district court would no longer have to address the issue of the 'immediate sanction' policy.
I am not in fact aware of any cases in which the highest administrative courts have applied Section 8:69, second paragraph of the General Administrative Law Act in such a way in a more or less similar

case (see footnote 130). Nevertheless, for the chamber's information – and perhaps unnecessarily – I will now discuss the relevance of the questions referred in the Sahin case for the levying of charges in the case of [appellant A] et al.

4.18 In the Division's judgment of 11 May 2006 (see footnote 131), in which the questions that led to the ruling of the ECJ in the Sahin case were referred to the ECJ, the handling of Sahin's application for an extension of the validity of a regular residence permit for a definite period was suspended because the relevant charges had not been paid on time. Sahin argued, inter alia, that the levying of charges was contrary to Article 13 of Decision No. 1/80 of the Association Council (see footnote 132), because the levying of charges constituted a new restriction on the conditions of access to employment. The article reads as follows:

The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.

In general, this 'standstill provision' prohibits the introduction of any new national measures whose purpose or consequence would be to impose stricter conditions on Turkish nationals wishing to avail of the free movement of workers on the national territory than those that applied at the time of the entry into force of Decision No. 1/80 in 1980 (see footnote 133).
An important point in the Division's judgment of 11 May 2006 was whether Sahin was living legally in the Netherlands at the time of the application. This point was relevant because in its judgment of 21 October 2003 in the joined cases C-317/01 and C-369/01 (Abatay and Sahin), the ECJ had ruled that Article 13 of Decision No. 1/80 only benefits a Turkish national if he is living legally in the territory of the relevant member state (see footnote 134). Sahin's position in the case before the Division was complex in the sense that Sahin had complied with the Dutch rules for initial admission and residence and had performed legal work in paid employment for a certain period, but had not requested an extension of the validity of his residence permit on time, so that on expiry of that permit and at the time of applying for its extension he was not legally resident under national law and was also not entitled to perform work. At the same time, with effect from the date of the application Sahin was again regarded as a legal resident and Dutch law provided that although the application by an alien in Sahin's situation was equated (procedurally) with an application for an (initial) residence permit, it was assessed (substantively) against the requirements laid down for admission for continued residence of an alien living legally in the Netherlands (see footnote 135). Therefore it could be argued – according to the Division – that Sahin could invoke the rights laid down in Article 13, even in the period during which he was illegally resident and performing work illegally when he made his applications. Consequently, the first question referred by the Division was, briefly, whether an alien in Sahin's situation could invoke Article 13 of Decision No. 1/80.
In the rest of the judgment of 11 May, the Division discussed the question of whether, if Sahin could indeed invoke Article 13 of Decision No. 1/80, the levying of charges might constitute a restriction within the meaning of Article 13. In that context, it found that on 1 December 1980, the date on which Article 13 took effect, there was no statutory obligation to pay charges for an application for a residence permit or for its extension. Charges for an application for a residence permit were only introduced with the entry into force of the Aliens Act 2000 and the Aliens Regulation on 1 April 2001 and the charges for applications for an extension of the validity of a residence permit that had already been granted were only introduced by regulation of 27 March 2002. The Division then found as follows:

"The question therefore arises whether Article 13 of Decision No. 1/80 prevents a member state from charging a certain amount in fees for handling an application for a residence permit or for an extension thereof."

The Division then referred the following question for a preliminary ruling:

"2a. Should the term "restriction" in Article 13 of Decision No. 1/80 be interpreted in such a way that it covers the obligation to pay charges owed for handling an application for an extension of the validity of a residence permit by an alien, a national of Turkey, who falls within the scope of application of Decision No. 1/80, failing which the handling of his application is suspended on the grounds of Article 24, second paragraph of the Aliens Act 2000?"

Finally, in the third question the Division asked whether Article 13 of Decision No. 1/80, in conjunction with Article 59 of the Additional Protocol to the Association Agreement between the EEC and Turkey (see footnote 136), should be interpreted in such a way that the amount of the charges for the handling of an application for a residence permit or its extension (169 euro at the time), for Turkish nationals who fall under the scope of application of Decision No. 1/80, may not exceed the amount charged (30 euro) to nationals of the European Community for handling an Application for Verification against EU Law and issuing the associated residence document.

4.19 If one compares the situation in the Sahin case with that of [appellant A] et al., a first relevant difference between the cases seems to be that the relevant article in the Sahin case, Article 13 of Decision No. 1/80, relates to 'access to employment for workers and members of their families', while [appellant A] requested a residence permit with the restriction 'work as a self-employed person' (see § 1.1). Article 13 of Decision No. 1/80 does not apply to that situation, since that article relates to the free movement of workers. The rights of Turkish nationals who, like [appellant A], want to start their own business in an EU member state – and therefore invoke the freedom of establishment and to provide services – are governed by Article 41, first paragraph of the Additional Protocol referred to in § 4.18, which is also part of EU legislation concerning the association between the EEC and Turkey. This article reads as follows:

"The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services ".

Although there is a clear difference between the situation of [appellant A] and that of Sahin on this point, that difference does not mean that the questions referred in the Sahin case could not be relevant for [appellant A]'s situation, since in a final judgment, dating from before the Sahin and [appellant A] cases, the ECJ ruled that 'the same significance must be assigned' to Article 13 of Decision No. 1/80 and Article 41, first paragraph of the Additional Protocol (see footnote 137). This implies that the ECJ's decision on the Dutch requirement for a Turkish employee like Sahin to pay charges in light of Article 13 of Decision No. 1/80 is also relevant for the assessment of this requirement for a Turkish self-employed person like [appellant A] in light of Article 41, first paragraph of the Additional Protocol.

4.20 A difference between the situations in the cases of Sahin and [appellant A] that is relevant, in my view, concerns the residence status of the two individuals. As mentioned in § 4.18, the Sahin case related to a Turkish national who had observed the national rules for initial admission and residence and had performed legal work in paid employment for a certain period, but who, as a result of the failure to apply for an extension of his residence permit in time, on expiry of that permit and at the time of the application for its extension was not a legal resident under national law (so that his application was procedurally equated with an application for an (initial) residence permit), but whose application was substantively assessed against the requirements laid down for admission for continued residence of an alien living legally in the Netherlands. The application by [appellant A], by contrast, concerned a 'genuine' initial application by a Turkish national who had never lived legally in the Netherlands. The questions referred in the Sahin case did not relate to that situation (see footnote 138). The answer by the ECJ in its ruling of 17 September 2009, in which the ECJ held –

in brief – that the amount charged to Turkish nationals for residence permits must not be disproportionate to the amount demanded from EU citizens (see § 1.3), concerned Sahin's specific situation. The ECJ seems to have been of the opinion that in his situation the conditions for legal residence in Article 13 of Decision No. 1/80 had been met (although the final decision on that point was left to the national court) (see footnote 139).
The ECJ's ruling did not relate to the situation of [appellant A], who did not comply with the conditions for legal residence. The conclusion therefore is that the questions referred by the Division in the Sahin case were not as such relevant for the appeal by [appellant A] et al.

4.21 Unfortunately, that is not the end of the matter. The question of whether the standstill provision of Article 41, first paragraph of the Additional Protocol also relates to the admission of a Turkish national living (not legally) in the territory of a member state was before the ECJ (and had been since the end of 2004) at the time [appellant A] et al. filed their appeal on 11 December 2006 because of a question referred to it by the House of Lords in case C-16/05 (Tum and Dari) (see footnote 140). In that case, Advocate-General Geelhoed concluded on 12 September 2006 that this provision did not apply to the procedure for admission to the territory of a member state of a Turkish national who intended to establish a company in that member state. In its judgment of 20 September 2007, however, the ECJ ruled otherwise and declared in law (see footnote 141):

"Article 41, first paragraph 1, of the Additional Protocol […] is to be interpreted as prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account."

In a manner of speaking, this judgment by the ECJ in the Tum and Dari case also changed the scope of the questions referred by the Division in the Sahin case since if – as ultimately happened – the ECJ were to rule negatively on the levying of charges for the granting of a residence permit or an extension thereof to a Turkish national like Sahin, who was (substantively) living legally in the Netherlands, then, in light of the Tum and Dari case, that judgment would also be applicable to the application for initial admission by a Turkish national residing illegally in the country like [appellant A]. Briefly, the question referred by the Division in the Sahin case became relevant for the situation of [appellant A] (and for the case of [appellant A] et al.) from 20 September 2007. In fact, that relevance did not arise from the Sahin case itself, but from that case in relation to the Tum and Dari case.

4.22 The conclusion from the above is that if the chamber does not wish to approach the question of relevance via the route suggested in § 4.16 – and hence does not already find the questions referred in the Sahin case to be irrelevant because the case of [appellant A] et al. is related to the 'immediate sanction' policy – the combination of the Sahin case and the Tum and Dari case first became relevant for the case of [appellant A] et al. on 20 September 2007. In principle, it was only from that date that the district court had reason to say the latter case.
In § 4.14 I stated that in a case like that of [appellant A] et al. – in which the case is stayed because of a request for a preliminary ruling in another case – the period that can be disregarded in determining whether there has been a breach of a reasonable period in the national proceedings, because it can be attributed to the preliminary ruling proceedings, should in my view only commence at such time as the parties are notified in writing by the court of (the reasons for) the decision to stay their case. The district court sent that letter on 6 July 2009. The only reason given for staying the case in that letter was a reference to the questions referred by the Division in case C-242/06 (Sahin) in 2006. In my view, that is insufficient reasoning for staying the proceedings because

– as mentioned in § 4.21 above – the questions referred in the Sahin case were not relevant for the case of [appellant A] et al. in themselves, but only in relation to the Tum and Dari case. Consequently, in my opinion, this means that none of the period for which the case was stayed by the district court can be attributed to the preliminary ruling proceedings and that period can therefore not be disregarded in determining whether or not there was a breach of the reasonable period requirement in the national proceedings.

4.23 It is conceivable that the chamber – unlike myself – will find that the letter of 6 July 2009 was sufficiently clear about the reasons for staying the case of [appellant A] et al., for example because the chamber feels that [appellant A] et al. could have made the link with the Tum and Dari case themselves. In that case, part of the duration of the national proceedings can be attributed to the preliminary ruling proceedings, but – in my view – only a small part.
In this option, that period would commence – in accordance with the views I expressed in § 4.14 – on 6 July 2009, the date of the letter in which the district court notified [appellant A] et al. that their case had been stayed. As regards the end of the period attributable to the preliminary ruling proceedings, the district court opted for 23 November 2009, the date on which [appellant A] et al. withdrew their appeal. In view of the position adopted in § 4.14 – which is based on the Pafitis case – that date is too late and the district court should have opted for 17 September 2009, the date on which the ECJ issued its ruling in the Sahin case.
In this option, therefore, only the period from 6 July 2009 to 17 September 2009 can be attributed to the preliminary ruling proceedings and only this period can be disregarded in determining a reasonable period for the national proceedings.

4.24 The above leads to the following conclusion. In my view, the period for which the case of [appellant A] et al. was stayed by the district court cannot be attributed to the preliminary ruling proceedings in the Sahin case (and should therefore not be disregarded in determining whether there was undue delay in the national proceedings).
-Primarily because the Sahin case, in which the legitimacy of the levying of charges on Turkish nationals was raised in light of Article 13 of Decision No. 1/80, was irrelevant for the case of [appellant A] et al. since the latter case was concerned with the application of the 'immediate sanction' policy with respect to the levying of charges (§ 4.14).
- Alternatively, if the chamber finds that the district court should have considered the issue raised in the Sahin case in its decision and should have supplemented the cause of action *ex officio*, because in its letter of 6 July 2009 the district court had only justified the decision to stay the case with a reference to the Sahin case, while that case was not in itself relevant for the case of [appellant A] et al. (§ 4.22).

5. Conclusion
In view of the above, my conclusion with regard to the questions presented in § 2.4 is as follows:

The administrative courts should adopt a uniform reasonable period of four years for the handling of non-punitive cases. For the distinct phases, there are two options: option A, in which there would be 6 months for the objection, 18 months for the appeal in first instance and 24 months for the final appeal; and option B, in which there would be 8 months for the objection, 20 months for the appeal in first instance and also 20 months for the final appeal. My preference is for option A. If the chamber also chooses this option, for the handling of cases that consist of an objection and an appeal in sole and final instance, the reasonable period should be 2 years and 6 months, with 6 months for an objection and 24 months for an appeal.

In assessing whether there has been undue delay in national proceedings, the duration of preliminary ruling proceedings before the ECJ may be disregarded, both in cases where questions

have been referred to the ECJ and in cases that have been stayed because questions have been referred in another case, provided, in the latter situation, that the postponement is 'reasonable' because the questions are relevant, given the scope of the proceedings (the legal dispute) in the case that is stayed, for a decision in that case. In the latter case, the period that can be disregarded commences at such time as the parties, after the questions have been referred, are notified in writing by the court of (the reasons for) the decision to stay their case and the period ends on the date of the ECJ's ruling.

R.J.G.M. Widdershoven
State Councillor Advocate-General

(1) The first was not dealt with and the objection lodged against that decision was dismissed as unfounded on 29 July 2004, and the appeal against that ruling was later withdrawn. A decision on the second was not made on time and the ensuing objection was dismissed as unfounded on 1 December 2005; no appeal was made against that ruling.

(2) Preliminary relief judge in The Hague, sitting in Zwolle, 16 February 2006, Awb 06/5549 and Awb 06/5550.

(3) The Hague District Court 17 February 2006, Awb 06/5600. This judgment was confirmed in a judgment of the AJD of 16 March 2006, 200601620/1.

(4) AJD 11 May 2006, ECLI:NL:RVS:2006:AX2432. This issue is discussed in detail in § 4.

(5) In the notice of appeal of 5 March 2013 in the present case, the appellants in fact denied that they had paid the charges.

(6) On this issue, see section B5/7.3.1 of the Aliens Act Implementation Guidelines 2000 that were in force at the time, as well as the judgments mentioned in the next footnote. This issue is not relevant for this advisory opinion and is therefore not further discussed.

(7) The Hague District Court, sitting in Amsterdam, 29 October 2010, AWB 10/12889, with reference to AJD 29 September 2010, ECLI:NL:RVS:2010:BN9181.

(8) The Hague District Court, sitting in 's-Hertogenbosch, 20 January 2012, AWB 11/6665.

(9)'s-Hertogenbosch District Court(read: East Brabant) 1 February 2013, AWB 12/14453.

(10) AJD 4 March 2009, ECLI:NL:RVS:2009:BH4667

(11) Supreme Court 9 April 2010, ECLI:NL:HR:2010:BJ8465, and AJD 21 November 2012, ECLI:NL:RVS:2012:BY3698, respectively.

(12) The reason why the first advisory opinion is only being presented today is connected with the transitional provisions of the Administrative Procedural Law (Amendment) Act (*Wet aanpassing bestuursprocesrecht*), pursuant to which no advisory opinions can be presented in cases in which, if there is an appeal in first and sole instance, the disputed decision was announced before 1 January 2013, or in which, if there is a final appeal, the district court's disputed judgment dated from before 1 January 2013.

(13) This option is explicitly mentioned in the Explanatory Memorandum to the Administrative Procedural Law (Amendment) Act. Cf. Parliamentary Documents II 2009/2010, 32 450, no. 3, p. 17.

(14) For more detailed descriptions of the relevant ECHR case law see, among others, Pieter van Dijk et al. (eds.), Theory and Practice of the European Convention on Human Rights, Intersentia: Antwerp - Oxford 2006 (fourth edition), pp. 511-650 (revised by Pieter van Dijk and Marc Viering); A.M.L. Jansen, *De redelijke termijn, met name in het bestuursrecht*, BJu: Den Haag 2000; A.W. Heringa, Commentaar 'Redelijke termijn' (par. 3.6) , in: A.W. Heringa, J.G.C. Schokkenbroek & J. van der Velde, *Europees Verdrag voor de Rechten van de Mens, Rechtspraak & Commentaar* (loose-leaf), Vermande: Den Haag (closed down on 1 January 2004, continued by SDU as an online bulletin); A.M.L. Jansen & D.W.M. Wenders, *Een kroniek van de redelijke termijn*, NJCM-Bulletin, Nederlands Tijdschrift voor Mensenrechten 2006/8, pp. 1091-1127.

(15) For a current overview of Dutch case law, see B.J. van Ettekoven et al., *Overheidsaansprakelijkheid anno 2013: de stand van de rechtsontwikkeling*, O&A 2013/32, issue 2, pp. 61-72.

(16) In this opinion, which covers all areas of administrative law, I only mention the ECLI number and not the sources in (one of) the many Dutch journals of case law unless the notes in them are 'used' in the text. After all, the ECLI number mentions all the Dutch sources of the judgment concerned.

(17) Cf. Van Dijk et al. (eds.) 2006, p. 524-535. For decisions regarding the establishment of civil rights or obligations see, inter alia, ECHR 23 October 1985, Series A, Vol. 97 (Benthem), AB 1986/1; ECHR 9 December 1994, no. 48/1993/443/522 (Schouten and Meldrum), AB 1995/599; ECHR 19 April 2007, no. 63235/00 (Eskelinen), AB 2007/317, EHRC 2007/82.

(18) See ECHR 21 February 1984, Series A, Vol. 73 (Öztürk) , NJ 1988/937.

(19) On the inapplicability of Article 6 of the Human Rights Convention to the admission, residence and expulsion of aliens, see ECHR 5 October 2000 (Maaouia), AB 2001/80, and on tax demands, ECHR 12 July 2011, no. 44759/98 (Ferrazzini), AB 2004/400.

(20) Cf. AJD 3 December 2008, ECLI:NL:RVS:2008:BG5910; Trade and Industry Appeals Tribunal 8 September 2010, ECLI:NL:CBB:2010:BN6785; Supreme Court 10 June 2011, ECLI:NL:HR:2011:BO5080.

(21) For relevant case law, see Jansen 2000, p. 24, and Van Dijk et al. (eds.) 2006, p. 603. In exceptional circumstances the *dies a quo* may be as early as the time of the request for a decision. See, for example, ECHR 26 April 1994, Series A, Vol. 289-A (Vallée) .

(22) Cf. ECHR 28 June 1978, Series A, Vol. 27 (König) , NJ 1980/54; ECHR 9 December 1994, no. 48/1993/443/522 (Schouten and Meldrum) , AB 1995/599; ECHR 29 June 2006, no. 22457/02 (Bozic). Cf.E.A. Alkema, *Telt de 'voorfase' mee voor de redelijke termijn?,* NJB 1994, issue 18, pp. 601-604.

(23) Cf. ECHR 15 July 1982, Series A, Vol. 51 (Eckle) ; ECHR 10 December 1982 (Foti) , NJ 1987/828; ECHR 22 May 1998 (Hozee) , NJ 1998/809.

(24) On the tax penalty, see Supreme Court 23 June 1993, ECLI:NL:HR:1993:BH8519, and Supreme Court 27 June 2001, ECLI:NL:HR:2001:AB2314. For relevant case law of the other highest administrative courts, see Van Ettekoven et al. 2013, p. 62.

(25) Cf. Van Dijk et al. (eds.) 2006, pp. 605-606, and Jansen 2000, p. 1098, with reference to relevant ECHR case law.

(26) See, inter alia, ECHR 27 June 2000 (Frydlander), AB 2001/86; EHRM 29 March 2006, no. 36813/97 (Scordino), AB 2006/294, ECHR 2006/61; ECHR 29 March 2006, no. 62361/00 (Pizzati II), JB 2006/134.

(27) ECHR 23 April 1987, Series A, no. 117 (Erker and Hofauer), par. 69.

(28) ECHR 27 June 2000, nr. 32842/96 (Nuutinen) .

(29) See Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468; AJD 4 March 2009, ECLI:NL:RVS:2009:BH4653; Central Appeals Tribunal 17 February 2010, ECLI:NL:CRVB:2010:BL4247.

(30) Jansen 2000, pp. 162-163, with reference to relevant ECHR case law.

(31) For the most extensive survey of the ECHR cases see the survey, based in part on Heringa, *Europees Verdrag voor de Rechten van de Mens, Rechtspraak & Commentaar* (loose-leaf), by Advocate-General Wattel in his advisory opinion in Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468, point 2.11.

(32) Cf. Advocate-General Wattel in his advisory opinion in Supreme Court 10 June 2011, ECLI:NL:PHR:2011:BO5046, point 8.27.

(33) Jansen & Wenders 2006, pp. 1102-1103. See ECHR 8 June 2006, (Sürmeli), ECHR 2006/100 (labour disputes), and ECHR 29 June 2006, no. 22457/02 (Bozic, pension disputes).

(34) ECHR 30 October 1991, Series A, Vol. 213 (Wiesinger), point 60; ECHR 27 February 1992, Series A, Vol. 228-f (G. v. Italy), point 17.

(35) ECHR 23 June 1993 (Ruiz-Mateos), point 49, NJ 1995/397.

(36) Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468, BNB 2005/337, with notes by M.W.E. Feteris to Supreme Court 17 June 2005, ECLI:NL:HR:2005:AT7630, BNB 2005/338.

(37) Feteris in his notes to BNB 2005/338, point 12.

(38) Feteris in his notes to BNB 2005/338, point 16.

(39) ECHR 9 December 1994, no. 48/1993/443/522 (Schouten and Meldum), AB 1995/599, JB 1995/49. The length of the proceedings before the Appeals Tribunal and Central Appeals Tribunal of 2 years and 6 months (Schouten) and one year and 10 months (Meldrum) were found not to be unreasonable.

(40) ECHR 26 October 2000, no. 30210/96 (Kudla), AB 2001/275, NJ 2001/594, EHRC 2000/89. On the judgment, see T. Barkhuysen & A.M.L. Jansen, *Actuele ontwikkelingen in de redelijke termijnjurisprudentie: over de Nederlandse termijnoverschrijdingen en ontbrekende nationale rechtsmiddelen*, NJCM-bulletin 2003, pp. 586-600; T. Barkhuysen & A.M.L. Jansen, *Rechtsmiddelen tegen rechterlijke en bestuurlijke traagheid: Het EVRM noopt tot aanpassing van het Nederlands*

recht, NJB 2002, pp. 841-848, and the commentary by T. Barkhuysen in AB-Klassiek, Kluwer: Deventer 2009 (sixth edition), no. 34, pp. 485-505.

(41) ECHR 11 September 2002 (Mifsud), EHRC 2002/92; ECHR 29 March 2006, no. 36813/97 (Scordino), AB 2006/294, EHRC 2006/61; ECHR 29 March 2006, no. 62361/00 (Pizzati II) , JB 2996/134.

(42) For the requirements that the ECHR stipulates for an effective compensatory remedy in the event of violations of a reasonable period, see Jansen & Wenders 2006, pp. 1107-1117; M. Schreuder-Vlasblom, Dertig jaar later; de redelijke termijn als nationale uitdaging, in: T. Barkhuysen et al. (eds.), *Geschakeld recht. Verdere studies over Europese grondrechten ter gelegenheid van de 70ste verjaardag van prof. mr. E.A. Alkema*, Kluwer: Deventer 2009, p. 453-473; P. van Dijk, Een effective remedy in de zin van artikel 13 EVRM bij overschrijding van de redelijke termijn in de zin van artikel 6 EVRM - bestuursrechtelijke procedures, in: T. Barkhuysen et al. (red.), *Geschakeld recht* 2009, pp. 115-133; Barkhuysen, commentary on Kudla, AB-Klassiek 2009, no. 34.

(43) ECHR 29 June 2006, no. 22457/02 (Bozic).

(44) Cf. ECHR 15 June 1982, Series A, Vol. 51 (Eckle) .

(45) ECHR 10 November 2004 (Pizzati I) , AB 2005/257; ECHR 6 October 2005 (Lukenda), EHRC 2005/114; ECHR 29 March 2006, no. 36813/97 (Scordino) , AB 2006/294, EHRC 2006/61; ECHR 4 July 2006 (Zarb), EHRC 2006/118.

(46) ECHR 29 March 2006, no. 36813/97 (Scordino), AB 2006/294, EHRC 2006/61; ECHR 29 March 2006, no. 62361/00 (Pizzati II) , JB 2006/134. Cf. Jansen & Wenders 2006, p. 1115-1117; Barkhuysen, commentary on Kudla, AB-Klassiek 2009, no. 34, pp. 491-493; Van Dijk 2009, p. 125-128.

(47) Cf. Jansen & Wenders 2006, pp. 1110-1111, with reference to ECHR 8 June 2006 (Sürmeli), EHRC 2006/100.

(48) ECHR 29 March 2006, no. 62361/00 (Pizzati II) , JB 2006/134, and ECHR 3 July 2008, no. 40383/04 (Vidas). Cf.Van Dijk 2009, pp. 120-121

(49) ECHR 29 March 2006, no. 36813/97 (Scordino) , AB 2006/294, EHRC 2006/61.

(50) ECHR 8 July 2008, no. 64894/01 (Fuggi) .

(51) AJD 4 June 2008, ECLI:NL:RVS:2008:BD3121; Central Appeals Tribunal 11 July 2008, ECLI:NL:CRVB:2008:BD7033. On (the background to) the remedy, see T. Barkhuysen & M.L. van Emmerik, *Schadevergoeding bij schending van de redelijke termijn: op weg naar een effectief rechtsmiddel?*, NJB 2008/1266, issue 26, pp. 1579-1582; T. Barkhuysen & B.J. van Ettekoven, *De compensatie voor schending van de redelijke termijn van art. 6 EVRM door de bestuursrechter*, NTB 2009/19, issue 6, pp. 129-141; A.M.L. Jansen, *Overheidsaansprakelijkheid voor overschrijding van de redelijke termijn*, O&A 2009/23, issue 2, pp. 60-68; Barkhuysen, commentary on Kudla, AB-Klassiek 2009, no. 34; Schreuder-Vlasblom 2009, pp. 469-473; J.C.A. de Poorter & A. Pahladsingh, *Rechtsvorming rond de redelijke termijn*, JBplus 2010/2, pp. 81-102; A.Q.C. Tak, *Het Nederlands bestuursprocesrecht in theorie en praktijk*, Wolf Legal Publishers: Nijmegen 2011, Part II, pp. 2196-2208; Van Ettekoven et al. 2013, pp. 61-72.

(52) If no judicial proceedings follow an objection, the litigant cannot claim compensation for excessively lengthy proceedings on the objection. See Central Appeals Tribunal 29 April 2009, ECLI:NL:CRVB:2009:BI2748; AJD 18 November 2009, ECLI:NL:RVS:2009:BK3597; Supreme Court 11 January 2013, ECLI:NL:HR:2013:BX8359.

(53) If the violation of the reasonable period is attributable to the administrative body, the judge can - without reopening the examination – deal with the question of damage directly on the grounds of Article 8:73 of the General Administrative Law Act. See, for example, AJD 26 April 2011, ECLI:NL:RVS:2011:BQ3236 and AJD 30 March 2012, ECLI:NL:RVS:2012:BW1467.

(54) For the contents of the consultation version, see the advisory opinion of Advocate-General Wattel in Supreme Court 10 June 2011, ECLI:NL:PHR:2011:BO5046, points 9.30 et seq., and De Poorter & Pahladsingh 2010, pp. 93-98. According to the proposal, what periods are reasonable would be determined by Order in Council.

(55) See the Explanatory Memorandum to the Decree of 22 April 2013 (Bulletin of Acts, Orders and Decrees. 2013, 162).

(56) Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468.

(57) Supreme Court 3 October 2000, ECLI:NL:HR:2000:AA7309.

(58) See his notes to Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468, BNB 2005/337, included under BNB 2005/338.

(59) Schreuder-Vlasblom 2009, p. 460.

(60) Advisory opinion of 24 February 2004, for Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468, included in BNB 2005/337. Cf. Barkhuysen and Van Emmerik in their notes to AJD 3 December 2008, ECLI:NL:RVS:2008:BG5910, AB 2009/70, point 9.

(61) Barkhuysen & Van Ettekoven 2009, p. 133.

(62) Van Ettekoven et al. 2013, p. 64.

(63) I ignore the cassation proceedings in the remainder of this opinion because in administrative law, with a single exception, cassation is only possible in tax cases. Incidentally, the Supreme Court adopts a maximum reasonable period for cassation proceedings of two years. See Supreme Court 17 June 2005, ECLI:NL:HR:2005:AT7630.

(64) Supreme Court 10 June 2011, ECLI:NL:HR:2011:BO5080.

(65) Supreme Court 22 March 2013, ECLI:NL:HR:2013:BX6666.

(66) Supreme Court 19 August 2013, ECLI:NL:HR:2013:199.

(67) Cf. the Explanatory Memorandum to the Bill on the strengthening of tax law enforcement (*Versterking fiscale rechtshandhaving*), Parliamentary Documents II 2005-2006, 30 322, no. 3, p. 11.

(68) Central Appeals Tribunal 26 January 2009, ECLI:NL:CRVB:2009:BH1009.

(69) Central Appeals Tribunal 9 April 2009, ECLI:NL:CRVB:2009:BI2179.

(70) The same longer statutory period for making a decision on an objection is to be found in Article 37b of the Special Pensions Act (*Wet buitengewoon pensioen*), Article 33b of the Special Pensions for Merchant Navy-War Victims Act (*Wet buitengewoon pensioen zeelieden-oorlogsslachtoffers*), Article 44b of the Special Pensions for Members of the Resistance in the Dutch East Indies Act (*Wet buitengewoon pensioen Indisch verzet*), and Article 55 of the Civilian War Victims Benefits Act (*Wet uitkeringen burger-oorlogsslachtoffers*).

(71) Central Appeals Tribunal 9 December 2009, ECLI:NL:CRVB:2009:BK8203.

(72) Central Appeals Tribunal 8 November 2012, ECLI:NL:CRVB:2012:BY3185. At least, the judgment does not mention that the interested party was established in another country.

(73) Central Appeals Tribunal 8 November 2011, ECLI:NL:CRVB:2012:BY4043.

(74) AJD 24 December 2008, ECLI:NL:RVS:2008:BG8294. Cf. AJD 7 April 2010, ECLI:NL:RVS:2010:BM0214, and AJD 21 September 2011, ECLI:NL:RVS:2011:BT2156.

(75) AJD 17 April 2009, ECLI:NL:RVS:2009:BI2283.

(76) AJD 30 March 2012, ECLI:NL:RVS:2012:BW1467.

(77) AJD 1 July 2009, ECLI:NL:RVS:2009:BJ1126. Cf. AJD 7 April 2010, ECLI:NL:RVS:2010:BM0231.

(78) AJD 9 February 2011, ECLI:NL:RVS:2011:BP3701.

(79) AJD 14 September 2011, ECLI:NL:RVS:2011:BS8827.

(80) AJD 1 August 2012, ECLI:NL:RVS:2012:BX3269.

(81) Trade and Industry Appeals Tribunal 25 June 2009, ECLI:NL:CBB:2009:BJ2560.

(82) Trade and Industry Appeals Tribunal 10 February 2010, ECLI:NL:CBB:2010:BM1611 (solely a decision on damage); Trade and Industry Appeals Tribunal 8 July 2010, ECLI:NL:CBB:2010:BN4148 (declaration on investment allowance); Trade and Industry Appeals Tribunal 8 September 2010, ECLI:NL:CBB:2010:BN6785 (product board levy); Trade and Industry Appeals Tribunal 5 February 2013 , ECLI:NL:CBB:2013:BZ4277 (certification of pesticide); Trade and Industry Appeals Tribunal 11 September 2012, ECLI:NL:CBB:2012:BX8168 (administrative coercion under the Animal Health and Welfare Act); Trade and Industry Appeals Tribunal 16 May 2013, ECLI:NL:CBB:2013:CA3169 (proceedings for compensation for damage caused by violation of a reasonable period in a case under the Animal Health and Welfare Act).

(83) Trade and Industry Appeals Tribunal 3 March 2009, ECLI:NL:CBB:2009:BH6281, in which the Tribunal found a total period of four years to be a reasonable period for appeals against the outcome of the proceedings for damages provided for in Articles 86 et seq. of the Animal Health and Welfare Act, i.e. one year for making the original decision on a request for a reappraisal, one year for an objection and two years for the Tribunal. The reason for the 'extra year' was probably connected with the fact that the reappraisal ended in a ruling by the 'subdistrict court' (cf. Article 88, third paragraph of the Animal Health and Welfare Act).

(84) In fact, this procedural avenue in non -punitive cases that fall within the jurisdiction of the Tribunal only arises sporadically, for example on the grounds of Article 15.2 of the Telecommunications Act.

(85) Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468.

(86) Central Appeals Tribunal 28 August 2008, ECLI:NL:CRVB:2008:BE9745; Central Appeals Tribunal 9 May 2012, ECLI:NL:CRVB:2012:BW5721; AJD 24 December 2008, ECLI:NL:RVS:2008:BG8313; AJD 7 October 2009, ECLI:NL:RVS:2009:BJ9526; AJD 9 December 2009, ECLI:NL:RVS:2009:BK5859; Trade and Industry Appeals Tribunal 1 September 2011, ECLI:NL:CBB:2011:BS7874; Trade and Industry Appeals Tribunal 11 September 2012, ECLI:NL:CBB:2012:BX8157.

(87) Trade and Industry Appeals Tribunal 8 April 2010, ECLI:NL:CBB:2010:BM1588.

(88) Trade and Industry Appeals Tribunal 7 July 2010, ECLI:NL:CBB:2010:BN0540.

(89) Supreme Court 3 October 2000, ECLI:NL:HR:2000:AA7309.

(90) Jansen 2000, p. 233.

(91) European Commission of Human Rights 12 March 1984, no. 9193/80 (Marijnissen) , Decisions and Reports of the European Commission of Human Rights 40, pp. 83-99.

(92) Supreme Court 17 June 2008, ECLI:NL:HR:2008:BD2578. See considerations 3.14 to 3.16 for the standard reasonable periods for first instance and final appeal.

(93) This is a reaction to the enquiry – made in the question addressed to me by the president of the Division (see § 2.1) – about whether there should perhaps be differentiation between the reasonable periods in different types of cases.

(94) Cf. Barkhuysen & Van Ettekoven 2009, p. 133.

(95) As mentioned in § 3.5, the ECHR makes no distinction between punitive and non-punitive disputes as regards a reasonable period.

(96) Cf. Barkhuysen/Van Emmerik in their notes to AJD 3 December 2008, ECLI:NL:RVS:2008:BG5910, AB 2009/70, point 12.

(97) Tak 2011, p. 2205.

(98) Schreuder-Vlasblom 2009, pp. 461-462.

(99) Schreuder-Vlasblom 2009, pp. 460-461.

(100) For example, Articles 8.2, second paragraph, and 8.3, second paragraph of the Town and Country Planning Act (*Wet ruimtelijke ordening*) , Article 1.6, fourth paragraph of the Crisis and Recovery Act (*Crisis- en Herstelwet*), and Article 44, third paragraph of the Housing Act (*Woningwet*).

(101) According to Schreuder-Vlasblom 2009, pp. 460-461.

(102) See § 3.5 above, with reference to ECHR 30 October 1991, Series A, Vol. 213 (Wiesinger); ECHR 27 February 1992, Series A, Vol. 228-f (G. v. Italy) .

(103) According to Feteris in his notes to Supreme Court 22 April 2005, ECLI:NL:HR:2005:AT4468, BNB 2005/337, included under BNB 2005/338.

(104) See Central Appeals Tribunal 9 December 2009, ECLI:NL:CRVB:2009:BK8203 (on the period for making a decision on an objection as provided for in Article 43 of the Benefits Act for Victims of Persecution 1940-1945 (*Wet uitkeringen vervolgingsslachtoffers 1940-1945*)), and Supreme Court 10 June 2011, ECLI:NL:HR:2011:BO5080 (on the period of one year for making a decision on an objection under Article 25, paragraph 1 of the General State Taxes Act (*Algemene Wet inzake Rijksbelastingen*), text until 1 January 2008). The Supreme Court still has to rule on the longer period for making a decision on an objection under Article 30, eighth paragraph of the Valuation of Immovable Property Act (*Wet waardering onroerende zaken*), and Article 236, second paragraph of the Municipalities Act (*Gemeentewet*).

(105) If the period for making a decision is not suspended, for example, the reasonable period for an interested party that has made an objection very quickly could commence five weeks before the start of the period to make a decision. If the period to make a decision is then suspended, to permit another interested party to remedy an omission, that period could easily be extended by a further two weeks.

(106) There are of course other possible options, such as six months for an objection, 21 months for an appeal in first instance and 21 months for a final appeal or eight months for an objection, 18 months for an appeal in first instance and 22 months for a final appeal. The pro and cons mentioned below also apply mutatis mutandis for those options.

(107) Respectively, ECHR 26 February 1998, no. 163/1996 (Pafitis), NJ 1999, 109, annotated by W.D.H. Asser, SEW 1998/5, p. 220, annotated by R.A. Lawson; ECHR 30 September 2003, no. 40892/98 (Koua Poirrez); ECHR 24 April 2008, no. 12066/06 (Mathy) .

(108) Cf. ECJ 16 January 1974, C-166/73 (Rheinmühlen), ECR 1974, p. 3.Cf. Asser in his notes to the Pafitis case, NJ 1999/109, and R. Barents, EU-procesrecht, Kluwer: Deventer 2010, p. 335.

(109) Central Appeals Tribunal 14 December 2012, ECLI:NL:CRVB:2012:B6202.

(110) In that context, I assume that - in line with the case law of the ECHR (§ 3.7) – a separate reasonable period applies to preliminary ruling proceedings as an added procedural instance. It is not clear to me how a national court can determine that period and how it should determine whether there is a justification for the ECJ exceeding it.

(111) In particular, see R.A. Lawson, *Het EVRM en de Europese Gemeenschappen*, Kluwer: Deventer 1999, pp. 410-416, and his notes to the Pafitis case, SEW 1998/5, p. 220. Cf. Asser in his notes to the Pafitis case, NJ 1999/109, and Jansen 2000, pp. 46-47.

(112) Central Appeals Tribunal 14 December 2012, ECLI:NL:CRVB:2012:BY6202.

(113) ECJ 16 July 2009, C-385/07 P (Der Grüne Punkt), ECR 2009, p. I-6155.

(114) Doubts can be expressed about this because the Der Grüne Punkt case did not relate to the reasonable period for preliminary ruling proceedings and there is no other case law in which the ECJ

explicitly recognises that a claim for damages also lies to a Union court in the event of violations of a reasonable period in preliminary ruling proceedings. There is, therefore, probably still no sufficiently effective remedy within the meaning of Article 13 of the Human Rights Convention (see § 3.8).

(115) See, for example, Supreme Court 9 April 2010, ECLI:NL:HR:2010:BJ8465, and AJD 6 July 2011, ECLI:NL:RVS:2011:BR0523.

(116) See, for example, Central Appeals Tribunal 9 April 2009, ECLI:NL:CRVB:2009:BI2179; Trade and Industry Appeals Tribunal 25 June 2009, ECLI:NL:CBB:2009:BJ2560; AJD 21 November 2012, ECLI:NL:RVS:2012:BY3698.

(117) See, for example, AJD 12 December 2012, ECLI:NL:RVS:2012:BY5887, in which the Division found that the district court had correctly disregarded the duration of preliminary ruling proceedings in assessing whether a reasonable period had been exceeded.

(118) AJD 27 June 2013, ECLI:NL:RVS:2013:102.

(119) By analogy, see ECJ 26 November 2002, C-275/00 (First and Franex), ECR. 2002, p. I-10943.

(120) See, for example, Central Appeals Tribunal 14 December 2012, ECLI:NL:CRVB:2012:BY6202; AJD 4 March 2009, ECLI:NL:RVS:2009:BH4667.

(121) Central Appeals Tribunal 14 December 2012, ECLI:NL:CRVB:2009:BY6202.

(122) Central Appeals Tribunal 9 April 2009, ECLI:NL:CRVB:2009:BI2179.

(123) Trade and Industry Appeals Tribunal 25 June 2009, ECLI:NL:CBB:2009:BJ2560.

(124) AJD 21 November 2012, ECLI:NL:RVS:2012:BY3698.

(125) AJD 30 June 2010, ECLI:NL:RVS:2010:BM9702.

(126) Arnhem District Court 16 October 2012, ECLI:NL:RBARN:2012:BY0026. Cf. Arnhem District Court 5 April 2012, ECLI:NL:RBARN:2012:BW3268, and The Hague District Court 3 January 2013, ECLI:NL:RBDHA:2013:BZ0010.

(127) This position differs from the aforementioned judgments of the Central Appeals Tribunal of 9 April 2009, ECLI:NL:CRVB:2009:BI2179, and of the Trade and Industry Appeals Tribunal of 25 June 2009, ECLI:NL:CBB:2009:BJ2560.

(128) Arnhem District Court 16 October 2012, ECLI:NL:RBARN:2012:BY0026.

(129) AJD 21 November 2012, ECLI:NL:RVS:2012:BY3698; AJD 30 June 2010, ECLI:NL:RVS:2010:BM9702.

(130) I did not find any such cases concerning the ex officio ‘application’ of the law in the literature, for example in M. Schreuder-Vlasblom, *Rechtsbescherming en bestuurlijke voorprocedure*, Recht en Praktijk Staats- en bestuursrecht, SB3, Kluwer: Deventer 2011 (fourth edition), pp. 484-571, D.A. Verburg, *De bestuursrechtelijke uitspraak en het denkmodel dat daaraan ten grondslag ligt*, Uitgeverij Kerckebosch bv/Zutphen SSR: Zeist 2008, pp. 101-144, and D. Brugman, *Hoe komt de bestuursrechter tot zijn recht*, BJu: Den Haag, pp. 103-147.

(131) AJD 11 May 2006, ECLI:NL:RVS:2006:AX2432.

(132) Decision of 19 September 1980. The Association Council was established by the Association Agreement between the EEC and Turkey, approved and confirmed by Council Decision 64/732/EEC of 23 December 1963 (OJ 1964, 217, p. 3685) .

(133) Cf. point 63 of ECJ 17 September 2009, C -242/06 (Sahin), ECR 2009, p. I-08465.

(134) ECJ 21 October 2003, joined cases C-317/01 and C-369/01 (Abatay and Sahin), ECR 2003, p. I-12301, point 84.

(135) Cf. ECJ 17 September 2009, C-242/06 (Sahin), ECR. 2009, p. I-08465, point 57

(136) The Additional Protocol was signed on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Regulation (EEC) no. 2760 of the Council of 19 December 1972 (OJ L 293, p. 1) .

(137) See explicitly ECJ 21 October 2003, joined cases C-317/01 and C-369/01 (Abatay and Sahin), ECR 2003, p. I-12301, point 70 et seq. Cf. ECJ 11 May 2000, C-37/98 (Savas), ECR 2000, p. I-2927, point 50.

(138) This is not altered by the fact that the Division, in the consideration cited in § 4.18 and in the third question referred by it, referred to the ‘granting of the residence permit, or extension thereof’, because in Sahin’s situation, ‘granting’ – given the context of the case – only related to the (formal) granting of the permit, to which the substantive criteria for an extension for an alien residing lawfully, and not for a ‘genuine’ initial granting of a residence permit to an alien living illegally in the Netherlands, were applied.

(139) See ECJ 17 September 2009, C-242/06 (Sahin), ECR. 2009, p. I-08465, point 57-61.

(140) Case C-16-05 (Tum and Dari); the advisory opinion was given on 12 September 2006.

(141) ECJ 20 September 2007, C-16/05 (Tum and Dari), ECR 2007, p. I-07415.