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ANALYSIS OF THE CURRENT LEGAL FRAMEWORK AND CASE-LAW IN RESPECT OF EFFECTIVE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN ADMINISTRATIVE PROCEDURES AND ADMINISTRATIVE DISPUTES

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I. INTRODUCTION

The importance of the right to a trial within a reasonable time in the Montenegrin legal order is emphasised by the fact that it is recognised that this right has the force of an individual constitutional right[1] and that a set of measures aimed at its effective realisation or protection have been undertaken.[2] The aim of this analysis is to point out the strengths and weaknesses of the system of the protection of the right to a trial within a reasonable time in Montenegro in administrative matters and to propose solutions that would improve the situation in those segments that require improvements. Since, by incorporation of the Convention into the national legal order, Montenegro undertook to respect or protect the rights guaranteed by the Convention and only the case-law of the European Court of Human Rights (hereinafter referred to as the "ECtHR") governs the interpretation and proper application of the Convention, the relevant ECtHR case-law setting standards for the assessment of the effectiveness of the remedies for the protection of the right to a trial within a reasonable time on a national level is the starting point for this analysis. Since the tasks to be covered by the analysis were defined in 2018, when the drafting of the analysis started, the analysis covers the period from 2015 to 2017 in accordance with the commissioned content of the analysis. In view of the above, data for 2018 have not been systematically processed and have been covered only in those segments of the analysis in respect of which they were available when the analysis was written.

This Analysis covers the following:

- An overview of the existing legal framework of Montenegro in relation to administrative procedures and disputes, including the Law on the Protection of the Right to a Trial within a Reasonable Time and the Law on Civil Servants
- Analysis of the use of domestic remedies for the protection of the right to a trial within a reasonable of time in administrative matters, with particular emphasis on filed requests for review and the manner in which they were resolved in the period 2015–2017
- Action for fair redress in the period 2015–2017
- Comparative overview of remedies for the protection of the right to a trial within a reasonable time in the Western Balkans region aimed at expediting administrative proceedings before the public law bodies, with a focus on an action brought for the silence of administration as an effective remedy
- Analysing case-law by remedies for the protection of the right to a trial within a reasonable time – comparative experiences
- Conclusions
- Recommendations for improving the situation in the protection of the right to a decision within a reasonable time in administrative matters

[1] The right to a trial within a reasonable time in Montenegro is guaranteed by the Constitution which stipulates in Article 32: "Everyone shall have the right to a fair and public trial within a reasonable time before an independent and impartial court established by law."

[2] One of these measures is the introduction of a constitutional appeal that guarantees in Montenegro the protection of constitutional rights in the proceedings before the Constitutional Court of Montenegro. Furthermore, it should be noted that a special law regulating the system of the protection of the right to a trial within a reasonable time has been adopted.

1. Convention for the Protection of Human Rights and Fundamental Freedoms

The most significant European legal act guaranteeing human rights and developing further the system of their protection is the Convention for the Protection of Human Rights and Fundamental Freedoms (franc. *Convention de sauvegarde des droits de l´homme et des libertés fondamentales*)[3], which was adopted in 1950 within the Council of Europe.[4,5]

Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention") in the part relating to the right to a trial within a reasonable time (as one of the elements of the right to a fair trial) introduces a factor of "time" as an important requirement for the exercise of justice. As lengthy court proceedings might jeopardise the effectiveness and credibility of the judiciary, the Convention emphasises the importance of rendering justice without delay, stipulating that judicial proceedings must be completed within a reasonable time.

Violation of the right to a fair trial before the ECtHR

1.1. Statistical data relating to member states of the Council of Europe

According to the ECtHR statistics, in the period from 1959 until 31 December 2017, 39.68% of the violations found related to the right to a fair trial enshrined in Article 6 of the Convention, as shown in Figure 1.

[3] For more information on the Convention see: Omejec, Jasna, *Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, Strasbourški acquis*, Novi informator, Zagreb, 2013; Greer, Steven: *The European Convention on Human Rights*. *Achievements, Problems and Prospects, Cambridge Studies in European Law and Policy*, Cambridge, 2006; Jacobs, Francis, Geoffrey; White, Robin C.A.; Ovey, Clare, *The European Convention on Human Rights*, Oxford, 2006.

[4] Council of Europe (franc. *Conseil de l'Europe*) is the first regional international political organisation founded on 5 May 1949 in London by Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom with the aim of strengthening democracy, the rule of law and the protection of human rights on the European continent so as not to repeat the horrors of the two world wars. The Council of Europe today embraces more than 800 million Europeans in 47 countries. The seat of the Council of Europe is in Strasbourg. The main goal of this international organisation is to strengthen co-operation and unity on the European continent, promoting human rights and fundamental freedoms, democracy and the rule of law. So far, the Council of Europe has adopted more than 200 international legal instruments (conventions and protocols) in various fields, but the Convention is considered as its highest achievement.

[5] For more information on founding of the Council of Europe, Omejec, Jasna, *Vijeće Europe i Europska unija – Institucionalni i pravni okvir*, Novi informator, Zagreb, 2008, pp. 43-49.

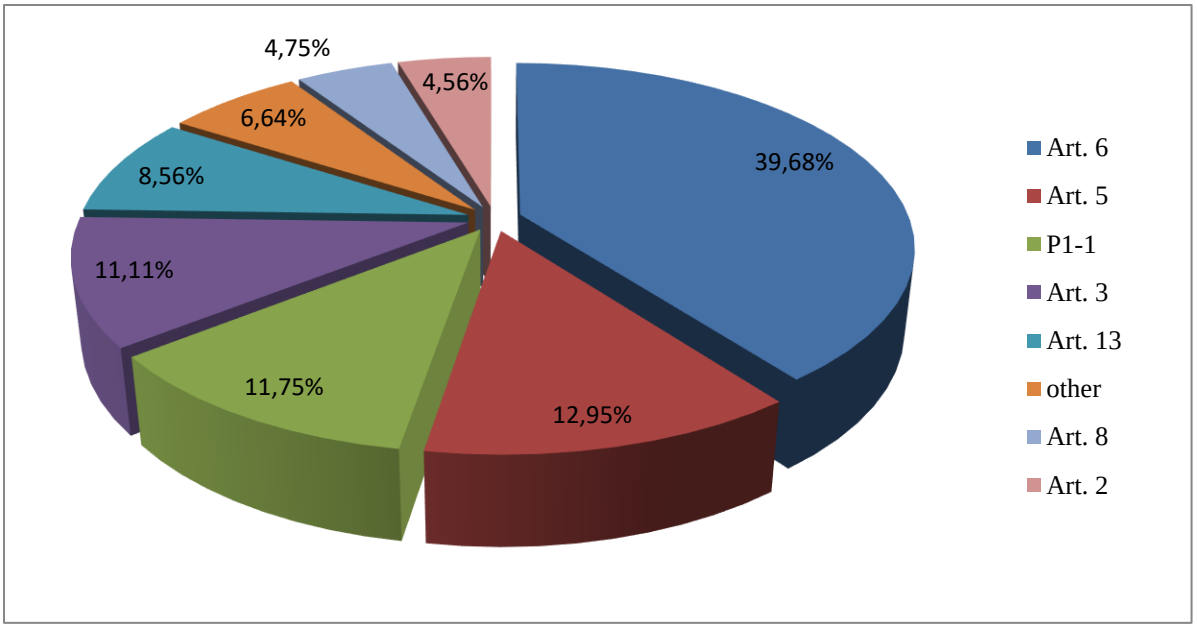

FIGURE 1

Share of violations of certain Convention rights in the total number of violations found between 1959 and 2017

Source: Overview 1959-2017 ECHR, European Court of Human Rights, March 2018, p. 6, www.echr.coe.int

It is considered that the number of applications submitted to the ECtHR for violation of the right to a fair trial stresses the importance of this Convention right.[6] The information on the share of violations of the right to a fair trial in the total number of violations of the Convention rights, as shown in Figure 1, points out the weaknesses of the domestic legal systems of the European countries in respect of the protection of this right.[7]

Likewise, it should be borne in mind that Article 6 of the Convention guarantees a variety of procedural rights. Due to their frequency, the ECtHR views and maintains statistics on some of them as separate Convention rights. That concerns the right to a fair trial in the strict sense, the right to a trial within a reasonable time and the right to enforcement of a judicial decision. Figure 2 shows the comparison between violations of these three rights and the total number of violations of Article 6 of the Convention found in the period from 1959 until 31 December 2017.

[6] Harris, David, O'Boyle, Michael, Warbrick, Colin, *Law of the European Convention on Human Rights*, London, 1995, p. 164.

[7] For more information on the Croatian law and case-law concerning individual elements of the right to a fair trial see: Uzelac, Alan, *Pravo na pravično suđenje u građanskim predmetima: Nova praksa Europskog suda za ljudska prava i njen utjecaj na hrvatsko pravo i praksu*, Zbornik Pravnog fakulteta u Zagrebu [Collected Papers of Zagreb Law Faculty], Vol. 60 No. 1, February 2010, pp. 100-122.

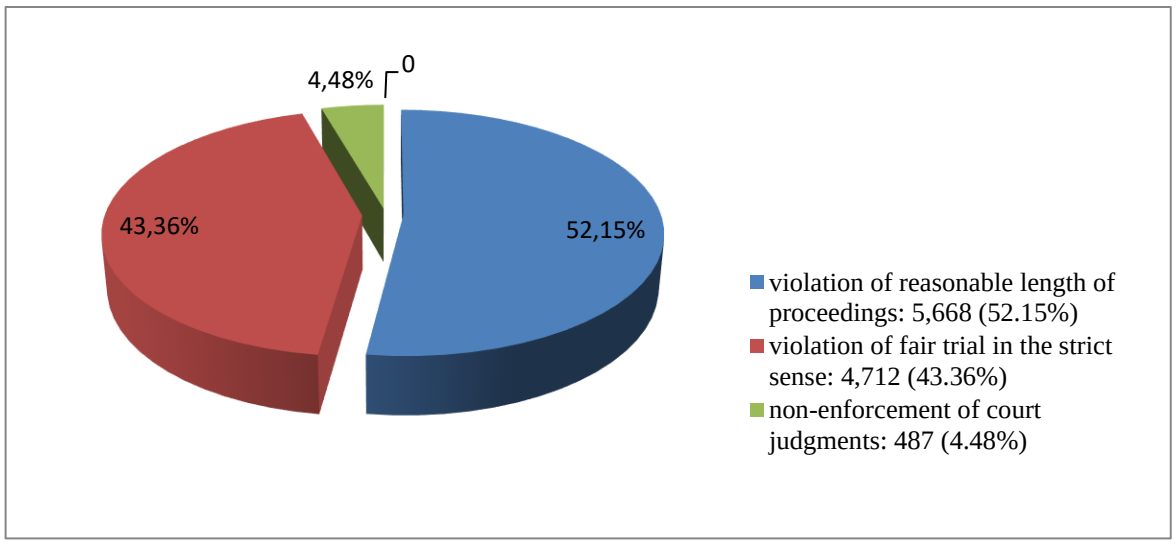

FIGURE 2

Share of violations of the three rights guaranteed by Article 6 of the Convention found between 1959 and 2017

Source: Overview 1959-2017 ECHR, European Court of Human Rights, March 2018, p. 9, www.echr.coe.int

In the total number of violations of the Convention rights found between 1959 and 31 December 2017 (27,384), the share of violations of the fairness of trial in the strict sense of the word (4,712) was 17.20%, while the share of violations of the reasonable length of the proceedings (5,668) was 20.69%.[8] In general, the violations of the right to a trial within a reasonable time have so far been the most frequent and the most common violations of the Convention rights since the ECtHR was established in 1959 to this day. This information becomes particularly important in view of the fact that the ECtHR started monitoring statistically the right to a reasonable length of proceedings as a separate Convention right only in 2002.

1.2. Importance of the trial within a reasonable time

There is no doubt that legal protection needs effectiveness. However, completely clear criteria for defining and assessing the effectiveness or efficiency of a particular legal system have not been established yet.[9]

Legal protection that remains declarative and lacks effectiveness cannot justify its existence because it does not fulfil the purpose for which it has been established. Therefore, the system of procedural rights referred to in Article 6 of the Convention is based on a notion of effective

[8] Overview 1959-2017 ECHR, European Court of Human Rights, March 2018, p. 9., www.echr.coe.int
[9] For more information see, Uzelac, Alan, *Efikasnost pravosuđa u europskom kontekstu: usporedba funkcioniranja europskih pravosudnih sustava*, Zbornik Pravnog fakulteta u Zagrebu [Collected Papers of Zagreb Law Faculty], 55:3-4/2005.

legal protection which does not exist if it is not timely. [10] The purpose of Article 6 § 1 of the Convention in its part guaranteeing a trial within a reasonable time is to protect the parties to civil and criminal proceedings from excessive delays in proceedings and to stress the importance of rendering justice without delays which might jeopardise the effectiveness and credibility of the judicial systems.[11]

Every legal order founded on the principles of a legal state and the rule of law seeks to achieve as efficient as possible system of protection of civil and human rights. Not only is the decision made within a reasonable time in the interest of a person applying to a court to decide on his or her rights or obligations, or suspicion of a criminal offence or a criminal charge, but it is also in the interest of legal certainty as the principle underlying an objective legal order which is why that principle should become imperative in each country aspiring to attain the ideal of the rule of law.[12]

The trial within a reasonable time is closely related to the notion of a fair trial that does not exist in the event of excessively long uncertainty of the parties as to their rights and obligations to be determined by the court.[13] The purpose of the reasonable-time requirement set out in Article 6 § 1 of the Convention is to provide a guarantee that a particular case before the court will be completed within a reasonable time, which means that the period of uncertainty and insecurity for the party to the proceedings will be reduced to an acceptable level.[14]

Although it may seem that stressing the need for an effective trial is a recent development, the problem of excessive length of court proceedings has been recognised much earlier, so we can find various attempts to reduce the length of the proceedings in the distant past. The importance of effective court proceedings, as one of the most important qualities of legal protection, has been recognised even by Roman jurists, accepting the principle of *Ne lites fiant immortales*.[15] The attempts to accelerate proceedings continued from the ancient period, through the Middle

[10] The old saying "Justice rétive, justice fautive" (franc.) that is "Justice delayed is justice denied" (engl.) best illustrates why it is necessary to avoid long trials.

[11] For more information see: Goranić, Ivana, *Suđenje u "razumnom roku" – jedan od uvjeta za pravično suđenje* (*članak 6. st. 1. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*), Vladavina prava. 6(2000), p. 51.

[12] Some authors give much more pragmatic reasons why making decision within a reasonable time is in the interest of the State. Thus, for example, Ivica Crnić notes: "… taking decision within such [reasonable] time is in the interest of the State which finances the work of the judiciary, because shorter length of the proceedings should result in less financial obligations of the State for the functioning of the judiciary.", Crnić, Ivica, *Hrvatska sudbena vlast i pravo na suđenje u razumnom roku*, Hrvatska pravna revija [Croatian Law Review], November 2002, p. 125.

[13] Goranić views the purpose of the reasonable time set out in Article 6 § 1 of the Convention as follows: "The fundamental purpose of introducing the term 'reasonable time' in Article 6 of the Convention is to ensure legal certainty, i.e. to ensure sufficient speed of resolving the cases before the courts, so that the parties are not under indictment for too long or uncertain as regards their legal status, which is – among other things – an essential condition for a fair trial. The aim of setting a 'reasonable time' criterion is also to protect all parties to the proceedings from delays. Some proceedings damage the reputation of the persons against whom they are conducted and need to be completed in the shortest possible time, but not to the detriment of the effective preparation of all parties for the trial. Delaying the proceedings also undermines the credibility and effectiveness of justice that the courts are obliged to administer." (own translation) Goranić, Ivana, *Suđenje u "razumnom roku" – jedan od uvjeta za pravično suđenje* (*članak 6. st. 1. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*), loc. cit.

[14] For more details see: Van Dijk, Pieter; Van Hoof, Fried, *Theory and Practice of the European Convention on Human Rights*, Antwerpen – Oxford, 2006, pp. 511-651.

[15] C. J. 3,1,13; "Neka parnice ne budu beskonačne", according to Romac, Ante, *Latinske pravne izreke*, Zagreb, 1982.

Ages[16] to the present day. The criticism of slow court proceedings throughout history can be found even in literature.[17]

Legal transactions require an effective trial or a fast termination of disputes, which is why courts must act in accordance with the principle of cost-effectiveness. Efficient justice is of exceptional legal and legal-political importance. It encourages faster and safer capital flows and contributes to a feeling of legal certainty.[18] The principle of cost-effectiveness is indispensable in providing effective judicial protection.

A specific monopoly position of state administration bodies and legal entities exercising public powers that make decisions in administrative matters may lead to their abuse of position by delaying the proceedings, i.e. by not making decision on a request. That is the "silence of the administration" - a passive conduct of the administrative body, instead of making a decision on the request from the party.[19]

The types and nature of the rights exercised in administrative proceedings before administrative bodies and administrative courts indicate the importance of timely decision-making in administrative matters. The decision to refer a patient to a medical treatment, on child allowance entitlement, on one of social welfare entitlements etc. becomes irrelevant after a certain time since in such cases delayed decision cannot attain the purpose for which the request was submitted.

Unlike the administration, courts are not bound by deadlines when deciding the cases, which is why the consequences of the "silence of the judiciary" and of the "silence of administration" are not the same. The "silence of the judiciary"[20] means a situation when the court to which an application for judicial review has been filed has failed to hold a hearing and decide on that application.[21] The failure of the court to decide on a particular application within a time which, in the light of the circumstances of a particular case, can be considered to be reasonable constitutes a violation of the constitutional right to a fair trial and also an infringement of the principle of the rule of law.[22] The ECtHR considers that failure to render a court decision in certain cases of excessively long proceedings can be considered to be a "denial of justice".[23]

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[16] In early 14th century, the canonical law introduced a simplified procedure in certain types of disputes, enabling certain types of proceedings to be conducted more quickly. For more information see: Ch. Van Rhee, *The Law's Delay, Essays on Undue Delay in Civil Litigation*, Antwerp/Oxford/New York, 2004, p. 1.

[17] Shakespeare, William, *Hamlet* (1600-1602); Dickens, Charles, *The Pickwick Papers* (1836-1837), *Bleak House* (1852–1853).

[18] Cf. Radolović, Aldo, *Zaštita prava na suđenje u razumnom roku – realna mogućnost,* (*pre*)*skupa avantura ili utopija?*, Hrvatska pravna revija [Croatian Law Review], April 2008, p. 7.

[19] Šikić defines the silence of administration as the failure of the competent public administration body to adopt a decision and deliver it to the party within certain time-limits prescribed by law, where such failure may lead to certain legal consequences. Šikić, Marko, *Temelji zaštite građana od šutnje uprave u Republici Hrvatskoj*, Hrvatska javna uprava, 6(2), p. 126.

[20] For more information on the "silence of judiciary" see: Omejec, Jasna, *"Razumni rok" u interpretaciji Ustavnog suda Republike Hrvatske*, in: Ustavni sud u zaštiti ljudskih prava, Interpretativna uloga ustavnog suda, Jadranko Crnić and Nikola Filipović (editors), Zagreb, 2000, p. 133.

[21] Triva, Siniša, *Građansko parnično procesno pravo*, the fifth revised edition, Zagreb, 1983, p. 394.

[22] Cf. Omejec, Jasna, *"Razumni rok" u interpretaciji Ustavnog suda Republike Hrvatske*, in: Ustavni sud u zaštiti ljudskih prava, Interpretativna uloga ustavnog suda, Jadranko Crnić and Nikola Filipović (editors), Zagreb, 2000.

[23] ECtHR, *Glykantzi v. Greece*, judgment of 30 October 2012, application no. 40150/09.

1.3. "Reasonable time" in the ECtHR case-law

The Convention does not determine the content of the right to a trial within a reasonable time, so the meaning of the concept of a reasonable time – a legal standard that can be considered as the time necessary to decide on the merits of the application, is determined by the ECtHR through its case-law.[24] The ECtHR does not set specific time-limits on the length of judicial proceedings or general rules in respect of its duration, but it assesses whether the length of the proceedings is reasonable in the light of the circumstances of each individual case.[25] The process is conducted in two steps:

- determining the period to be considered,
- assessing whether the length of the period considered was reasonable.[26]

Despite the fact that the ECtHR has not set universal rules, the ECtHR case-law provides useful information on the ECtHR's approach to assessing the reasonableness of the length of proceedings. Based on the analysis of the relevant case-law of the ECtHR, the European Commission for the Efficiency of Justice[27] (*Commission européenne pour l'efficacité de la justice – CEPEJ*) (hereinafter referred to as CEPEJ) summarised the main positions relating to the duration of judicial proceedings in the report "Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights".[28] The Report mentions, *inter alia*, that:

- Duration of up to two years at one instance of the trial in non-complex cases is generally regarded as reasonable.

- When proceedings have lasted more than two years at one instance of the trial, the ECtHR examines the case closely to determine whether the national court has shown due diligence in the process.

- In priority cases, it is possible to find violation of the right to a trial within a reasonable time even if the case lasted less than two years.

- In complex cases, the ECtHR may allow time longer than two years, but, generally, it pays special attention to the periods of inactivity which are clearly excessive. The proceedings which lasted more than five years will rarely be assessed as complying with the Convention right to a trial within a reasonable time and the proceedings lasting more than eight years almost never. The only situation in which the ECtHR will not find

[24] For more information see: Jacobs, Francis, Geoffrey; White, Robin C.A.; Ovey, Clare, *The European Convention on Human Rights*, Oxford, 2006, pp. 166-168.
[25] It is often noted that the reasonableness of the time-limit must be evaluated on a case-by-case basis, considering all the circumstances. Clayton, Richard; Tomlinson, Hugh, *Fair Trial Rights*, Oxford 2001, p. 105.
[26] See, for example, ECtHR, *Kudła v. Poland*, judgment of 26 October 2000, application no. 30210/96; *Foti and Others v. Italy*, judgment of 10 December 1982, applications nos. 7604/76, 7719/76, 7781/77, 7913/77.
[27] The European Commission for the Efficiency of Justice was established on 18 September 2002, by the Council of Europe's Committee of Ministers' Resolution, as a standing body within the Council of Europe. CEPEJ's objective is to improve the functioning and efficiency of the judiciary in the member states of the Council of Europe.
[28] CEPEJ, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, 2nd Edition, Strasbourg, 7 December 2012 (CEPEJ Study N°3, updated), p. 5, www.coe.int/t/dghl/cooperation.

violation in spite of manifestly excessive duration of proceedings are the cases in which long duration of proceedings is the consequence of the applicant's behaviour.

When deciding on the merits of the application, the ECtHR firstly determines the length of the particular judicial proceedings the party alleges that they do not comply with the reasonable-time requirement set out in Article 6 § 1 of the Convention. The ECtHR determines the starting point and the end of court proceedings. When examining the duration of the proceedings, the Court considers the total duration of the proceedings, but also whether there were longer periods of inactivity at a certain stage of the proceedings which cannot be attributed to the applicant. Strict limits have not been set, but the ECtHR case-law refers to indicative limits.[29]

1.3.1. Legally relevant period

1.3.1.1. The starting point of the legally relevant period

The starting point and the end of the period to be considered are not uniform to all types of court proceedings, but differ depending on the proceedings in question. In addition to the type of proceedings, the date of entry into force of the Convention in a Contracting Party also affects the starting point of the period to be considered, while it may also depend on the moment at which the person concerned got involved in the proceedings. In that respect, the ECtHR has made the following distinction in relation to the intervention of third parties in the proceedings conducted for the determination of civil rights and obligations: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir he or she can complain of the entire length of the proceedings.[30]

The period to be considered in the light of the reasonable-time requirement referred to in the Convention begins to run, as a rule, by instituting proceedings before the court.[31] In certain cases, this period can start even earlier. As early as in 1975, in *Golder v. the United Kingdom* (1975) judgment[32], the ECtHR made the point that the period to be considered may begin to run even before the commencement of the judicial proceedings. To that effect, it has been pointed out in the mentioned judgment that: "… in criminal matters, the 'reasonable time' may start to run from a date prior to the session of the trial court, of the 'tribunal' competent for the 'determination ... of (the) criminal charge' (…). It is conceivable also that in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute".[33]

In civil contentious proceedings, a legally relevant period begins by filing a lawsuit, while in proceedings before the administrative court, the period against which the violation of the right to a trial within a reasonable time is assessed does not begin, as a rule, by bringing an action

[29] For more information see: Calvez, Françoise, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, Strasbourg, 2007.
[30] ECtHR, *Scordino v. Italy*, (no. 1), judgment [GC] of 29 March 2006, application no. 36813/97, § 220; *M.Ö. v. Turkey*, judgment of 19 May 2005, application no. 26136/95, § 25.
[31] ECtHR, *Deumeland v. Germany*, judgment of 29 May 1986, application no. 9384/81, § 77.
[32] ECtHR, *Golder v. the United Kingdom*, judgment of 21 February 1975, application no. 4451/70.
[33] § 32.

before the administrative court but by filing an appeal in the administrative procedure which preceded the proceedings before the administrative court.

In cases where the length of proceedings before the administrative courts is contested, the ECtHR also takes into consideration the length of the proceedings before the administrative body which preceded bringing of an action before the court.[34] Thus, the period to be considered begins on the date when a "dispute" arises within the meaning of Article 6 § 1 of the Convention. This may be the date when the party first lodged an ordinary remedy in the administrative procedure[35] or the date when the party first lodged a remedy against the silence of the administration.[36]

1.3.1.2. Jurisdiction *rationae temporis*

The ECtHR's jurisdiction *rationae temporis* is related to the date of ratification of the Convention in each of the Contracting Parties. It is only by the decision on ratification that the State undertakes to provide to everyone falling within its jurisdiction the rights guaranteed by the Convention.

However, if the proceedings commenced before the Contracting Party acceded to the Convention, the ECtHR shall declare it has temporal jurisdiction to examine the length of judicial proceedings commenced before the Convention entered into force in the respondent State if their length continued after its entry into force. The ECtHR then examines in detail the course of the proceedings after the Convention entered into force, but it also takes into account the state of the case at the time of entry into force of the Convention.[37] The length of the overall proceedings is, thus, subject to the assessment within the meaning of Article 6 § 1 of the Convention.[38]

In *Horvat v. Croatia* (2001)[39], the ECtHR examined the reasonable length of two court proceedings. Both proceedings started before the Convention entered into force in the Republic of Croatia.[40] In addition to the fact that the duration of these proceedings continued after 5 November 1997, the ECtHR took into account the length of the proceedings before that date. In that judgment, the following was, *inter alia*, stated:

> "50. The Court observes firstly that the proceedings commenced on 29 and 30 March 1995, respectively … However, the period which falls under the Court's jurisdiction did not begin on those dates, but on 5 November 1997, when the Convention came into

[34] ECtHR, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, applications nos. 19005/91 and 19006/91, § 62.
[35] ECtHR, *Janssen v. Germany*, judgment of 20 December 2001, application no. 23959/94, § 40.
[36] ECtHR, *Počuča v. Croatia*, judgment of 29 June 2006, application no. 38550/02, § 30.
[37] For more information see, Vajić, Nina, *Duljina sudskog postupka u Hrvatskoj i praksa Europskog suda za ljudska prava*, Zbornik Pravnog fakulteta u Zagrebu [Collected Papers of Zagreb Law Faculty], 51(2001), p. 984.
[38] ECHR, *Practical Guide on Admissibility Criteria*, 2014, § 216, p. 51; Grdinić, Elica, *Pretpostavke dopuštenosti zahtjeva*, Novi informator, 5300-5303, 2004, p. 15.
[39] ECtHR, *Horvat v. Croatia*, judgment of 26 July 2001, application no. 51585/99.
[40] The Republic of Croatia ratified the Convention by the Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols nos. 1, 4, 6, 7 and 11 to the Convention, Official Gazette – International Treaties 18/97, 6/99 – consolidated text, 8/99 – corrigendum. The Convention has been in force in the Republic of Croatia since 5 November 1997. The Republic of Croatia ratified Protocol no. 12 and Protocol no. 13 to the Convention in 2002 (Official Gazette – International Treaties 14/02), while Protocol no. 14 was ratified in 2006 (Official Gazette – International Treaties 1/06).

force in respect of Croatia (see *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53). The proceedings are currently pending before the court of first instance. Thus, they have so far lasted for more than six years, out of which a period of three years and eight months falls to be examined by the Court.

51. The Court notes further that in order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 5 November 1997. (…). In this respect the Court notes that at the date of entry of the Convention into force in respect of Croatia both proceedings had lasted for about two and a half years."

1.3.1.3. The end of the legally relevant period

The period to be considered ends with the adoption of a decision by which the subject of dispute is finally decided. Concerning the enforcement of court judgments, in *Adi Prede v. Italy* (*1996*)[41] already the ECtHR included the enforcement proceedings in the legally relevant period, while in *Hornsby v. Greece* (1997)[42] it expressed and explained in more detail its view according to which the execution of a judgment given by any court must be regarded as an integral part of the 'trial' for the purposes of Article 6 § 1 of the Convention. In that case, the ECtHR held that the Greek authorities violated Article 6 § 1 of the Convention by not enforcing within a reasonable time two judgments of the Supreme Administrative Court which set aside decision of the Minister of Education by which the applicants' application for authorisation to establish a private school for the teaching of English was refused. It has been pointed out in the judgment that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative. To construe Article 6 § 1 of the Convention as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law. Therefore, for the purposes of Article 6 § 1 of the Convention, the execution of a court judgment must be regarded as an integral part of the trial or other stage of court proceedings for the determination of the rights or obligations of the parties.[43]

To that effect, the length of the proceedings must be calculated from their beginning until the execution of the decision made in the proceedings. The right to a trial within a reasonable time may, therefore, be violated despite the fact that the court proceedings which preceded the enforcement proceedings, when considered separately, ended within a reasonable time, if the overall length of the proceedings (including the enforcement proceedings) was not in accordance with the reasonable-time requirement set out in Article 6 § 1 of the Convention.

In cases in which it assesses whether the duration of enforcement complies with a reasonable length of proceedings under Article 6 § 1 of the Convention, the ECtHR applies criteria such as the complexity of the enforcement proceedings, the conduct of the applicant and of the competent authorities, and the amount and nature of the compensation awarded.[44] Although in such cases the ECtHR takes into account the statutory time-limits laid down in the domestic legislation, it points out that non-compliance with these time-limits does not constitute an

[41] ECtHR, *Di Pede v. Italy*, judgment of 26 September 1996, application no. 15797/89.
[42] ECtHR, *Hornsby v. Greece*, judgment of 19 March 1997, application no. 18357/91.
[43] The ECtHR referred to such view expressed in the cases *Di Pede v. Italy* and *Zappia v. Italy*, judgment of 26 September 1996, application no. 24295/94, Reports of Judgements and Decisions, 1996-IV, pp. 1383-1384, § 20-24, and pp. 1410-1411, § 16-20 respectively.
[44] ECtHR, *Raylyan v. Russia*, judgment of 15 February 2007, application no. 22000/03, § 31.

automatic violation of the Convention. In certain circumstances some delays may be justified,[45] but the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention.[46]

Furthermore, the ECtHR considers that the responsibility for complying with a court judgment rendered against a State lies primarily with the state authorities. The applicant must not be the victim of unreasonable delays caused by the public authorities. Both parties to the proceedings, as victims of long proceedings, have the right to adequate satisfaction.[47] The complexity of domestic enforcement proceedings or a limited state budget cannot relieve the State of the obligation to ensure that each person is entitled to have a binding and enforceable court decision rendered in his favour enforced within a reasonable time.[48] The Contracting States have an obligation to organise their legal systems in such a way that the competent authorities can fulfil their obligations in this respect.[49]

A long period of non-enforcement of domestic court judgments or other acts and documents whose legal force is equal to that of court judgments may lead to violations of other Convention rights as well.[50]

The ECtHR emphasises that these principles are of even greater importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for the civil rights of the parties.[51] In this regard, the ECtHR stressed that by lodging an application for judicial review with the State's highest administrative court the parties seek not only annulment of the impugned decision of the administrative body, but also and above all the removal of its effects. The effective protection of a party to such proceedings presupposes an obligation on the part of the administrative body which adopted the decision set aside by the court to comply with a judgment of that court.

Over time, the ECtHR explained in more detail the importance of enforcement in exercising the right to a fair trial and expanded the scope of Article 6 § 1 of the Convention to include enforcement proceedings where its application had previously been excluded. In *Estima Jorge v. Portugal* (1998)[52] the Court expressed its view on a separate significance of enforcement, expanding the guarantee of decision within a reasonable time to include enforcement proceedings even if the enforcement proceedings had not been preceded by court proceedings. Earlier, the ECtHR considered that the guarantee of a trial within a reasonable time set out in Article 6 § 1 of the Convention related to the proceedings for the determination of civil rights and obligations, including the stage subsequent to the adoption of a judgment on the subject matter of the dispute. However, in *Estima Jorge v. Portugal* (1998), relating to the enforcement of a contract concluded as a notarial deed of mortgage, there was no dispute or prior judicial proceedings for the determination of rights and obligations The subject of the proceedings was the repayment of debt. The Court stated in the judgment that "conformity with the spirit of the

[45] ECtHR, *Burdov v. Russia*, judgment of 7 May 2002, application no. 59498/00, § 35.
[46] ECtHR, *Kukalo v. Russia*, judgment of 3 November 2005, application no. 63995/00, § 49.
[47] See: MacDonald, Ronald, Matscher, Franz, Petzold, Herbert, *The European System for the Protection of Human Rights*, Deventer, 1993, p. 163.
[48] ECtHR, *Kukalo v. Russia*, judgment of 3 November 2005, application no. 63995/00, § 49.
[49] ECtHR, *Burdov v. Russia*, judgment of 15 January 2009, application no. 33509/04, § 70.
[50] For example, the right of access to a court, the right to peaceful enjoyment of property etc. (see the ECtHR's *Crnišanin and Others v. Serbia* judgment of 13 January 2009, applications nos. 35835/05, 43548/05, 43569/05 and 36986/06)
[51] ECtHR, *Hornsby v. Greece*, judgment of 19 March 1997, application no. 18357/91, § 41.
[52] ECtHR, *Estima Jorge v. Portugal*, judgment of 21 April 1998, application no. 24550/94.

Convention requires that the word "contestation" (dispute) should not be construed too technically" – in other words, that concept should be construed according to its substantive rather than a formal meaning. In view of the above-mentioned, despite the lack of prior court proceedings, the Court held that the Convention provision on a reasonable time had been infringed.

In some Eastern European countries, such as Russia, the problem of non-enforcement of decisions against the State has been marked as one of the main "systemic problems" in the judiciary.[53]

The period to be considered may also include proceedings before the Constitutional Court.[54] However, the staying of proceedings before a national court for referring a question to the Court of Justice of the European Union for a preliminary ruling is not taken into consideration in the assessment of the length of proceedings before a national court within the meaning of Article 6 § 1 of the Convention.[55]

1.3.2. The criteria for the assessment of the reasonableness of the length of the proceedings

By considering the specific circumstances of each case in the light of the established criteria for assessing whether the proceedings have been completed within a reasonable time, the ECtHR determines whether there has been a violation of the right to a trial within a reasonable time. The assessment whether in a particular case the Convention right to a trial within a reasonable time has been violated depends on a number of factors:

- the total length of the proceedings,
- the complexity of the case,
- the conduct of the domestic authorities,
- the conduct of the applicant,
- what was at stake for the applicant in the dispute,
- the number of stages of the proceedings,
- specific circumstances that may justify longer duration of the proceedings.[56]

1.3.2.1. Total length of the proceedings

In cases where the total duration of the proceedings cannot be regarded, at first sight, as complying with the Convention requirement of trial within a reasonable time, the ECtHR has found that there has been a violation of Article 6 § 1 of the Convention without scrutinising

[53] CEPEJ, *Examination of problems related to the execution of decisions by national civil courts against the state and its entities in the Russian Federation*, CEPEJ(2005)8; CEPEJ, Non-enforcement of court decisions against the state and its entities in the Russian Federation: remaining problems and solutions required, CEPEJ (2006)11.
[54] ECtHR, *Süßmann v. Germany*, judgment [GC], 16 September 1996, application no. 20024/92.
[55] ECtHR, *Pafitis v. Greece*, judgment of 26 February 1998, application no. 20323/92, § 95.
[56] Many authors analysed in detail the criteria according to which the ECtHR assesses whether the Convention right to a trial within a reasonable time has been violated in a particular case. To mention a few: Omejec, Jasna, *"Razumni rok" u interpretaciji Ustavnog suda Republike Hrvatske*, cit. (fn 124), pp. 143-144; Van Dijk, Pieter; Van Hoof, Fried, *Theory and Practice of the European Convention on Human Rights*, cit. (fn 115), pp. 606-611; Robertson, Arthur, Henry; Merills, John, G., *Human rights in Europe – A study of the European Convention on Human Rights*, Manchester, 1993, pp. 101-102.

individual stages of the proceedings.[57] In *Capuano v. Italy* (*1987*),[58] the ECtHR concluded that there was no need to scrutinise the appeal proceedings that had lasted four years, noting that such lapse of time, which in itself appeared excessive, was subsequent to an earlier stage of the proceedings which had already lasted too long, noting that undoubtedly in that specific case there had been a violation of Article 6 § 1 of the Convention. The ECtHR case-law shows that when assessing the reasonableness of the length of the proceedings determining the rights and obligations of a civil nature less strict criteria are applied than those applied when assessing the length of criminal proceedings.[59]

1.3.2.2. The complexity of the case

The ECtHR examines whether the complexity of the case may justify the duration of the proceedings. Unlike simpler cases, the complex cases allow for longer length of the proceedings. The complexity of the case may be related to factual and legal issues and is assessed according to different criteria, such as the number of witnesses or expert witnesses, the amount of evidence, that is, the pieces of evidence that must be adduced in the proceedings, the nature of the facts to be determined, connection to other cases including the need to obtain a file from another case, complex legal issues, a large number of parties to the proceedings etc.[60] For example, the case may be considered to be complex if it is necessary to apply a new legal provision.

Thus, in *Pretto and Others v. Italy* (1983)[61] the ECtHR pointed out, *inter alia*, that it agreed with the view of the Commission and the Government which both considered that the facts were undisputed but that a rather complex problem of legal interpretation was raised in the particular case. It involved the application of a relatively recent statute which did not contain any specific provisions on the legal point in issue. In addition, authorities which were to make a decision thereon disclosed contradictory approaches. The Court assessed that it was reasonable that, with a view to eliminating this divergence of approach and to ensuring certainty of the law, the court chamber deferred its decision until judgment was given by the plenary court, even though there was a possibility that this would lead to a prolongation of the proceedings.

On the contrary, in *Zimmermann and Steiner v. Switzerland* (1983)[62] the period of three years and six months was considered to be excessive for the appeal at one instance in the area of administrative law. The ECtHR also considered the period of three years and ten months in the first instance before the court to be excessive having found two periods of almost total inactivity of the competent authorities for a total duration of about two years.[63]

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[57] ECtHR, *König v. Germany*, judgment of 28 June 1978 – proceedings related to the withdrawal of the authorisation to run a clinic that lasted eleven years; *Bagetta v. Italy*, judgment of 25 June 1987, Series A no. 119, p. 32 – criminal proceedings that lasted thirteen years.

[58] ECtHR, *Capuano v. Italy*, judgment of 19 May 1987, application no. 9381/81, § 34.

[59] For more details see: Gomein, Donna, *Kratki vodič kroz Europsku konvenciju o ljudskim pravima (Short Guide to the European Convention on Human Rights)*, Zagreb, 1996, p. 96.

[60] Van Dijk, *Theory and Practice of the European Convention on Human Rights*, Antwerpen – Oxford, 2006, p. 607.

[61] ECtHR, *Pretto and Others v. Italy*, judgment of 8 December 1983, application no. 7984/77.

[62] ECtHR, *Zimmerman and Steiner v. Switzerland*, judgment of 13 July 1983, application no. 8737/79.

[63] ECtHR, *Guincho v. Portugal*, judgment of 10 July 1984, application no. 8990/80, § 32.

1.3.2.3. The conduct of the domestic authorities

It is a general rule that courts and other domestic authorities deciding on the civil rights and obligations are responsible for their omissions or (in)activity. Therefore, the State must organise its judiciary in a way enabling courts to meet the requirement set out in Article 6 paragraph 1 of the Convention. In addition, the court before which the proceedings are conducted must take care not to contribute to the excessive length of the proceedings by its own omissions in the proceedings.[64] In numerous judgments, the ECtHR stressed the particular importance of the requirement for proper and appropriate conduct of judicial proceedings. The problems relating to the organisation or staff of the court cannot justify the unreasonably long inactivity of the court. The examples of circumstances that are not considered justified are a sickness leave of a judge assigned to the case, the change of one or more judges assigned to the case, a judge leaving his office, the excessive workload of the court or judge etc.[65]

1.3.2.4. The conduct of the applicant

In some cases, the excessive length of the proceedings is entirely or partly a consequence of the applicant's conduct, so the ECtHR assesses the impact of the applicant's conduct on the length of the proceedings. In addition to the cases in which there is an intention of the applicant to cause delay in the proceedings, there are also cases in which the excessive length of the proceedings is the consequence of the maximum use of all available procedural powers which are recognised to the parties by the domestic legal order. When assessing the contribution to the length of the proceedings, the ECtHR treats the applicant's contribution and the contribution attributable to the State differently.[66] . If a public law body participates as a party to the proceedings, any delays that may arise because of that body (e.g. in the submission of evidence) will be attributed to the State which will be responsible for them under Article 6 § 1 of the Convention.[67] In cases in which the applicant or another party to the proceedings (private law person) causes delay in the proceedings, the State will not be directly responsible, but it can still be determined whether the court has taken the appropriate steps to speed up the proceedings, namely, whether it has, for example, extended time-limits excessively or for no valid reason, allowing thereby a reasonable time of the trial to be exceeded. In cases in which extension of time-limits is necessary, it should be such as to cause the least possible delay in the proceedings. There are situations in which certain staying of the proceedings is justified and is not contrary to the requirements of effective court proceedings within the meaning of Article 6 § 1 of the Convention such as the staying of proceedings until other proceedings whose outcome may affect decision in the first proceedings are completed.[68] Such justified cases of staying of the proceedings include the cases of staying the proceedings until the procedure of assessing the constitutionality of the law applied in the proceedings concerned is completed.

The applicants' behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account in determining whether or not the length of the proceedings met the reasonable time requirement referred to in Article 6 § 1 of the

[64] For more information see Grgić, Aida, *The length of civil proceedings in Croatia – Main causes of delay* in: Uzelac, Alan & Van Rhee, C.H., Public and Private Justice. Dispute Resolution in Modern Societies, Antwerpen-Oxford, Intersentia, 2007, p. 156.
[65] Cf. Gomein, Donna, op. cit. (fn 59), pp. 95-96.
[66] ECtHR, *Guincho v. Portugal*, judgment of 10 July 1984, application no. 8990/80, § 32.
[67] ECtHR, *Baraona v. Portugal*, judgment of 8 July 1987, application no. 10092/82, § 56.
[68] ECtHR, *Zand v. Austria*, Commission Report of 12 October 1978, application no. 7360/76.

Convention.[69] In other words, the applicant cannot complain of the long duration of the proceedings that he himself caused. However, the ECtHR has held that the fact that the parties to civil proceedings are responsible for the course of the proceedings does not relieve the judicial authorities of the responsibility to ensure that the trial is conducted within a reasonable time.[70]

Thus, for instance, in the case *Oberling v. France* (2006),[71] the ECtHR stressed that although the applicant was, to a certain extent, responsible for the duration of the first-instance proceedings, his conduct cannot justify the long duration of the appeal proceedings or the total duration of the proceedings at two levels which lasted more than six years.

In order to assess the applicant's contribution to the length of the proceedings, the ECtHR has considered whether the applicant appeared when summoned, paid court fees,[72] submitted requests for adjournment,[73] delivered evidence proposed,[74] whether it was requested in a timely manner to schedule a hearing.[75] In other words, the ECtHR examines whether the use of procedural powers of the parties has influenced the excessive length of the proceedings,[76] where, by the nature of things, not every use of a procedural power will be attributed to the party that uses it. Thus, for example, the ECtHR considers that the applicant cannot be held responsible for the use of remedies available under domestic law.[77] The party will also not be held responsible for repeated failures to appear at hearings due to illness.[78]

However, it should be borne in mind that the adjournments caused by actions or omissions by the applicant are only one of the elements considered by the ECtHR when assessing whether the length of the proceedings was reasonable. The ECtHR may find that there has been a violation of Article 6 of the Convention despite the fact that it has attributed some of the cases of staying of the proceedings to the applicant, however their importance is diminished by the delays caused by the authorities of the respondent State.[79]

1.3.2.5. What is at stake in the case for the applicant

The ECtHR case-law shows that the type of the proceedings concerned, namely, the type of the right or obligation to be determined in the proceedings, may influence the assessment of the reasonableness of the length of the proceedings, i.e. determination as to which period can be considered to be within a reasonable time. The ECtHR has acknowledged that the necessity to resolve certain types of cases as priority is closely related to the importance of what is at stake in the dispute for the applicant and, thus, it examines the length of the proceedings from that perspective as well. The case *H. v. the United Kingdom* (1987)[80] dealt with the procedure of

[69] ECtHR, *Erkner and Hofauer v. Austria*, judgment of 24 March 1987, application no. 9616/81, § 69.
[70] ECtHR, *Guincho v. Portugal*, judgment of 10 July 1984, application no. 8990/80, § 32.
[71] ECtHR, *Oberling v. France*, decision of 11 April 2006, application no. 31520/02, § 24.
[72] ECtHR, *Peryt v. Poland*, judgment of 2 December 2003, application no. 42042/98, § 56.
[73] ECtHR, *Gana v. Italy*, judgment of 24 January 1992, application no. 13024/87, § 16.
[74] ECtHR, *Ommer v. Germany*, judgment of 13 November 2008, application no. 26073/03, § 70.
[75] ECtHR, *Capuano v. Italy*, judgment of 19 May 1987, application no. 9381/81, § 28.
[76] ECtHR, *Parizov v. the former Yugoslav Republic of Macedonia*, judgment of 7 February 2008, application no. 14258/03,§ 57.
[77] ECtHR, *Arsov v. the former Yugoslav Republic of Macedonia*, judgment of 19 October 2006, application no. 44208/02, § 42; *Girardi v. Austria*, judgment of 11 December 2003, application no. 500064/99, § 55.
[78] ECtHR, *Rashid v. Bulgaria*, judgment (no. 2) of 5 June 2008, application no. 74792/01, § 81.
[79] ECtHR, *Sürmeli v. Germany*, judgment [GC], 8 June 2006, application no. 75529/01.
[80] ECtHR, *H. v. the United Kingdom*, judgment of 8 July 1987, application no. 9580/81, § 85.

child adoption. ECtHR held that the case is quite complex.[81] Having examined all the relevant facts and circumstances, the Court found that cases involving child custody require special diligence since any procedural delay might result in the de facto determination of the issue submitted to the court before it has held its hearing.

If, in the ECtHR's view, the proceedings are of particular importance for the applicant, it is possible that a violation of the right to a trial within a reasonable time will be found even in case of a relatively short length of the proceedings. The more important the proceedings are for the applicant, the ECtHR will be more strict in assessing the compliance of their length with Article 6 § 1 of the Convention. The ECtHR considers that certain types of proceedings require faster resolution, such as disputes related to pensions, employment-related disputes, disputes relating to the status of individuals, etc., especially where such obligation arises from domestic law.[82] The applicant's old age may also be one of the factors influencing the ECtHR's decision.[83]

In the case *X. v. France* (1992)[84] the applicant was a haemophiliac who died one month before the ECtHR judgment. He underwent a series of blood transfusions and was infected with HIV, having received infected blood, for which he sought compensation from the State. By the time the ECtHR started examining the case, the domestic proceedings had lasted more than two years. The ECtHR considered that the State authorities, although they had not caused unjustified delays, should have acted with exceptional diligence in view of the fact that the applicant faced a greatly reduced life expectancy due to the consequences of his disease. The ECtHR found that the national authorities did not use their powers to speed up the proceedings and found that there had been a violation of Article 6 § 1 of the Convention.

In *Martins Moreira v. Portugal* (1988)[85] the applicant was seriously injured in a road accident. He initiated proceedings against the person responsible for the accident. The ECtHR held that a special diligence was required in the proceedings concerning compensation for the victims of road accidents. It found that there had been a violation bearing in mind various unjustified delays in the proceedings by the competent authorities.

When considering what is at stake in the case for the applicant, the ECtHR also takes into account other rights that may be violated by an excessive length of the proceedings.[86]

1.3.3. Just satisfaction

When it finds a violation of the right to a trial within a reasonable time, the ECtHR will, as a rule, award just satisfaction for non-pecuniary damage on a request from the applicant. The ECtHR considers that there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage[87] due to prolonged uncertainty about the

[81] It based such assessment on the fact that a large number of the parties were involved in the case and that it was necessary to gather and assess a large amount of evidence.
[82] ECtHR, *Mihajloski v. the former Yugoslav Republic of Macedonia*, judgment of 31 March 2007, application no. 44221/02, § 41.
[83] ECtHR, *Süßmann v. Germany*, judgment [GC], 16 September 1996, application no. 20024/92, § 61.
[84] ECtHR, *X. v. France*, judgment of 31 March 1992, application no. 18020/91.
[85] ECtHR, *Martins Moreira v. Portugal*, judgment of 7 October 1988, application no. 11371/85.
[86] For more information: Gomein, Donna, op. cit. (fn 59), p. 97.
[87] ECtHR, *Apicella v. Italy*, application no. 64890/01, judgment [GC], 29 March 2006, § 93.

outcome of the proceedings.[88] If a domestic court, when deciding on the application for the protection of the right to a trial within a reasonable time, finds that the right has been violated but does not consider that non-pecuniary damage was sustained or considers that only minimal non-pecuniary damage was sustained, it will have to justify such decision by giving sufficient reason.[89]

In *Apicella v. Italy* (*2004*),[90] the ECtHR gave an indication of the method of calculation used in determining an equitable assessment of the non-pecuniary damage arising out of infringement of the right to a trial within a reasonable time. A sum varies between EUR 1,000 and 1,500 per year's duration of the proceedings (and not per year's delay).[91] The outcome of the domestic proceedings is immaterial to the non-pecuniary damage sustained on account of a violation of the right to a trial within a reasonable time. The aggregate amount may be increased or reduced, depending on different circumstances. Thus, the amount will be increased by EUR 2,000 if the stakes involved in the dispute are considerable.[92] The award will be reduced in accordance with the number of court instances, the conduct of the applicant (in case of delays in the proceedings caused by the applicant), the standard of living in the country concerned. The award may also be reduced if what is at stake in the proceedings is not particularly important for the applicant. The amount may also be reduced where the applicant has already obtained a compensation in domestic proceedings by using domestic remedies for the protection of the right to a trial within a reasonable time.[93]

The Court considers that the most appropriate form of redress in respect of a violation of Article 6 of the Convention is to ensure that the applicant as far as possible is put in the position in which he would have been had there been no violation.[94]

[88] ECtHR, *Arvanitaki-Roboti and Others v. Greece*, judgment [GC], 15 February 2008, application no. 27278/03, § 27; *Guillemin v. France*, judgment of 21 February 1997, application no. 19632/92, § 63.
[89] ECtHR, *Scordino v. Italy*, (no. 1), judgment of 29 March 2006, application no. 36813/97, § 204.
[90] ECtHR, *Apicella v. Italy*, judgment of 10 November 2004, application no. 64890/01.
[91] § 26.
[92] For example, in case of labour disputes, disputes related to pensions or health etc. For more information see, Edel, Frederic, *The length of civil and criminal proceedings in the case law of the European Court of Human Rights*, Strasbourg, 2007, p. 99.
[93] ECtHR, *Apicella v. Italy*, application no. 64890/01, judgment of 10 November 2004, § 93.
[94] ECtHR, *Teteriny v. Russia*, judgment of 30 June 2005, application no. 11931/03, § 56, *Jeličić v. Bosna and Herzegovina*, judgment of 31 October 2006, application no. 41183/02, § 53.

II. OVERVIEW OF CURRENT MONTENEGRIN LEGAL FRAMEWORK CONCERNING ADMINISTRATIVE PROCEDURE AND ADMINISTRATIVE DISPUTE, INCLUDING THE LAW ON THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME AND THE LAW ON CIVIL SERVANTS

1. Law on Administrative Procedure

The administrative procedure in Montenegro is regulated by the Law on Administrative Procedure[95] (hereinafter referred to as "LAP"), which entered into force on 1 January 2015 and has applied since 1 July 2017. In addition to this Law, the procedural provisions of other pieces of legislation regulating specific administrative areas are also applied in the administrative procedure.

The duty to act in compliance with LAP relates to State authorities, State administration bodies, local self-government authorities, local administration bodies, institutions and other entities holding public powers when, applying the legislation directly, they make decisions and take other administrative activities in administrative matters.[96]

By analysing LAP in the light of the obligation to decide on the rights and obligations of the parties in administrative matters within a reasonable time, we come to the conclusion that the Montenegrin legislator has taken account of the need to create legislative preconditions for the compliance with this important right enshrined in the Convention. Namely, LAP lays down strict time-limits for (different) actions to be taken by the public law bodies, prescribing short deadlines, and it regulates the legal consequences of non-compliance with the provisions on time-limits. There is no doubt that a consistent application of the legal provisions on time-limits for actions to be taken in the administrative procedures and for decisions to be made on the rights, obligations or legal interests of the parties in the administrative procedures would prevent violation of the parties' right to a decision within a reasonable time. However, it still needs to be determined how the public law bodies apply those provisions in practice and in what way the non-compliance with these provisions of LAP affects the Convention right of the parties to a decision within a reasonable time.

Issuing certificates

The time-limit for issuing a certificate or another document on the facts on which official records are maintained is eight days. If the public law body does not issue a certificate or other document on the facts on which official records are maintained nor does it adopt a decision rejecting the request and notify the party thereof within a period of eight days from the date of the submission of the request, the party may lodge an appeal as if its request were rejected.[97]

The public law body shall issue a decision on the refusal of the party's request to amend or issue a new certificate or other document. If the public law body does not act on the request to amend

[95] The Law on Administrative Procedure was published in the Official Gazette of Montenegro 56/14. The amendments to that Law were published in the Official Gazette of Montenegro 20/15, 40/16 and 37/17.
[96] Article 1 of LAP.
[97] Article 33 paragraph 5 of LAP.

or issue a new certificate or other document within eight days from the date of submission of the request, the party may lodge an appeal as if its request were rejected.[98]

A certificate or other document on the facts on which a public law body does not maintain official records or a decision rejecting the request shall be issued to the party within 15 days from the date of submitting the request. The party may lodge an appeal against this decision.[99]

If the public law body does not issue a certificate or other document on the facts on which official records are not maintained nor does it adopt the decision rejecting the request and notify the party thereof within a period of fifteen days from the date of the submission of the request, the party may lodge an appeal as if its request were rejected.[100]

Time-limit for adoption of the decision

The time-limit for adoption and delivery of the decision in the administrative procedure is 30 days from the date of initiating the proceedings, unless otherwise provided by a special law.[101]

If the administrative procedure cannot be completed within the prescribed time-limit due to the complexity of the administrative matter, the time-limit may be extended for a period of time necessary to adopt the decision but for no more than 15 days. The time-limit that has been extended once cannot be extended again. If the time-limit has been extended, the party must be notified of such extension, of the date of its expiry and of the reasons for its extension.[102,103]

Failure to adopt decision (the silence of administration)

When the administrative procedure has been initiated on the request from the party and a public law body does not adopt and does not deliver a decision to the party within the prescribed or extended period, the request shall be deemed to have been granted, if that is prescribed by a special law.[104] In that event, the party is entitled to request the first-instance or second-instance public law body to issue a certification that his/her request has been granted.[105]

If the public law body does not issue a certification within seven days from the date of submitting the request for issuance of the certification or does not adopt a decision by which it subsequently decided on the party's request within that period, the party may initiate an administrative dispute.[106]

Appeal for failure to adopt decision

[98] Article 33 paragraph 7 of LAP.
[99] Article 34 paragraph 3 of LAP.
[100] Article 34 paragraph 4 of LAP.
[101] Article 114 of LAP.
[102] Article 115 of LAP.
[103] This notification must be delivered to the party before the expiry of the period set out in Article 114 of LAP.
[104] Thus, LAP introduces a positive fiction of granting the request (Article 117 paragraph 1 of LAP).
[105] The certification must contain all elements of the decision granting the party's request.
[106] Article 117 paragraph 3 of LAP.

The party has the right to appeal against the decision adopted in the first instance or if the decision has not been adopted within the period prescribed by the law, unless the appeal is not permitted by the law.[107]

If the appeal has been lodged because of the silence of administration and the first-instance public law body has not adopted a decision within seven days from the date of receipt of the appeal, it is obliged to forward the appeal with the case files and a written explanation of reasons for which the decision was not issued within the prescribed period to the second-instance body without delay.[108]

If the second-instance body finds that the first-instance body has not adopted the decision within the prescribed period for justified reasons, it shall issue an order ordering the first-instance body to adopt the decision within a period not exceeding 30 days.[109]

If the second-instance body finds that the reasons for which the first-instance body has not adopted the decision within the period prescribed by law are not justified, the second-instance body shall make a decision on the party's request within 45 days from receipt of the appeal or it shall issue an order ordering the first-instance body to make a decision on the party's request within 15 days from the date of receipt of the order.[110]

Time-limit for adopting decision on appeal

A decision on appeal shall be adopted and delivered to the party as soon as possible and no later than 45 days from the date of receipt of the appeal, unless a shorter period is prescribed by a special law.[111]

Proceeding on an appeal against a first-instance decision

If the second-instance body finds that in the first-instance proceedings the facts have not been fully established or that they have been erroneously established, or that the appellant was not given the opportunity to declare on the outcome of the examination procedure, it may only amend the procedure and remedy deficiencies. If the second-instance body finds that, based on the established facts, the administrative matter must be resolved differently than in the first-instance decision, it shall annul the first-instance decision and resolve the administrative matter itself.[112]

If the second-instance body finds that the deficiencies of the first-instance proceedings will be remedied in a faster and more economical manner by the first-instance body, it shall annul the first-instance decision and refer the case back to the first-instance body for reconsideration.[113]

If the second-instance body annuls the first-instance decision, it shall be obliged to advise the first-instance body in what respect the procedure needs to be amended, while the first-instance

[107] Article 119 paragraph 1 of LAP.
[108] Article 125 paragraph 6 of LAP.
[109] Article 129 paragraph 1 of LAP.
[110] Article 129 paragraph 2 of LAP.
[111] Article 130 of LAP.
[112] Article 126 paragraph 6 of LAP.
[113] Article 126 paragraph 7 of LAP.

body shall be obliged to comply with the second-instance decision fully and without delay and to adopt a new decision no later than 20 days from the date of receipt of the case. The party shall be entitled to appeal against such decision.[114]

When the second-instance body has already annulled the first-instance decision once and the party has appealed against the new decision of the first-instance body, the second-instance body shall be obliged to annul the first-instance decision and resolve the administrative matter itself.[115]

This legal provision is one of the most effective ways to prevent excessive length of the proceedings given the fact that it does not allow for repeated remittals of the case which was, until recently, not only in Montenegro but in other countries of this region as well, one of the main reasons for excessive length of administrative procedures. However, the quality of such legislative provision alone does not guarantee that it will be applied in practice as the application depends on the entities applying this provision.

Supervision over the implementation of the Law

The supervision over the implementation of LAP is exercised by the state administration body responsible for administration affairs. The inspection supervision over the implementation of LAP is exercised by the administrative inspectorate.[116]

Transitional and final provisions

Transitional and final provisions of LAP prescribe that the proceedings that have not been completed by a final decision until the date on which LAP starts to apply shall be completed under the provisions of the Law on General Administrative Procedure (Official Gazette of Montenegro 60/3 and 32/11).[117]

If we were to draw conclusions solely on the basis of the legislative framework regulating the administrative procedure in Montenegro, we could say that, in Montenegro, the new 2017 LAP created legal preconditions for the length of the administrative proceedings to fall within the limits which do not exceed a reasonable time frame according to the standards set by the ECtHR. The relevant provisions of LAP specify short time-limits for the public law bodies to take action in the administrative proceedings and for the adoption of a decision and they do not allow for repeated remittals of cases.

2. Law on Administrative Dispute

The administrative dispute in Montenegro is regulated by the Law on Administrative Dispute[118] (hereinafter referred to as "LAD"), which entered into force on 23 August 2016 and has applied since 1 July 2017.

[114] Article 126 paragraph 8 of LAP.
[115] Article 126 paragraph 9 of LAP.
[116] Article 160 of LAP.
[117] Article 161 of LAP.
[118] The Law on Administrative Dispute was published in the Official Gazette of Montenegro 54/16.

An administrative dispute is resolved by the Administrative Court of Montenegro and the Supreme Court of Montenegro. In administrative disputes the court decides in a panel of three judges, while case handling by a single judge is provided for as an exception.[119]

Administrative dispute relating to the silence of administration

Article 12 paragraph 2 of LAD stipulates that an administrative dispute may be initiated even if a public law body has not issued an administrative act or has not decided on an appeal lodged by the party or has not taken administrative activity or has not decided on a complaint filed by the party.

Dispute resolution

In the context of the exercise of the parties' right to a trial within a reasonable time, it is important to mention Article 28 of LAD which stipulates that, in administrative disputes, the Administrative Court decides in closed session or on the basis of an oral hearing. The Administrative Court is obliged to hold an oral hearing if the party so requests in the statement of claim or in the statement of defence, except in the case referred to in Article 25 of LAD.

Given the fact that the parties are seeking the hearings to be held even in disputes in which the facts are indisputable, which under the applicable legal provision imposes an obligation on the Administrative Court to hold a hearing, the changes with a view to limiting the cases in which an oral hearing is mandatory should be considered. It is possible to prescribe that the disputes are to be resolved without a hearing in cases where the facts are not disputable, regardless of the parties' motions to hold a hearing. Considering the fact that a hearing prolongs the procedure to a greater or lesser extent (which depends on the circumstances of the case or the procedural discipline of the parties etc.), prescribing the possibility of completing the administrative disputes without a hearing in disputes in which the facts are indisputable would accelerate making of a decision in the proceedings and reduce the overall length of the proceedings. We consider that such a legal provision would not be contrary to the Convention right to an oral hearing as an integral part of the right to a fair hearing guaranteed by Article 6 paragraph 1 of the Convention, since such a provision (limitation) does not call into question the obligation to hold an oral hearing in all cases in which the facts are disputable. The proposed measure would change the current legal provision only in that it would allow the Administrative Court not to grant the parties' motions to hold a hearing in cases where a hearing is not necessary.[120]

Resolution on the basis of an oral hearing or in closed session

If the Administrative Court should find during an oral hearing that the facts are different from those established during an administrative procedure or if it should find that the procedure has not been properly conducted, which affected the determination of the administrative matter, it

[119] Article 6 of LAD.

[120] The view that a limitation of the right to an oral hearing does not necessarily mean *a priori* non-compliance with the Convention right to a fair hearing is also supported by the ECtHR case-law, e.g. *Jussila v. Finland*, application no. *73053/01,* 23 November 2006, *Håkansson and Sturesson v. Sweden,* 21 February 1990, Series A no. 171-A, *Döry v. Sweden*, application no. 28394/95, 12 November 2002, *Pursiheimo v. Finland*, application no. 57795/00, 25 November 2003, *Lundevall v. Sweden*, application no. 38629/97, 12 November 2002, *Salomonsson v. Sweden*, application no. 38978/97, 12 November 2002, *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, Reports 1998-I.

shall annul the impugned act or other administrative activity by a judgment. In that case, the respondent public law body whose act or other administrative activity has been annulled shall be obliged to comply with the judgment of the Administrative Court and adopt a new act or undertake another administrative activity, unless the Administrative Court itself decided on the merits in accordance with Article 36 of LAD.[121]

When deciding in closed session, the Administrative Court makes a decision on the grounds of the facts established in the administrative procedure. If the Administrative Court should find in closed session that the dispute cannot be tried on the grounds of the facts established in the administrative procedure as there are inconsistencies in the case files with regard to the established facts or the facts have been incompletely established in respect of important issues or a wrong conclusion with regard to the facts has been made on the grounds of the established facts or should it find that the procedure has not been properly conducted, which affected the determination of the administrative matter, it shall annul the impugned act or other administrative activity by a judgment. In that case, the respondent public law body shall be obliged to comply with the judgment of the Administrative Court and adopt a new act or undertake another administrative activity.[122]
When an action has been brought for the silence of administration in accordance with the law and the Administrative Court has found it to be well-founded, it shall accept the action by a judgment and impose an obligation on the respondent public law body to resolve the administrative matter in question.[123]

Resolving a dispute of full jurisdiction

If the Administrative Court annuls the impugned act, and the nature of the administrative matter allows it to do so, it may decide the administrative matter concerned itself, if:
…

- the act has already been annulled in the same dispute and the respondent public law body has not fully complied with the judgment;
- the act has already been annulled in the same dispute and the respondent public law body has failed to adopt a new act within 30 days from the date of annulment or within another period set by the Administrative Court; or
- the competent public law body has failed to adopt an act within the period prescribed by law.[124]

Another provision which should have a positive impact on the length of the proceedings in which the rights, obligations and legal interests of the parties are determined in administrative matters is the provision of Article 36 paragraph 3 of LAD which prescribes that when the Administrative Court has already annulled the impugned act once in the same administrative matter, it is obliged to resolve the matter itself upon the action brought against the new act of

[121] Article 33 paragraphs 2 and 3 of LAD.
[122] Article 33 paragraphs 4, 5 and 6 of LAD.
[123] Article 35 paragraph 3 of LAD.
[124] Article 36 paragraph 1 of LAD. This provision, *inter alia*, also serves to effectively provide judicial protection to the parties in administrative dispute proceedings or to make decision without unnecessary remittals of the case. However, as with other similar legal provisions, it is up to the entity applying the legal provision to achieve the aim pursued by that provision.

the public law body in that administrative matter, if the nature of the administrative matter so allows. In that event, the Court's decision shall replace the annulled act in its entirety.

Legal consequences of annulment

When the court annuls an act or another administrative activity against which an administrative dispute has been initiated, the case shall be restored to the position before the annulled act had been adopted or another administrative activity annulled by the judgment of the Administrative Court had been taken.[125]

If the nature of the administrative matter which had been the subject matter of the dispute requires to adopt another act or take another administrative activity in place of the annulled administrative act or other administrative activity, the respondent public law body is obliged to adopt that act or to take that other administrative activity without delay and, in any event, no later than 30 days from the date of service of the judgment. The respondent public law body shall be bound by the legal opinion of the Administrative Court and by the observations of the Court concerning the procedure.[126]

Legal consequences of non-compliance with the judgment

Article 57 of LAD prescribes the legal consequences of failure to comply with the judgment of the Administrative Court.

If the respondent public law body, after the judgment of the Administrative Court annulling its act is adopted, fails to adopt a new act in that procedure immediately and, in any event, within 30 days at the latest or fails to adopt, within that time-limit, an act concerning the enforcement of the judgment of the Administrative Court on an action brought for the silence of administration, the party may, by a separate submission, request that such an act be adopted.

If the respondent public law body fails to adopt the act within seven days from the date of such submission, the party may request that such an act be adopted by the Administrative Court. The Administrative Court shall request the respondent public law body to notify it of the reasons for failure to adopt the act. The respondent public law body shall deliver the notification immediately and, in any event, within seven days at the latest. If it fails to deliver the notification within the prescribed period or if the notification delivered does not provide justification for non-enforcement of the judgment of the Administrative Court by which the action brought for the silence of administration was accepted, the Administrative Court shall adopt a ruling replacing the act of the respondent public law body in its entirety. The Administrative Court shall deliver this ruling to the authority competent for the enforcement of the administrative act and, at the same time, it shall inform thereof the body supervising that authority. The authority competent for the enforcement of the administrative act shall, without delay, enforce the ruling of the Administrative Court replacing the act of the respondent public law body.

Legal consequences of repeated non-compliance with the judgment

[125] Article 56 paragraph 1 of LAD.
[126] Article 56 paragraph 2 of LAD.

Legal consequences of repeated non-compliance with the judgment are set out in Article 58 of LAD.

If the respondent public law body, after the Administrative Court annuls the act of that body, does not adopt an act in accordance with the court judgment and the applicant brings a new action, the court will annul the impugned act and, as a rule, resolve the administrative matter itself by a judgment. Such a judgment replaces the act of the respondent public law body in its entirety. In that event, the Administrative Court shall notify the body supervising the work of the respondent public law body that failed to comply with the judgment of the Administrative Court. The body exercising supervision over the respondent public law body is obliged to inform the Administrative Court of the measures taken, within 30 days.

Transitional and final provision

Transitional and final provision of Article 60 of LAD prescribes that the proceedings that have not been completed by a final decision until the date on which LAD starts to apply shall be completed under the provisions of LAD.

3. Law on Civil Servants and State Employees

The Law on Civil Servants and State Employees (hereinafter referred to as the LCSSE)[127] regulates the categorisation of job positions and titles of civil servants and state employees, entering into employment and filling job vacancies, human resources management, rights, obligations, responsibilities and the protection of the rights of civil servants and state employees, and other issues relevant to the exercise of their rights and obligations.

Civil servants and state employees perform the tasks on the basis of the Constitution, laws, other regulations and general acts. Civil servants and state employees are responsible for the legality, professionalism and efficiency of their work.[128] In accordance with the law, a civil servant and a state employee is liable for the damage caused to a state authority or third person by their unlawful work or malpractice.[129]

The quality of performance of civil servants is subject to appraisal which, ultimately, governs a promotion of a civil servant, but then again, also being able to impose sanctions for violations of official duty,[130] which includes a termination of service.

[127] The Law on Civil Servants and State Employees, Official Gazette of Montenegro 2/08, entered into force on 18 January 2018 and has applied since 1 July 2018.
[128] Article 5 paragraphs 1 and 2 of the LCSSE.
[129] Article 5 paragraph 4 of the LCSSE.
[130] Article 14 of the LCSSE.

A performance appraisal of civil servants is done according to various numerous criteria of which will point up those that may be linked to the duty of effective conduct in administrative procedures and adoption of a decision within a reasonable time:[131]

- fulfilment of work assignments;

- performance results with respect to quality and quantity;

- volume and timeliness in performing the tasks pertaining to their job positions;

- other competencies and skills in performing the tasks.

A civil servant will be awarded a performance appraisal grade "unsatisfactory" if he did not perform the tasks as defined under the requirements of his work post, while his immediate manager had objections regarding his performance and warned him of omissions and irregularities in his work.[132] The civil servant whose performance was appraised with a grade "unsatisfactory" is obliged, on the manager's order, to undergo professional training for the tasks pertaining to the job position to which he has been assigned, according to an appropriate programme.[133]

The LCSSE also prescribes the performance appraisal of the persons discharging the tasks of senior management staff. The grade "excellent" will be awarded to the person who showed excellent competencies in work organisation and management, in cooperation and communication with other bodies and employees, and other competencies aimed at the efficient performance of the work assignments. He will be awarded the grade "unsatisfactory" if he has not showed average competencies in work organisation and management, or average competencies in cooperation and communication with other bodies and employees, and other competencies aimed at the efficient performance of the work assignments.[134]

The provision of the LCSSE which prescribes that the appraisal of the quality of performance of the persons discharging the tasks of senior management staff in a state authority is done twice annually[135] should contribute to continuous monitoring of the work of the persons which have the greatest responsibility for lawful and effective conduct of public law bodies and timely reaction in case of the appraisal indicating deficiencies in the organisation and work of the public law body.[136]

The civil servants are liable to have disciplinary action for violations of official duty arising from employment.

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[131] In the authorities performing the affairs related to diplomacy, police, safety, defence, security of detained and convicted persons and other tasks in the enforcement of detention, imprisonment sentences and security measures, performance appraisal may be done in a different manner, in accordance with a special law.
[132] Article 82 paragraph 1 item 3 of the LCSSE.
[133] Article 82 paragraph 2 of the LCSSE.
[134] Article 84 paragraph 1 indents 1 and 3 of the LCSSE.
[135] Article 84 paragraph 2 of the LCSSE.
[136] In the case of two consecutive “unsatisfactory” grades, the head of the state authority shall, based on an enforceable decision on performance appraisal, submit to the Government the proposal for the termination of the term of office of the person who was awarded such grade.

Serious violations of official duty[137] include:

- failure to perform or reckless, untimely or negligent fulfilment of official obligations;

- any omission or action preventing a citizen or a legal person to exercise the rights accorded to him under the law;

- violation of work obligations that resulted in serious consequences for the party or the state authority;

Disciplinary measures for serious violation of official duty[138] shall be as follows:

- a fine, lasting from two to six months, in the amount ranging from 20% to 40% of the salary paid for the month in which the serious violation of official duty was committed;

- termination of employment.

The LCSSE also prescribes financial responsibility of a civil servant for the damage he caused at work or in connection with work to the state authority unlawfully, intentionally or as a result of gross negligence.[139]

The State shall be liable for the damage a civil servant and/or state employee causes at work or in connection with work to a third person. Third person may also claim compensation for the damage from a civil servant and/or state employee who caused the damage, if the damage was caused intentionally.[140] The State is entitled to a recourse claim against a civil servant and/or state employee in the amount of the compensation paid for the damage that the civil servant and/or state employee caused at work or in connection with work to a third person.[141]

4. Protection of the right to a trial within a reasonable time

1.1. Constitution of Montenegro

The right to a trial within a reasonable time in Montenegro is protected by the Constitution. Article 32 of the Constitution of Montenegro[142] stipulates as follows:

"Article 32

> *Everyone shall have the right to a fair and public trial within a reasonable time before an independent and impartial court established by law."*

The protection of constitutional rights is ensured in the proceedings before the Constitutional Court of Montenegro on a constitutional appeal.

[137] Article 95 of LCSSE.
[138] Article 96 of LCSSE.
[139] Article 114 paragraph 1 of LCSSE.
[140] Article 114 paragraph 2 of LCSSE.
[141] Article 119 of LCSSE.
[142] Constitution of Montenegro, Official Gazette of Montenegro 1/07 and 38/13.

Article 149 paragraph 1 item 3 of the Constitution sets out as follows:

"Article 149

The Constitutional Court shall decide on the following:

...(3) constitutional appeal for a violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted.

...The constitutional appeal[143] may be submitted against an individual act of a state authority, state administration body, local self-government body or a legal person exercising public powers for a violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted."[144]

1.2. Law on the Protection of the Right to a Trial within a Reasonable Time

The protection of the right to a trial within a reasonable time in Montenegro is regulated by the 2007 Law on the Protection of the Right to a Trial within a Reasonable Time (hereinafter referred to as the "LPRTRT").[145] Although in earlier procedural laws, a trial within a reasonable time was considered to be one of the main procedural principles, remedies for the protection of that right have been introduced into the Montenegrin legal system by the LPRTRT.[146]

The holders of the right to the protection of the right to a trial within a reasonable time are the following:

- a party to and an intervener in civil proceedings,
- a party to and an interested person in administrative disputes,
- a defendant and a victim in the criminal proceedings.

The LPRTRT provides for the protection of the right to a trial within a reasonable time only in the event of the proceedings aimed at the exercise of the rights within the meaning of the Convention.[147,148]

The remedies for the protection of the right to a trial within a reasonable time[149] are:

- a request to expedite the proceedings (request for review),
- an action for fair redress.

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[143] For more information on the constitutional appeal see: Omejec, Jasna, *Analiza primjene i efikasnost ustavne žalbe u Crnoj Gori u smislu čl. 13. Konvencije za zaštitu ljudskih prava i temeljnih sloboda Vijeća* (*Savjeta*) *Europe – pravo na djelotvorno pravno sredstvo* (*međunarodna ekspertiza*), Zagreb, 2011.

[144] Article 48 paragraph 1 of the Law on the Constitutional Court of Montenegro, Official Gazette of Montenegro 64/08, 46/13 and 51/13.

[145] Law on the Protection of the Right to a Trial within a Reasonable Time, Official Gazette of Montenegro 11/07, entered into force on 21 December 2007.

[146] The legal basis for the adoption of the LPRTRT is contained in Articles 6 and 13 of the Convention.

[147] Article 2 paragraph 1 of the LPRTRT.

[148] Thus, the protection of the right to a trial within a reasonable time in Montenegro is more specific than the protection in the Republic of Croatia which covers all proceedings on the rights and obligations, or on suspicion of a criminal office or on a criminal charge, which makes that protection broader than the one in Article 6 § 1of the Convention.

[149] Article 3 of the LPRTRT.

The importance of protecting the right to a trial within a reasonable time in Montenegro is reflected not only in the fact that the protection of that right is regulated by a special law, but also in the content of the Law itself. Namely, the protection is provided in an urgent court proceedings and the Law also prescribes the responsibility of a judge and/or a president of the court if they fail to not act in the manner and within the time limits prescribed by the LPRTRT. The access to court protection in this type of proceedings is facilitated by the parties' exemption from court fees.

Following the ECtHR case-law, the LPRTRT prescribed the criteria to be taken into account when deciding on the remedies for the protection of the right to a trial within a reasonable time: the complexity of the case in terms of facts and law, conduct of the applicant, conduct of the court and of other state authorities, local self-government authorities, public services and other holders of public powers, what is at stake for the applicant.[150]

1.2.1. The request to expedite the proceedings (request for review)

If the party considers that the court unreasonably delays the proceedings and decision in the case, he or she may file a request to expedite the proceedings[151] to the court handling the case. Such request shall, as a rule, be decided by the president of the court.[152] The president of the court may not act on the request filed in the case he or she tries or tried. In that case the request will be decided by the president of the immediately superior court. The time-limit for deciding on the request is 60 days from the date of receipt of the request. The request will be decided by a ruling that must be reasoned. The proceedings on the request may be finalised by:

- dismissing the request – if the request is incomplete;
- rejecting the request:
    - if the request is manifestly ill-founded,
    - if the request is ill-founded, that is if the right to a trial within a reasonable time has not been violated;
- notifying the party – if the judge assigned to the case notifies the president of the court that certain procedural actions will be taken and/or decision made within a certain period;
- granting the request – if the request is well-founded.

If the president of court does not dismiss or reject the request as manifestly ill-founded, he or she shall request the judge or the presiding judge of the chamber assigned to the case to deliver to him or her, promptly or within 15 days at the latest, a written report on the length of the

[150] Article 4 of the LPRTRT.
[151] LPRTRT uses two terms for that request: the request to expedite the proceedings and the request for review.
[152] In courts having more than ten judges, a judge who will decide on requests to expedite proceedings, apart from the president of the court, may be designated under the annual schedule of assignments (Article 10 paragraph 2 of the LPRTRT).

proceedings and the reasons for which the proceedings have not been finalised and the opinion within which period the case may be resolved.[153]

The specificity of this system of the protection of the right to a trial within a reasonable time, which is clearly inspired by the Slovenian model, is in notifying the party, regulated by Article 17 of the LPRTRT. According to the provision of that Article, if the judge assigned to the case notifies the president of the court that certain procedural actions will be taken and/or decision made no later than four months after receipt of the request, the president of the court shall notify the party thereof. The procedure on the request for review is thereby finalised.

If it is found that the request is well-founded,[154] the president of the court will specify a period for taking certain procedural actions,[155] as well as the period within which the judge must notify him or her of the action taken. The president of the court may order that the case be resolved as a priority if the circumstances of the case or the urgency of the case so require.

A particularity of the LPRTRT is also that it prescribes the possibility to remove the assigned judge from the case. Namely, if a judge fails to take measures specified in the ruling of the president of the court rendered on the request concerned, or in other cases of non-compliance with the LPRTRT, the president of the court may remove the judge from the case to which he or she was assigned.[156]

In the proceedings on the request, the president of the court also assesses the in(activity) of a State authority, local self-government body, public service or other holder of public powers in a particular case. If he or she finds that the proceedings and adoption of decision in the case have been unreasonably delayed due to failure to submit documents or other evidence, he or she shall order the body that did not submit documents or other evidence to comply with the request within a specified timeframe. The powers of the president of the court also include the initiative for instituting disciplinary proceedings or dismissal procedure against the person who has failed to comply with the order.

If the president of the court considers the request to be well-founded and notifies the party of the time-limit in which it is expected that the proceedings will be finalised or sets a time-limit for the judge assigned to the case to finalise the proceedings, the party may not file a new request in the same case before the expiry of the deadline set in the notification or ruling made by the president of the court.

If the president of the court rendered a negative ruling on the request, the party may submit a new request only after the expiry of six months from receipt of the ruling.

The appeal is admissible:

- against the ruling dismissing the request,
- against the ruling rejecting the request,

[153] The president of the court may also request that the case files be delivered.
[154] When the president of the court finds that the proceedings and decision in the case are unreasonably delayed.
[155] That period may not exceed four months.
[156] If we leave aside the legitimate aim pursued by such measure, such measure may seem unfair for the judge who will be assigned to the case, which certainly does not contribute to the collegial relationships between the judges of a particular court. It is presumed that the case could not be resolved within the time-limit specified by the president of the court because of its complexity, so the reallocation of such case i.e. the assignment of another judge who expediently resolves cases to the case may be viewed as a sort of "punishment" imposed on the judge who achieves better results in handling the cases.

- in case of failure to serve the ruling on the party within the statutory time-limit,
- in case of failure to deliver notification to the party.

The deadline for the appeal is eight days from receipt of the ruling or from the expiry of the deadline for delivering a ruling or notification. The appeal is to be decided by the president of the immediately superior court within 60 days from the date of receipt of the case files.

If the president of the immediately superior court found the appeal to be well-founded, he or she shall reverse the ruling rendered by the president of the court. If the appeal was filed because the president of the court had failed to adopt a ruling on the request or to deliver the notification referred to in Article 17 of the LPRTRT within the period prescribed by the law, the president of the immediately superior court shall take action and adopt ruling on the request for review.

1.2.2. Just satisfaction

Just satisfaction is the other remedy for the protection of the right to a trial within a reasonable time.[157] Just satisfaction for a violation of the right to a trial within a reasonable time is provided for in two forms:

- payment of pecuniary compensation for the damage caused by a violation of the right to a trial within a reasonable time,

- publication of the judgment by which it has been found that the party's right to a trial within a reasonable time has been violated.

The requirement for bringing an action for fair redress (claim for just satisfaction) is that the party has previously filed a request for review,[158] except if the party was objectively unable to use that remedy.[159] The action is brought before the Supreme Court not later than six months from the date of receipt of the final decision adopted in the proceedings in respect of which the protection of the right to a trial within a reasonable time is sought or of the decision on the request to expedite the proceedings.[160] The deadline for the Supreme Court to make decision is four months from the date of receipt of the statement of claim.

The party may exercise the right to pecuniary compensation for non-pecuniary damage caused by a violation of the right to a trial within a reasonable time.[161] The LPRTRT prescribes very short time-limits for taking certain actions in the proceedings on the action and for finalising the proceedings. If it has been found, by a final ruling, that the request for review is well-founded or the court notified the party pursuant to Article 17 of the LPRTRT, the Supreme Court will award just satisfaction.[162] If the request for review has been rejected by a final ruling or the request was filed by a party who was objectively unable to file the request for review, the Supreme Court may award just satisfaction or reject the claim if it finds that the right to a trial

[157] State authorities, local self-government authorities, public services or other holders of public powers are not entitled to use that remedy if they participate in court proceedings as parties.
[158] Article 33 paragraph 1 of the LPRTRT.
[159] Article 33 paragraph 2 of the LPRTRT.
[160] A premature action will be dismissed (e.g. ruling of the Supreme Court of Montenegro Tpz. br. 8/15 of 24 April 2015).
[161] The LPRTRT prescribes that the compensation may be awarded in the amount ranging from EUR 300 to EUR 5,000.
[162] Article 37 paragraph 3 of the LPRTRT.

within a reasonable time has been violated.[163] The LPRTRT stipulates that (exceptionally), taking into consideration all circumstances of the case and in particular the conduct of the party, the Supreme Court may only find, by a judgment, that the right to a trial within a reasonable time has been violated. In that case, the court shall decide, at the request of the party, to make the judgment public.[164]

If the court finds that there has been a serious violation of the right to a trial within a reasonable time, it may order, at the request of the party, that the judgment be published in addition to awarding a pecuniary compensation. The court which was found, by a judgment of the Supreme Court, to have unreasonably delayed the proceedings and decision is obliged to publish the judgment.[165]

As regards the pecuniary compensation for a violation of the right to a trial within a reasonable time, the LPRTRT stipulates that the compensation is to be paid from the budget[166] and that Montenegro is entitled to lodge a recourse claim if the violation of the right to a trial within a reasonable time was caused by the conduct of local self-government authorities, public services or other holders of public powers.

The party whose right to a trial within a reasonable time has been violated may, by an action brought in civil proceedings, claim compensation for pecuniary damage by application of general rules on damages.

According to Article 44 of the LPRTRT, that Law also applies to court proceedings initiated prior to its entry into force, but after 3 March 2004.[167]

It may be concluded based on the relevant ECtHR case-law that after nearly six years of applying the LPRTRT, Montenegro managed to satisfy the Convention requirement for an effective remedy in respect of the length of the proceedings. In *Vukelić v. Montenegro* (*2013*), a request for review was considered to be an effective remedy. Three years later, in *Vučeljić v. Crne Gore* (2016, the action for fair redress was also considered as an effective remedy for the protection of the right to a trial within a reasonable time, while in *Siništaj and Others v. Montenegro* (2015) the ECtHR held that the constitutional appeal was an effective remedy for the protection of the right to a trial within a reasonable time.

The ECtHR judgment rendered in *Stanka Mirković and Others v. Montenegro* (2017)[168] showed that the Montenegrin system of protection of the right to a decision within a reasonable time, in some cases, suffers from the weaknesses making ineffective the system which is otherwise effective[169]. In this specific case, the competent second-instance administrative bodies and the

[163] Article 37 paragraph 4 of the LPRTRT.
[164] Article 38 of the LPRTRT.
[165] This obligation means posting the judgment on the website of the court and bearing the costs of publishing. The judgment must remain available on the website to the public for two months.
[166] Article 41 paragraph 2 of the LPRTRT.
[167] In those cases violations which occurred after 3 March 2004 (from the date when the Convention entered into in force in respect of Montenegro) are considered, while the court also takes into account the length of the court proceedings prior to 3 March 2004.
[168] ECtHR, *Stanka Mirković and Others v. Montenegro*, judgment of 7 March 2017, applications nos. 33781/15, 33785/15, 34369/15, 34371/15.
[169] In *Vuković v. Montenegro* decision of 27 November 2012 (application no. 18626/11), the ECtHR held that the domestic remedy against the silence of administration (Article 212 paragraph 2 of the Law on General Administrative Procedure, Official Gazette of Montenegro 60/03, and Article 18 of the Law on Administrative Dispute, Official Gazette of Montenegro 60/03 and 32/11), in the circumstances of that case, is an effective remedy.

Administrative Court issued sixteen decisions in total (eight decisions each). Most of the second-instance administrative proceedings lasted within the statutory time-limits. However, the length of administrative proceedings considered together with the length of the proceedings before the Administrative Court (which lasted from 5 months to 1 year, 8 months and 17 days) leads to the conclusion that the excessive length of the proceedings is caused by the repeated remittals of the case. The ECtHR held that the domestic remedy provided for in Article 212 paragraph 2 of the Law on General Administrative Procedure, Official Gazette of Montenegro 60/03, in cases concerning the "silence of administration" and the initiative to initiate the inspection supervision[170] are not applicable in this particular case as they are not intended to solve the situation of the repeated remittals of the case. As to the effectiveness of the request for review, the ECtHR considered that, in the circumstances of the particular case, that remedy would also not achieve the intended results given that the Administrative Court in principle ruled within the time-limits that were not contrary to the reasonable-time requirement. As regards the effectiveness of this remedy in respect of administrative proceedings, the ECtHR pointed out that a request for review could not have expedited the proceedings ongoing before various administrative bodies beforehand, nor could it have prevented the repeated remittals of the case, which was the main reason for excessive length of the proceedings in the particular case.[171] Since there were no circumstances that would justify the length of the proceedings which exceeded 10 years, the ECtHR held that there had been a violation of the Convention right to a decision within a reasonable time. Proceeding from the assessment that in Montenegro there was no effective remedy in the cases of repeated remittals of the case to public law bodies, the ECtHR held that there had also been a violation of the Convention right to an effective remedy.

This judgments shows that legal provisions that had been in force before the entry into force of the 2014 Law on Administrative Procedure and the 2016 Law on Administrative Dispute were not effective in solving the problem of excessive length of administrative proceedings before administrative bodies and before the Administrative Court in the cases of repeated repeals of individual acts of public law bodies and repeated remittals of the cases.

III. THE ANALYSIS OF USE OF DOMESTIC REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN ADMINISTRATIVE MATTERS, WITH SPECIAL EMPHASIS ON REQUESTS FOR REVIEW FILED AND MANNER OF THEIR RESOLUTION IN THE PERIOD BETWEEN 2015 AND 2017

1. The system of administrative justice in Montenegro

The administrative justice in Montenegro is organised as a one-tiered system.[172] The Administrative Court of Montenegro was established by the 2002 Law on Courts and it started its operations in January 2005. Until then, judicial control of the legality of individual acts of

[170] This remedy is regulated by Article 10 paragraph 3 of the Law on Inspection Supervision, Official Gazette of Montenegro 76/09, 57/11, 18/14, 11/15 and 52/16.
[171] § 49.
[172] Despite the fact that the Law on Administrative Dispute, Official Gazette of Montenegro 60/03 and 32/11, prescribes that administrative disputes shall be resolved by the Administrative Court of Montenegro and the Supreme Court of Montenegro, it is inaccurate to speak of a two-tiered administrative dispute as the judgments of the Administrative Court are not subject to appeal. The Supreme Court acts only on extraordinary remedies.

public law bodies was exercised at the administrative division of the Supreme Court of Montenegro. The Law on Courts, which was adopted in 2015,[173] has retained the existing organisation as a one-tiered system of administrative justice.[174]

According to the applicable Law on Administrative Dispute,[175] the Administrative Court of Montenegro decides on the legality of administrative acts and on the legality of other individual acts when provided by the law.

Under the Law on Courts and the Law on Administrative Dispute, the Administrative Court of Montenegro shall decide in administrative disputes on the legality of an administrative act and of other individual acts when provided by the law.

The Administrative Court has 13 judges and the president of court, assigned to four panels (two panels consisting of three judges each and two panels consisting of four judges each).

Over time, the jurisdiction of the Administrative Court increasingly expanded, both with regard to providing, before that Court, the protection that had been previously provided before other state authorities and with regard to entirely new competences. In this context, we should mention the laws on civil servants, the salaries of civil servants, restitution, free access to information, public procurement, regulatory agencies. In addition, it should be borne in mind that the alignment of Montenegrin law with the European Union law will have as a result that the protection against all unlawful acts of the authorities will be ensured before the Administrative Court, which will also affect the inflow of cases.

2. Statistical data

Data on the number of received, resolved and unresolved cases before the Administrative Court of Montenegro[176] show that up to 2008 the Administrative Court received around 2,000 cases per year, whereas since 2010 the number of received cases has significantly increased.[177] For comparison purposes, it should be noted that during the first year of the operation of the Administrative Court, the number of incoming cases was 1,443 (with 845 cases transferred from the Supreme Court), while in 2017 that number increased to 12,828 cases (with 2,721 cases carried forward from 2016). In 2018, 9,112 actions were brought before the Administrative Court. Despite the fact that the number of resolved cases was, on average, similar to the number of received cases, not only that the number of unresolved cases had not decrease, but their number has been constantly increasing since 2010. The clearance rate, which has been declining since 2013[178] and stood at modest 88.08% in 2016, dropping to alarming

[173] Law on Courts, Official Gazette of Montenegro 11/15.
[174] Article 21 of the 2015 Law on Courts sets out that the Administrative Court is established for the territory of Montenegro and that its seat shall be in Podgorica. The Administrative Court shall decide in administrative disputes and shall also perform other duties laid down by law (Article 22 of the 2015 Law on Courts).
[175] Law on Administrative Dispute, Official Gazette of Montenegro 60/03 and 32/11.
[176] Administrative Court of Montenegro, www.sudovi.me/uscg.
[177] Since 2010, the Administrative Court received more than 3,000 cases per year, with a trend of increase in the number of new cases, so that the number of the cases received in 2016 exceeded 4,500, Work Report of the Administrative Court of Montenegro, 2016, p. 8, www.sudovi.me/uscg.
[178] The clearance rate was 107.13% in 2013, 90.64% in 2014 and 90.32% in 2015.

37.44% in 2017, shows that the Administrative Court of Montenegro cannot cope successfully with the number of incoming cases.[179]

By analysing the statistical data on the number of cases of the Administrative Court from the introduction of the request for review into the legal system of Montenegro until 1 January 2018[180], including the data on the number of filed requests for review,[181] we can reach a conclusion that the request for review is very rarely used by the parties to the proceedings before the Administrative Court. A moderate trend of increase in the number of filed requests for review was recorded in 2015. As regards the manner of decision-making on requests for review, it is obvious that in most cases the parties were successful.

3. Requests for review

As this analysis was started during 2018, it was not possible to take into account the data for 2018, so most of the analysis is based on the data for the period 2015-2017. The data for 2018 are mentioned only in those segments in respect of which they were available.

[179] In addition to the constant increase in the number of incoming cases, one of the factors affecting the efficiency of the Administrative Court is the increase in the number of cases in which the Administrative Court holds an oral hearing, which to a certain extent prolongs the proceedings. In 2016, the Administrative Court held 1,598 oral hearings, which was 392 hearings more than in 2015 in which 1,206 oral hearings were held. Work Report of the Administrative Court of Montenegro, 2016, p. 8, www.sudovi.me/uscg.
[180] In that period, the Administrative Court received a total of 35 181 cases, www.sudovi.me/uscg.
[181] 193 requests for review.

Table 1
Received and resolved requests for review
2015–2017

Year	Received	Resolved
2015	25	25
2016	15	15
2017	23	23
TOTAL	**63**	**63**

During the ten years of application of the LPRTRT, between 2008 and 2018, a total of 193 requests for review were filed to the Administrative Court of Montenegro. If we compare the first five years of application of the Law (2008–2013) when a total of 26 requests for review were filed, to the other five years (2014–2018) when 167 requests were filed in total, we come to the conclusion that the number of filed requests for review significantly increased, particularly in 2018 when 97 requests were filed in that year alone.

Between 2015 and 2017, the Administrative Court received 63 requests for review.[182]

Table 2
Average duration of the proceedings on the day of filing a request for review
2015–2017

Year	Duration of the proceedings (from the first appeal in the administrative procedure) on the day of filing a request for review (in days)
2015	428
2016	465
2017	401
AVERAGE	431

The data from the table above show that the parties addressed the Administrative Court of Montenegro using a remedy from the LPRTRT only after a passage of a certain relatively long period of duration of administrative procedure that preceded the administrative dispute proceedings. In the period between 2015 and 2017, the parties filed a request for review on average after a lapse of more than 400 days from the first appeal in the administrative procedure, which is, in itself, in most cases, sufficient to make a conclusion that the proceedings conducted to make a decision on some administrative matter have been excessively long.

[182] Table 1.

Table 3
Manner of Decision-Making on a Request for Review
2015–2017

Year	Number of resolved requests for review	Notification that the case will be completed within four months (Art. 17)	Notification that the case has been completed (Art. 17)	Requests rejected as manifestly ill-founded (Art. 14)
2015	25	22	2	1
2016	15	8	3	4
2017	23	10	11	2
TOTAL	**63**	**40**	**16**	**7**

Proceeding from the average length of the proceedings at the time of filing a request for review, the data provided in Table 3 above describing the manner of decision-making on a request for review are not surprising. Namely, long duration of the proceedings that preceded a request for review explains the fact that in the majority of cases in which a request for review was filed, the President of the Administrative Court found the request well-founded.[183]

Article 14 of the LPRTRT – rejecting a request for review as manifestly ill-founded

Under Article 14 of the LPRTRT, the president of court shall, by a ruling, reject the request for review if he or she finds that it is manifestly ill-founded.

In the period between 2015 and 2017, in only six cases the Administrative Court made a decision rejecting the request as manifestly ill-founded, under Article 14 of the LPRTRT.

Table 4
Reasons for rejecting requests for review as manifestly ill-founded
(Article 14 of the LPRTRT)

Year	Request withdrawn (dispute finalised)	Request for failure to act by the administrative bodies	Available remedies were not exhausted before the request for review was filed	Dispute falling within the limits of a reasonable time
2015	1	-	-	-
2016	-	1	-	3
2017	-	-	2	-
TOTAL	1	1	2	3

[183] In 40 out of 63 cases in which a request for review was filed, the President of the Administrative Court notified the party that the proceedings will be finalised within four months at the latest.

In the jurisprudence of the Administrative Court, the reasons for rejecting requests for review as manifestly ill-founded include:

- duration of the administrative dispute falls within the limits of a reasonable time
- it does not concern a dispute in which rights and obligations of a civil nature are decided
- it does not concern a violation of a right in court proceedings, but in the proceedings before an administrative body
- all available remedies had not been exhausted before a request for review was filed

We should cite the following as important parts of the reasoning of the decisions rejecting the requests for review as manifestly ill-founded:

"It undeniably arises from the facts established by examination of the files of the case to which the request for review relates and definition of a reasonable time in the afore-mentioned law and the ECHR that, in the case at hand, the applicant's right to a trial within a reasonable time has not been violated as the actions taken by this Court with a view to fulfilling the procedural requirements for adoption of a decision lead to the conclusion that in the case U.br.3535/15 there has been no violation of the right to a trial within a reasonable time, in the proceedings before the Administrative Court.

Additionally, the length of the reasonable time established in the case-law of the European Court of Human Rights renders the arguments of the applicant who filed the request for review with a view to protecting the right to a trial within a reasonable time ill-founded as the duration of the administrative dispute from 25 December 2015 (the date when the action was registered at the court) until 25 January 2016 (the date of filing the request for review) is not a time that would constitute a violation of the applicant's right to have a decision made within a reasonable time in accordance with the applicable national legislation and international standards."[184]

"As established from the request for review filed, the applicants of the request for review seek judicial protection for the violation of the right to a trial within a reasonable time, in the proceedings conducted before the Real Estate Administration – Herceg Novi Regional Unit – in the procedure for deciding on expropriation, initiated by the Property Directorate of the Municipality of Herceg Novi. Thus, the present case does not concern a violation of the right in court proceedings but in the proceedings before a state authority, which means that the applicants of the request for review may seek the protection of the right to a trial within a reasonable time only for a violation of that right committed in court proceedings and in administrative dispute proceedings, but not in the procedure conducted before the state authorities."[185]

"It is undeniable that the Administrative Court of Montenegro rendered a decision in the case U.br.2932/2015 on 26 April 2016 by which it accepted the action and annulled the decision in question and remanded the case for reopened procedure, thereby ending the proceedings on the action brought. Thus, the present case does not concern a violation of the right in court proceedings but in the proceedings before a state authority, which means that the applicant of the request for review may seek the protection of the right to a trial within a

[184] *Su.IV-2.br.2/16* The same was done in the case Su.IV-2.br.3/16 which is identical to the case Su.IV-2.br.2/16 in terms of facts and law.
[185] Su.IV-2.br. 9/16.

reasonable time only for a violation of that right committed in court proceedings and in administrative dispute proceedings, but not in the procedure conducted before the state authorities, i.e. before the Real Estate Administration – Ulcinj Regional Unit, in the present case.

Article 57 of the Law on Administrative Dispute prescribes that if the respondent public law body, after the judgment annulling its act is adopted, fails to adopt a new act in that procedure immediately and, in any event, within 30 days at the latest or fails to adopt, within that time-limit, an act concerning the enforcement of the judgment of the Administrative Court referred to in Article 35 paragraph 3 of this Law, the party may, by a separate submission, request that such an act be adopted.

If the respondent public law body fails to adopt the act referred to in paragraph 1 of this Article within seven days from the date of such submission, the party may request that such an act be adopted by the Administrative Court.

Bearing in mind such legal provision and the allegations of the filed request for review, it is evident that the applicant of the request did not continue the proceedings under the conditions prescribed by the Law on Administrative Procedure and the Law on Administrative Dispute, namely, that he had not exhausted all remedies available to him before he filed the request for review to the Court, and such view has also been taken by the European Court of Human Rights in Vera Štajcar v. Croatia*, no. 46279/99, ECtHR, 20 January 2000.*

In view of the afore-mentioned, the request for review filed in this case had to be rejected as manifestly ill-founded, by applying the provision of Article 14 of the Law on the Protection of the Right to a Trial within a Reasonable Time."[186]

In the case Su.IV-2.br.7/17 the request for review was filed for the failure of the administrative inspector to act on the application – initiative for inspection supervision – requesting the inspection of the Public Institution "Vukašin Radunović" Primary School in Berane and the Berane Regional Unit of the Health Insurance Fund, which violated the applicant's labour rights.

The reasoning of the ruling rejecting the request for review as manifestly ill-founded essentially stated the following:

"It arises from the facts established by the examination of the request for review that the applicant sustained occupational injury on 15 April 2014, that he has been diagnosed to have a disability exceeding 50%, that he notified the employer of that injury within three days but that the employer did not submit a report on occupational injury to the Berane Regional Unit of the Health Insurance Fund in a timely manner due to which he could not have been paid the pecuniary compensation. In the request for review, the applicant indicated the failure of the Administrative Inspectorate and of the Chief Administrative Inspector to act on his initiative to exercise inspection supervision in the above-mentioned entities.

As established from the request for review filed, the applicant of the request for review seeks the judicial protection for the violation of the right to a trial within a reasonable time and

[186] Su IV-2 br. 23/17.

failure to act on his initiative to exercise inspection supervision, in the proceedings conducted before the administrative inspectorate in the Ministry of Interior of Montenegro. Thus, the present case does not concern a violation of the right in court proceedings but in the proceedings before a state authority, which means that the applicant of the request for review may seek the protection of the right to a trial within a reasonable time only for a violation of that right committed in court proceedings (administrative dispute proceedings) but not in a procedure conducted before state authorities.

Apart from that, the applicant of the request had at disposal the possibility of judicial protection in case of the "silence of administration".

Namely, Article 13 of the Law on Inspection Supervision (Official Gazette of the Republic of Montenegro 039/03 of 30.6.2003, Official Gazette of Montenegro 076/09 of 18.11.2009, 057/11 of 30.11.2011, 018/14 of 11.4.2014, 011/15 of 12.3.2015, 052/16 of 9.8.2016), prescribes, inter alia*, an obligation of the inspector to consider an initiative for initiating inspection procedure and to inform thereof the person who submitted the initiative. If the inspector does not proceed in the manner stated above, the person who submitted the initiative may submit an appeal for the failure of the inspector to act on his initiative, to the ministry responsible for the administrative area to which the initiative relates. Only if the competent ministry has not taken a decision or if it has taken a decision with which the person submitting the initiative is not satisfied, the person who submitted the initiative would be able to bring an action.*

Bearing in mind such legal provision and the allegations of the filed request for review, the mentioned violation indicated by the applicant is not considered a violation of the right protected under the provisions of the Law on the Protection of the Right to a Trial within a Reasonable Time, under the provision of Article 2 paragraph 1 of that Law.

In view of the afore-mentioned, the request for review filed in this case had to be rejected as manifestly ill-founded, by applying the provision of Article 14 of the Law on the Protection of the Right to a Trial within a Reasonable Time."

In the analysed period[187], one case on the request for review was terminated by reference to Article 14 of the LPRTRT.

In that case a request for review was filed in relation to the administrative dispute for the "silence of administration" (Ministry of Finance). In the proceedings on the request for review, the President of the Administrative Court found that the Ministry of Finance issued a decision and that the applicant informed the Court that the decision had been issued and that the reasons for the action brought and for the request for review had ceased. Therefore, pursuant to Article 14 of the LPRTRT, in conjunction with Article 194 of the Civil Procedure Law, the proceedings on the request for review were discontinued.[188]

Article 16 of the LPRTRT – rejecting the request for review as ill-founded

[187] Between 2015 and 2017.
[188] Su.IV-2.br.18/15.

Article 16 of the LPRTRT prescribes that when the president of the court, after the proceedings have been conducted, finds that the court has not violated the right to a trial within a reasonable time, he or she shall, by a ruling, reject the request for review as ill-founded.

In the analysed period (2015–2017), there were no cases in which the Administrative Court adopted decision on the request for review on the basis of Article 16 of the LPRTRT.

According to the data of the Administrative Court, eight such decisions were adopted in 2018. The most common reason for rejecting the request for review as ill-founded under Article 16 of the LPRTRT is timely and continuous activity of the Court[189] and the length of court proceedings falling within the reasonable-time limits.
The relevant part of the reasoning of the decision on the request for review in one such case reads:

"Namely, the length of a reasonable time, according to the case-law of the European Court of Human Rights, is calculated from the moment of filing an appeal against a decision made in the first instance (Živaljević v. Montenegro, application no. 17229/04, § 72 of 8.3.2011).

In view of the fact that the appeal to the first-instance body was submitted to the competent authority, that an action was brought before the Administrative Court for the "silence of administration" of the second-instance body, that the Court sent the statement of claim for a response thereto, that the respondent submitted the statement of defence, the case files and the letter informing the Court that a conclusion was adopted (...) that the judge assigned to the case sent a letter to the applicant to declare on whether he was satisfied with the conclusion adopted subsequently, (...) it clearly arises that the Court has taken actions in a timely manner and in continuity.

Namely, the proceedings in this legal matter, which are not urgent, calculating from the moment of filing an appeal to the second-instance body (8 September 2017) until the moment of filing the request for review (2 April 2018), lasted 6 months and 25 days, which is a length that does not provide basis for the conclusion that there has been a violation of the right to a trial within a reasonable time which is guaranteed by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In view of the length of the proceedings and the fact that there were no major delays in taking procedural actions that could lead to the conclusion that the applicant's right to a trial within a reasonable time has been violated, the request for review filed in this case had to be rejected as ill-founded, by applying the provision of Article 16 of the Law on the Protection of the Right to a Trial within a Reasonable Time." (Su. IV-2 br. 22/18)

Article 17 of the LPRTRT – notification

The president of the court may notify the party that certain procedural actions will be taken and/or decision made no later than four months after receipt of the request for review and, thus, finalise the proceedings on the request for review.

[189] This means taking actions in the proceedings the length of which is examined in a timely and continuous manner.

In the period between 2015 and 2017, the Administrative Court made 56 notifications under Article 17 of the LPRTRT (88.8% of the total number of the requests for review). Out of those 56 notifications, in 40 cases (71.4%) the party was notified that the proceedings would be accelerated or that they would be completed within four months, while in 16 cases (28.6%) the parties were notified that the case had been finalised.

In the case of notification under Article 17 of the LPRTRT, the Administrative Court has acted in a timely manner, within the time-limit laid down in Article 20 of the LPRTRT. Thus, it can be concluded that the Court's practice regarding the proceedings on the requests for review is transparent and in cases where the parties had been notified that the decision would be made within a certain timeframe, it was. It should also be noted that the Administrative Court publishes all its decisions on the website[190] which makes it easier to monitor the date of adoption of the decision and provides an answer to the question whether the Court complied with the decision rendered on the request for review.

[190] www.sudovi.me

Article 18 of the LPRTRT – specifying a relevant time-limit

The president of court may, by a ruling, specify a period for taking certain procedural actions, which may not exceed four months, and a relevant period within which the judge must inform him or her of the action taken, when he or she finds that the proceedings and decision in the case is unreasonably delayed, and he or she may also order that the case be resolved as a priority if the circumstances of the case or the urgency of the case so require.[191]

If the judge fails to take actions as stipulated by the ruling on the request for review or by the notification, as well as in other cases of failure to act, the president of court may remove the assigned judge from the case pursuant to a separate law.[192]

In the ten-year period of application of the LPRTRT, there have been no actions taken at the Administrative Court under Article 18 of the LPRTRT.

Table 5
Average length of proceedings on requests for review
2015–2017

Year	Length of proceedings on a request for review (in days)
2015	4
2016	18
2017	32
AVERAGE	**18**

Long length of the proceedings on the remedy intended to speed up the proceedings or to protect the right to a trial within a reasonable time would undermine the purpose of the remedy and call into question its effectiveness. Analysing the request for review from this perspective, the data provided in Table 5 on the average length of proceedings on requests for review in the period between 2015 and 2017 (18 days) indicate that it is an effective remedy for the exercise and protection of the right to a trial within a reasonable time.

Table 6
Average length of proceedings following the decision on a request for review
2015–2017

Year	Overall length of proceedings (in an administrative matter) following the decision on a request for review (in days)
2015	90
2016	58
2017	74
AVERAGE	**74**

[191] Article 18 of the LPRTRT.
[192] Article 19 of the LPRTRT.

The next element affecting the assessment of the effectiveness of a remedy for the protection of the right to a trial within a reasonable time is the length of the proceedings in respect of which the request had been filed after a decision on the remedy was adopted. In this way, it is assessed whether the remedy attained the main objective for which it has been established (speeding up the proceedings in question) i.e. whether the remedy has acceleratory function. The information on the average length of administrative dispute proceedings following the decision on the request for review leads to the conclusion that after the decision on the request for review is adopted, administrative dispute proceedings are finalised in a relatively short period which could indicate the acceleratory function of that remedy. However, without exact data on the average length of administrative dispute proceedings in the period considered[193], it is not possible to determine whether the request for review actually accelerates the proceedings in respect of which it has been filed i.e. whether that remedy has an acceleratory function.[194]

Table 7
Average length of proceedings overall (from the first appeal until the completion of the proceedings by a final decision)
2015–2017

Year	Overall length of proceedings (in an administrative matter) (in days)
2015	537
2016	560
2017	426
AVERAGE	**508**

The data in the table above show that in the cases in which the requests for review were filed, in the period between 2015 and 2017, the legally relevant period lasted an average of 508 days, which is unacceptable from the perspective of the right to a trial within a reasonable time in the cases in which administrative matters are determined. On the other hand, it can be assumed that the proceedings in the cases in which the parties did not resort to a request for review would last even longer and the positive effect of the request for review can be noted in that respect as well.

4. Appeals against decisions on a request for review

If the president of court dismisses or rejects the request for review or if he/she fails to submit to the party a ruling or notification on the request for review within 60 days in accordance with Article 17 of the LPRTRT, the party may file an appeal within 8 days from the receipt of ruling or the expiry of the deadline for the delivery of ruling or notification.[195]

[193] The data on the average length of administrative dispute proceedings before the Administrative Court of Montenegro between 2015 and 2017 have not been available.
[194] According to available data, the average length of the administrative dispute proceedings in 2018 was 339.34 days. However, this data does not allow us to draw conclusions regarding the situation in the analysed period 2015–2017 for which the data have not been available, as already mentioned above.
[195] Article 24 of the LPRTRT.

Table 8
Number of the appeals filed

Year	Appeals
2015	3
2016	2
2017	5
TOTAL	**10**

Table 9
Structure of the appeals

Year	Appeals against rulings referred to in Article 14 of the LPRTRT	Appeals for failure to make decision on the request for review
2015	**1**	**2**
2016	**1**	**1**
2017	**2**	**3**
TOTAL	**4**	**6**

In the period between 2015 and 2017, 10 appeals were filed against the decisions of the Administrative Court on a request for review or for failure of the president of the court to make decision on a request for review.

Table 10
Decisions of the Supreme Court on appeals

Year	Granted	Refused
2015	2	1
2016	1	1
2017	1	4
TOTAL	**4**	**6**

Out of a total of 10 appeals filed, the Supreme Court of Montenegro rejected six appeals and upheld the decision of the Administrative Court.

Four appeals filed for failure to adopt a ruling on a request for review were well-founded, in the opinion of the Supreme Court, but the requests for review in those cases were found to be manifestly ill-founded.[196]
In one of those cases, the request for review was filed by the person who was not a party to the proceedings before the Administrative Court at the time of filing the request. Given the fact that the applicant was not a party to the administrative proceedings before the Administrative Court, the President of the Administrative Court did not decide on his request.

The Supreme Court held that such an approach of the Administrative Court was wrong, stating essentially that under Article 20 of the LPRTRT the president of the court was required to decide on the request for review within 60 days of receipt of the request for review at the latest. In view of the finding that no decision was made on the request for review, the Supreme Court found the appeal well-founded in the part relating to the failure to make decision on the request for review.[197]

However, the request for review was found to be manifestly ill-founded, with the following reasoning:

"Article 2 paragraph 1 of the Law on the Protection of the Right to a Trial within a Reasonable Time stipulates that, among others, a party to and an interested person in the administrative dispute proceedings shall have the right to judicial protection for the violation of the right to a trial within a reasonable time, while Article 9 paragraph 1 of same Law prescribes that a party may file a request for review if he/she deems that the court unreasonably delays the proceedings and making of decision in the case.

In the case at hand, at the time of filing the request for review and the appeal in question the applicant was not a party to the administrative dispute proceedings, nor was the case pending before the Administrative Court of Montenegro, so the request for review is manifestly ill-founded.

For the afore-mentioned reasons and with reference to Article 30 of the Law on the Protection of the Right to a Trial within a Reasonable Time, in conjunction with Article 14 of the same Law, it has been decided as stated under point 2 of the operative part of this Ruling."[198]

In the second case, the President of the Administrative Court informed the applicant that the files had not been completed and that the case would be assigned to a judge promptly after the case files were completed.

Proceeding from Article 17 of the LPRTRT and the content of the act sent by the president of the court to the applicant, the Supreme Court held that the appellant stated justifiably that no decision on the request for review was made in this particular case.

In the reasoning for its decision, the Supreme Court essentially stressed that:

[196] Supreme Court of Montenegro, Ruling, IV-2 Su 3/15 of 12 June 2015, Ruling, IV-2 Su 5/15 of 30 June 2015, Ruling IV-2 Su 11/16 of 31 October 2016 and Ruling IV-2 7/17 of 17 October 2017.
[197] Such consideration of the Supreme Court is the only correct as it is beyond doubt that a decision is to be made on the remedy filed (where the way in which the remedy is decided is not decisive).
[198] Supreme Court of Montenegro, Ruling, IV-2 Su 11/16 of 31 October 2016.

"In this particular case, the President of the Administrative Court informed the party, by act Su IV-2 br. 7/15 of 9 March 2015, that the files had not been completed and that the case would be assigned to a judge promptly after the case files were completed.
In view of the afore-mentioned provision of Article 17 of the Law on the Protection of the Right to a Trial within a Reasonable Time and the content of the above-mentioned act of the President of the Court, it has been justifiable to state in the appeal that no decision on the filed request for review was made in the case at hand.
Article 30 of the Law on the Protection of the Right to a Trial within a Reasonable Time stipulates that when the appeal was filed because the president of the court had failed to adopt a ruling or to submit the notification referred to in Article 17 of the Law, the president of the immediately superior court shall take action and adopt a ruling on the request for review, in accordance with the provisions of Articles 14, 15, 16, 18 and 22 of the Law.

It has been established from the case files of the Administrative Court U. br. 3506/2014 that a judgment was rendered in that case on 3 April 2015 and that the appeal in question was delivered to the registered postal service on 11 May 2015. In view of such state of facts and the afore-mentioned legal provisions, the request for review had to be rejected as manifestly ill-founded as at the time of filing the appeal the proceedings before the court were completed. The purpose of the request for review is to accelerate the court proceedings and, accordingly, under Article 9 paragraph 2 of the Law on the Protection of the Right to a Trial within a Reasonable Time, a request for review is filed to the court handling the case. In view of such legal provisions and the fact that the appeal in question was filed after the court proceedings had ended, the request for review has to be rejected as manifestly ill-founded since the proceedings which have already been completed cannot be accelerated.

Therefore, for the afore-mentioned reasons and in view of legal provisions, it has been decided as stated in the operative part of this Ruling." [199,200]

In one case, a request for review was filed in the course of duration of the administrative dispute proceedings, however, the administrative dispute was terminated before the appeal for failure to act on the request for review was filed. The Supreme Court found that the request for review was manifestly ill-founded and provided the following reasoning: *"...at the moment when the appeal for failure to make decision on the request for review was filed the proceedings in the case U. broj 7599/17 of 21 September 2017 had been completed, hence the request for review is manifestly ill-founded since the proceedings which have already been completed cannot be accelerated."*[201]

The remaining two appeals for failure to adopt a ruling on a request for review were not well-founded, in the opinion of the Supreme Court, as with regard to the request for review the President of the Administrative Court acted in accordance with the LPRTRT.[202] In both cases,

[199] Supreme Court of Montenegro, Ruling, IV-2 Su 3/15 of 12 June 2015.
[200] The case which the Supreme Court resolved by the Ruling IV-2 Su 5/15 of 30 June 2015 concerned an identical factual and legal situation as in the case IV-2 Su 3/15, the only difference being that in the case IV-2 Su 5/15, at the time when the Supreme Court rendered its ruling, a decision of the Administrative Court in the administrative dispute in respect of which a request for review and an appeal were filed had not been adopted, but the Supreme Court found that the hearing had been concluded and that the decision of the Administrative Court would be made within the time-limit prescribed by law.
[201] Supreme Court of Montenegro, Ruling, IV-2 7/17 of 17 October 2017.
[202] Supreme Court of Montenegro, Ruling, IV-2 4/17 of 2 October 2017, Ruling, IV-2 5/17 of 2 October 2017.

the President of the Administrative Court of Montenegro informed the applicant that the decision in the administrative dispute proceedings would be made within four months from the date of receipt of the request for review. Having held that in this case the proceedings on the request for review had been terminated by the notification made by the President of the Administrative Court, the Supreme Court found that the appeal for failure to adopt a ruling on a request for review was ill-founded.

The Supreme Court has rejected the appeals against the rulings of the President of the Administrative Court of Montenegro rejecting requests for review as manifestly ill-founded, in respect of proceedings which do not concern determination of civil (property-related) rights of the plaintiff (the applicant).

The relevant part of the reasoning in one such case reads:

"The request for review filed by the plaintiff N.D. in the case U. br. 3508/15 of that Court has been rejected as ill-founded by the Ruling Su IV-2 broj 1/16 of 27 January 2016 of the President of the Administrative Court of Montenegro with the reference to Article 14 of the Law on the Protection of the Right to a Trial within a Reasonable Time.
...
The proceedings have been conducted on the plaintiff's request to strike off registration of the ownership rights of other persons, and not that of the plaintiff, so it is obvious that in these particular proceedings no civil (property-related) rights of the plaintiff are to be decided.
As no civil rights of the plaintiff are to be decided in these particular proceedings, the request for review is manifestly ill-founded because Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and, consequently, the Law on the Protection of the Right to a Trial within a Reasonable Time apply only to disputes concerning the civil rights of the party.

For the afore-mentioned reasons and in view of legal provisions, and with reference to Article 28 of the Law on the Protection of the Right to a Trial within a Reasonable Time, it has been decided as stated in the operative part of this Ruling.

The allegations of the filed appeal that the length of the administrative dispute proceedings is calculated from the moment the party files an appeal against an administrative act are irrelevant for a different decision. The reason for that is that the case at hand does not concern determination of the plaintiff's civil rights, so that the Law on the Protection of the Right to a Trial within a Reasonable Time cannot be applied, making the request for review manifestly ill-founded."[203]

Furthermore, the Supreme Court has rejected the appeals against the rulings of the President of the Administrative Court of Montenegro rejecting requests for review as manifestly ill-founded if, at the time when request for review was filed, the court proceedings in respect of which the request for review was filed had been completed.[204]

The next situation in which the Supreme Court has rejected an appeal against a ruling of the President of the Administrative Court of Montenegro rejecting a request for review as

[203] Supreme Court of Montenegro, Ruling, Su VI br. 2/16 of 24 February 2016.
[204] Supreme Court of Montenegro, Ruling, IV-2 Su broj 3/17 of 23 March 2017.

manifestly ill-founded is a situation in which the applicant's claim was partially granted by an earlier judgment of the Supreme Court of Montenegro and the respondent State – Montenegro was ordered to pay a certain sum to the applicant as compensation for non-pecuniary damage sustained as result of violation of the right to a trial within a reasonable time in two cases of the Administrative Court of Montenegro. The compensation for the damages caused by violation of the right to a trial within a reasonable time was awarded to the applicant for the period between 23 April 2011 (the date of filing the first appeal) and 22 January 2015 (the date of filing an action for fair redress).

The request for review in this particular case was filed in connection with the proceedings brought before the Administrative Court of Montenegro for the adoption of an act in the enforcement of an earlier judgment of the Administrative Court rendered in the same case. Therefore, the case concerned the same proceedings that were subject of the proceedings conducted before the Supreme Court on an action for fair redress.

Rejecting the appeal filed against the ruling of the President of the Administrative Court, the Supreme Court essentially pointed out as follows:

"Bearing in mind the afore-mentioned findings, a violation of the right to a trial within a reasonable time in the period between 23 April 2011 and 22 January 2015 cannot be determined again, but a violation of the right to a trial within a reasonable time after that period is determined, while the fact that the proceedings had already lasted the specified period of time is to be taken into consideration.

It has been established from the case files that after the Judgment U. br. 2363/14 of the Administrative Court of Montenegro had been rendered the administrative body did not adopt an act in the enforcement of that judgment for justified reasons (presentation of evidence and the claim amended by the applicant) by the date of adoption of the Judgment U. br. 655/15 of 23 April 2015. Considering this fact and the fact that the action in the case U. br. 655/15 was brought on 13 March 2015 and the judgment adopted on 23 April 2015, I hereby find that the President of the Administrative Court of Montenegro justifiably concluded, by the impugned ruling, that in the particular case there had been no violation of the right to a trial within a reasonable time, which makes the filed appeal manifestly ill-founded."[205]

Proceeding from Article 24 of the LPRTRT which regulates the right to appeal against a decision or failure to act by the president of the court on a request for review, the Supreme Court has dismissed the appeals filed against the notification referred to in Article 17 of the LPRTRT.[206]

[205] Supreme Court of Montenegro, Ruling, IV-2 Su broj 2/15 of 9 June 2015.

[206] Supreme Court of Montenegro, Ruling, IV-2 broj 4/17 of 2 October 2017, Ruling, IV-2 broj 5/17 of 2 October 2017. It should be noted that, under the first point of the operative part of both of the above-mentioned rulings, the appeals were rejected for the failure to make decision on the request for review in the cases of the Administrative Court of Montenegro, while the appeals filed against the notifications referred to in Article 17 of the LPRTRT were dismissed under the second point of the operative part of the afore-mentioned rulings.

5. Summary

Over time, the jurisdiction of the Court was expanding, both in respect of providing, before the Administrative Court, the protection that had been previously provided before other State authorities and in respect of entirely new competences. In this context, one should mention the laws on civil servants, the salaries of civil servants, restitution, free access to information, public procurement, regulatory agencies etc. In addition, it should be borne in mind that the alignment of Montenegrin law with the European Union legislation will result in the situation where the protection against any unlawful act of the authorities will be provided before the Administrative Court, which will also affect the inflow of the cases.

The data on the number of received, resolved and unresolved cases before the Administrative Court of Montenegro show that the number of the cases received has increased significantly since 2010. Despite the fact that the number of cases resolved was on average similar to the number of cases received, not only that the number of unresolved cases has not decreased, but their number has been constantly increasing since 2010. The clearance rate, which has been declining since 2013 and stood at modest 88.08% in 2016, dropping to alarming 37.44% in 2017, shows that the Administrative Court of Montenegro cannot cope successfully with the number of incoming cases.

Analysing the statistical data on the number of cases before the Administrative Court in the period between 2010 and 1 January 2017, together with the number of filed requests for review, we can conclude that the parties to the proceedings before the Administrative Court very rarely use the request for review. A moderate trend of increase in the number of filed requests for review was recorded in 2015. As for the manner of making decisions on the requests for review, it is evident that until 2014 most of the requests were refused, while between 2014 and 31 December 2017, in most cases on requests for review the parties were successful. Therefore, there is no ground for conclusion that the manner of deciding on the requests for review is a reason discouraging potential applicants to file requests and, thus, a reason for a very small percentage of the use of this remedy should be sought elsewhere.
In the period between 2015 and 2017, the Administrative Court received 63 requests for review.

The parties addressed the Administrative Court of Montenegro by filing a request for review after a relatively long length of administrative procedure which preceded the administrative dispute proceedings. In the period between 2015 and 2017, the parties filed requests for review on average after a lapse of more than 400 days from the first appeal in the administrative procedure, which is, in itself, in most cases, sufficient to make a conclusion that the proceedings conducted to make a decision on some administrative matter have been excessively long. The length of the proceedings which preceded the request for review explains the fact that in most cases in which the request was filed, the President of the Administrative Court found the request well-founded. In the period between 2015 and 2017, in only six cases it was decided to reject the request as manifestly ill-founded, under Article 14 of the LPRTRT, for the following reasons:

- the length of the administrative dispute proceedings fell within the reasonable-time limits,
- it did not concern a dispute in which rights and obligations of a civil nature are determined,

- it did not concern a violation of the right in court proceedings but in the proceedings before an administrative body,
- all available remedies had not been exhausted before a request for review was filed.

In the analysed period (2015–2017), the Administrative Court did not issue, in any of the cases, a decision on a request for review under Article 16 of the LPRTRT which prescribes that when the president of the court, after the proceedings have been conducted, finds that the court has not violated the right to a trial within a reasonable time, he or she shall, by a ruling, reject the request for review as ill-founded.

Between 2015 and 2017, 56 notifications were made under Article 17 of the LPRTRT (88.8% of the total number of the requests for review). Out of 56 notifications, in 40 cases (71.4%) the party was notified that the proceedings would be accelerated, i.e. that they would be completed within four months, whereas in 16 cases (28.6%) the parties were sent notifications that the case had been completed.

In the case of notification under Article 17 of the LPRTRT, the Administrative Court has acted in a timely manner within the period laid down in Article 20 of the LPRTRT. The analysis performed shows that the Court's practice of acting on the requests for review is transparent and in cases in which the parties were notified that the decision would be made within a certain period it indeed was. In addition, it should be noted that the Administrative Court publishes all its decisions on the website, making it easier to monitor the date of the adoption of decision, i.e. it provides an answer to the question whether the Court complied with the decision it made on the request for review.

Long length of the proceedings on the remedy intended to speed up the proceedings or to protect the right to a trial within a reasonable time would undermine the purpose of the remedy and call into question its effectiveness. Analysing the request for review from this perspective, the data on the average length of proceedings on requests for review in the period between 2015 and 2017 (18 days) indicate that it is an effective remedy for the exercise and protection of the right to a trial within a reasonable time.

The next element affecting the assessment of the effectiveness of a remedy for the protection of the right to a trial within a reasonable time is the length of the proceedings in respect of which the request had been filed after a decision on the remedy was adopted. In this way, it is assessed whether the remedy attained the main objective for which it has been established (speeding up the proceedings in question) i.e. whether the remedy has acceleratory function. The information on the average length of administrative dispute proceedings following the decision on the request for review leads to the conclusion that after the decision on the request for review is adopted, administrative dispute proceedings are finalised in a relatively short period which could indicate the acceleratory function of that remedy. However, without exact data on the average length of administrative dispute proceedings in the period considered, it is not possible to determine whether the request for review indeed accelerates the proceedings in respect of which it has been filed i.e. whether that remedy has an acceleratory function.

The compiled data show that in the cases in which the requests for review were filed, in the period between 2015 and 2017, the legally relevant period lasted an average of 508 days, which is unacceptable from the perspective of the right to a trial within a reasonable time in the cases in which administrative matters are determined. On the other hand, it can be concluded that the

proceedings in the cases in which the parties did not resort to a request for review would last even longer and the positive effect of the request for review can be noted in that respect as well.

In the period between 2015 and 2017, 10 appeals were filed against the decisions of the Administrative Court on a request for review or for failure of the president of the court to make decision on a request for review. Out of a total of 10 appeals, four appeals were filed against a ruling of the President of the Administrative Court adopted under Article 14 of the LPRTRT and six appeals were filed for failure to adopt a decision on a request for review. The Supreme Court accepted four appeals and rejected six appeals. All appeals accepted related to the failure to adopt a ruling on a request for review due to wrong legal approach in respect of procedural requirements for deciding on a request for review.

Proceeding from the number of cases in which the appeal against the decision on the request for review (or the failure of the President of the Administrative Court to act) was found admissible and the number of appeals filed, we come to the conclusion that the parties were not satisfied with a decision of the President of the Administrative Court on a request for review, for which reason they appealed to the Supreme Court. However, the analysis of the way how the Supreme Court acted on the appeals shows that in 60% of the cases the President of the Administrative Court acted in accordance with the LPRTRT in the proceedings on the request for review, while the data that 40% of the appeals were accepted indicates the failure to adopt decision on a request for review in situations in which the legal requirements for taking action have been met.

IV. ACTION FOR FAIR REDRESS

Under the LPRTRT, just satisfaction for a violation of the right to a trial within a reasonable time may be exercised by payment of pecuniary compensation for the damage caused and/or by publication of the judgment that the party's right to a trial within a reasonable time has been violated.[207]

An action for fair redress may be brought only if the party has previously filed a request for review to the competent court. It may also be brought by a party who was objectively unable to file a request for review to the court. The action is to be brought within six months from the date when the decision made in the case concerned becomes final.

As already noted above, this analysis was started during 2018 so it was not possible to take into account the data for 2018, and that is why major part of the analysis is based on the data available for the period 2015-2017. The data for 2018 are mentioned only in those segments in respect of which they were available.

During the ten years of application of the LPRTRT (2008–2018), a total of 395 actions for fair redress were brought before the Supreme Court of Montenegro. Only 34 of those actions relate to the proceedings before the Administrative Court of Montenegro and of that number, eight actions were granted, seven were rejected, seventeen were dismissed, while in two cases the actions were withdrawn.

Table 11
Actions for fair redress with regard to the Administrative Court of Montenegro

Year	Filed	Granted (partially)	Rejected	Dismissed	Action withdrawn
2015	10	2	2	5	1
2016	4	-	-	4	-
2017	5	2	2	1	-
TOTAL	19	4	4	10	1

In the period between 2015 and 2017, the Supreme Court received 19 actions for fair redress related to the administrative dispute. Four actions were partially granted, four were rejected and ten were dismissed. In one case, the action was withdrawn.

1. Proceedings before the Supreme Court of Montenegro – well-founded claims

The Supreme Court of Montenegro provides protection of the right to a trial within a reasonable time in cases in which a party complains about the length of the proceedings in which civil

[207] Article 31 of the LPRTRT.

rights and obligations within the meaning of the ECtHR case-law are determined, while it dismisses the actions relating to other proceedings.[208]
In all the cases in which the actions for a violation of the right to a trial within a reasonable time were partially granted, in the administrative procedures and the administrative disputes, the Supreme Court found that the claim was partially well-founded since the State authorities had not been sufficiently effective, i.e. the competent authorities caused a delay and unreasonable length of the proceedings.[209]

REQUEST FOR EVICTION

In the case Tpz. br. 1/15, the Supreme Court of Montenegro partially granted the applicant's claim and found that Montenegro is obliged to pay EUR 600 to the applicant as non-pecuniary damages for a violation of the right to a trial within a reasonable time before the Administrative Court of Montenegro, within 15 days from the date of receipt of the judgment, while the remainder of the claim in excess of the amount awarded was rejected.

An action for fair redress was filed on 21 January 2015 for violation of the right to a trial within a reasonable time in the proceedings before the Administrative Court. The Supreme Court found the action admissible, based on the following findings:

- The applicant is a party to an administrative dispute and within the meaning of Article 2 paragraph 1 of the LPRTRT he is entitled to judicial protection as a result of any violation of the right to a trial within a reasonable time, since the proceedings before the Administrative Court relate to the protection of the rights guaranteed by the Convention.
- The applicant had filed a request for review in the case in respect of which the action was brought, thereby fulfilling the condition for bringing an action for fair redress set out in Article 33 paragraph 1 of the LPRTRT.
- The action for fair redress is timely and complete.

Since the applicant's request for review, filed during the administrative dispute proceedings, was rejected as ill-founded by a final decision, the Supreme Court first of all had to assess within the meaning of Article 37 paragraph 4 of the LPRTRT whether in the process of resolving the administrative matter of the applicant in relation to which he filed the action his right to a trial within a reasonable time had been violated. Only after that, the Supreme Court proceeded to determine the amount of financial award. When determining the length of the legally relevant period, the Supreme Court took into account the relevant ECtHR case-law.[210]

In this particular case, the administrative procedure was conducted on the request from the applicant to evict a certain person from the applicant's apartment. The Supreme Court found that, as from the date of filing the appeal against the first-instance decision of the administrative body, the particular administrative matter fell under the scope of Article 6 § 1 of the Convention,

[208] In the rulings dismissing the actions for fair redress relating to proceedings not falling under the scope of Article 6 § 1 of the Convention, the Supreme Court cited detailed reasons for which it considered that the proceedings in respect of which the action had been brought did not fall under the scope of Article 6 § 1 of the Convention. For example, the Ruling Tpz. br. 16/16 of 11 July 2016.
[209] Judgment Tpz. br. 1/15 of 19 February 2015, Judgment Tpz. br. 2/15 of 26 February 2015, Judgment Tpz. br. 6/17 of 23 March 2017 and Judgment Tpz. br. 7/17 of 27 March 2017.
[210] According to Article 2 paragraph 2 of the LPRTRT, the right to judicial protection for a violation of the right to a trial within a reasonable time and the length of a "reasonable time" shall be determined in accordance with the ECtHR case-law.

since from that moment it had a character of dispute over a "civil" right recognised on the basis of the domestic law and from that moment the applicant acquired the right to a fair trial within a reasonable time. The period between filing the appeal and the date of bringing an action for fair redress (21 January 2015) lasted five years, two months and eight days.[211] Furthermore, the Supreme Court analysed the conduct of the administrative bodies and of the Administrative Court in the legally relevant period, as well as all the criteria applied by the ECtHR in the proceedings relating to the right to a trial within a reasonable time.[212] In the Supreme Court's reasoning, from which it could be concluded that this Court considers all administrative proceedings to be urgent, the following has been noted:

> *"... it should be borne in mind that the law stipulates short periods within which decisions are to be taken by the administrative body at the request of the party. Namely, the Law on General Administrative Procedure (LAP) stipulated that the first-instance administrative bodies must make decisions on a request from a party within one or two months (Article 212 of the 2003 LAP), which was shortened by the 2011 Amendments to LAP to 20 days or 1 month (Article 12 of the 2011 Law Amending LAP). Under the provisions of the 2003 LAP, the second-instance procedure had to be completed within 60 days (Article 242 of LAP), and this period was shortened by the 2011 Amendments to LAP to 30 days.*
>
> *The European Court has set the standards requiring particular diligence of the State and its bodies when the national law provides that cases must be completed with particular urgency (Stevanović v. Serbia, 2007), which could be taken into account in the present case in view of statutory time-limits for decision-making by the administrative bodies."*

Following the analysis of the entire proceedings, as well as the assessment of the contribution of the administrative bodies, the Administrative Court and the applicant to the length of the proceedings, the Supreme Court held that the overall "administrative procedure" (administrative proceedings following the filing of the first appeal and administrative dispute proceedings) conducted on the applicant's request does not comply with the requirement of a trial within a reasonable time. In view of the above and the assessment that there is no justification for such length of the proceedings, the Supreme Court held that the applicant's right to a trial within a reasonable time had been violated.[213]

The Supreme Court provided the following reasoning for the amount of the compensation awarded:

> *"After the claim had been found well-founded in respect of its basis, when deciding on the amount of the claim, the Supreme Court took into account that the purpose of the*

[211] On the date when the action for fair redress was brought, the proceedings in the administrative matter were not completed.

[212] The complexity of the case, the conduct of the applicant, the conduct of the court and of other competent authorities, and what was at stake for the applicant.

[213] In this case, it is conspicuous that five administrative disputes were conducted in that administrative matter, most of them ending by accepting the action (except in one case in which the action was brought for the failure of the second-instance body to take decision which was in the meantime taken), and that this, still, had not lead to completion, by a final decision, of the proceedings initiated in 2007, but that the proceedings were at the beginning at the time when the proceedings were conducted on the action for fair redress. The very fact that such developments were possible indicates a systemic problem in the Montenegrin administrative procedural law.

compensation for non-pecuniary damage was to provide to the party an adequate financial compensation for the psychological pain, frustration and uncertainty suffered because of unreasonable length of the judicial proceedings, and in this regard, considering the importance of what was at stake for the applicant in the proceedings initiated on his request for eviction, which is not of existential nature (...) and guided by the principle of fairness and taking into account the standards of the case-law of the European Court and of the Supreme Court of Montenegro in earlier cases, the Court held that the applicant's claim was partially well-founded in respect of the amount.

Namely, the Supreme Court considers that the compensation amounting to EUR 600.00 is a sufficient financial compensation for the frustration and uncertainty suffered by the applicant as a result of the unreasonable length of the proceedings concerning the resolution of his administrative matter relating to the eviction request and that the amount concerned constitutes just satisfaction for the measure of violation of his right guaranteed by Article 6 § 1 of the ECHR, which is why the claim in excess of the amount awarded was rejected as ill-founded."[214]

ADOPTION OF THE DECISION ON LOCATION AND ZONING AND TECHNICAL SPECIFICATIONS FOR A CADASTRAL PARCEL

In the Supreme Court case Tpz. br. 2/15 it was established that the applicant filed an appeal between which and the date of bringing an action for fair redress three years and nine months passed, and that in that period the administrative body made several decisions, while the Administrative Court of Montenegro rendered three judgments by which the actions brought were granted and decisions annulled, but that a final decision on the applicant's request had not been made yet. In the Supreme Court's view, the applicant's right to a trial within a reasonable time has been violated in this case. It is not an overly complex case in terms of the facts and law, and the applicant has not contributed to the length of the proceedings in any way whatsoever.

Considering all of the foregoing, the Court found that the amount of EUR 300.00 was proportionate to the severity of the violated right.

APPLICATION FOR REOPENING OF THE PROCEDURE OF A CIVIL NATURE

In the Supreme Court case Tpz. br. 7/17, an action for fair redress was brought for a violation of the right to a trial within a reasonable time in relation to the proceedings conducted on an application for reopening the procedure for issuance of a building permit which had not been completed by a final decision even after seven years.[215] The applicant claimed just satisfaction in the amount of EUR 2,000.00.

The Supreme Court first examined the admissibility of the action for fair redress and in that regard the Court found that:

[214] Judgment, Tpz br. 1/15 of 19 February 2015.
[215] Ruling Tpz.br. 7/17 of 27 March 2017.

With regard to the mentioned case, the applicant filed a request for review to the President of the Administrative Court of Montenegro who did not decide on the request and, therefore, after two months the applicant filed an appeal to the Supreme Court of Montenegro which, by the Ruling Su IV-2.br.11/16 of 31 October 2016 found the appeal well-grounded and rejected the request as manifestly ill-founded. It was, thus, considered that the condition for bringing an action for fair redress had been met. The action was brought in a timely manner.

In assessing whether the applicant had the right to judicial protection within the meaning of Article 2 of the LPRTRT, since the claim concerned the proceedings conducted on the application for the reopening of the administrative procedure for issuance of a building permit which had been completed by a final decision, the Supreme Court took into account the relevant positions of the ECtHR.

In view of the circumstances of the particular case, the Supreme Court found that Article 6 § 1 of the Convention in its aspect relating to the right to a trial within a reasonable time was to be applied to the applicant's application for the reopening of the procedure for issuance of a building permit and that in this case the applicant acquired the right to a judicial protection from a potential violation of the right to a trial within a reasonable time. The applicant's request for review was rejected as manifestly ill-founded. Therefore, the Supreme Court had to determine beforehand whether there had been a violation of the applicant's right to a trial within a reasonable time in the proceedings in question and only after that, in case it found that there had been a violation, decide on the amount of compensation.

The Court concluded that the period to be considered began with the submission of an application for the reopening of the procedure and ended with bringing an action for fair redress.

Proceeding from the facts established and taking into account the purpose of the compensation for non-pecuniary damage, which means providing to the party or an interested person an adequate financial compensation for the uncertainty suffered as a result of an unreasonable length of the proceedings, based on the principle of fairness and the standards set in the case-law of the ECtHR and of the Supreme Court of Montenegro in earlier cases, the Supreme Court held that the amount claimed by the applicant was partially well-founded and concluded that the compensation for non-pecuniary damage in the amount of EUR 1,300.00 is just financial compensation for the frustration suffered by the applicant because of unreasonable delay in the proceedings conducted on the application for the reopening of the administrative procedure which is the sole responsibility of a local administration body.

In the case Tpz.br. 6/17, the body did not take any action for four years, four months and fourteen days in the administrative procedure on the applicant's application.

Since this case concerned an administrative procedure for deciding on the application for the reopening of the procedure for issuance of a building permit, the Supreme Court concluded that the applicant's interest existed.

Proceeding from the absolute inactivity of the administrative body over a long period of time, the Supreme Court found that the amount of EUR 1,500.00 is proportionate to the seriousness of the violated right, which constituted just satisfaction in the form of compensation for non-pecuniary damage, considering that an excessively long procedure caused non-pecuniary

damage because of the state of anxiety, inconvenience and living in a state of prolonged uncertainty regarding the outcome of the proceedings.[216]

As regards claims for just satisfaction, out of four partially granted actions for violation of the right to a trial within a reasonable time in the administrative procedure and administrative dispute proceedings, the statutory minimum compensation in the amount of € 300 was awarded in one case, while in the remaining three cases compensations in the amounts of EUR 600, EUR 1,300 and EUR 1,500, respectively, were awarded. The compensation in the statutory maximum amount of EUR 5,000 has not been awarded in any case.

Table 12
Compensations awarded

Year	Total amount of compensations awarded by year	Claims granted
2015	EUR 900	2
2016	-	-
2017	EUR 2,800	2
TOTAL	EUR 3,700	4

2. Proceedings of the Supreme Court of Montenegro – ill-founded claims

In ten years of application of the Law on the Protection of the Right to a Trial within a Reasonable Time, the claims for just satisfaction regarding the length of proceedings before the Administrative Court were rejected in seven cases. In the period between 2015 and 2017, the claims were rejected as ill-founded in four cases[217] since there had been no violation of the applicant's right to a trial within a reasonable time as the length of the proceedings in these cases cannot be considered as unreasonable, namely the action for fair redress was rejected due to the fact that the public law bodies acted with a view to protecting the party's right to a trial within a reasonable time. In three cases, the claims were rejected as ill-founded due to the fact that just satisfaction and compensation for damages had already been awarded.[218]

EXPROPRIATION PROCEDURE

Proceeding on the basis of the relevant positions of the ECtHR, the Supreme Court found that, in the case concerned, the period to be considered when assessing the length of a reasonable time had not even begun as in administrative matters a reasonable time began to run only from filing of an appeal against the decision of the first-instance body by which the subject-matter of the administrative matter was decided. As for the expropriation process, a reasonable time for real estate owners starts to run from the moment of filing an appeal against the decision on the merits of the proposal for the expropriation of real estate because only upon the adoption of such a decision it is determined that they have been deprived of their ownership rights.

[216] Tpz.br. 6/17 of 23 March 2017.
[217] Tpz.br. 11/15, 24/15, 8/17, 46/17.
[218] Tpz.br. 11/15, 24/15, 46/17.

Furthermore, the real estate owners has not appeared as applicants who submitted proposal for expropriation in order to be able to file an appeal for the silence of the administration.

Therefore, the Supreme Court has found that the applicant cannot justifiably invoke a violation of the right to a trial within a reasonable time, for which reason his claim was rejected as ill-founded.[219]

PRIOR JUST SATISFACTION

In the case Tpz.br. 24/15, the Supreme Court noted the following:

"... since it has been found that the applicant had obtained just satisfaction for a violation of the right to a trial within a reasonable time (...) and that a ruling on the merits was subsequently adopted, this Court finds that the part of the claim seeking just satisfaction for a violation of the right to a trial within a reasonable time is ill-founded.

The reason for this is that the ensuing eight-month period until the date a new action for fair redress was brought (28 September 2015) does not justify awarding just satisfaction. A lapse of time of eight months cannot absolutely be considered to be an "unreasonable time", therefore, the applicant's right to a trial within a reasonable time has not been violated, even more so, in view of the fact that during that period a decision was made on the merits of the applicant's application for issuance of the zoning and technical specifications. Therefore, this part of the applicant's claim had to be rejected as ill-founded."

In the case Tpz.br. 11/15, the following was essentially stated:
" (...) since it has been found that the applicant obtained just satisfaction for a violation of the right to a trial within a reasonable time (...) by which the claim was partially granted and the respondent was ordered to pay the sum of 300.00 euros to the applicant as compensation for non-pecuniary damage, this Court finds that the claim is ill-founded.

Namely, the judgment of this Court recognised the applicant's right to just satisfaction for a violation of the right to a trial within a reasonable time in the cases concerned for the period between 23 April 2011 (the date of filing an appeal in the administrative procedure) and 22 January 2015 (the date of bringing the action before the Supreme Court of Montenegro), i.e. for the period of 3 years and 9 months. In view of the foregoing, this Court considers that even though the judgment of the Administrative Court had not been enforced which is why a new action was brought, the ensuing period of three months until the action was brought to the Supreme Court of Montenegro (23 April 2015) does not justify awarding the claimed just satisfaction. A lapse of time of 3 months cannot be considered to be an unreasonable time, so the applicant's right to a trial within a reasonable time has not been violated, which is why the claim had to be rejected as ill-founded. "

In the case Tpz.br. 46/17, the Supreme Court noted as follows:

"... it has been found in the course of the procedure that as regards the enforcement of the final decision of the Ministry of Spatial Planning and of the Conclusion granting

[219] Tpz. br. 8/17.

enforcement, on 1 September 2009 the applicant lodged application no. 65695/09 to the European Court of Human Rights, concerning which on 17 November 2016 a decision on friendly settlement was made by which Montenegro undertook to pay to the applicant the sum of EUR 3,600.00 as just satisfaction and the sum of EUR 100.00 for the costs and in accordance with Article 39 of the Convention for the Protection of Human Rights and Fundamental Freedoms the application was struck out of the list of cases.

Bearing in mind the foregoing and that it has been found that the administration bodies took certain actions, as stated above, after the adoption of the decision on friendly settlement of 17 November 2016 until the date on which the action was brought, this Court finds that there has been no violation of the applicant's right to a trial within a reasonable time, guaranteed by Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, for which reason the claim has been rejected as ill-founded."

3. Proceedings of the Supreme Court of Montenegro – inadmissible claims

Table 13
Dismissed actions for fair redress

Year	Dismissed actions	Non-exhaustion of available legal remedies	Premature actions	It does not concern a "civil" right (there is no "dispute" over that right)	Other
2015	5	3	2	-	-
2016	4	1	-	1	2
2017	1	1	-	-	-
TOTAL	10	5	2	1	2

Out of 10 dismissed actions:

- In five cases, the actions were dismissed for failure to exhaust available remedies or for the failure to file a request to expedite the proceedings (request for review) before the Administrative Court, under Article 33 of the LPRTRT which provides that the action for fair redress may be brought by the party who previously filed a request for review to the competent court and that the Supreme Court will dismiss the action brought in contravention of that article as set out in Article 37 of that Law.[220]
- Two actions were dismissed as premature since those actions had been filed before the expiry of the period within which the president of the court was obliged to decide on the request for review, and the applicant had not yet received a decision on the request for review, or a notification, or the case files had not been completed which is why the procedural requirements for processing the case had not been fulfilled.[221]

[220] Tpz.br. 3/15, 4/15, 16/15, 42/16, 33/17.
[221] Tpz.br. 8/15, 9/15.

"When making the decision, the Supreme Court took into account the letter of the President of the Administrative Court sent to the applicant concerning the request for review informing him that the case files on his action had not been completed and that the procedural requirements for processing the case had not been fulfilled. In that regard, it should be noted that such information cannot be made compatible to the notification referred to in Article 17 of the Law on the Protection of the Right to a Trial within a Reasonable Time despite the fact that the President of the Administrative Court referred to that particular provision in the mentioned information.

A reason for this is that the notification within the meaning of Article 17 of the mentioned Law may be given only after the president of the court has assessed that the request for review is not to be dismissed as incomplete or rejected as manifestly ill-founded and has requested, under Article 15 of the Law on the Protection of the Right to a Trial within a Reasonable Time, that the judge assigned to the case submit, immediately or within 15 days at the latest, a report on the length of the proceedings and the reasons for which the proceedings have not been completed, and only if the judge, acting on the request from the president of the court, submits a report informing the president of the court that he/she will take certain procedural actions within a certain period not longer than four months. Therefore, only after the procedure has been conducted as described above, the notification of the president of the court, which is to be delivered to the applicant who filed the request for review, shall have the procedural effect of the notification referred to in Article 17 of the Law on the Protection of the Right to a Trial within a Reasonable Time.

Therefore, bearing in mind that the action was brought in contravention of the provision of Article 33 paragraph 1 in conjunction with Article 35 paragraph 2 of the Law on the Protection of the Right to a Trial within a Reasonable Time, since the applicant failed to enclose a final decision on the request for review or the notification referred to in Article 17 of the Law on the Protection of the Right to a Trial within a Reasonable Time to the action, and having found that the time-limit for deciding on the request for review, set in Article 20 of the afore-mentioned Law, has not expired yet, the Supreme Court found the action premature and dismissed it." (Tpz.br.8/15 and Tpz. 9/15).

– One action was dismissed because it did not concern a "civil right" within the meaning of Article 6 § 1 of the Convention.[222] The action was dismissed because of the absence of a "genuine and serious dispute" over a "civil" right. Namely, in order to assess whether a particular case enjoys the protection guaranteed by Article 6 of the Convention, in its aspect relating to a trial within a reasonable time, it is necessary to assess whether it falls under a scope of "civil" right within the meaning of the Convention. In this particular case, the Supreme Court made an assessment that there was no "genuine and serious dispute" as the applicant requested non-existent information and it did not concern a substantive right recognised in the national legislation but a right that is exercised fully on the basis of a procedural law which regulates the manner in which it is exercised.

[222] Tpz.br. 16/16.

- One action was incomprehensible, and since it had been filed by a lawyer, it was dismissed without having been returned to be corrected and amended.[223] It was essentially a submission that included a request for an extraordinary review of a court decision, a claim for indemnity and lost profit and a claim for compensation for non-pecuniary damage. The Supreme Court held that the submission was incomprehensible and could not be acted upon.

- One action was dismissed as inadmissible because the request for review was filed after the administrative dispute proceedings had already been completed.[224]

The Supreme Court has cited the following as the reason for rejecting the action:

"... a request to expedite the proceedings (a request for review) is a remedy filed by the party to speed up the proceedings that are pending and ongoing.

As in the present case the request to expedite the proceedings was filed on 13 October 2015 after the Judgment U.br.313/15 of the Administrative Court of Montenegro of 23 September 2015 had been rendered ending the administrative dispute by rejecting the action, and since the Judgment was served on the applicant personally on 2 October 2015, the request to expedite the proceedings could not achieve its purpose of speeding up the proceedings for the sole reason that the proceedings had already been completed.

Therefore, this Court considers that the applicant has not fulfilled the precondition for filing an action for fair redress under Article 33 paragraph 1 of the Law on the Protection of the Right to a Trial within a Reasonable Time, regardless of the fact that the action was brought in a timely manner, within the time-limit laid down in Article 33 paragraph 3 of the said Law, which is why it had to be rejected as inadmissible."

4. Summary

In the period between 2015 and 2017, the Supreme Court received 19 actions for fair redress relating to the administrative dispute. If this number is compared to the number of requests for review filed in the same period (63), we come to the conclusion that an action for fair redress was brought in 30% of the cases in which the request for review had been filed. As for the way in which the actions for fair redress were decided, four actions were partially granted, four were rejected and ten were dismissed. In one case, the action was withdrawn.

In all the cases in which the actions were partially granted for a violation of the right to a trial within a reasonable time in the administrative procedures and the administrative disputes, the Supreme Court found that the claim was partially well-founded since the State authorities had not been sufficiently effective, i.e. the competent authorities caused a delay and unreasonable length of the proceedings.

By analysing proceedings upon the action, it can be said that in a situation where a request for review filed in the course of duration of the administrative dispute was rejected as ill-founded

[223] Tpz.br. 19/16.
[224] Tpz.br. 2/16.

by a final ruling, the Supreme Court would previously examine whether the applicant's right to a trial within a reasonable time had been violated in the procedure for resolving the applicant's administrative matter in relation to which the action was brought. Only after that the Supreme Court would consider the amount of the financial award. When determining the length of the legally relevant period, the Supreme Court has taken into account the relevant ECtHR case-law and the ECtHR's positions and, as a rule, has determined such period to last from the filing of the appeal until the date of bringing an action for fair redress. Furthermore, the Supreme Court has analysed the conduct of the administrative bodies and of the Administrative Court in the legally relevant period, as well as all the criteria applied by the ECtHR in the proceedings related to the right to a trial within a reasonable time. It is interesting that the decisions of the Supreme Court lead to the conclusion that this Court considers all administrative procedures to be urgent with respect to the statutory time-limits for the adoption of decisions in administrative procedures, while referring to the ECtHR case-law which indicates that a particular diligence of the State or its bodies is required when domestic law provides that the cases must be resolved with particular urgency.

When determining the amount of the claim, the Supreme Court has proceeded from the purpose of the compensation for non-pecuniary damage (adequate financial compensation for the psychological pain, frustration and uncertainty arising from an unreasonable length of the judicial proceedings). Apart from the purpose of the compensation, the importance of what is at stake in the proceedings for the applicant, the principle of fairness and the standards of the case-law of the ECtHR and of the Supreme Court of Montenegro are also taken into account.

In cases in which the action for fair redress relates to the length of the proceedings conducted on an application for reopening of the administrative procedure which had been completed by a final decision, the Supreme Court proceeds from the relevant ECtHR's positions.

As regards claims for just satisfaction, out of four partially granted actions for a violation of the right to a trial within a reasonable time in administrative procedures and administrative dispute proceedings, the statutory minimum compensation in the amount of € 300 was awarded in one case, while compensations in the amounts of EUR 600, EUR 1,300 and EUR 1,500, respectively, were awarded in the remaining three cases. The compensation in the statutory maximum amount of EUR 5,000 has not been awarded in any case.

In the period between 2015 and 2017, in four cases which concerned the proceedings before the Administrative Court, claims for just satisfaction were rejected as ill-founded since there had been no violation of the applicants' right to a trial within a reasonable time as the length of the proceedings in these cases cannot be considered as unreasonable, namely, the action for fair redress was rejected due to the fact that the public law bodies undertook actions with a view to protecting the party's right to a trial within a reasonable time. In three cases, the claims were rejected as ill-founded due to the fact that just satisfaction and compensation for damages had already been awarded.

The reasons for dismissing actions for fair redress in the period between 2015 and 2017 were as follows:

- non-exhaustion of available legal remedies, i.e. failure to file a request to expedite the proceedings (request for review) before the Administrative Court,
- actions filed before the expiry of the period within which the president of the court was obliged to decide on the request for review,

- actions brought in the cases which did not concern a "civil right" within the meaning of Article 6 § 1 of the Convention, i.e. because of the absence of a "genuine and serious dispute" over a "civil" right,
- incomprehensible actions
- a request for review filed after the administrative dispute had been completed.

V. COMPARATIVE OVERVIEW OF REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE REGION FOR THE EXPEDITION OF ADMINISTRATIVE PROCEEDINGS BEFORE THE PUBLIC ADMINISTRATIVE AUTHORITIES WITH THE EMPHASIS ON THE ACTION FOR THE SILENCE OF ADMINISTRATION AS AN EFFECTIVE REMEDY

I. SLOVENIA

1. General Administrative Procedure Act

In 1999, Slovenia adopted its first Law on General Administrative Procedure[225] (hereinafter: GAP Law) [226], which has been amended and supplemented several times since the beginning of its application.

The Slovenian legislator also included the principle of cost-effectiveness of administrative procedure in the principles of administrative procedure, prescribing the procedure to be carried out rapidly, with the minimum possible costs and with the shortest possible delay. [227]

According to the GAP Law, in an administrative procedure initiated at the request of the party or *ex officio* if this is in the interest of the party, if it is not necessary to conduct the examination procedure for the purpose of establishing the facts, the decision must be rendered and delivered to the party as soon as possible, and no later than within one month from the date when a formal request was submitted or from the date *ex officio* procedure was initiated. In other cases, the decision must be rendered no later than within two months. [228]

Protection due to the silence of administration

If the first-instance public adminsitrative authority fails to render a decision on the request within the prescribed time-limit, the party is entitled to appeal. [229]

[225] The Law on General Administrative Procedure entered into force on 2 April 2000.
[226] The Law on General Administrative Procedure, OJ of the Republic of Slovenia, 80/99, 70/00, 52/02, 73/04, 119/05, 126/07, 65/08, 8/10 and 82/13.
[227] Article 14 of the Law on GAP.
[228] Article 222 paragraph 1 of the Law on GAP.
[229] Article 13 paragraph 4 of the Law on GAP.

If the competent authority against whose decision the appeal is allowed fails to render a decision and serve it on the party within the prescribed time-limit, the party shall have the right to appeal as if their claim had been refused. [230]

If the party files an appeal because the first instance authority has not rendered a decision concerning their request within the prescribed time-limit, the second instance authority shall require the first instance authority to inform it of the reasons for the failure to render the decision in due time. If it establishes that the decision has not been rendered within the time-limit due to justified reasons or for reasons on the side of the party, the second instance authority shall extend to the first instance authority the time-limit for the decision by the amount of time equal to the amount of time that the reason for the delay has lasted, but for not more than one month.[231]

If the reasons for which a decision has not been duly issued are not justified, the second instance authority shall require the first instance authority to send it the files of the case.[232]

If the second instance authority can resolve the case through the files, it shall render its own decision on the administrative matter. If it cannot resolve the case through the files, it shall conduct a procedure and subsequently decide upon the case. Exceptionally, if it establishes that a procedure can be carried out in a more rapid and economic manner by the first instance authority, it shall impose on it the duty to do so and to send it the collected data in a specified time-limit, after which the second instance authority shall resolve the case. Such decision shall be final in an administrative procedure.[233]

Time-limit for deciding on appeals

A decision on an appeal must be issued and served on the party as soon as possible, and in two months at the latest from the day the authority received the proper appeal.[234]

Supervision over Implementation of the General Administrative Procedure Act

Supervision over the implementation of the General Administrative Procedure Act shall be conducted by the administrative inspection service.[235]

An administrative inspector shall have the right to enter the premises of the public law authority and the right to inspect the documents relating to administrative procedures.[236] The public law authority must provide to the administrative inspector the conditions for work and all the necessary information. If any irregularities are established, an administrative inspector may order their remedying within a specified time-limit.[237]

[230] Article 222 paragraph 4 of the Law on GAP.
[231] Article 255 paragraph 1 of the GAP Act.
[232] Article 255 paragraph 2 of the GAP Act.
[233] Article 255 paragraph 3 of the GAP Act.
[234] Article 256 paragraph 1 of the GAP Act.
[235] Article 307 paragraph 1 of the GAP Act prescribes the competence of the administrative inspection to conduct supervision over the implementation of the GAP Act and other regulations governing the administrative procedure.
[236] This authorisation referred to in Article 307, paragraph 2 of the GAP Act also extends to classified information, personal data, trade secrets, tax secrets and other protected data.
[237] Article 307a of the GAP Act.

If violations of the rules of administrative procedure result in an evident violation of the public interest, of the rights or legal benefits of the parties, or other continuous violations of the rules of administrative procedure which were not remedied within the specified time-limit, the administrative inspector may issue an order whereby the official person shall be imposed an additional training on conducting and deciding in an administrative procedure.[238]

Owing to violations of the rules of administrative procedure referred to in Article 307b of the GAP Act, the administrative inspector may propose that a disciplinary procedure be initiated against the official person who has violated rules of procedure.[239]

If during supervision it is established that a bearer of public authority exercises public authorisation in a non-professional or negligent manner, the administrative inspector may propose to the competent authority that it initiate a procedure for withdrawing public authorisation.[240]

The administrative inspector shall write a record of the findings of supervision in which they may impose on the head of the authority the remedying of irregularities or take other measures within a specified time-limit.[241]

Once a year, the ministry competent for administration shall report to the Government of the Republic of Slovenia on the findings of supervision over the implementation of the GAP Act and other regulations governing administrative procedures.[242]

Obligations of the head of authority

The head of a state authority, local community authority and legal entity with public authorisation shall ensure the proper application of the GAP Act, in particular, that administrative cases are resolved within the prescribed time-limits, and must make sure that the professional knowledge of employees who decide in administrative cases is constantly promoted.[243]

The ministry competent for administration shall organise permanent training for official persons who conduct administrative procedures and decide in administrative cases.[244]

State authorities, local community authorities and bearers of public authorities shall keep records of the following data which refer to the resolving of administrative cases:

- the number of requests submitted,
- the number of administrative procedures initiated *ex officio,*
- the manner and time-limits for resolving administrative cases in the first and second instance,

[238] Article 307b paragraph 1 of the GAP Act.
[239] Article 307č of the GAP Act.
[240] Article 307e of the GAP Act.
[241] Article 307f paragraph 1 of the GAP Act.
[242] Article 307g of the GAP Act.
[243] Article 320 of the GAP Act.
[244] Article 322 paragraph 1 of the GAP Act.

- the number of dismissed ot suspended administrative acts and
- the number of requests refused or administrative procedures suspended.[245]

2. Administrative dispute act

After the termination of validity of the Administrative dispute act of the former State, which was incorporated into the Slovenian legal system, the development of the administrative judiciary in the Republic of Slovenia can be divided into two periods. The first period began in 1998 with the adoption of the first Administrative dispute act in independent Slovenia and lasted until January 1, 2007, when the new Administrative dispute act entered into force.[246]

The Administrative dispute act (hereinafter: AD Act) was amended and supplemented several times.[247]

Administrative dispute due to the silence of the administration

Article 5 paragraph 3 of the Administrative Dispute Act, unless otherwise provided by this Act, prescribes that an administrative dispute shall be permitted if the administrative procedure act has not yet been adopted, or was not served on the plaintiff within the specified time-limit.

The elaboration of this principal provision is contained in Article 28 of the Administrative Dispute Act which prescribes that if the second instance authority fails to render its decision on an appeal filed by a party against the decision of the first instance authority, within two months, or within a shorter period prescribed by the Act, and if it fails to render its decision within seven days following a repeated request by the party, the party may initiate an administrative dispute as if their appeal had been refused.[248]

The right of initiation of administrative dispute shall exist also if the first instance authority fails to render a decision against which no appeal is permitted, and in cases where the authority has not issued a final administrative act within three years following the commencement of the procedure, irrespective of the fact whether or not ordinary and extraordinary remedies were already used in the procedure, except if the proceedings were stayed.[249]

If the first instance authority against which an appeal may be filed, within two months or within a shorter period prescribed by a special regulation, fails to issue its decision about the party's request, the party shall be entitled to address its request to the second instance authority, which is competent for adjudication in this case. The party may initiate an administrative dispute against the decision of the second instance authority. An administrative dispute may also be

[245] This duty of the public law authorities referred to in Article 322 paragraph 2 of the GAP Act was established to monitor the implementation of the GAP Act.
[246] Administrative Dispute Act, Official Gazette of the Republic of Slovenia, 105/06.
[247] Amendments to the Administrative Dispute Act were published in the Official Gazette of the Republic of Slovenia, 62/10, 109/12 and 10/17. In addition to these amendments, on two occasions this act was subject to constitutional review before the Constitutional Court of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, 107/09 and 89/11.
[248] Article 28 paragraph 2 of the Administrative Dispute Act.
[249] Article 28 paragraph 3 of the Administrative Dispute Act.

initiated when the second instance authority fails to render its decision under the conditions referred to in Article 28 paragraph 2 of the Administrative dispute act.[250]

A claim due to silence may include issuance or service of an administrative act.[251]

Deciding on the action (powers of the court)

The authorities of the court which may have an impact on the overall duration of procedure in which the administrative matter is decided upon are specified by Article 65 paragraph of the Administrative Dispute Act.

Pursuant to this provision, the court may annul the administrative act and decide on the administrative case if so permitted by the nature of the matter and if a reliable foundation for this is provided by the data of the procedure, or if the court established the facts of the case at the main hearing, particularly if:

- the annulment of the contested administrative act and the new procedure at the competent authority would cause damage for the plaintiff which would be difficult to redress;
- after the administrative act has been annulled, the competent authority issues a new administrative act which contradicts the legal standpoint of the court or its views on the procedure.

In the same manner, the court may also decide where the competent authority fails to issue a new administrative act within 30 days of the annulment of the administrative act, or within the time-limit set by the court, or within seven days of a special request made by the party, if the party demands by the claim that the court adjudicates on a right, obligation or legal benefit and if this is necessary for the purpose of the nature of the right or the protection of a constitutional right.[252] In such case, the court shall request from the competent authority an explanation as to why it did not issue the administrative act. The competent authority must submit its explanation within seven days. If it fails to do so, or if the court is of the opinion that the explanation is not satisfactory, the court shall decide on the matter. Otherwise, it shall reject the claim.[253]

The court may annul the administrative act and decide on the case by a decision

If the claim is filed due to silence and the court finds it justified, it shall uphold the claim by a decision and decide on the matter by itself[254], or it shall instruct the competent authority what type of administrative act should be adopted, or, if the decision has not been served, it shall order the service of the decision.[255]

[250] These conditions are as follows: if the second instance authority fails to issue a decision on the party's appeal against the first instance decision within two months, or within a shorter period prescribed by the Act, and if it fails to pass it seven days from the repeated request of the party.
[251] Article 33 paragraph 1 item 3 of the Administrative Dispute Act.
[252] Article 65 paragraph 2 of the Administrative Dispute Act.
[253] Article 65 paragraph 3 of the Administrative Dispute Act.
[254] Under the conditions referred to in 65 paragraph 1 or 5 of the Administrative Dispute Act.
[255] Article 69 paragraph 1 of the Administrative Dispute Act.

If the competent authority fails to act in compliance with the instructions of the court, and as a result the party files a claim, the court shall act pursuant to Article 65, paragraphs 2 and 3 of the present Act.[256]

3. Act on the protection of the right to a trial without undue delay

Act on the protection of the right to a trial without undue delay[257] (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*), which, with certain amendments and supplements, is still in force, was adopted on 26 April 2006. It entered into force on 25 May 2006 and started to apply on 1 January 2007. This Act has been amended, that is, supplemented, two times.[258] The purpose of the Act on the protection of the right to a trial without undue delay is to protect the right to a trial within a reasonable time, in particular, expediting the procedure and ensuring fair compensation for the violation of the right to trial within a reasonable time. This Act prescribes the protection of the right to trial within a reasonable time in all types of court proceedings, except in the constitutional court cases.

The following two basic types of remedies for the protection of the right to trial within a reasonable time have been introduced by the Act on the protection of the right to a trial without undue delay:

- remedy to expedite the procedure

- remedy for receiving a just satisfaction.

Remedies to expedite the procedure shall be as follows:

- appeal due to the delay (*nadzorstvena pritožba*) [259];
- motion to set a deadline (*rokovni predlog*) [260].

Legal remedies for receiving a just satisfaction shall be as follows:

- request for just satisfaction (*zahteva za pravično zadoščenje*).[261]

Legal remedies for expediting the procedure may be used during the first instance or second instance procedure. When deciding on the referred legal remedies, principles under which the ECHR actd in such cases shall be taken into account, particularly its complexity in terms of facts and law, actions of parties to proceedings, in particular as regards the use of procedural powers and fulfilment of "obligations" in proceedings, statutory deadlines for particular actions of the court in the proceedings, statutory deadlines for the completion of a particular stage of

[256] Article 69 paragraph 2 of the Administrative Dispute Act.
[257] Act on the protection of the right to a trial without undue delay, Official Gazette of the Republic of Slovenia, 49/06.
[258] By the Act amending the Act on the protection of the right to a trial without undue delay, Official Gazette of the Republic of Slovenia, 58/09 and the Act amending the Act on the protection of the right to a trial without undue delay, Official Gazette of the Republic of Slovenia, 38/12.
[259] Article 3 item 1 of the Act on the protection of the right to a trial without undue delay.
[260] Article 3 item 2 of the Act on the protection of the right to a trial without undue delay.
[261] Article 3 item 3 of the Act on the protection of the right to a trial without undue delay.

the procedure, duration of proceedings per legal remedies, the nature and type of a case and its importance for a party.[262]

Appeal due to delay

An appeal due to delay[263] shall be filed before the court managing the proceedings. President of a court shall decide on the appeal.[264] If the supervisory appeal is manifestly unfounded considering the timetable of proceedings the duration of which is being supervised, the appeal shall be rejected.[265] Tshall be dismissed if it does not contain elements prescribed by the Act on the protection of the right to a trial without undue delay.

If the president of the court neither dismisses the appeal, nor rejects it for obvious ill-founded reasons, he/she shall ask the judge to whom the case has been assigned a report indicating reasons for the duration of proceedings. The judge to whom the case is assigned shall submit a report no later than in 15 days of receiving the request for the submission of the report or after obtaining the file if necessary for drawing up the report. The report, *inter alia*, shall include the opinion on the time-limit within which the case may be resolved.[266]

If the judge to whom the case has been assigned notifies the president of the court that all relevant procedural acts may be performed or a decision rendered within the time-limit not exceeding four months following the receipt of the appeal, the president of the court shall inform the party thereof and thus conclude the consideration of the appeal.[267] If the president of the court establishes that in the case with respect to which the appeal has been submitted, the court does not unduly delay the proceedings, the appeal shall be rejected.

If the president of the court has failed to notify the party on the expected duration of proceedings within the meaning of Article 6 paragraph 4 of this Law and if he establishes that the court is unduly delaying the proceedings, the president of the court may:

- order a deadline for performing certain procedural acts that could effectively accelerate the resolution of the case[268]
- order that the case be resolved as a priority due to the circumstances of the case, particularly when the matter is urgent
- order that the case be reassigned to another judge.[269]

If in the specific case the president of the court notifies the party of the expected length of the proceedings or sets a time-limit for the judge to take certain actions in the proceedings or orders

[262] Article 4 of the Act on the protection of the right to a trial without undue delay.
[263] More about this legal remedy, Potočar, Jernej, *Pristojnosti sodne uprave oziroma predsednikov sodišč v zvezi z Zakonom o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Judicial bulletin, 2008/1.
[264] Article 5. paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[265] Article 6 paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[266] Article 6 paragraph 3 of the Act on the protection of the right to a trial without undue delay.
[267] Article 5. paragraph 4 of the Act on the protection of the right to a trial without undue delay.
[268] This time-limit can range from 15 days to 6 months.

[269] He/she will do so if he/she finds that the excessive duration of the proceedings is caused by the work overload imposed the judge or by his/her long absence.

the priority resolution of the case, the party can not, as a rule, file a new appeal in relation to the same case before the expiry of the time-limit stated in the notice or in the decision on setting the time-limit. In the event of a refusal of the appeal, irrespective of the reason for the refusal, a new appeal can not be filed prior to the expiration of six months following the receipt of the decision on the refusal of the appeal.[270]

The proposal for setting the time-limit

The party may file the motion for setting the time-limit if:

- the appeal with the motion for acceleration of proceedings is refused
- an answer to the appeal is not provided to the party within two months
- the notification of the expected duration of proceedings is not sent to the party within two months
- if appropriate procedural acts are not performed within time-limits set in the notification sent to the party or in the ruling of the president of the court.[271]

The motion for the time-limit shall be filed to the court before which the proceedings are managed. The president of the immediately higher court shall have the competence to decide on the motion.[272] The president of the Supreme Court of the Republic of Slovenia shall have the competence to decide on the motion concerning the duration of proceedings before the Administrative court.[273] The deadline for the decision-making on the motion shall be 15 days following its receipt.[274]

The motion for the time-limit shall be rejected if:

- the motion is manifestly ill-founded
- the motion is unfounded (there is no undue delay of the proceedings).

The motion will be dismissed in the absence of procedural assumptions for deciding. The motion will be adopted if the unjustified length of the proceedings is established, particularly if the president of the court before which the proceedings is conducted has failed to notify the party of the expected duration of the proceedings or has failed to issue a decision ordering the implementation of necessary actions in the proceedings or the completion of the proceedings.

In the decision under which the motion is adopted, the president of the court may order taking appropriate procedural actions that can effectively expedite the decision-making in the proceedings, and may determine the time-limit for conducting those actions[275], as well as the time-limit in which the judge must file a report on the actions undertaken in that regard. The president of the court deciding on the motion may also order that the case be resolved as a priority and suggest to the president of the court before which the proceedings are being

[270] Such a restriction does not exist in cases related to detention and in cases with a proposal for the issuance of a provisional measure.
[271] Article 8 paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[272] Article 9 paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[273] Article 9 paragraph 2 of the Act on the protection of the right to a trial without undue delay.
[274] Article 11 paragraph 5 of the Act on the protection of the right to a trial without undue delay.
[275] That time-limit may be from 15 days to 4 months.

conducted to introduce measures aimed at effective resolution of the case[276]. The appeal[277] is not allowed against the decision under which the motion was made, but a constitutional complaint may be filed.

The Minister of judiciary may require the president of the court to submit a report on all filed appeals due to delay and motions for setting the time-limit of such notice and the decision with respect to those remedies served to parties.[278]

Request for just satisfaction

The Act on the protection of the right to a trial without undue delay prescribes two assumptions for filing a claim for just satisfaction, which must be fulfilled cumulatively:

- filing an appeal due to delay or motions for time-limit during the first instance and / or second instance proceedings
- the completed proceedings.

If, on the occasion of the appeal due to delay, the president of the court serves a notice on the party or renders a decision on the need to take actions in the proceedings or the priority resolution of the case, or if a party files a motion for the time-limit, the party may claim fair satisfaction.

Just satisfaction may be set as:

- monetary compensation for damage caused by a violation of the right to a trial without undue delay;
- a written statement of the State Attorneys' Office (*Državno pravobranilstvo)* on violation of party's right to a trial without undue delay;
- the publication of a judgement on the establishement of violation of party's right to a trial without undue delay.

Pecuniary compensation

Pecuniary compensation is defined as compensation for non-pecuniary damage caused by violation of the right to trial within a reasonable time. The compensation may be granted in the amount of EUR 300 up to EUR 5000. [279] As the key reason for restricting the amount of

[276] For example, the distribution of cases among judges with regard to the level of overload of a single judge, the proposal to appoint new judges to a court facing an excessive length of proceedings etc.
[277] Article 13 of the Act on the protection of the right to a trial without undue delay.
[278] Pursuant to Article 14, paragraph 3 of the Act on the protection of the right to a trial without undue delay, the Ministry may request such information from the court regarding cases in which the remedies for the protection of the right to trial within reasonable time have been filed within the period of two years backwards from the date of the submission of the request to the court for the submission of information.
[279] Article 16 paragraph 2 of the Act on the protection of the right to a trial without undue delay.

compensation, it is emphasised that the purpose of the right to a trial without undue delay is to ensure an expeditious judicial procedure and, in this regard, the introduction of legal remedies by which this can be provided, and not the monetary compensation for non-pecuniary damage. When deciding on the amount of compensation, the complexity of the case, actions of the State, actions of the party and the importance of the case for the party shall in particular be taken into account.[280] Monetary compensation is a main form of fair satisfaction for non-pecuniary damage caused by violation of the right to trial within a reasonable time. Before claiming a monetary compensation, the party must file to the State Attorney's Office a motion for settlement in order to reach an agreement on the type or amount of fair compensation. In the event that the settlement is not reached within three months, the party may bring an action before the competent court for the purpose of compensation. [281]

State authorities, local self-government authorities, public companies, public funds and agencies can not obtain fair compensation in the form of monetary compensation for damage caused by violation of the right to a trial without undue delay.

Written statement

One of the forms of satisfaction for a violation of the right to a trial within a reasonable time is a written statement of the State Attorney's Office on the violation of the right to a trial within a reasonable time. Given the specific circumstances of the case, the State Attorneys' Office may, by agreement with the party, without the monetary compensation, make a written statement as a compensation for non-pecuniary damage caused by the violation of the right to a trial without undue delay. At the request of the party, a written statement shall be published on the website of the State Attorney's Office. In the event that the right to a trial without undue delay has been seriously violated, the party may, in addition to the written statement, claim the monetary compensation.

Publication of the judgement

If the party claims payment of monetary compensation before the court, having regard to all circumstances of the case and statutory criteria, in particular the actions of the party in proceedings for the duration of which the fair compensation is claimed and upon the assessment that just satisfaction might be afforded merely by establishing a violation of the right to a trial within reasonable time, the court may exceptionally decide not to grant monetary compensation but only to establish a violation of the right to a trial within reasonable time. In this case, at the request of the party, the court may publish the judgement. In the event that the right to a trial within reasonable time has been seriously violated, at the request of the party, in addition to the monetary compensation, the court may order the publication of the judgement.

Procedure for making a fair compensation

The procedure for the establishment of a fair compensation begins with the motion for the settlement which the party submits to the State Attorney's Office in which the type of compensation claimed is addressed. If neither the motion for the settlement specifies the type

[280] Article 16.paragraph 3 of the Act on the protection of the right to a trial without undue delay.

[281] The actions are decided by ordinary courts in the proceedings conducted under the Civil Proceedings Act and the application of the Obligations Act.

of compensation, nor the party amends the motion within 30 days after the State Attorney's Office's invitation to do so, the proposal shall be dismissed.[282] The motion of the settlement may be filed within 9 months from the day the final decision of the court was served, or from the day the decision of the Supreme Court of the Republic of Slovenia was rendered with regard to the extraordinary legal remedy. The State Attorneys' Office shall pronounce itself on the motion of the party not later than in three months if it establishes that the just satisfaction claim is substantiated. Until the expiry of the referred time-limit, the party may not bring an action before the competent court with regard to the compensation of damage.[283] If the party and the State Attorney's Office reach an agreement, the conclusion of an out-of-court settlement follows, by which the proceedings with respect to fair compensation is terminated. If no agreement is reached, the party may initiate the proceedings before the competent court with the purpose of the compensation of damage.[284] Action for damages may be initiated not later than 18 months from the day the decision of the court by which the proceedings have been terminated was served.[285]

Decision of the Constitutional Court (2010) and its implementation

By Decision No. U-I-207/08 and Up-2168/08 of 18 March 2010, the Constitutional Court of the Republic of Slovenia found that Article 25 of the Act on the protection of the right to a trial without undue delay was unconstitutional to the extent that it has failed to regulate the status of the injured parties whose violation of right to a trial within a reasonable time ceased before 1 January 2007 and who did not claim fair compensation before the international court. The Constitutional Court ordered the Parliament to remedy the established violation within six months from the date of the publication of decision of the Constitutional Court and emphasised that until then, in cases where the unconstitutionality of Article 25 of the Act on the protection of the right to a trial without undue delay was established, the courts should apply the criteria set out in the relevant provisions of the Act on the protection of the right to a trial without undue delay.

On 15 May 2012, the Act amending and supplementing the Act on the protection of the right to a trial without undue delay[286] was adopted, by which the Article 25 of the Act on the protection of the right to a trial without undue delay was amended pursuant to the decision of the Constitutional Court.

The amended Article 25 of the Act on the protection of the right to a trial without undue delay stipulates that, in cases where a presumed violation of the right to a trial within a reasonable time ceased before 31 March 2007 and if a party has filed a request before the International Court for a fair compensation in a timely manner, the State Attorney's Office shall propose to the party the settlement in respect of the amount of compensation within four months from the date on which the State has been notified of the case by the international court. The party shall submit to the State Attorney's Office a motion for settlement within two months from the receipt of motion from the State Attorney's Office. The State Attorney's Office must decide on the motion as soon as possible, and within four months at the latest. If the settlement is not reached,

[282] Article 15 paragraph 3 of the Act on the protection of the right to a trial without undue delay.
[283] Article 19 paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[284] Article 20 paragraph 1 of the Act on the protection of the right to a trial without undue delay.
[285] Article 20 paragraph 2 of the Act on the protection of the right to a trial without undue delay.
[286] An Act amending the Act on the protection of the right to a trial without undue delay, Official Gazette of the Republic of Slovenia, 38/12.

the party may bring an action before the competent court to determine the amount of compensation. [287] The party may bring an action within six months of receipt of the response of the State Attorney's Office, i.e. after the expiry of the time-limit for deciding on the settlement.[288]

In cases where a presumed violation of the right to a trial within a reasonable time ceased by 31 March 2007 and the party has in a timely manner brought an action for non-pecuniary damage as regards the violation of the right to trial within a reasonable time, in determining principles by which the violation of the right to a trial within reasonable time and decides on the fair compensation, the provisions of Articles 16 and 17 of the Act on the protection of the right to a trial without undue delay apply[289]. ECHR, as it was expected, welcomed this modification.[290]

II. SERBIA

1. General Administrative Procedure Act

Administrative procedure in the Republic of Serbia is governed by the General Administrative Procedure Act[291], which is in use for less than two years.

SILENCE OF ADMINISTRATION

Against a decision issued at first instance, or in the situation in which public law authority in administrative procedure has not decided within the prescribed time-limit, a party is entitled to appeal, unles otherwise specified by law.[292]

TIME-LIMIT FOR ISSUING DECISIONS

By issuing a decision, the General Administrative Procedure Act of the Republic of Serbia considers issuing and notifying the party of the decision issued. [293]

Where the proceedings are initiated at a party's request or *ex officio*, if this is in the interest of a party, and where deciding on administrative matter is in the process of immediate decision-

[287] It appears that such a legal solution is a response of Slovenia to the practice of the ECHR, according to which, in the event of the introduction of a new legal remedy for correcting a "systemic deficiency" in the judiciary leading to massive violations of the Convention right, it is an exception to the rule that the applicants are required to exhaust only the legal remedies available to them at the time of submission of claims to the ECHR.
[288] For proceedings before the court, irrespective of the type or amount of claims, the provisions of the Civil Proceedings Act governing minor disputes shall apply.
[289] Article 25 paragraph 3 of the Act on the protection of the right to a trial without undue delay.
[290] Judgement of the ECHR *Hajrudinović vs. Slovenia* of 21 May 2015, request No. 69319/12, § 53.
[291] The General Administrative Procedure Act, Official Gazette of the Republic of Serbia, 18/16, entered into force on 9 March 2016 and applies from 1 June 2017, except Articles 9, 103 and 207 of this Act, the application of which commenced 90 days after the date of entry into force of the Act.
[292] Article 13 paragraph 1 of the General Administrative Procedure Act.
[293] Article 145 paragraph 1 of the General Administrative Procedure Act.

making, the authority shall issue a decision no later than 30 days from the initiation of proceedings.[294]

Where the proceedings are initiated at a party's request or *ex officio*, if this is in the interest of a party, and where deciding on administrative matter is not in the process of immediate decision-making, the authority shall issue a decision at the latest within 60 days from the initiation of proceedings.[295]

If a decision is not issued within the time-limit specified by law, a party has the right to appeal.[296] A party has no right to appeal if a special law provides that the failure to serve a decision within the time-limit prescribed by the law is deemed to be the adoption of a party's request.[297]

Time-limit for appeal

Where an authority fails to issue a decision within the time-limit prescribed by the law, an appeal may be filed after the expiry of that time-limit and not later than one year after the expiry of that time-limit.[298]

The provisions of the General Administrative Procedure Act governing the submission of appeals due to the silence of the administration serve to expedite this procedure. Thus, Article 161 paragraph 1 of the General Administrative Procedure Act stipulates that an appeal filed for the reason of failure to issue a decision within the time-limit specified by the lae shall be addressed to the second instance authority.

Article 161 paragraph 2 of of the General Administrative Procedure Act prescribes that the appeal shall be filed with the second instance authority also where the first instance authority fails to issue within the time-limit specified by the law a certificate or other document on the facts of which the official record is kept, where the first instance authority fails to decide within the statutory time-limit the request for an inspection of the file and in other cases set stipulated by the law.

Appeals in absence of first instance decision within a time-limit specified by law

Where the first-instance authority has failed to adopt a decision within the time-limit specified by law, the second-instance authority shall request the first-instance authority to state the reasons for such failure. If the second instance authority finds that the first instance authority has not has failed to adopt a decision for justified reason, it shall extend the time-limit for adoption of the decision for the duration of justified reason, not longer than 30 days.[299]

If the second instance authority establishes that there is no justified reason for which the decision has not been issued within the statutory time-limit, it shall decide by itself on the administrative matter or order the first instance authority to issue a decision within a period not longer than 15 days.[300]

[294] Article 145 paragraph 2 of the General Administrative Procedure Act.
[295] Article 145 paragraph 3 of the General Administrative Procedure Act.
[296] Article 151. paragraph 3 of the General Administrative Procedure Act.
[297] Article 151. paragraph 5 of the General Administrative Procedure Act.
[298] Article 153. paragraph 2 of the General Administrative Procedure Act.
[299] Article 173. paragraph 1 of the General Administrative Procedure Act.
[300] Article 173. paragraph 2 of the General Administrative Procedure Act.

If the first instance authority again fails to issue a decision within the time-limit set by the second instance authority, it decides on the administrative matter by itself.[301]

Time-limit for deciding on appeals

A decision on the appeal shall be adopted without delay, but not later than 60 days from the date of the duly submission of appeal, unless a shorter time-limit was prescribed by law.[302]

Penal provisions

A fine ranging from RSD 5,000 to RSD 50,000 will be imposed an authorized official person for a misdemeanor, within the meaning of the General Administrative Procedure Act, who fails to file an appeal along with the response of the first instance authority to the appeal and the files to the second instance authority within the time-limit prescribed by the General Administrative Procedure Act, that is, who does not keep an official record on resolution in administrative matters.[303]

Supervision over the implementation of the General Administrative Procedure Act

Supervision over the implementation of the General Administrative Procedure Act shall be performed by the ministry responsible for state administration.[304]

Inspectional supervision over the implementation of the General Administrative Procedure Act shall be performed by the administrative inspection, except in matters related to the enforcement of laws in the field of defense and of the importance for defense and the Army of Serbia.[305]

Responsibility of authorised officer

The authorized officer of the authority conducting the procedure shall be responsible if specific procedural actions are not performed due to his/her fault.[306]

The ministry responsible for state administration affairs in the performance of supervision over the implementation of the General Administrative Procedure Act and other administrative authorities shall require a disciplinary proceedings to be initiated against the authorised officer or the responsible person who fails to inspect *ex officio* the facts on which the official records are kept, who, at the request of the authority conducting the proceedings free of charge fails to provide the data with respect to which the official records are kept within the time prescribed by the law, who fails to issue the decision within the time prescribed by the law or who fails to serve the case file to the second instance authority or the court competent for administrative disputes within the time-limits set by the law.[307]

[301] Article 173. paragraph 3 of the General Administrative Procedure Act.
[302] Article 174 of the General Administrative Procedure Act.
[303] Article 208 of the General Administrative Procedure Act.
[304] Article 209 paragraph 1 of the General Administrative Procedure Act.
[305] Article 209 paragraph 2 of the General Administrative Procedure Act.
[306] Article 210 paragraph 1 of the General Administrative Procedure Act.
[307] Article 210 paragraph 2 of the General Administrative Procedure Act.

2. Administrative Dispute Act

The administrative dispute in the Republic of Serbia is governed by the Administrative dispute act (hereinafter: Administrative Dispute Act).[308]

Article 2 of the Administrative Dispute Act prescribes that the court shall decide in administrative disputes in compliance with the law and within a reasonable time-limit, based on the facts established at the oral public discussion.

An administrative dispute in the Republic of Serbia shall be resolved by the Administrative Court.[309]
The Supreme Court of Cassation shall decide on the proceedings initiated at the request to review a court decision against the decision issued by the Administrative Court.[310]

The silence of the Administration

An administrative dispute may be instituted also where the competent authority fails to issue an administrative act with regard to the request or appeal filed by a party, in line with the conditions stipulated by the Administrative dispute act.[311]

An action brought for the silence of the administration

If a second instance authority fails to issue a decision on the appeal filed by the party against the first instance decision within **60 days** from the date of receiving the appeal or within the shorter time-limit stipulated by the law, and fails to issue it within the time-limit extended for seven days upon the subsequent request filed by the party to the second instance authority, the party may, after the expiry of that time-limit, bring an action due to the failure to issue the act.[312]

If a first instance authority, upon the request of a party, fails to issue a decision which may not be subject to an appeal, within the time-limit stipulated by the law governing general administrative proceedings, and fails to issue it within the time-limit extended for seven days upon the subsequent request filed by the party, the party may, after the expiry of that time-limit, bring an action due to the failure to issue the requested act.[313]

Content of the action

In addition to the action brought for silence of the administration, which must contain the usual elements of the action[314], a copy of the request i.e. the appeal, a copy of the request for subsequent claim referred to Article 19 of the Administrative dispute act and a proof of service of such submissions to the competent authority shall be enclosed.[315]

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[308] Administrative Dispute Act, Official Gazette of the Republic of Serbia, 111/09, entered into force on 30 December 2009.
[309] Article 8 paragraph 1 of the Administrative Dispute Act.
[310] Article 9 paragraph 1 of the Administrative Dispute Act.
[311] Article 15 of the Administrative Dispute Act.
[312] Article 19 paragraph 1 of the Administrative Dispute Act.
[313] Article 19 paragraph 2 of the Administrative Dispute Act.
[314] name and surname, address and place of residence, i.e. place and seat of the plaintiff, reasons for the action to be brought, the plaintiff's signature.
[315] Article 22 paragraph 3 of the Administrative Dispute Act.

Satisfying the plaintiff's request by the defendant

If in the event of silence of the administration, the defendant passes a first instance or a second instance administrative act, the defendant shall, apart from the plaintiff, simultaneously notify the court thereof. In such case, the court shall summon the plaintiff to serve on the court within 15 days from the date of being summoned a written statement on whether he/she is satisfied with the subsequently passed act or intends to continue with the action and to what extent, or whether he/she extends the action also to the new act.[316]

If the plaintiff timely serves on the court a written statement on his/her satisfaction with the subsequently passed act or if he/she fails to make statement within the prescribed time-limit, the court shall render a ruling on the termination of the proceedings.[317]

If the plaintiff states that he/she is not satisfied with the new act, the court shall continue the proceedings.[318]

Judgments rendered in a dispute due to the silence of the administration

Where the action is brought due to the silence of administration, and where the court establishes it grounded, it shall render the judgement to approve the action and order to the competent authority to render a ruling. If the court is in disposal of the necessary facts, and if so permitted by the nature of the matter, it may with its own judgement directly resolve the administrative matter.[319]

Legal effects of the annulment of an act in an administrative dispute

Where the court annuls an act against which an administrative dispute was instituted, the case shall be returned to the state of a reopened proceeding based on the appeal, i.e. to the state of a reopened proceeding based on the request of a party in the first instance proceeding, if the appeal was excluded by the law (the state before the annulled act was passed).[320] If according to the nature of the matter, which was the subject of the administrative dispute it is necessary to pass another administrative act in place of the one that has been annulled, the competent authority shall pass it without delay, no later than 30 days after the day the judgement is served, and in doing so it shall be bound by the legal opinion of the court and the comments of the court with reference to the proceedings.[321]

Legal effects of the active failure to follow a judgement

If the competent authority, after annulling the administrative act, passes an administrative act contrary to the legal opinion of the court, or contrary to the comments made by the court with reference to the proceedings[322], and the plaintiff fibringsles another action, the court shall annul

[316] Article 29 paras. 1 and 2 of the Administrative Dispute Act.
[317] Article 29 paragraph 3 of the Administrative Dispute Act.
[318] Article 29. paragraph 4 of the Administrative Dispute Act.
[319] Article 44 of the Administrative Dispute Act.
[320] Article 69 paragraph 1 of the Administrative Dispute Act.
[321] Article 69 paragraph 2 of the Administrative Dispute Act.
[322] The authority performing supervision over the operation of the subject public law authority shall report on the matter.

the contested act and resolve the matter itself by way of judgement, unless this is not possible due to the nature of the matter or if the the full jurisdiction has been excluded by the law.[323]

The judgement rendered in such case shall replace the act of the competent authority in its entirety.[324]

If the court considers that due to the nature of the matter it is unable to resolve the matter itself, is shall explain it specifically.[325]

Legal effects of the passive failure to follow a judgement

If the competent authority, following the annulment of the administrative act, fails to immediately pass a new administrative act or an act on the enforcement of judgement within not later than **30 days** pursuant to Article 43 of the Administrative dispute act[326], the party may request such an act to be passed by means of a separate submission.

If the competent authority fails to pass the act even within seven days from the party's request, the party may, by means of a separate submission, request from the court which issued the judgement to pass the respective act. Upon such party's request, the court shall request from the competent authority to notify it of the reasons for the failure to pass the administrative act. The competent authority shall provide this notification immediately, within not later than seven days. If it fails to do so, or if the notification provided, as per the opinion of the court, does not justify the failure to enforce the court judgement, the court shall render a ruling which shall replace in its entirety the act of the competent authority, if so permitted by the nature of the matter. The court shall serve such ruling on the authority competent for enforcement, and at the same time notify the authority performing the supervision thereof. The authority competent for enforcement shall enforce this ruling without any delay.[327]

Right to compensation of damage due to the failure to enforce the judgement

Due to the damage incurred by the failure to enforce, or by the untimely enforcement of the judgement rendered in the administrative dispute, the plaintiff has the right to a compensation exercised in the dispute before the competent court, pursuant to the law.[328]

A pecuniary penalty (a fine)

If the manager of the authority fails to appear before the court or fails to state reasons justified as per the opinion of the court with regard to the failure to submit the required documents, the court shall render a ruling on the fine in the amount from RSD 10,000 to RSD 50,000 dinars.

The court shall render a ruling on the fine in the amount from RSD 30,000 to RSD 100,000 to the manager of the authority who has failed to follow the judgement.

[323] Article 70 paragraph 1 of the Administrative Dispute Act.
[324] Article 70 paragraph 2 of the Administrative Dispute Act.
[325] Article 70 paragraph 3 of the Administrative Dispute Act.
[326] Article 43 of the Administrative Dispute Act regulates the pronouncement of judgments in a dispute of full jurisdiction.
[327] Article 71 of the Administrative Dispute Act.
[328] Article 72 of the Administrative Dispute Act.

In the event that the manager of the authority, in spite of the imposed fine, fails to fulfil the obligation due to which the penalty was imposed, the court may impose the fine again.[329]

3. Act on Protection of the Right to a Trial Within a Reasonable Time

The Act on the protection of the right to a trial within a reasonable time of the Republic of Serbia[330] provides protection to parties in court proceedings, including enforcement and non-contentious proceedings, as well as to defendants in criminal proceedings, private plaintiff and to the defendant as the plaintiff if they have pointed out the claim for the property right.

Legal remedies which seek to protect the right to trial within a reasonable time shall be:
1) Complaint to expedite the procedure (hereinafter: the complaint);
2) Appeal;
3) Request for just satisfaction.[331]

A complaint and an appeal may be filed in the course of the proceedings.

A party shall file a complaint to the court conducting the proceedings or the court before which proceedings are conducted if they considers that the public prosecutor has violated their right.

The proceedings based on the complaint shall be conducted by the president of the court, who shall decide on the complaint. In the annual work schedule, the president of the court may appoint one or more judges to conduct the proceedings, along with himself/herself and to decide on the complaints.

The president of the court shall decide on the complaint no later than two months from the receipt of the complaint.

Deciding on the complaint without the inquiry procedure

By means of rendering a ruling, the president of the court shall either dismiss or refuse the complaint without the inquiry procedure or conduct the inquiry procedure.

The complaint shall be dismissed if the absence of any mandatory element of the complaint makes it impossible to act upon it, if the complaint has been filed by an unauthorized person or if the complaint is premature. No appeal is allowed against the ruling on the dismissal of the complaint. The complaint shall be refused without an inquiry procedure if, given the duration of the proceedings set out in the complaint, it is manifestly ill-founded.[332]

The inquiry procedure

[329] Article 75 of the Administrative Dispute Act.
[330] Act on protection of the right to trial within a reasonable time of the Republic of Serbia, "Official Gazette of the Republic of Serbia", 40/15. The act entered into force on 1 January 2016.
[331] Article 3 of the Act on protection of the right to trial within a reasonable time.
[332] Article 8 of the Act on protection of the right to trial within a reasonable time.

The inquiry procedure begins when the president of the court invites a judge or a president of the panel or a public prosecutor, to submit a report no later than 15 days or within the shorter time-limit, if it is a procedure with reference to which the urgent action is prescribed by the special law.

The report shall contain a statement of progress of the procedure with reference to the duration and a proposal for a time-limit within which the proceedings can be completed.

The president of the court may order that the case file be served on him if, given the content of the complaint, he considers that they should be inquired.[333]

Deciding on a complaint upon the inquiry procedure

The president of the court shall examine the report and the case files and shall apply the criteria for assessing the length of a trial within the reasonable time. [334] After that, the president of the court shall either refuse or approve the complaint by way of a decision and shall establish the violation of the right to a trial within the reasonable time. The judge and the public prosecutor shall not be entitled to appeal against the decision by means of which the complaint is accepted.

Orders to a judge

In rendering the decision approving the complaint and establishing the violation of right to a trial within the reasonable time, the president of the court shall indicate to the judge or the public prosecutor the grounds on which the the party's right was violated and shall order the judge to undertake procedural steps to effectively expedite the procedure.

In the same decision, the president of the court shall also set the time-limit within which the judge is obliged to take procedural steps as ordered, which may neither be less than 15 days nor longer than four months, and a reasonable time within which the judge shall submit the report on the steps undertaken to the president of the court.

Depending on circumstances, and in particular if the proceedings are urgent, the president of the court can set the priority in deciding, then withhold the case from the judge and assign it to another judge, if the party's right is violated due to overload or a longer absence of the judge.[335]

The right to a new complaint

A party whose complaint has been refused and who has failed to file an appeal, may file a new complaint four months after the receipt of the decision on refusal of complaint, the party whose complaint was refused, who filed an appeal that was refused upon the expiry of four months

[333] Article 9 of the Act on protection of the right to trial within a reasonable time.
[334] These criteria are prescribed by Article 4 of the Act on protection of the right to trial within a reasonable time: the complexity of factual and legal issues, the overall duration of the proceedings and the actions of the court, the public prosecutor's office or other state authority, the nature and type of the subject matter of the trial or investigation, the importance of the subject matter of the trial or investigation for the party, conduct of parties throughout the proceedings, in particulat the compliance with the procedural rights and obligations, compliance with the sequence of resolution of cases and legal time-limits for setting up hearings and drafting rulings.
[335] Article 11 of the Act on protection of the right to trial within a reasonable time.

from the receipt of the decision on refusal of appeal, and the party whose complaint was accepted, who has failed to file an appeal – upon the expiry of five months from the receipt of the decision on acceptance of complaint.

A party whose appeal has been accepted, and a party whose complaint has been accepted and the appeal refused, may file a new complaint immediately upon the expiry of the time-limit within which the judge or the public prosecutor was obliged to undertake effective procedural steps.

Restrictions on the right to file a new complaint shall not apply in the proceedings in which either a detention or a temporary injunctions have been proposed or imposed, in the enforcement proceedings and in the proceedings against juveniles.

A party whose complaint or appeal have been dismissed may immediately file a new complaint.[336]

An appeal and the grounds for an appeal

A party is entitled to appeal if its complaint was refused or if the president of the court fails to decide upon it within two months from the receipt of complaint.

An appeal may be filed also if the complaint has been accepted but the directly higher-instance public prosecutor has failed to issue the mandatory instructions within eight days of receipt of decision by the president of the court, if the president of the court or the directly higher-instance public prosecutor has failed to order the judge or the public prosecutor to undertake procedural steps which effectively expedite the procedure, or if the judge or the public prosecutor has failed to undertake the procedural steps as ordered within the given time-limit.[337]

Time-limit for an appeal

If the president of the court has failed to decide on the complaint, the appeal shall be filed within eight days from the expiry of the two months' period from the receipt of complaint.

If the complaint has been refused, and the party is entitled to appeal, the appeal shall be filed within eight days from the party's receipt of the decision on refusal of the complaint.

If the complaint has been accepted and the party is entitled to appeal, the appeal shall be filed within eight days:
1) from the date of expiry of time-limit in which the immediately higher-instance public prosecutor was obliged to issue mandatory instructions - if the appeal is submitted on the grounds of the directly higher-instance public prosecutor's failure to issue mandatory instructions;
2) from the date when the party has been served on a decision - if the appeal is filed on the grounds of the court president's failure to order the judge procedural steps that effectively expedite the proceedings;

[336] Article 13 of the Act on protection of the right to trial within a reasonable time.
[337] Article 14 of the Act on protection of the right to trial within a reasonable time.

3) from the date the party has received mandatory instructions - if the complaint is submitted on the grounds of the directly higher-instance public prosecutor's failure to order the public prosecutor the procedural steps that effectively expedite the proceedings;
4) from the date of expiry of the time-limit during which the judge or the public prosecutor was obliged to undertake the procedural steps as ordered - if the appeal is submitted on the grounds of the judge's or the public prosecutor's failure to undertake the procedural steps as ordered within the given time-limit.[338]

Jurisdiction for deciding on an appeal

The appeal shall be submitted to the president of the court who has decided on a complaint, and who shall forthwith serve on the president of the directly higher-instance court an appeal and a case file. The president of the directly higher-instance court shall conduct the appeal procedure and shall decide on it.

If the proceedings in the course of which the party considers that its right to a trial within a reasonable time has been violated are conducted by the Supreme Court of Cassation, the appeal procedure shall be conducted by a panel of three judges of the Supreme Court of Cassation who shall decide on the appeal.

The president of a directly higher-instance court may appoint one or more judges to conduct the proceedings along with himself/herself and may decide on appeals in an annual work schedule.[339]

Deciding on an appeal without the inquiry procedure

In a decision, the president of the directly higher-instance court shall dismiss or refuse the appeal without the inquiry procedure or conduct the inquiry procedure.

An appeal shall be dismissed if it is incomplete, if it has been filed by an unauthorized person, if it is premature, untimely, if the party has waived the right to appeal or if it withdrew an appeal or has no legal benefit for it. The ruling on the dismissal of the appeal may not be appealed.

The appeal shall be refused without an inquiry procedure if, given the duration of the proceedings referred to in the appeal, it is manifestly ill-founded.[340]

Deciding on an appeal after the inquiry procedure

The president of the directly higher-instance court shall examine the case file and apply the criteria for assessing the duration of a trial within the reasonable time.

After that, in a decision, the president of the directly higher-instance court shall refuse the appeal and uphold the first instance decision, accept the appeal and amend the first instance decision, accept the appeal and decide on the complaint or accept the appeal and serve it on the competent public prosecutor.

[338] Article 15 of the Act on protection of the right to trial within a reasonable time.
[339] Article 16 of the Act on protection of the right to trial within a reasonable time.
[340] Article 17 of the Act on protection of the right to trial within a reasonable time.

The president of the directly higher-instance court may, depending on circumstances, and in particular if the proceedings are urgent, set the priority in deciding and then order the president of the court before which the complaint has been filed to withhold the case from the judge and assign it to another judge, if the party's right has been violated on the grounds of work overload or a longer absence of the judge.

If the appeal has been filed due to the failure of the president of the court to decide on a complaint, when drafting a decision deciding on the complaint, the president of the directly higher-instance court has the same rights and obligations as the president of the court before which the complaint has been filed.[341]

Other rules on the procedure involving the appeal and the time-limit for deciding on the appeal

The president of the directly higher-instance court shall decide on the appeal within 30 days of its receipt.[342]

Exclusion of appeal

The decision of the president of the directly higher-instance court shall not be appealed.[343]

Just satisfaction

The right to just satisfaction shall be granted to a party whose complaint was accepted and who has not filed an appeal, a party whose appeal was refused whilst the first instance decision on accepting the complaint was upheld and a party whose appeal was accepted.

A party whose complaint has been accepted and who has failed to file a complaint and the party whose appeal has been refused whilst the first instance decision on accepting the complaint was upheld shall be granted the right to a fair satisfaction upon the expiry of the time-limit within which the judge or the public prosecutor was obliged to take the procedural steps as ordered, and the party whose appeal has been adopted – upon the receipt of the decision on acceptance of the appeal.[344]

Types of just satisfaction

Types of just satisfaction are:
1) right to monetary compensation for non-pecuniary damage caused to the party through violation of the right to a trial within the reasonable time (hereinafter: monetary compensation),
2) right to publication of a written statement of the State Attorney's Office establishing that the party suffered the violation of its right to a trial within the reasonable time,
3) right to publication of the judgment establishing that the party suffered the violation of its right to trial within a reasonable time.[345]

[341] Article 18 of the Act on protection of the right to trial within a reasonable time.
[342] Article 20 paragraph 3 of the Act on protection of the right to trial within a reasonable time.
[343] Article 21 of the Act on protection of the right to trial within a reasonable time.
[344] Article 22 of the Act on protection of the right to trial within a reasonable time.
[345] Article 23 paragraph 1 of the Act on protection of the right to trial within a reasonable time.

The responsibility of the Republic of Serbia for non-pecuniary damage caused through the violation of the right to a trial within the reasonable time is objective.[346]

In deciding on just satisfaction, the Attorney's Office and the courts are bound by the decisions of the presidents of the courts that have established a violation of the right of the party to a trial within a reasonable time.[347]

Attempt to reach settlement with the Attorney's Office and the possibility to submit a motion for settlement

A party may submit a motion for settlement to the Attorney's Office within six months from the date it acquired the right to just satisfaction.

In the motion for settlement, the party shall state whether it requires the payment of a monetary compensation or the issuance and publication of a written statement of the Attorney's Office establishing that its right to a trial has been violated within a reasonable time, or both.

The Attorney's Office may attempt to reach an agreement with the party within two months of receipt of the motion for settlement. If an agreement is reached, the Attorney's Office will conclude an out-of-court settlement with the party, which constitutes an executive document.

In the settlement procedure, the Attorney's Office shall stick to the amount of monetary compensation prescribed by the Act on protection of the right to trial within a reasonable time.

The party is free at any time to give up (in writing) from the attempt of settlement.[348]

Publication of a written statement of the General Attorney's Office stating that a party's right has been violated

After assessing whether a just satisfaction for non-pecuniary damage is possible, and if a written statement stating that a party's right to a trial within a reasonable time has been violated is published only, the Attorney's Office may propose, instead of effecting a payment of pecuniary compensation, to issue to the party and publish a written statement stating that the party's right has been violated.

In the event of a serious violation of the right to a trial within the reasonable time, the Attorney's Office may, at the request of the party, issue and publish a written statement, and pay a monetary compensation to the party.

A written statement stating that a party's right to a trial within the reasonable time has been violated contains the party's personal or business name and address, residence or registered office, the personal or business name of the party's representative or proxy and their address, place of residence or registered office, name of the court or the public prosecutor who violated the right of the party to a trial within the reasonable time, registration number of the court case

[346] Article 23 paragraph 2 of the Act on protection of the right to trial within a reasonable time.
[347] Article 23 paragraph 3 of the Act on protection of the right to trial within a reasonable time.
[348] Article 24 of the Act on protection of the right to trial within a reasonable time.

or the registration number of the public prosecutor's office case, and an explicit statement stating that the party's right to a trial within the reasonable time has been violated.

The Attorney's Office shall issue a written statement in the form of an out-of-court settlement to the party and published it in the "Official Gazette of the Republic of Serbia".[349]

An action for monetary compensation

A party may bring an action against the Republic of Serbia for monetary compensation within one year from the date it acquired the right to a just satisfaction.[350]

The action shall neither be allowed as long as there is an attempt to reach a settlement with the Attorney's Office, nor if the party and the Attorney's Office have concluded a settlement.

Proceedings involving an action

Irrespective of the type and amount of the action brought, in the proceedings before the court, provisions from the law governing the civil proceedings involving small-value disputes shall be applied accordingly.

The court may not award a monetary compensation in the amount higher than the amount prescribed by the Act on protection of the right to trial within a reasonable time.[351]

A judgment stating that a party's right has been violated

In the event of a serious violation of the right to a trial within the reasonable time, the court may, at the request of the party, pronounce and publish a judgement stating that the party's right has been violated and pay a monetary compensation to the party.

The court or the public prosecutor's office that have violated the party's right shall publish a final judgement in the "Official Gazette of the Republic of Serbia" at its own expense.[352]

The amount of monetary compensation

The monetary compensation shall be acknowledged in the amount ranging between EUR 300 and EUR 3,000 per case, payable in RSD equivalent at the median exchange rate of the National Bank of Serbia applicable on the payment date.

In deciding on the amount of monetary compensation, the Attorney's Office and the court shall apply criteria for the assessment of duration of a trial within the reasonable time, particularly complexity of the subject matter of trial or investigation, conduct of the competent state authority and the party during the proceedings and its importance of the subject matter of trial or investigation to a party.[353]

[349] Article 25 of the Act on protection of the right to trial within a reasonable time.
[350] Article 26 of the Act on protection of the right to trial within a reasonable time.
[351] Article 27 of the Act on protection of the right to trial within a reasonable time.
[352] Article 29 paragraphs 1 and 3 of the Act on protection of the right to trial within a reasonable time.
[353] Article 30 of the Act on protection of the right to trial within a reasonable time.

An action for compensation of material damage

A party may bring an action against the Republic of Serbia for compensation of material damage caused through the violation of right to a trial within the reasonable time, within one year from the date it acquired the right to just satisfaction.

In addition to the provisions of the law governing obligations, the court shall also apply criteria for assessing the duration of a trial within the reasonable time.

The liability of the Republic of Serbia for material damage caused by a violation of right to a trial within the reasonable time is objective.[354]

Payment of monetary compensation and compensation of material damage

The monetary compensation and compensation of material damage paid by the court or the public prosecutor's office who violated the right to a trial within the reasonable time.[355]

Providing funds for payment

Funds for payment of monetary compensation and compensation of material damage shall be provided from the budget of the Republic of Serbia, from the funds intended to cover current expenditures of courts and public prosecutors' offices, excluding staff expenditures and current maintenance of facilities and equipment.[356]

III. BOSNIA I HERZEGOVINA

1. Administrative Procedure Acts

As regards the specific territorial structure of Bosnia and Herzegovina[357], the administrative procedure in Bosnia and Herzegovina is governed by four Administrative Procedure Acts:

- Administrative Procedure Act of Bosnia and Herzegovina,

- Administrative Procedure Act of the Federation of Bosnia and Herzegovina,

- Administrative Procedure Act of the Republika Srpska and

[354] Article 31 of the Act on protection of the right to trial within a reasonable time.

[355] Article 32 of the Act on protection of the right to trial within a reasonable time.
[356] Article 33 of the Act on protection of the right to trial within a reasonable time.

[357] Bosnia and Herzegovina is composed of the two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska and the Brčko Distrikt holding a special status.

- Administrative Procedure Act of Brčko Distrikt.,

1.1. Administrative Procedure Act of Bosnia and Herzegovina

The Law on Administrative Procedure of Bosnia and Herzegovina[358] shall be applied in procedures whereby the administration authorities of Bosnia and Herzegovina act in administrative matters, directly applying the regulations, on the rights, obligations or legal interests of natural persons, legal entities or other parties in administrative matters that are in competencies of the institutions of Bosnia and Herzegovina. According to this Law, legal entities with public authority are obliged to act.

The principle of cost-effectiveness of the procedure is contained in Article 11 of the General Administrative Procedure Act/B&H, according to which the procedure has to be conducted expeditiously and with as little cost and time as possible for the party and other persons participating in the procedure, but in order to obtain everything necessary for the proper establishment of the factual situation and for the issuance of a lawful and correct decision.

Time-limit for issuing decisions

Where the procedure is instigated on request of the party, that is, ex officio, if it is in the party's interest and it is not necessary to conduct a special inquiry procedure prior to taking a decision and there are no other reasons due to which it would not be possible to issue a decision without delay (resolving of a prior issue and the like), the competent authority shall issue a decision and communicate it to the party as soon as possible and within 30 days at the latest calculating from the date of duly submission of request, that is from the date of instigation of the procedure ex officio, unless a shorter time-limit is set by a special provision.

In other cases of instigation of a procedure on party's request, that is, ex officio if it is in the party's interest, the competent authority shall issue a decision and communicate it to the party within 60 days at the latest, unless a shorter time-limit is set by a special provision.[359]

Protection from the silence of administration

A party shall have the right to appeal even where the first instance authority has not rendered a decision on the request within a specified time-limit, that is, if it fails to take a decision in the procedure ex officio and in the interest of a party.[360]

If the competent authority against a decision of which an appeal is permitted fails to issue a decision and communicate it to the party within the time-limit stipulated by law, the party shall

[358] The Administrative Procedure Act of Bosnia and Herzegovina, Official Gazzette of B&H, 29/02, 12/04, 88/07, 93/09, 41/13 and 53/16.
[359] Article 208 paragraphs 1 and 2 of the Administrative Procedure Act of Bosnia and Herzegovina.
[360] Article 15 paragraph 2 of the Administrative Procedure Act of Bosnia and Herzegovina.

have the right to file an appeal to the competent authority as if its request was refused. [361] Where the shortened procedure is concerned, the competent authority shall issue a decision as per the party's request within 15 days at the latest from the date of receiving the request.[362]

Prevention of repeated remittals

Article 230 paragraph 3 of the Administrative Proceedure Act of B&H prescribes that, if the first instance authority, after the second instance authority has annulled the first instance decision, renders a new decision contrary to the legal understanding of the second instance authority or to the remarks of the second instance authority with reference to the proceedings, and the party files a new appeal, the second instance authority shall annul the first instance decision and resolve the administrative matter itself. The second instance authority shall give notice to the administrative inspection about the conduct of the first instance authority for the purpose of initiating the misdemeanor proceedings

If the second instance authority establishes that evidence was incorrectly assessed in the first instance decision, that in respect of facts a wrong conclusion was derived from the established facts, that the legal provision on the grounds of which the matter is being resolved was incorrectly applied, that the first instance decision was already annul once and in particular if the first-instance authority did not fully comply with the second instance decision, or if it finds that a different decision should have been issued on the basis of a free assessment, it shall revoke the first instance decision by its decision and resolve the matter itself.[363]

An appeal in case where the first instance decision was not issued within the time-limit stipulated by law

If the appeal was filed by a party at request of which the first instance authority failed to issue a decision within the time-limit stipulated by law, the second instance authority shall immediately, and within three days from the receipt of the appeal, request that the first instance authority immediately submits to it all the cases and state the reasons for failing to issue the decision within the time-limit. The first instance authority shall act upon such request within the time-limit determined by the second instance authority, but that the time-limit may not exceed five days. If the second instance authority finds that the decision has not been issued within the time-limit for justified reasons or due to the party's fault, it will order the first instance authority a time-limit for issuing a decision, which may not exceed 15 days, and return to it all case files for resolving.

If the second instance authority finds that the reasons due to which the decision was not issued within the set time-limit are not justified, it shall resolve the matter on the grounds of the case files and issue its decision, if possible, and if it is not possible to resolve the matter on the grounds of the case files, it shall conduct the proceedings itself and resolve the matter by its decision. Exceptionally, if the second instance authority finds that the proceedings would be more expeditiously and more cost-effectively conducted by the first instance authority, it shall order this authority to do so and to provide the second instance authority with collected information within a specified time-limit which may not exceed eight days and the first instance authority shall act as per this request. Once the first instance authority provides the requested

[361] Article 208 paragraph 3 of the Administrative Procedure Act of Bosnia and Herzegovina.
[362] Article 208 paragraph 4 of the Administrative Procedure Act of B&H .
[363] Article 231 of the Administrative Procedure Act of B&H.

information and evidence, the second instance authority shall immediately resolve the matter. A decision of the second instance authority shall be final.[364]

Time-limit for issuing a decision on appeal

A decision on appeal must be issued and served on the party as soon as possible and no later than 30 days from the date of filing of appeal, unless a shorter time-limit is stipulated by law.[365]

The authority which resolved the matter in the second instance shall, as a rule, send its decision along with case files to the first instance authority, which shall serve the decision on the parties within five days following the date of receiving the file.[366]

Measure for enforcement of the Administrative Procedure Act of B&H

Measure for enforcement of the Administrative Procedure Act of B&H are contained in the Title XVIII of the Administrative Procedure Act of B&H.

Article 284 of the Administrative Procedure Act of B&H stipulates the following:

Managers of administrative authorities or institutions with public powers shall be responsible for proper and consistent implementation of this Act and shall in particular be responsible to make sure that administrative matters are resolved within the time-limits stipulated by law. For the purpose of proper and efficient resolving of matters in the administrative proceedings, responsible persons shall undertake measures for the continuous provision and carrying out of professional training of employees and other persons engaged in resolving administrative matters.

The official who is authorised to undertake measures in the administrative procedure, i.e., authorised to resolve in administrative matters shall notify the party in writing of the reasons why a decision, i.e. a conclusion has not been issued, as well as of the activities he or she will undertake to issue the decision or the conclusion and advise the party on the remedies to be used. At the same time, this notification must be served also on responsible persons for the purpose of taking measures with the aim of issuing a decision or conclusion, without delay.

The official authorised to conduct the administrative proceedings, i.e. resolve administrative matters, more serious violates work duties if certain procedural actions in the administrative procedure have not been carried out due to his or her fault, and due to which the decision or the conclusion could not have been issued within the time-limit stipulated by law.

A competent administrative inspection shall have the right to request the instigation of an accountability proceedings with the competent authority against the manager of an administrative authority or the manager of an institution with public powers, in case of failure to carry out duties referred to in paragraph 1 of this Article, as well as against a person who, contrary to Article 283 of the Administrative Procedure Act of B&H, authorises an official to

[364] Article 234 of the Administrative Procedure Act of B&H.
[365] Article 235 paragraph 1 of the Administrative Procedure Act of B&H.
[366] Article 237 of the Administrative Procedure Act of B&H.

undertake actions in the proceedings or to resolve in administrative matters, but who fails to meet the prescribed requirements, as well as a disciplinary proceedings against persons referred to in paragraph 3 of that Article.

Article 285 of the Administrative Procedure Act of B&H egulates keeping of official records on resolving administrative issues.

The records contain the information on:

- the number of requests submitted;
- the number of procedures instigated ex officio;
- the manner and time-limits for resolving administrative matters in the first and second instance proceedings;
- the number of annulled or revoked administrative acts and the number of dismissed requests, i.e. suspended proceedings.

Once a year, public law authorities should serve the above data on the Ministry of Justice - the Administrative Inspection, not later than 31 January of the current year for the previous year.

Based on the submitted data of public law authorities, the Ministry of Justice - the Administrative Inspection, compiles an annual report on the resolution of administrative matters in the administrative proceedings and submits it to the Council of Ministers of Bosnia and Herzegovina no later than by the end of February of the current year for the previous year.

Supervision over the implementation of the General Administrative Procedure Act of B&H

The Ministry of Justice performs supervision over the implementation of the General Administrative Procedure Act of B&H in administrative authorities of B&H, institutions of B&H and other authorities of B&H, in the institutions of B&H with public authorisations in matters in which the public law authorities decide on administrative matters in administrative proceedings pursuant to the B&H Act or other regulation of B&H.

Supervision is performed through administrative inspection, as well as in any other, statutory admissible manner.

Public law authorities shall enable an inspection into the administrative resolving and act as per orders of the administrative inspection performing supervision and, at the request of this inspection, provide necessary data, files and notifications on issues referred to the administrative matters being resolved in the course of the administrative proceedings.[367]

Penal provisions contained in Title XX of the General Administrative Procedure Act of B&H, prescribe sanctions for misdemeanors.

An institution with public authorisations shall be imposed a fine from 2,000 KM to 8,000 KM for a minor offence if:

[367] Article 288 of the General Administrative Procedure Act of B&H.

- at the party's request, he or she fails to issue a decision and serves it on the party within the prescribed time-limit,
- it fails to communicate an appeal together with case files to the second instance authority within a prescribed time-limit,
- it fails to act upon request of the second instance authority or it fails to fully comply with the second instance decision or it fails to issue a decision within a prescribed time-limit;
- upon request of the second instance authority it fails to communicate within a specified time-limit the required information, or it fails to issue a decision as ordered by the second instance authority within a prescribed time-limit, or it fails to collect the required information as ordered by a second instance request and communicate them within a prescribed time-limit;
- it fails to issue a decision on appeal within a prescribed time-limit;
- it fails to act as ordered by the second instance authority or it fails to communicate the required material within a prescribed time-limit;
- it fails to submit a report on the resolution of administrative matters in administrative proceedings within the prescribed time-limit;
- it prevents the inspection of the administrative decision-taking or it fails to act as per orders of the competent authority, i.e. of the administrative inspection performing supervision or it fails to communicate necessary data, files and notifications at the request of the authority or the administrative inspection.

For the above misdemeanors, the fine ranging from 300 KM to 1,200KM will be imposed also on a responsible person in a public law authority.

For a misdemeanor, the institution with public authorisations shall be imposed a fine ranging from 1,500 KM to 6,000 KM if:

- at a party's request, if fails to issue a certificate, i.e. to issue a decision on refusing the request within a prescribed time-limit,
- if it fails to undertake measures for continuous professional training and expertise of officials who resolve in administrative matters, i.e. to undertake actions in the proceedings or it fails to ensure resolving of administrative matters within a specified time-limit or it fails to give notice to the party within a prescribed time-limit of the reasons due to which a decision or a conclusion has not been issued.

For these misdemeanors, the fine ranging from 200 KM to 800KM will be imposed also on a responsible person in the institution with public authorisations, and a responsible person in the in the administrative authority, i.e. administrative service. [368]

1.2. General Administrative Procedure Act of the Federation of Bosnia and Herzegovina

Pursuant to the General Administrative Procedure Act of the Federation of Bosnia and Herzegovina[369], the administration authorities of the Federation of Bosnia and Herzegovina and the administration authorities of the cantons - counties, as well as the city and municipal

[368] Article 290 of the General Administrative procedure act.
[369] General Administrative Procedure Act of B&H, Official Gazzette of the Federation of B&H, 2/98 and 48/99.

administration services and other authorities when in administrative matters, directly applying the regulations, decide on the rights, obligations or legal interests of citizens, legal entities or other parties.[370]

The competent authorities of the cantons - counties may pass additional rules of administrative procedure that must be in compliance with the General Administrative Procedure Act of the Federation of Bosnia and Herzegovina.[371]

Enterprises (companies), institutions and other legal entities are obliged to act pursuant to the General Administrative Procedure Act of the FB&H, when carrying out administrative tasks in the performance of public authorisations entrusted with them by law or by a city or municipal council regulation.[372]

Certain issues of the procedure for a particular administrative area can be regulated only exceptionally, by a separate federal law regulated differently than they are regulated by the General Administrative Procedure Act of the FB&H, if this is necessary for different acting in those matters, but cannot be in opposition to the principles of the General Administrative Procedure Act of the FB&H.[373]

In administrative areas for which a separate procedure is stipulated by the federal law, it is acted pursuant to the provisions of that law, and it is acted pursuant to the provisions of the General Administrative Procedure Act of the FB&H in all matters not governed by a separate law.[374]

As one of the principles of administrative proceedings, Article 6 of the General Administrative Procedure Act of B&H governs the principle of efficiency by specifying that when authorities and institutions with public powers resolve in administrative matters, they are obliged to ensure an efficient exercise of rights and interests of citizens, enterprises (companies), institutions and other legal entities, which includes a good organization in the performance of tasks by authorities, ensuring prompt, complete and high-quality resolution of administrative matters in the administrative proceedings, with a comprehensive consideration of these matters.

Article 14 of the General Administrative Procedure Act of B&H regulates the economy of the proceedings, setting out that the procedure should be conducted promptly and with as little cost and time-consuming as possible for the party and other persons involved in the proceedings, but in the manner as to obtain all that is necessary for the proper establishment of facts and for the issuance of a legitimate and proper decision.

The certificate and other documents on the facts on which the official records are kept shall be issued to the party at its oral request, as a rule, on the same day on which the party applied for the issuance of a certificate or other document, and at the latest within five days, unless otherwise provided by a regulation.[375]

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[370] Article 1 paragraph 1 of the General Administrative Procedure Act of B&H.
[371] Article 1 paragraph 2 of the General Administrative Procedure Act of B&H.
[372] Article 1 paragraph 3 of the General Administrative Procedure Act of B&H.
[373] Article 2 of the General Administrative Procedure Act of B&H.
[374] Article 3 of the General Administrative Procedure Act of B&H.
[375] Article 169 paragraph 5 of the General Administrative Procedure Act of FB&H.

If public law bodies refuse the request for issuing a certificate or other document, they are obliged to issue a special decision on this. If they neither issue a certificate or other document within five days from the date of submitting the application, nor render and serve on the party a decision on refusal of the request, the request shall be deemed refused.[376]

If a party, on the grounds of available evidence, considers that the certificate or other document has not been issued to it in compliance with the data from the official records, it may request the modification of the certificate or other document. The authority, that is, legal entity and institutions shall issue a separate decision in case of a refusal of party's request for modification or issuance of a new certificate or other document. In this case, the time-limit of five days from the day of submitting a request for issuing a new certificate or other document is given, and if this is not done within that period, the request shall be deemed refused.[377]

The certificate or other document about facts of which public authorities do not keep official records shall be issued to the party within eight days from the date of submission of the request, and if this is not done, the party's request shall be deemed refused.[378]

Time-limit for issuing decisions

Where the proceedings are initiated with reference to the party's request, or ex officio, if this is in the interest of the party, and prior to rendering a decision, it is neither necessary to conduct a separate inquiry procedure, nor there are other reasons why a decision cannot be rendered without delay (resolving the previous issue etc.), the competent authority shall render a decision and serve it on the party as soon as possible, and no later than within 30 days from the date of submission of a proper request, or from the date of initiation of proceedings ex officio, unless shorter time-limit is specified by a separate regulation.[379]

In other cases, where the proceedings are initiated on the party's request, or ex officio, if this is in the interest of the party, the competent authority shall render a decision and serve it on the party no later than within 60 days, unless shorter time-limit is specified by a separate regulation.[380]

When dealing with cases of resolving in shortened proceedings[381], the competent authority shall render a decision on the request of the party no later than 15 days from the date the request was received.

The silence of the administration

If the competent authority against a decision of which an appeal is allowed fails to issue a decision and communicate it to the party within the within the time-limit prescribed by law, the

[376] Article 169 paragraph 6 of the General Administrative Procedure Act of FB&H.
[377] Article 169 paragraph 7 of the General Administrative Procedure Act of FB&H.
[378] Article 170 paragraph 3 of the General Administrative Procedure Act of FB&H. This provision also applies to rendering and delivery to party of a decision on refusal of request for the issuance of a certificate or other document.
[379] Article 216 paragraph 1 of the General Administrative Procedure Act of FB&H.
[380] Article 216 paragraph 2 of the General Administrative Procedure Act of FB&H.
[381] Article 139 of the General Administrative Procedure Act of FB&H.

party shall have the right to file an appeal to the competent authority as if its request was refused.[382]

Under the terms set out in the General Administrative Procedure Act of FB&H, a party shall have the right to appeal where the first instance authority has not rendered a decision as per the party's request within a specified time-limit.[383]

Acting on appeal due to failure to render the first instance decision within the time-limit specified by law

This situation is governed by Article 243 of the General Administrative Procedure Act of FB&H, paragraph 1 of which stipulates the following:

"If an appeal has been filed by the party at whose request the first instance authority did not render a decision within a time-limit specified by law, the second instance authority shall be required to immediately, and within three days from the date of receiving the appeal, request from the first instance authority to immediately provide it with all case files and present in writing the reasons due to which the decision was not rendered within the time-limit. The first instance authority shall be obliged to act on this request within the period set by the second instance authority, provided that this period may not exceed five days. If the second instance authority finds that the decision was not rendered within the time-limit due to justified reasons or due to a party's failure, it shall set a time-limit to the first instance authority for rendering a decision, which may not exceed 15 days, and return to it all case files for deciding."

If the second instance authority finds that the reasons due to which the decision was not rendered within the set time-limit are not justified, it shall resolve the matter based on the case files and render its decision, if possible, and if it is not possible to resolve the matter based on the case files, it shall conduct the proceedings itself and resolve the matter as per its own decision. Exceptionally, if the second instance authority finds that the proceedings will be more expeditiously and more cost-effectively conducted by the first instance authority, it shall order this authority to do so and to provide the second instance authority with collected information within a specified time-limit which may not exceed eight days and the first instance authority shall be obliged to act as per this request. Once the first instance authority provides the requested information and evidence, the second instance authority shall immediately resolve the matter. A decision of the second instance authority rendered under this provision shall be final.[384]

Time-limit for issuance of a decision as per an appeal

[382] Article 216 paragraph 3 of the General Administrative Procedure Act of FB&H.
[383] Article 11 paragraph 3 of the General Administrative Procedure Act of FB&H.
[384] Article 243 paragraph 2 of the General Administrative Procedure Act of FB&H.

A decision as per an appeal must be issued and delivered to the party as soon as possible and within 30 days at the latest from the date of filing of the appeal, unless a shorter period is laid down by a separate regulation.[385]

Service of the second instance decision

The authority which resolved the matter in the second instance shall, as a rule, serve its decision together with case files on the first instance authority, which shall deliver the decision to the parties within the period of five days from the date of receiving the file.[386]

A provision that can prevent the excessive duration of administrative proceedings is the provision of Article 240, paragraph 1 of the General Administrative Procedure Act of FB&H, which, inter alia, specifies that if the second instance authority establishes that the first instance decision was already revoked once in the same administrative matter and in particular if the first instance authority failed to fully comply with the second instance decision, or if it finds that a different decision should have been issued on the basis of a free assessment, it shall annul the first instance decision by its decision and resolve the matter by itself.

Title XVIII of the General Administrative Procedure Act of FB&H sets out measures for the implementation of this Act, out of which we will refer to those which are, inter alia, focused on the exercise of rights of parties to decision-taking in administrative matters within the statutory time-limits.

Heads of federal and cantonal - county administrative authorities and in the cities – the mayor and in the municipality – the president of the municipality or heads of institutions with public authorisations shall be responsible for proper and consistent implementation of the General Administrative Procedure Act of FB&H and shall in particular be responsible to make sure that administrative matters are resolved within the time-limits laid down by law. For the purpose of proper and efficient resolving of matters in the administrative proceedings, these responsible persons shall take measures for the continuous provision and carry out the professional training of employees and other persons engaged in resolving administrative matters.[387]

The official authorised to take measures in the administrative proceedings, i.e., resolve in administrative matters shall be required to notify the party in writing of the reasons why a decision, that is, a conclusion has not been issued, as well as of the activities he or she will undertake to issue the decision or the conclusion and advise the party on the available remedies to be used within three days from the date of expiry of the time-limit for resolving referred to in Article 216 and 244 of the General Administrative Procedure Act of FB&H

This notice must, at the same time, be communicated to the responsible persons in the public law authority for the purpose of taking measures for issuing the decision or conclusion without delay.[388]

The official authorised to conduct the administrative proceedings, that is, to resolve administrative matters, makes a more serious violation of work duty if certain procedural

[385] Article 244 paragraph 1 of the General Administrative Procedure Act of FB&H.
[386] Article 245 of the General Administrative Procedure Act of FB&H
[387] Article 293. paragraph 1 of the General Administrative Procedure Act of FB&H.
[388] Article 293 paragraph 2 of the Administrative Disputes Act/FBIH.

activities in the administrative procedure have not been carried out due to his or her fault and due to which the decision or the conclusion could not be issued within the statutory time-limit.[389]

A competent administrative inspection shall have the right to request the instigation of an accountability proceedings with the competent authority against the manager of an administrative authority or the manager of an institution with public powers, in case of failure to carry out duties referred to in paragraph 1 of this Article, as well as against a person who, contrary to Article 292 of the General Administrative Procedure Act of FB&H, authorises an official to undertake actions in the proceedings or to resolve in administrative matters, but who fails to meet the prescribed requirements, as well as a disciplinary proceedings against persons referred to in paragraph 3 of that Article.[390]

Article 294 of the General Administrative Procedure Act of FB&H stipulates another way of monitoring the resolution of administrative matters in the administrative proceedings.

Pursuant to that Article, a Mayor or a President of Municipality are required to submit a written report to the city or municipal council once a year on the resolution of administrative matters in administrative procedure by all city or municipal administration services.

A copy of the report shall also be submitted to the cantonal - county authority of administration responsible for general administration. Cantonal - county administrative authorities and administrative institutions are required to submit an annual report on the resolution of administrative matters in administrative procedure from their jurisdiction to the cantonal - county government, and the federal administration authority and federal institutions are required to submit a report to the Government of the Federation.

Cantonal - county and federal administration authorities are required to submit a copy of the report also to the Federal Ministry of Justice, and the cantonal - county administration authorities shall submit their report also to the cantonal - county administration authority responsible for general administration.

The cantonal - county administration authority responsible for general administration affairs, i.e. the Federal Ministry of Justice, uses the report for taking appropriate measures through administrative inspectorate and other measures for which they are authorized by the law for the proper and consistent application of provisions of the Administrative Disputes Act/FBIH.

The report contains in particular the following information:

- the number of parties' requests submitted,
- the number of administrative procedures initiated *ex officio*,
- the manner and time-limits for resolving administrative cases in the first and second instance administrative proceedings,
- the number of annulled or abolished administrative acts,
- the number of dismissed or suspended administrative acts and

[389] Article 293 paragraph 3 of the Administrative Disputes Act/FBIH.
[390] Article 293 paragraph 4 of the Administrative Disputes Act/FBIH.

- the number and types of applied enforcement measures or the imposed fines and
- the number of unresolved administrative cases.

Supervision over the implementation of the General Administrative Procedure Act of FB&H

Supervision over the implementation of the General Administrative Procedure Act of FB&H was regulated by Title XIX of the Act.

Supervision over the implementation of the General Administrative Procedure Act of FB&H in federal administration authorities and other federal authorities, in federal institutions with public authorisations and in cantonal – county administration authorities and city and municipal administration services, as regards matters in which those authorities, services and institutions in administrative proceedings decide on administrative matters on the grounds of federal law or other federal regulation, shall be carried out by the Federal Ministry of Justice.[391]

Supervision over the implementation of the General Administrative Procedure Act of FB&H in cantonal – county institutions and other cantonal - county authorities, city and municipal administration services, as well as in institutions with public authorisations pursuant to cantonal – county law as regards matters in which those authorities, services and institutions in administrative proceedings decide on administrative matters pursuant to cantonal – county law and other cantonal – county regulation, as well as to municipal and city council regulation, shall be carried out by the cantonal – county authority competent for judicial affairs.[392]

The Federal Ministry of Justice and the cantonal – county administration authority competent for judicial affairs shall perform supervision over the implementation of the General Administrative Procedure Act of FB&H primarily through administrative inspection, as well as in any other, statutory admissible manner. [393]

Authorities, services and institutions referred to in Article 297 paras. 1 and 2 of the General Administrative Procedure Act of FB&H shall enable an inspection into the administrative resolving and acting as per orders of the administrative inspection performing the supervision.[394]

Title XX of the General Administrative Procedure Act of FB&H contains penal provisions.

For a misdemeanor, the institution with public authorisations shall be imposed a fine ranging from 2,000 KM to 8,000 KM if:

- - at a party's request, if fails to issue a certificate or other document on facts of which it keeps official records or if it fails to certificate or other document within a prescribed time-limit or fails to issue a decision on refusal of request for issuing the certificate,
- if it fails to communicate an appeal together with the files to the second instance authority within the prescribed time-limit,

[391] Article 297 paragraph 1 of the General Administrative Procedure Act of FB&H.
[392] Article 297 paragraph 2 of the General Administrative Procedure Act of FB&H.
[393] Article 297 paragraph 3 of the General Administrative Procedure Act of FB&H.
[394] Article 297 paragraph 4 of the General Administrative Procedure Act of FB&H.

- it fails to act upon request of the second instance authority or it fails to fully comply with the second instance decision or it fails to issue a decision within a prescribed time-limit;
- upon request of the second instance authority it fails to communicate within a specified time-limit the required information, or it fails to issue a decision as ordered by the second instance authority within a prescribed time-limit, or it fails to collect the required information as ordered by a second instance request and communicate them within a prescribed time-limit;
- it fails to issue a decision on appeal within a prescribed time-limit;
- it fails to act as ordered by the second instance authority or it fails to communicate the required material within a prescribed time-limit.[395]

For the misdemeanor referred to in Article 298 paragraph 1 of the General Administrative Procedure Act of FB&H, the fine ranging from 300 KM to 1,200KM will be imposed also on a responsible person in a public law authority or an administration service.

For a misdemeanor, the institution with public authorisations shall be imposed a fine ranging from 1,500 KM to 6,000 KM if:

- at a party's request, it fails to issue a certificate, i.e. to issue a decision on refusing the request within a prescribed time-limit,
- it fails to submit a report on the resolution of administrative matters in administrative proceedings within the prescribed time-limit;
- it fails to undertake measures for continuous professional training and expertise of officials who resolve in administrative matters, i.e. to undertake actions in the proceedings or it fails to ensure resolving of administrative matters within a specified time-limit or it fails to give notice to the party within a prescribed time-limit of the reasons due to which a decision or a conclusion has not been issued.

For these misdemeanors, the fine ranging from 200 KM to 800KM will be imposed also on a responsible person in the institution with public authorisations, and a responsible person in the in the administrative authority, i.e. administrative service. [396]

1.3. General Administrative Procedure Act of the Republika Srpska

Public law authorities in Republika Srpska shall act pursuant to the General Administrative Procedure Act of the Republika Srpska[397].

Like other laws governing the administrative procedure in Bosnia and Herzegovina, the General Administrative Procedure Act/RS includes the principles of economy[398] and efficiency[399] among the principles of administrative procedure.

[395] Article 298 paragraph 1 of the General Administrative Procedure Act of FB&H.
[396] Article 299 paragraphs 1 and 2 of the General Administrative Procedure Act of B&H.
[397] General Administrative Procedure Act of the Republika Srpska, Official Gazzette of the Republika Srpska, 13/02, 87/07 - correction, 50/10 and 66/18, entered into force in 2002.
[398] Article 14 of the General Administrative Procedure Act /RS.
[399] Article 7 of the General Administrative Procedure Act /RS.

Time-limit for issuing decisions

Where the proceedings are initiated with reference to the party's request, or *ex officio*, if this is in the interest of the party, and prior to rendering a decision, it is neither necessary to conduct a separate inquiry procedure, nor there are other reasons why a decision cannot be rendered without delay (resolving the previous issue etc.), the competent authority shall render a decision and serve it on the party no later than within 30 days from the date of submission of a proper request, or from the date of initiation of proceedings *ex officio*, unless shorter time-limit is specified by a separate regulation. In other cases, where the proceedings are initiated on the party's request, or *ex officio*, if this is in the interest of the party, the competent authority shall render a decision and serve it on the party no later than within 60 days, unless shorter time-limit is specified by a separate regulation

If the competent authority against a decision of which an appeal is allowed fails to issue a decision and communicate it to the party within the prescribed time-limit, the party shall have the right to file an appeal as if its request was refused.[400]

An appeal in case where the first instance decision was not issued within the time-limit

If the appeal was filed by a party at request of which the first instance authority failed to issue a decision within the time-limit stipulated by law, the second instance authority shall request that the first instance authority states the reasons for failing to issue the decision within the time-limit. If the second instance authority finds that the decision has not been issued within the time-limit for justified reasons or due to the party's fault, it will order the first instance authority a time-limit for issuing a decision, which may not exceed one month. If the reasons for which the decision has not been issued within the prescribed time-limit are not justified, the second instance authority shall request from the first instance authority to return to it all case files.

If the second instance authority can resolve the matter on the grounds of the case files, it shall issue its decision, and if this is not possible, it shall conduct the proceedings itself and resolve the matter by its decision. Exceptionally, if the second instance authority finds that the proceedings would be more expeditiously and more cost-effectively conducted by the first instance authority, it shall order this authority to do so and to provide the second instance authority with collected information within a specified time-limit after which it will resolve the matter itself. Such decision shall be final.[401]

Time-limit for deciding on appeals

A decision on appeal shall be issued and served on the party as soon as possible, but not later than 60 days from the date of the duly submission of appeal, unless a shorter time-limit was prescribed by regulation.[402]

[400] Article 206 of the General Administrative Procedure Act /RS.
[401] Article 231 of the General Administrative Procedure Act/RS.
[402] Article 232 paragraph 1 of the General Administrative Procedure Act/RS.

1.4. General Administrative Procedure Act of Brčko Distrikt

Public law authorities in Brčko Distrikt of Bosnia and Herzegovina shall act pursuant to the General Administrative Procedure Act of the Brčko Distrikt[403] Also this Act includes the principles of economy and efficiency among the principles of administrative procedure.

Time-limit for issuing decisions

Where the proceedings are initiated with reference to the party's request, or *ex officio*, if this is in the interest of the party, and prior to rendering a decision, it is neither necessary to conduct a separate inquiry procedure, nor there are other reasons why a decision cannot be rendered without delay (resolving the previous issue etc.), the competent authority shall render a decision and serve it on the party as soon as possible and no later than within 15 days from the date of submission of a proper request, or from the date of initiation of proceedings *ex officio*, unless shorter time-limit is specified by a separate regulation.

In other cases, where the proceedings are initiated on the party's request, or *ex officio*, if this is in the interest of the party, the competent authority shall render a decision and serve it on the party no later than within 30 days, unless shorter time-limit is specified by a separate regulation.

If the competent authority against a decision of which an appeal is allowed fails to issue a decision and communicate it to the party within the time-limit prescribed by law, the party shall have the right to file an appeal to the competent authority as if its request was refused (silence of administration).

Where deciding in the proceedings as per the shortened procedure, the competent authority shall issue a decision on the party's request not later than within 7 days from the date of receipt of the request.[404]

An appeal in case where the first instance decision was not issued within the time-limit stipulated by law

If the appeal was filed by a party at request of which the first instance authority failed to issue a decision within the time-limit stipulated by law, the Appellate Commission shall immediately, and within three days from the receipt of appeal, request that the first instance authority immediately submits to it all the cases and state the reasons for failing to issue the decision within the time-limit. The first instance authority shall act upon such request within the time-limit determined by the Appellate Commission, but that the time-limit may not exceed five days. If the Appellate Commission finds that the decision has not been issued within the time-limit for justified reasons or due to the party's fault, it will order the first instance authority a time-limit for issuing a decision, which may not exceed 15 days, and return to it all case files for resolving.

If the Appellate Commission finds that the reasons due to which the decision was not issued within the set time-limit are not justified, it shall resolve the matter on the grounds of the case

[403] General Administrative Procedure Act of Brčko Distrikt, fficial Gazette of Brčko Distrikt, 48/11 – consolidated text and 21/18.
[404] Article 203 of the General Administrative Procedure Act/BD.

files and issue its decision, if possible, and if it is not possible to resolve the matter on the grounds of the case files, it shall conduct the proceedings itself and resolve the matter by its decision. Exceptionally, if the Appellate Commission finds that the proceedings would be more expeditiously and more cost-effectively conducted by the first instance authority, it shall order this authority to do so and to provide the Appellate Commission with collected information within a specified time-limit which may not exceed eight days and the first instance authority shall act as per this request. Once the first instance authority provides the requested information and evidence, the Appellate Commission shall immediately resolve the matter. A decision of the Appellate Commission shall be final.[405]

Time-limit for issuing a decision on appeal

A decision on appeal must be issued and served on the party as soon as possible and no later than 30 days from the date of filing of appeal, unless a shorter time-limit is stipulated by law. [406]

The authority which resolved the matter in the second instance shall, as a rule, send its decision along with case files to the first instance authority, which shall serve the decision on the parties within five days following the date of receiving the file

The fifth part of the General Administrative Procedure Act/BD contains provisions relating to the implementation of the Act, which include various measures focused on the efficient conduct of administrative proceedings.

Thus, for example, Article 276, paragraph 1 of the General Administrative Procedure Act/BD stipulates that the heads of departments shall be responsible for a proper and consistent application of the General Administrative Procedure Act/BD, and in particular they are responsible for the administrative matters to be resolved within the prescribed time-limits. For the purpose of proper and efficient resolution of matters in the administrative procedure, those responsible persons shall take measures with the aim of continuous professional training of officials and other persons resolving administrative matters.

Supervision over the implementation of the General Administrative Procedure Act/BD shall be conducted by an administrative inspection.

The General Administrative Procedure Act/BD contains penal provisions for misdemeanours committed by various forms of (non) acting in opposition to the General Administrative Procedure Act/BD.

2. Administrative dispute acts

Administrative dispute, as well as administrative procedure in Bosnia and Herzegovina is governed by four acts:

- Administrative Dispute Act of Bosnia and Herzegovina,

[405] Article 227 of the General Administrative Procedure Act/BD.
[406] Article 228 of the General Administrative Procedure Act/BD.

- Administrative Dispute Act of the Federation of Bosnia and Herzegovina,
- Administrative Dispute Act of Republika Srpska and
- Administrative Dispute Act of Brčko Distrikt.

2.1. Administrative Dispute Act of Bosnia and Herzegovina

Administrative Dispute Act of Bosnia and Herzegovina [407] entered into force on 2 August 2002.

Article 1 of the Administrative Dispute Act of B&H stipulates the following:

"In order to provide judicial protection of the rights of citizens, enterprises, companies, institutions and other legal entities in Bosnia and Herzegovina, the present Act shall govern the rules of administrative dispute in which it is decided on legality of specific and general final administrative acts issued based on the laws in exercise of public offices of the institutions of Bosnia and Herzegovina deciding on the rights and duties of citizens and legal entities."

Administrative disputes shall be decided by the Administrative Division of the Court of Bosnia and Herzegovina (hereinafter: the Court).[408]

An administrative dispute may be initiated also in the event of silence of administration, under the condition set forth in Administrative Dispute Act/B&H.[409]

In administrative dispute, it may be required to establish the fulfilment of legal obligations, if the issue is an omission to act by the administration or public agencies.[410]

Action due to the silence of administration

Article 21 of the Administrative dispute act/B&H stipulates that if in the administrative procedure the second instance authority failed to issue a decision with reference to the appeal of the party against the first instance decision within 30 days or within shorter time-limit set by special regulation and if it fails to issue the decision within the additional time-limit of seven days after the written request, the party may instigate an administrative dispute as if its appeal was refused.

[407] Administrative Dispute Act of Bosnia and Herzegovina, Official Gazzette of Bosnia and Herzegovina, 19/02, 88/07, 83/08 and 74/10.
[408] Article 5 of the Administrative Dispute Act/B&H.
[409] Article 9 paragraph 2 of the Administrative Dispute Act/B&H.
[410] Article 12 paragraph 2 item 4 of the Administrative Dispute Act/B&H.

The party may act in the same manner also where at its request in the administrative procedure the first instance authority failed to issue the decision the appeal of which is inadmissible pursuant to the Act.

If within the administrative procedure, the first instance authority against the act of which the appeal is allowed has failed to render any decision as per the request within 60 days or within a shorter time-limit specified by a special regulation, the party has the right to address the second instance authority with a request. Against the decision of the second instance authority, the party may instigate an administrative dispute, and it may, under the terms set forth in paragraph 1 of that Article, instigate an administrative dispute also if the second instance authority fails to render a decision within the specified time-limit.

If during the court proceedings, the competent authority issues another administrative act amending or repealing the final administrative act against which the administrative dispute was instigated and if in the case referred to Article 21 of the Administrative Dispute Act/B&H subsequently passes a final administrative act, that authority shall, in addition to the plaintiff, simultaneously inform in writing the Court before which the dispute was instigated and submit to it the new final administrative act. In that case, the Court shall invite the plaintiff to state in writing within 15 days whether the subsequently passed final administrative act satisfies him/her, or he/she tends to proceed with an action and to what extent, that is, whether he or she extends the action also to the new administrative act. If a plaintiff states that the subsequently passed final administrative act satisfies him or her or if he or she fails to give statement within the specified time-limit, the court shall render a decision on the suspension of proceedings. If the plaintiff states that the new final administrative act does not satisfy him or her, the court shall continue the proceedings.[411]

If the action was brought with reference to the silence of administration and if the Court finds it justified, it shall approve the action by way of pronouncing a judgement, revoke the contested administrative act and determine in what sense the competent authority shall issue a decision or resolve the administrative matter by itself, by way of a judgement. [412]

Compliance with judgements

When the Court annuls a final administrative act against which an administrative dispute has been instigated, the case shall be restored to the situation before the revoked act was passed. If, according to the nature of the matter, subject to a dispute, a new administrative act replacing the revoked final administrative act needs to be passed, the competent authority shall pass it without delay, but not later than within 15 days from the service of judgement. In doing so, the competent authority shall be bound by the legal interpretation of the Court and the remarks related to the proceedings. [413]

If, following the annulment of the final administrative act, the competent authority adopts an administrative act contrary to the legal interpretation of the Court, or contrary to the remarks of the Court with respect to the proceedings, and the plaintiff brings a new action, the Court shall, in these cases, annul the contested final administrative act and resolve the matter itself by

[411] Article 27 of the Administrative Dispute Act/B&H.
[412] Article 37 paragraph 6 of the Administrative Dispute Act/B&H.
[413] Article 62 of the Administrative Dispute Act/B&H.

pronouncing its judgement. Such judgement shall replace the final administrative act of the competent institution in all respects.[414]

If, following the annulment of the final administrative act, the competent authority fails to adopt forthwith or not later than within 15 days, a new administrative act or a new administrative act in the enforcement of the judgement rendered pursuant to Article 37, paragraph 6 of the Administrative Dispute Act/B&H, the party may file a submission requesting the adoption of such act. If the competent authority fails to adopt an administrative act within the seven-day period from the filing of the request, the party may request the adoption of such act from the Court which rendered the judgement in the first instance proceeding.[415]

At the request of the party, the Court shall request from the competent authority the case file and information about the reasons why the authority concerned has failed to adopt the administrative act. The competent authority shall deliver the file and the information forthwith, and not later than within seven days. If it fails to comply with the request, or if the information delivered does not justify, as the Court deems, the failure to comply with the Court judgement, the Court shall take a decision which shall replace the final administrative act of the competent authority in all respects and serve it on the competent authority in charge of enforcement which shall enforce this decision without delay.[416]

The responsible person in the competent institution who does not comply with the provisions of Article 62, 63 and 64 of this Law shall be liable for a serious violation of the duty. [417] A motion for instituting disciplinary proceedings against that person shall be submitted by the Administrative Division of the Court which has rendered the judgement annulling the disputed administrative act, *ex officio* or at the request of the party.[418]

The Court must notify the Council of Ministers of Bosnia and Herzegovina in writing of the conduct of competent authority referred to in Art. 63 and 64 of the Administrative Dispute Act/B&H in order for them to take, within the scope of their powers, relevant measures to have the competent institution comply with the decision of the Administrative Division of the Court[419].

The competent authority, the final administrative act of which has been annulled by the court decision, must comply with the order of the Council of Ministers of Bosnia and Herzegovina.[420]

The Council of Ministers of Bosnia and Herzegovina shall ensure, as appropriate, the enforcement of any court decision rendered in an administrative dispute at the proposal of the Administrative Division of the Court or at the request of a party.[421]

[414] Article 63 of the Administrative Dispute Act/B&H.
[415] Article 64 paragraph 1 of the Administrative Dispute Act/B&H.
[416] Article 64 paragraph 2 of the Administrative Dispute Act/B&H.
[417] Article 64 paragraph 3 of the Administrative Dispute Act/B&H.
[418] Article 64 paragraph 4 of the Administrative Dispute Act/B&H.
[419] Article 65 paragraph 1 of the Administrative Dispute Act/B&H.
[420] Article 65 paragraph 2 of the Administrative Dispute Act/B&H.
[421] Article 65 paragraph 3 of the Administrative Dispute Act/B&H.

Penal provisions are included in Article 83 of the Administrative Dispute Act/B&H, pursuant to which a fine from KM 1,500 to KM 5,000 shall be imposed for a minor offence on the competent authority if:

1) it fails to issue a decision on the request of the party within the set time-limit;
2) it fails to provide the Court with all the files relating to the case;
3) if it fails to act in the manner determined in the judgment or it fails to adopt a new administrative act, or fails to act upon the request of the Court;
4) fails to adopt a new administrative act within the time-limit or it adopts an act contrary to the legal interpretation of the Court or the objections of the Court
5) it fails to issue an administrative act within the set time-limit or upon a filed party's special submission or fails to deliver all case files and required information to the Court or fails to execute the Court's decision. A fine from KM 200 to KM 800 shall be imposed for above minor offences also on a responsible person in a competent authority. [422]

A responsible person in the administration authority, a national administrative organization, or bodies of local self-government units shall also be fined. The court shall give notice to the National Administrative Inspectorate of the minor offence for the purpose of instituting a misdemeanour proceedings. The National Administrative Inspectorate shall notify the court of the measures taken, within 60 days from the notification.

2.2. Administrative Dispute Act of the Federation of Bosnia and Herzegovina

Administrative Dispute Act of the Federation of Bosnia and Herzegovina[423] (hereinafter: Administrative Dispute Act/FB&H) entered into force on 24 February 2005.

The Cantonal Court resolves administrative disputes by applying the Administrative Disputes Act/FBIH as per the official seat of the first instance authority or its organizational unit.[424]

Administrative dispute due to the silence of administration

An administrative dispute may be initiated also where the competent authority failed to pass an appropriate administrative act in administrative procedure, under the terms set forth in that Act.[425]

If in the administrative procedure the second instance authority failed to issue a decision upon the appeal of the party against the first instance decision within 30 days or within shorter time-limit set by special regulation and if it fails to issue the decision with reference to the request of administrative inspection addressed by the party pursuant to Article 10 of the Administrative Dispute Act/B&H, the party may instigate an administrative dispute as if its appeal was refused.

[422] A responsible person in the competent authority shall be the head of the authority and the officer in that authority who is in charge of the direct carrying out of particular tasks, but he or she failed to do so or carried out an activity contrary to the task assigned. (Article 84 of the Administrative Dispute Act / B & H
(Article 84 of the Administrative Dispute Act/B&H).
[423] Administrative Dispute Act of the Federation of Bosnia and Herzegovina, Official Gazzette of the Federation of Bosnia and Herzegovina, 9/05.
[424] Article 5 of the Administrative Dispute Act/FB&H.
[425] Article 10 of the Administrative Dispute Act/FB&H.

The party may act in the same manner also where, with reference to its request in the administrative procedure, the first instance authority failed to issue the decision the appeal of which is inadmissible pursuant to the Act.

The party shall have the right to address the second instance authority with the request if in the administrative procedure the first instance authority the decision of which can be appealed against failed to issue a decision with reference to the request within 60 days or within the shorter time-limit stipulated by special regulation. The party may instigate an administrative dispute against the decision of the second instance authority and it may also instigate the administrative dispute under the terms referred to in Administrative Dispute Act/B&H, even if the second instance authority fails to issue a decision within the prescribed time-limit.[426]

If during the court proceedings, the competent authority issues an administrative act, that authority shall, in addition to the plaintiff, simultaneously inform in writing the Court before which the dispute was instigated and submit to it the new administrative act. In that case, the Court shall invite the plaintiff to state in writing within 15 days whether the subsequently issued administrative act satisfies him/her, or he/she tends to proceed with an action and to what extent, that is, whether he or she extends the action also to the new administrative act. If a plaintiff states that the new administrative act satisfies him or if he or she fails to give statement within the specified time-limit, the competent court shall render a decision on the suspension of proceedings. If the plaintiff states that the new administrative act does not satisfy him or her, the court shall continue the proceedings.[427]

If the action was brought with reference to the silence of administration and if the Court finds it justified, it shall approve the action and determine in what sense the competent authority shall issue a decision. Should the competent authority fail to act upon such judgement, a responsible person in that authority grossly violates official duties and the competent court shall instigate an administrative proceedings against that person.[428]

Compliance with judgements

When the Court revokes a contested administrative act or the contested and first instance act, the case shall be restored to the situation before the annulled act was passed. If, according to the nature of the matter, subject to a dispute, a new administrative act replacing the revoked administrative act should be passed, the competent authority shall pass it without delay, but not later than within 15 days from the service of judgement.[429]

If, following the annulment of the disputed administrative act, the competent authority adopts an administrative act contrary to the legal interpretation of the Court, or contrary to the remarks of the Court with respect to the proceedings, and the plaintiff brings a new action, the Court shall annul the disputed administrative act and resolve the matter on its own by pronouncing a judgement, if the factual situation was entirely and properly established in this matter.. Such judgement shall replace the administrative act of the competent authority in all respects.[430]

[426] Article 20 of the Administrative Dispute Act/FBIH.
[427] Article 26 of the Administrative Dispute Act/FBIH.
[428] Article 36 paras. 4 and 5 of the Administrative Dispute Act/FBIH.
[429] Article 57 of the Administrative Dispute Act/FBIH.
[430] Article 58 of the Administrative Dispute Act/FBIH.

If, following the annulment of the administrative act, the competent authority fails to adopt a new administrative act within the set time-limit, or if it adopts the administrative act contrary to the objections of the Court with respect to the factual situation, so the Court cannot render a judgement substituting the final administrative act of the competent authority in all respects, the responsible person in that authority shall be liable for a serious violation of the duty, against which the competent court is obliged to institute disciplinary proceedings. [431]

A fine from KM 1,500 to KM 5,000 shall be imposed for a minor offence on the legal entity with public authorisations if:

1) it fails to issue a decision within the set time-limit, on the request of the party;
2) it fails to provide the Court with all the files relating to the case;
3) it fails to issue a decision as per the judgement;
4) it fails to submit to the Court all case files at its request;
5) fails to adopt a new administrative act within the time-limit or it adopts an act contrary to the legal interpretation of the Court or the objections of the Court;
6) if, after the annulment of the administrative act, it fails to adopt a new administrative act within the set time-limit or adopts it contrary to the objections of the Court with respect to factual situation. .

A fine from KM 200 to KM 800 shall be imposed for minor offences also on a responsible person in legal entity with public authorisations and the responsible person in the administration authority i.e. city or municipal administration service. [432,433]

A responsible person in the administration authority, a national administrative organization, or bodies of local self-government units shall also be fined. The court shall give notice to the National Administrative Inspectorate of the minor offence for the purpose of instituting a misdemeanour proceedings. The National Administrative Inspectorate shall notify the court of the measures taken, within 60 days from the notification

2.3. Administrative Dispute Act of Republika Srpska

Administrative Dispute Act of Republika Srpska[434] (hereinafter: Administrative Dispute Act /RS) applies in Republika Srpska. The Act entered into force on 16 December 2005.[435]
Article 5 of the Administrative Dispute Act/RS stipulates that administrative disputes shall be resolved by a Distrikt court as regards the official seat of the first instance authority or its organizational unit, unless otherwise provided by a separate law.

Administrative dispute due to silence of administration

[431] Article 64 paragraph 3 of the Administrative Dispute Act/FBIH.
[432] Article 73 of the Administrative Dispute Act/FBIH.
[433] A responsible person in the administration authority, or a city or municipal administration service shall be a head of the administration authority and administrative institution, or head of city or municipal administration service and the officer in those authorities and services in charge of the immediate performance of certain duties but he or she failed to perform those duties og he/she carries out activities in opposition to duties assigned.
[434] Administrative Dispute Act Republike Srpske, Službeni Glasnik Republike Srpske, 109/05. i 63/11.
[435] The Law has been amended i.e. supplementedby theAct on Amendments of the Administrative Dispute Act, Official Gazette of Republika Srpska, 63/11.

An administrative dispute may be instituted also where a competent authority has failed to adopt a relevant administrative act on the request or the appeal of the party.

If the second instance authority failed to issue a decision with reference to the appeal of the party against the first instance decision within 60 days or within shorter time-limit set by special regulation and if it fails to issue the decision within the additional time-limit of 15 days upon the repeated request, the party may instigate an administrative dispute as if its appeal was refused. The party may act in the same manner also where, with reference to its request, the first instance authority failed to issue the decision pursuant to the Act the appeal of which is inadmissible. If the first instance authority against the act of which an appeal may be filed, fails to issue the decision on the request within 60 days or within a shorter period prescribed by a special regulation, the party is be entitled to file an appeal with the second instance authority. The party may instigate an administrative dispute against the decision of the second instance authority. An administrative dispute may also be initiated when the second instance authority fails to issue its decision.[436]

The party shall have the right to address the second instance authority with the request if in the administrative procedure the first instance authority the decision of which can be appealed against failed to issue a decision with reference to the request within 60 days or within the shorter time-limit stipulated by special regulation. The party may instigate an administrative dispute against the decision of the second instance authority and it may also instigate the administrative dispute under the terms referred to in Administrative Dispute Act/B&H, even if the second instance authority fails to issue a decision within the prescribed time-limit

If during the court proceedings, the competent authority issues an administrative act, that authority shall, in addition to the plaintiff, timely inform in writing also the Court before which the dispute was instigated and submit to it the new administrative act. In that case, the Court shall invite the plaintiff to state in writing within 8 days whether the subsequently issued administrative act satisfies him/her, or he/she tends to proceed with an action, that is, whether he or she extends the action also to the new administrative act. If a plaintiff states that the subsequently issued administrative act satisfies him or if he or she fails to give statement within the specified time-limit, the competent court shall render a decision on the suspension of proceedings. If the plaintiff states that the new administrative act does not satisfy him or her, the court shall continue the proceedings against that act.[437]

If the action was brought with reference to the silence of administration and if the Court finds it justified, it shall approve the action by way of pronouncing a judgement and order the competent authority to issue an appropriate decision within the time-limit not exceeding 30 days from the date the judgement was delivered.[438]

Compliance with judgements

When the Court annuls a contested administrative act or a first instance act, the case shall be restored to the situation before the revoked act was passed. If, according to the nature of the matter, subject to a dispute, a new administrative act replacing the revoked administrative act

[436] Article 17 of the Administrative Dispute Act/RS.
[437] Article 23 of the Administrative Dispute Act/RS.
[438] Article 31 paragraph 4 of the Administrative Dispute Act/RS.

needs to be passed, the competent authority shall pass it without delay, but not later than within 30 days from the service of judgement. In doing so, the competent authority shall be bound by the legal interpretation of the Court and the remarks of the Court related to the proceedings.[439]

If, following the annulment of the disputed administrative act, the competent authority adopts an administrative act contrary to the legal interpretation of the Court, or contrary to the remarks of the Court with respect to the proceedings, and the plaintiff brings a new action, the Court shall annul the disputed administrative act and resolve the matter itself by pronouncing a judgement. Such judgement shall replace the administrative act of the competent authority in all respects.[440]

If, following the annulment of the final administrative act, the competent authority fails to adopt a new administrative act within the set time-limit, the party may file a submission requesting the adoption of such act. If the competent authority fails to adopt an administrative act within the fifteen-day period from the filing of the request, the party may request the adoption of such act from the Court which rendered the judgement.

At the request of the party, the Court shall require from the competent authority the information about the reasons why the authority concerned has failed to adopt the administrative act. The competent authority shall deliver the information forthwith, and not later than within seven days. If it fails to comply with the request, or if the information delivered does not justify, as the Court deems, the failure to comply with the Court judgement, the Court shall issue a decision which shall replace the administrative act of the competent authority in all respects. The Court shall serve this decision on the competent authority in charge of enforcement and simultaneously notify the authority performing supervision thereof. The authority in charge of enforcement shall enforce this decision without delay.[441]

Penal provisions are included in Article 65 of the Administrative Dispute Act/RS.

Pursuant to Article 65 of the Administrative Dispute Act/RS, a fine from KM 1,500 to KM 5,000 shall be imposed for a minor offence on the enterprise, institution or other legal entity with public authorisations if:

7) it fails to issue a decision within the set time-limit, at the request of the party;
8) it fails to provide the Court with all the files relating to the case;
9) it fails to issue a decision as per the judgement;
10) the Court fails to deliver all case files at their request;
11) fails to adopt a new administrative act within the time-limit or it adopts an act contrary to the legal interpretation of the Court or the objections of the Court
12) if, after the annulment of the administrative act, it fails to adopt a new administrative act within the set time-limit or adopts it contrary to the objections of the Court with respect to factual situation;
13) it fails to execute a decision referred to in Article 60 paras. 1 and 2 of the Act and
14) for non-executed decisions.

[439] Article 50 of the Administrative Dispute Act/RS.
[440] Article 51 of the Administrative Dispute Act/RS.
[441] Article 52 of the Administrative Dispute Act/RS.

A fine from KM 200 to KM 800 shall be imposed for minor offences also on a responsible person in an enterprise, institution or other legal entity with public authorisations.

A responsible person in the administration authority, a national administrative organization, or bodies of local self-government units shall also be fined. The court shall give notice to the National Administrative Inspectorate of the minor offence for the purpose of instituting a misdemeanour proceedings. The National Administrative Inspectorate shall notify the court of the measures taken, within 60 days from the notification.

2.4. Administrative Dispute Act of Brčko Distrikt

Administrative dispute act of Brčko Distrikt[442] (hereinafter: The Administrative Dispute Act /BD) is applied in Brčko Distrikt.

Administrative disputes are resolved by the Basic Court of Distrikt[443].
Administrative dispute may be instigated also where the competent authority has failed to pass a relevant administrative act in the administrative procedure on the request or on the appeal of the party.[444]

If in the administrative procedure, the Appellate Commission failed to issue a decision upon the appeal of the party against the first instance decision within 30 days or within shorter time-limit set by special regulation and if it fails to issue the decision within the additional time-limit of 7 days upon the party's written request, the party may instigate an administrative dispute as if its appeal was refused. The party may act in the same manner also where the first instance authority failed to issue the decision with reference to its request against the act of which the appeal shall not be allowed.[445]

If during the court proceedings, the competent authority issues an administrative act, that authority shall, in addition to the plaintiff, duly inform in writing also the Court before which the dispute was instigated and submit to it the new administrative act. In that case, the Court shall invite the plaintiff to state in writing within 15 days whether the subsequently issued administrative act satisfies him/her, or he/she tends to proceed with an action, that is, whether he or she extends the action also to the new administrative act. If a plaintiff states that the new administrative act satisfies him or if he or she fails to give statement within the specified time-limit, the competent court shall render a decision on the suspension of proceedings. If the plaintiff states that the new administrative act does not satisfy him or her, the court shall continue the proceedings against that act.[446]

If the action was brought with reference to the silence of administration and if the Court finds it justified, it shall approve the action and determine in what sense the competent authority shall issue a decision or resolve the administrative matter by itself by way of judgement.[447]

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[442] Administrative Dispute Act of Brčko Distrikt, Official Gazzette of Brčko Distrikt.
[443] Article 5 paragraph 1 of the Administrative Dispute Act/BD.
[444] Article 8 of the Administrative Dispute Act/BD.
[445] Article 19 of the Administrative Dispute Act/BD.
[446] Article 25 of the Administrative Dispute Act/BD.
[447] Article 31 paragraph 5 of the Administrative Dispute Act/BD.

Compliance with judgements

When the Court annuls a contested administrative act or a contested and first instance act, the case shall be restored to the situation before the revoked act was passed. If, according to the nature of the matter, subject to a dispute, a new administrative act replacing the revoked administrative act needs to be passed, the competent authority shall pass it without delay, but not later than within 15 days from the date the judgement was served. In doing so, the competent authority shall be bound by the legal interpretation of the Court and the remarks of the Court related to the proceedings.[448]

If, following the annulment of the disputed administrative act, the competent authority adopts an administrative act contrary to the legal interpretation of the Court, or contrary to the remarks of the Court with respect to the proceedings, and the plaintiff brings a new action, the Court shall annul the disputed administrative act and resolve the matter itself by pronouncing a judgement, if the factual situation was entirely and properly established in this matter.. Such judgement shall replace the administrative act of the competent authority in all respects.[449]

If, following the annulment of the administrative act, the competent authority fails to adopt a new administrative act within the set time-limit, the party may file a submission requesting the adoption of such act. If the competent authority fails to adopt an administrative act within the seven-day period from the filing of the request, the party may request the adoption of such act from the Court which rendered the judgement.

At the request of the party, the Court shall request from the competent authority the case file and information about the reasons why the authority concerned has failed to adopt the administrative act. The competent authority shall deliver the file and the information forthwith, and not later than within eight days. If it fails to comply with the request, or if the information delivered does not justify, as the Court deems, the failure to comply with the Court judgement, the Court shall take a decision which shall replace the final administrative act of the competent authority in all respects. The Court shall serve this decision on the competent authority in charge of enforcement which shall enforce this decision without delay. A responsible person in the competent authority who fails to comply with the above, shall be liable for a serious violation of the duty.[450]

The Court must notify the Mayor in writing of acting or a failure to act of the competent authority in order for him or her to take, within the scope of his or her powers, relevant measures to have the competent authority comply with the decision of the Court. The Mayor shall ensure, as appropriate, the enforcement of any court decision rendered in an administrative dispute at the proposal of the Court or at the request of a party.[451]

[448] Article 33 of the Administrative Dispute Act/BD.
[449] Article 34 of the Administrative Dispute Act/BD.
[450] Article 35 of the Administrative Dispute Act/BD.
[451] Article 36 of the Administrative Dispute Act/BD.

3. Protection of the right to a trial within a reasonable time before the Constitutional Court of Bosnia and Herzegovina

In addition to remedies for the protection of parties from the silence of administration, in Bosnia and Herzegovina there is also an exceptional possibility of filing an appeal with the Constitutional Court of Bosnia and Herzegovina if the competent court fails to take a decision. To that effect, Article 16 paragraph 3 of the Rules of the Constitutional Court of Bosnia and Herzegovina stipulates that the Constitutional Court may consider the appeal exceptionally also where there is no decision of the competent court, if the appeal indicates gross violations of the rights and fundamental freedoms that protect the Constitution of Bosnia and Herzegovina or international documents applicable in Bosnia and Herzegovina.

IV. CROATIA

1. General administrative procedure act

General administrative procedure act[452] was adopted with the aim of modernizing the general administrative procedure in the Republic of Croatia.[453, 454, 455]

This Act governs the rules pursuant to which state administration authorities and other state authorities, the authorities of local and regional self-government units and legal entities vested with public authority proceed and decide on administrative matters within their statutory scope of work.

The principle of effectiveness and economy is governed by Article 10 of the General Administrative Procedure Act, prescribing that in administrative matters proceedings shall be as simple as possible, without delay and with the least possible expenditure, but in the manner as to ensure that all facts and circumstances of importance for the resolution of the administrative matter are established.

[452] General Administrative Procedure Act, Official Gazzette, 47/09., has entered into force on 1 January 2010.
[453] Adoption of the General Administrative Procedure Act / 09 was preceded by multi-year discussions on the need for revision of administrative procedural law, which, *inter alia*, emphasized the need to regulate general and specific administrative procedures in the manner that would enhance and modernize the Croatian system of administrative procedural law.
[454] About the context of the adoption of the General Administrative Procedure Act / 09 and the modifications that occurred in the neighboring countries after passing new acts on general administrative procedure, more in: Koprić, Ivan, The New Act on General Administrative Procedure - Tradition or Modernization (*Novi Zakon o općem upravnom postupku – tradicija ili modernizacija)* in: Modernization of General Administrative Procedure and Public Administration in Croatia, Contemporary Public Administration, Zagreb, 2009, p. 21-54.
[455] More about the Slovene and Finnish experience of modernizing the general administrative procedure in: Trpin, Gorazd, Comparative Experiences of Modernization of the General Administrative Procedure *(Komparativna iskustva modernizacije općeg upravnog postupka)*, in: Modernization of the General Administrative Procedure and Public Administration in Croatia, quote (note 390), p. 55-70.

The General Administrative Procedure Act has retained the time-limits for rendering a decision in the administrative procedure[456] and legal remedies for the protection against the silence of the administration[457, 458] from the previous General Administrative Procedure Act[459] with some new elements[460], and brought some new decisions that could have an impact on the duration of administrative proceedings.[461,462]

Time-limits for rendering decisions

When deciding directly at the request of a party, an official person shall render the decision and serve it on the party without delay and no later than within 30 days following the receipt of an orderly request.

When conducting an inquiry procedure at the request of a party, an official person shall render the decision and serve it on the party within 60 days following the receipt of an orderly request.

If an official person fails to render the decision and serve it on the party within the prescribed time-limit, the party is entitled to file an appeal or institute an administrative dispute.[463]

Presupposed adoption of a party's request

Where this is prescribed by an act, the party's request shall be considered as accepted if the public law authority, following proceedings instituted at the orderly request of a party, in

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[456] Article 101 paragraph 1 of the General Administrative Procedure Act/09 specifies the following: "When deciding directly at the request of a party, an official person shall render the decision and serve it on the party without delay and no later than within 30 days following the receipt of an orderly request." Article 101 paragraph 2 of the General Administrative Procedure Act/09 specifies the following: "When conducting an inquiry procedure at the request of a party, an official person shall render the decision and serve it on the party within 60 days following the receipt of an orderly request."

[457] Article 101 paragraph 3 of the General Administrative Procedure Act/09 specifies the following: "If an official person fails to render the decision and serve it on the party within the prescribed time-limit, the party is entitled to file an appeal or institute an administrative dispute." Article 105 paragraph 2 of the General Administrative Procedure Act/09 specifies the following: "A party may file an appeal also when a decision has not been rendered within the prescribed time-limit."

[458] More about the silence of administration according to the new General Administrative Procedure Act, see: Šikić, Marko, Legal protection from the silence of the administration pursuant to the new General Administrative Procedure Act (*Pravna zaštita od šutnje uprave prema novom Zakonu o općem upravnom postupku)*, in: Modernization of General Administrative Procedure and Public Administration in Croatia, Contemporary Public Administration, Zagreb, p. 191-213.

[459] General Administrative Procedure Act, Official Gazzette, 53/91 i 103/96.

[460] General Administrative Procedure Act introduces a positive fiction or, pursuant to legal terminology, "the subject of the acceptance of a party's request". Article 102 paragraph 1 of the General Administrative Procedure Act / 09 specifies the following: "Where this is prescribed by law, it shall be considered that the party's request has been accepted if the public law authority, following the proceedings instituted at the orderly request of a party, in which it is authorised to directly solve the administrative matter, fails to adopt a decision within the set time-limit."

[461] These could be provisions on a single administrative place (Article 22 of the General Administrative Procedure Act/09), on electronic communication of a party and of a public body (Article 75 of the General Administrative Procedure Act / 09).

[462] More about this, Ljubanović, Boris, Current issues of regulation of the new croatian general administrative procedure *(Aktualna pitanja uređenja novog hrvatskog opće upravnog postupka)*, Proceedings of the Law Faculty in Split, y. 45, 1/2008., p. 73; Ljubanović, Boris, *Novi Zakon o općem upravnom postupku i posebni upravni postupci*, quoted (note 631), p. 319–329.

[463] Article 101 General Administrative Procedure Act.

which it is authorized to directly resolve the administrative matter, fails to render a decision within the set time-limit.

The party has the right to require the public law authority to render a decision establishing that the party's request has been accepted. A public law authority shall issue such decision within eight days following the party's request.[464]

An appeal due to failure to render a decision

Article 105 paragraph 2 of the General Administrative Procedure Act /09 specifies the following: *"A party may file an appeal also where a decision has not been rendered within the prescribed time-limit."*

Procedure upon appeals where first instance authorities failed to reach a decision upon a request of the party within the given time-limit

When deciding upon an appeal filed due to the failure of the first instance authority to render a decision at the request of a party within the given time-limit, the second instance authority shall, without delay, request information on the reasons for which the decision has not been rendered in the set time-limit.

Where the second instance authority finds that the first instance authority failed to render a decision for justified reasons, it shall set a new time-limit, which may not exceed 30 days and within which the first instance authority shall render the decision.

Where the second instance authority finds that the reasons for failing to render a first instance decision are not justified, it shall itself decide on the administrative matter or order the first instance authority to render the requested decision within 15 days.[465]

Time-limit for rendering a second instance decision

Second instance authority shall render and serve on a party a decision on the appeal by way of the first instance authority as soon as possible and no later than 60 days following the service of an orderly appeal, except where a shorter time-limit has been prescribed by law.[466]

Supervision over the implementation of the General Administrative Procedure Act

Supervision over the implementation of the General Administrative Procedure Act shall be carried out by the central state administration authority competent for general administrative affairs. Supervision by inspection over the implementation of the General Administrative Procedure Act shall be carried out by the administrative inspectorate.[467]

Within their scope of activities, the ministries shall supervise deciding in administrative matters and ensure the lawfulness, effectiveness and purposefulness of the implementation of

[464] Article 102 General Administrative Procedure Act.

[465] Article 119 of the General Administrative Procedure Act.
[466] Article 121 of the General Administrative Procedure Act.
[467] Article 165 of the General Administrative Procedure Act.

administrative procedure of state administration authorities and local and regional self-government units, as well as legal entities vested with public authorities.[468]

The central state administration authority competent for general administrative affairs shall notify the Government of the Republic of Croatia of deciding in administrative matters and of the undertaken steps with regard to the protection from the conduct of public law authorities and public service providers.[469]

2. Administrative Dispute Act

Administrative Dispute Act[470] entered into force on 1 January 2012. This act replaced the Administrative Dispute Act/91[471], which was originally adopted in 1952 and which (with minor amendments) was in force until 2012. The system of the administrative judiciary in the Republic of Croatia was significantly modified with the Administrative dispute act from 2010.[472]

The purpose of adopting the Administrative dispute act / 10 is to harmonize the Croatian administrative procedure with the EU acquis communautaire and with the requirements of a fair trial under Article 6, paragraph 1 of the Convention[473]. The procedural solutions of the new Administrative dispute act were expected to contribute to a more efficient and more effective administrative law protection of the rights and legal benefits for the parties[474]. In analysing the newly established role of administrative courts in the judicial control of administration in the Republic of Croatia, some authors emphasized that the novelties introduced by the Administrative dispute act / 10 "before the judges of administrative courts set a very difficult task of efficient conduct that must be in line with the standards of legal protection of citizens from violation of the right to a trial in the reasonable time"[475]

The greatest change introduced by the Administrative dispute act / 10 is a two instance system of administrative judiciary. As of 1 January 2012, administrative courts and the High

[468] Article 166 of the General Administrative Procedure Act.
[469] Article 167 of the General Administrative Procedure Act.
[470] Administrative Dispute Act, Official Gazzette, 20/10.
[471] Administrative Dispute Act, Official Gazzette, 53/91, 9/92 and 77/92.
[472] More about this in Đerđa, Dario; Pičuljan, Zoran, The Emergence and the founding institutes of the new Administrative Dispute Act (*Nastanak i temeljni instituti novog Zakona o upravnom sporu)*, in: Europeanization of administrative judgment in Croatia, Zagreb, 2014., p. 93-122
[473] One of the greatest changes is related to the oral hearing before an administrative court. More about this in: Karlovčan, Đurović, Ljiljana, Oral Debate in Administrative Judicial Procedure (*Usmena rasprava u upravnosudskom postupku)*, Proceedings of the Faculty of Law in Split, year. 47, 1/2010.
[474] In this sense, Galić, Rostaš-Beroš and Vezmar-Barlek state the following: "The guiding principle in the process of drafting the new Administrative Dispute Act was to bring the Croatian administrative judiciary closer to the European standards of administrative judiciary with the new solutions." The new Administrative Dispute Act is certainly more comprehensive, more modern and it contains a series of new procedural solutions aimed at achieving greater efficiency in an administrative dispute, and this would be granted a better judicial protection as a returning effect. " Galić, Ante; Rostaš, Beroš, Lidija; Vezmar, Barlek, Inga, Administrative dispute in practice, Actions, appeals, other submissions, judgments, decisions with notes and alphabetical glossary (*Upravni spor u praksi, tužbe, žalbe, ostali podnesci, presude, rješenja s napomenama i abecednim kazalom pojmova)*, Administrative Dispute Act, Organizator, Zagreb, 2011, Preamble.
[475] Šikić, Marko, The right to a trial within the reasonable time in administrative procedures - new problems and challenges (*Pravo na suđenje u razumnom roku u upravnosudskim postupcima – novi problemi i izazovi)*, quoted. (note. 984), p. 979.

Administrative Court of the Republic of Croatia (hereinafter: the High Administrative Court) decide in administrative disputes.

Conducting an oral hearing in an administrative dispute of full jurisdiction[476] prescribed as a rule and a two instance administrative dispute undoubtedly represent a positive shift in the protection of the rights of parties[477] and the fulfilment of some of the constitutional and convention requirements. However, on the other hand, there is a real threat that the new concept of administrative dispute, in a few years, puts into question the exercise of the right to a trial within the reasonable time in administrative judicial procedures[478]. However, the Administrative dispute act contains solutions that prevent the repeated cases from being returned to the appealed authorities[479], which in the former administrative dispute system very often led to excessive duration of proceedings.

The demand for a more expedite and more efficient administrative dispute, as well as a trial within the reasonable time is covered by the principle of effectiveness as one of the fundamental principles of the administrative and judicial procedure incorporated in the Administrative dispute act.[480]

A subject matter of the administrative dispute shall, *inter alia*, be an assessment of the legality of a failure of the administrative law authority from the field of administrative law to adjudicate on the right, obligation or legal benefit or a regular legal remedy of the party within the statutory time-limit or to act pursuant to legislation.[481]

In addition, in the action it may be required to render a specific decision which has not been rendered within the prescribed time-limit. In that case, the court may be required to adjudicate on the rights, obligations and legal benefits of the party.[482]

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[476] For more about the conflict of full jurisdiction see: Britvić, Vetma, Bosiljka; Ljubanović, Boris, Specificities of the administrative dispute of full jurisdiction (*Posebnosti upravnog spora pune jurisdikcije)*, in: News in administrative, and administrative and judicial practice, Novi informator, Zagreb, 2015, p. 23-46 .; Pičuljan, Zoran; Britvić, Vetma, Bosiljka, Application and evolution of administrative disputes of full jurisdiction (*Primjena i evolucija upravnog spora pune jurisdikcije)*, Proceedings of the Faculty of Law in Split, 47 (2010), 1 (95), p. 53-64.

[477] More on establishing the facts and evidence in an administrative dispute in: Rajko, Alen, Determining the facts and evidence in the administrative dispute (*Utvrđivanje činjenica i dokazni postupak u upravnom sporu)*, Proceedings of the Faculty of Law, University of Rijeka (1991) v. 34, no. 1, (2013), p. 495-524.

[478]Experiences in the Republic of Slovenia serve as a reference to this possibility. Zalar believes that "the extensive practice of trials at oral hearings essentially endangers the right to a trial within the reasonable time." Zalar, Boštjan, Oral Discussion - Problems in Practice: Example of Slovenia *(Usmena rasprava – Problemi u praksi: Primjer Slovenije)*, Seminar for judges of the Supreme Court and the Administrative Court of Montenegro, 4-5 December 2008, Bečići, Montenegro, www.sudovi.me/podaci/uscg/dokumenta/85.doc.

[479] Pursuant to the Administrative Dispute Act /10, the court has an obligation to decide the administrative matter by a judgment. Adopting a cassation decision is possible only in exceptional cases.

[480] The principle of effectiveness has been governered in Article 8 of the Administrative Dispute Act /10, namely: "The court shall conduct the administrative procedure promptly and without delay, by avoiding unnecessary activities and expenses, prevent the abuse of the rights of parties and other participants in the administrative dispute and shall render a decision within the reasonable time."

[481] Article 3 paragraph 1 item 3 of the Administrative Dispute Act.

[482] Article 22 paragraph 2 item 2 and paragraph 3 of the Administrative Dispute Act.

Where an administrative dispute is initiated by reason of failure to take a specific decision or by acting within the prescribed time-limit, proof of the time of initiation of administrative procedure or of the submission of the request to act shall be enclosed to the complaint.[483]

Where an administrative dispute is initiated by reason of a failure to take a decision or by acting within the prescribed time-limit, an action shall be brought before the court eight days after the expiry of the prescribed time-limit at the earliest.[484]

If the court establishes that the public law authority has failed to take a specific decision within the prescribed time-limit within which, pursuant to regulations, should have been taken, it shall accept the action in a judgment and resolve the matter by itself, except where this may not be done due to the nature of things or where the defendant acted at its own discretion. In such case, the defendant shall be ordered to render the decision and the reasonable time-limit shall be provided to it.[485]

Enforcement of a judgement

The enforcement of judgements is governed by Article 81 of the Administrative dispute act, namely:

"(1) A defendant or an authority competent for enforcement shall ensure the enforcement of a judgment.

(2) In enforcing the judgment, the defendant or the competent enforcement authority shall act in compliance with the pronouncement of the judgment, no later than 60 days from the service of the final judgment, in which case shall be bound by the legal perception and remarks of the court.

(3) If the defendant or the authority competent for execution fails to enforce the judgement within a certain time-limit or if in the execution of judgment the defendant acts contrary to its pronouncement, legal understanding or remarks of the court, the plaintiff may request the enforcement of the judgment from the first instance court or the inadmissibility of the enforcement.

(4) The enforcement shall be carried out pursuant to the rules governing the enforcement in the general administrative procedure.

(5) In a decision, the court shall dismiss the request for enforcement submitted by an unauthorized person as well as a premature or an untimely request.

[483] Article 23 paragraph 4 of the Administrative Dispute Act.
[484] Article 24 paragraph 2 of the Administrative Dispute Act.
[485] Article 58 paragraph 3 of the Administrative Dispute Act.

(6) In a decision, the court shall dismiss the request for enforcement if the judgment was enforced before the decision on the request was made, if the request is addressed to an authority that is not subject to the enforcement of the judgment, and if the request is unfounded for other reasons.

(7) The decision in which the request has been accepted and a forced execution of the judgment determined, that is the established inadmissibility of the enforcement shall also be submitted to the authority that, pursuant to special regulations, is in charge of the supervision over the public law authority in charge of enforcement.

(8) The court may impose a fine up to the amount of one-month average net salary in the Republic of Croatia to the responsible person in a competent public law authority which fails to act pursuant to the provisions of paragraphs 1 and 2 of this Article for an unjustified reason.

(9) The responsible person within the meaning of paragraph 8 of this Article shall be the head of the competent public law authority.

(10) An appeal against the decision of the administrative court referred to in paragraphs 5, 6, 7 and 8 of this Article is allowed, and the appeal procedure is urgent.

(11) Due to damage caused by non-enforcement, or the timely enforcement of judgment pronounced in an administrative dispute, the plaintiff shall have the right to a compensation that is exercised in a dispute before a competent court."

3. Protection of the right to a trial within the reasonable time in the Republic of Croatia

On 14 March 2013, the Law on Courts / 13[486], which amended the former system of protection of the right to a trial within the reasonable time in the Republic of Croatia entered into force.

3.1. Law on courts from 2013

Article 63 of the Law on Courts prescribes the following:

"Article 63:

> *A party to the court proceedings considering that the competent court has not decided within the reasonable time upon its right or obligation or the suspicion or charge of a criminal offense has the right to judicial protection pursuant to the provisions of the present Law."*

Protection of the right to take a decision within the reasonable time refers exclusively to judicial proceedings. With regard to the subject of regulation of the Law on Courts / 13, the

[486] Law on Courts, Official Gazette, 28/13.

administrative procedures that precede the administrative and judicial procedure (noted as independent procedures) are exempted from this kind of protection by nature of the matter.

Pursuant to the new legislation, there are two legal remedy for the protection of the right to a trial within the reasonable time in the Republic of Croatia:

1. Request for the protection of the right to a trial within the reasonable time,

2. A request for payment of appropriate compensation due to a violation of the right to a trial within the reasonable time.[487]

Leaving aside the criticism of certain authors aimed at the Croatian non-contentious law[488], it can be concluded that by prescribing the proper application of rules on non-contentious proceedings, under which the decisions, as a rule, are taken without the hearing[489], but also by some other provisions, the legislator emphasized the importance of prompt and effective protection of the right to a trial in the reasonable time, and endeavoured to prevent the appearance of excessively lengthy proceedings in order to protect that right, which would not only diminish the value of such procedure, but also contested the effectiveness of the legal remedy for the protection of the right to a trial within the reasonable time.[490]

The request shall be submitted to the court before which the procedure is being conducted[491]. The president of the court[492] decides on the request, and in the event of the case in which the president of the court acts, the deputy president of the court shall decides on the request[493]. It is interesting that some authors criticized this solution[494] even before this came to life, while others, long before its issuance, advocated such approach. [495].

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[487] Article 64 paragraph 1 of the Law on Courts/13.

[488] Maganić, Aleksandra, The necessity of the reform of Croatian non-contentious law *(Nužnost reforme hrvatskog izvanparničnog prava)*, Proceedings of the Faculty of Law of the University of Rijeka, (1991) v. 27, no. 1(2006), p. 465-497.

[489] Article 64 paragraph 2 of the Law on Courts/13.

[490] The ECHR's view in this regard is the following*: "The Court also notes that the llegal remedy for the length of proceedings still pending can be considered effective if particular attention is paid to the speediness of the remedial action itself, since the adequate nature of the remedy can be undermined by its excessive duration (see Doran v. Ireland, no. 50389/99, §57, ECHR 2003-X (excerpts); and mutatis mutandis, case Erdős v. Hungary (Dec.), No. 38937/97, 3 May 2001.)."* ECHR, *Počuča vs. Croatia*, judgement of 29. June 2006., request No. 38550/02, § 39.

[491] Article 65 paragraph 1 of the Law on Courts/13.

[492] Putting into the scope of work of the president of the court deciding on requests for the protection of right to a trial within the reasonable time, the intention was to emphasize the responsibility of the president of the court for the promptness of work of the court under his/her control. See the Final Proposal of the Law on Courts, P.Z. no. 217, class: 711-01/12-01/06, reg. no.: 50301-09/06-13-7 of 6 February 2013, p. 46., www.sabor.hr.

[493] Article 65 paragraph 2 of the of Law on Courts/13.

[494] Thus, for example, on the grounds of proposal of the Law on Courts/13, Šikić warned about an "extremely dangerous and harmful reform of the system of protection of right to a trial within the reasonable time". Šikić argues that at the beginning of the development of the institute for the protection of right to a trial within the reasonable time, the main legal remedy for the protection of such right was a constitutional action, whilst, if the Draft of the new Law on Courts/13 proposal is accepted, such an asset will become a request to the court president before by which the procedure is conducted. Šikić Marko, The Impact of the Practice (Judgment) of the European Court for the Protection of Human Rights on Administrative Judgment, Proceedings of the Law Faculty in Split, v. 50, 2013.

[495] Potočnjak, Željko, *Zaštita prava na suđenje u razumnom roku – neki prijedlozi za unapređenje hrvatskog sustava na temelju stranih iskustava*, quoted (note. 206), p. 13.

Unlike the Law on Courts / 05, the Law on Courts / 13 governs the proceedings involving request, prescribing a time-limit of 15 days from the receipt of a request in which the president of the court must ask from the judge acting in the case the report on the duration of proceedings, the reasons on the ground of which the proceedings have not been terminated and an opinion on the time-limit in which the case can be resolved. In addition, the President of the court may also immediately inspect the case file[496]. The provision prescribing that the judge acting in the case shall submit a report to the president of the court immediately and by which the final, short time-limit for the service of the report was set[497,498] could also contribute to the acceleration of the procedure within which the request is being decided on. This is contributed also by setting a time-limit of 60 days for deciding on the request[499]. Another provision of the Law on Courts / 13 could add to a more quality protection of the right to a trial within the reasonable time. Namely, Article 65 paragraph 5 of the Law on Courts / 13 established (certain) criteria for deciding on the merits of the request - the type of case, the factual and legal complexity of the case, the conduct of the parties and acting of the court. Thus, these criteria, which were not consistently applied prior to the entry into force of the Law on Courts / 13, were translated into a legal text, which aimed at having a positive impact on their application.

Request for the protection of the right to trial within a reasonable time

The acting of the president of the court upon request is governed by Articles 66 and 67, paragraph 1 of the Law on Courts / 13, which prescribes the following:

"Article 66.

> *(1) If the president of the court establishes that the request is founded, as a rule, he/she shall set the time-limit for a maximum of six months, unless the circumstances of the case require setting a longer time-limit in which a judge must resolve the case. The decision determining the merits of the request does not have to be explained and it cannot be appealed.*
>
> *(2) If the judge fails to resolve the case within a set time-limit, he/she shall submit a written report to the president of the court within 15 days from expiry of the set time-limit. The president of the court will deliver without delay the report of the judge and his/her statement to the president of the directly higher-instance court and to the Ministry of Justice."*

"Article 67

> *(1) If the president of the court establishes that the request is ill-founded, he/she shall refuse it in a decision against which the party has the right to appeal within eight days of receipt of the decision. "*

In the procedure for the protection of right to a trial within the reasonable time, the party has the right to appeal in two cases:

- against a negative decision on the request[500],

[496] Article 65 paragraph 3 of the Law on Courts/13.
[497] Time-limit of 15 days.
[498] Article 65 paragraph 4 of the Law on Courts/13.
[499] Article 65 paragraph 6 of the Law on Courts/13.
[500] Article 67 paragraph 1 of the Law on Courts/13.

– if the president of the court fails to take a decision on the request within 60 days from receipt of the request.[501]

The president of the directly higher-instance court shall decide on the appeal. The President of the High Administrative Court shall decide on the appeal against the decision of the presidents of administrative courts. The appeal against the decision of the President of the High Administrative Court is decided by the President of the Supreme Court. If the request refers to the proceedings pending before the Supreme Court, a panel of three judges of that court shall decide on the appeal.[502]

Request for payment of an appropriate fee

The request for payment of an appropriate fee is governed by Article 68 of the Law on Courts / 13, specifying in paragraph 1 the following:

"Article 68

(1) If the court fails to resolve the case referred to in Article 65 of the present Law within a specified time-limit, the party may submit a request for payment of appropriate compensation to a higher-instance court within a further time-limit of six months on the grounds of a violation of right to a trial within the reasonable time."

The request for compensation shall be submitted directly to the higher court within six months from the expiration of the deadline for the completion of the proceedings. The Supreme Court shall decide on a request relating to proceedings pending before the High Administrative Court. The deadline for deciding on the request is six months. The request for payment of an appropriate fee has a double effect. Namely, acting upon a request for compensation, the competent court will:

The request for compensation shall be submitted directly to the higher instance court within six months from the expiry of the time-limit for the completion of the proceedings. [503] The Supreme Court shall decide on the request referring to the proceedings pending before the High Administrative Court[504]. The time-limit for deciding on the request shall be six months[505]. The request for payment of an appropriate fee has a double effect. Namely, acting upon the request for compensation, the competent court shall:

- set the time-limit within which the court before which the proceedings are pending must resolve the case and

- determine the appropriate compensation to the applicant for violating his/her right to a trial within the reasonable time.[506]

If the competent court fails to act in compliance with the decision setting the time-limit for resolving the case and fails to resolve the case within the set time-limit, the president of the

[501] Article 67 paragraph 2 of the Law on Courts/13.
[502] Article 67 paragraph 3 of the Law on Courts/13 specifies that the president of the directly higher-instance court or the panel may refuse the appeal as unfounded and uphold the first instance decision or change the decision.
[503] Article 68 paragraph 1 of the Law on Courts/13.
[504] Article 68 paragraph 2 of the Law on Courts/13.
[505] Article 68 paragraph 5 of the Law on Courts/13.
[506] Zakonom je određena i gornja granica naknade u jednom predmetu: 35.000,00 kuna.

court shall submit a written report on the reasons to the president of the directly higher-instance court and to the Ministry of Justice within 15 days from the expiry of the set time-limit.[507]

The decision on the request for payment of an appropriate fee may be appealed within eight days. The panel of three judges of the Supreme Court shall decide on the appeal.[508]

3.2. Constitutional Act on the Constitutional Court of the Republic of Croatia

The protection of right to trial within a reasonable time in the Republic of Croatia is governed also by the Constitutional Act on the Constitutional Court of the Republic of Croatia[509], establishing a special constitutional and judicial procedure for the protection of that fundamental right. A remedy for the protection of right to trial within a reasonable time under the Constitutional Act on the Constitutional Court is a constitutional action specified in the following Article 59a:

"Article 59.a

> *(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.*
>
> *(2) If the decision is passed to adopt the constitutional action for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall set a time-limit for the competent court within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such time-limit for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette.*
>
> *(3) In the decision referred to in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant with regard to the violation of his/her constitutional right committed by the court by not deciding within a reasonable time about the applicant's rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within three months from the date when the applicant submitted a request for its payment.*

The Constitutional Act of the Constitutional Court regulates the initiation of constitutional proceedings before the exhausted legal remedy[510] in two legal situations:

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[507] Article 69 paragraph 6 of the Law on Courts/13.

[508] An exception to this rule is stipulated in the event if the decision was rendered by the panel of the Supreme Court referred to in Article 68, paragraph 4 of the Law on Courts/13, in which case the panel of the Supreme Court composed of five judges of that court.

[509] Constitutional Act on Amendments to the Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazzette, No. 29 of 22 March 2002

[510]

- where the court failed to decide on the rights and obligations of the party or on the suspicion or accusation of a criminal offense within a reasonable time,
- where the contested specific act grossly violates the constitutional rights, and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.

Three months after the entry into force of the Constitutional Act of the Constitutional Court / 02, the ECtHR ruled on the admissibility of request in the case: Slaviček v. Croatia (2002) [511], which assessed the constitutional action as an effective remedy for the protection of right to trial within a reasonable time, despite the fact that at the time of the issuance of decision of the ECtHR, the Constitutional Court has not yet issued any decision based on this Article referred to in the Constitutional Act of the Constitutional Court/02. In that decision, the ECtHR stated that all the requests submitted under Article 6 paragraph 1 of the Convention for the violation of right to trial within a reasonable time received after the entry into force of the Constitutional Act of the Constitutional Court / 02 were inadmissible, since the applicants had previously not exhausted their domestic effective remedy before the Constitutional Court.

V. SUMMARY

After a comparative review of the provisions of laws governing the administrative procedure, administrative dispute and protection of right to trial within a reasonable time in Slovenia, Croatia, Serbia and Bosnia and Herzegovina, we reach the following conclusions:

- all analyzed legal orders classify the principle of economy among the principles of administrative procedure, prescribing that the procedure is conducted promptly,

- in all countries, short times limits for undertaking actions in administrative procedure and for issuing a decision are set

About the submission of a constitutional action before the exhausted legal remedy and the application of Article 63 of the Constitutional Act of the Constitutional Court / 02 in the practice of the Constitutional Court more in: Crnić, Jadranko, Protection of human rights and fundamental freedoms *(Zaštita ljudskih prava i temeljnih sloboda – podnošenje ustavne tužbe prije iscrpljenog pravnog puta*) - bringing a constitutional complaint before the exhausted legal remedy, in: Actuality of Croatian legislation and legal practice, civil, commercial, labor and procedural law in practice, Yearbook 9-2002, Zagreb, 2002, p. 3; Omejec, Jasna, "*Reasonable Time*" *in the interpretation of the Constitutional Court of the Republic of Croatia*, *("Razumni rok" u interpretaciji Ustavnog suda Republike Hrvatske)* cit. (note 124), p. 131; Gerkman, Rudec, Renata, Deciding in a reasonable time in the practice of the Constitutional Court of the Republic of Croatia *(Odlučivanje u razumnom roku u praksi Ustavnog suda Republike Hrvatske)*, in: Actuality of Croatian legislation and legal practice, civil, commercial, labor and procedural law in practice, Yearbook 9-2002, Zagreb, 2002, p. 265; Trgovac, Sanja, Recent practice of the Constitutional Court in relation to constitutional actions filed before the exhausted legal remedy *(Novija praksa Ustavnog suda u svezi s ustavnim tužbama podnijetim prije iscrpljenog pravnog puta)*, in: Actuality of Croatian Legislation and Legal Practice, 11, 2004, p. 315-324.

[511] ECtHR, *Slaviček v. Croatia*, decision on admissibility of 4 July 2002, request no. 20862/02.

Table 14.1
Montenegro and neighbouring countries - legal time-limits for the issuance of a first instance decision in administrative procedure

COUNTRY	Time-limit for issuance of the first instance decision (direct resolution)	Time-limit for issuance of the first instance decision (inquiry procedure)
Montenegro	30 days	30 days
Slovenia	One month	Two months
Croatia	30 days	60 days
Serbia	30 days	60 days
Bosnia and Herzegovina	30 days	60 days

What distinguishes Montenegro from other countries in the region is the fact that Montenegrin General Administrative Procedure Act fails to prescribe different time-limits for rendering decisions in administrative proceedings depending on whether a decision is rendered in the procedure of direct resolution or within the examination procedure. Thus, the unique time-limit for rendering a first instance decision is 30 days, with the possibility of extending the time-limit, but not longer than 15 days (if the administrative procedure, due to the complexity of the administrative matter, cannot be completed within the set time-limit). This solution, at a normative level, is better than the decisions of other countries in the region, because it emphasises the right of the party to decide on its request as soon as possible. On the other hand, it is possible that such a short time-limit has a negative effect on the quality of resolution in administrative matters.

Table 15.2
Montenegro and neighbouring countries - legal time-limits for the issuance of a second instance decision in administrative procedure

COUNTRY	Time-limit for issuance of the first instance decision
Montenegro	45 days
Slovenia	Two months
Croatia	60 days
Serbia	60 days
Bosnia and Herzegovina	30 days

As regards the time-limit for issuing the second instance decision, Montenegro prescribes one of shorter time-limits compared to the neighbouring countries. Only Bosnia and Herzegovina sets a shorter time-limit for issuing a second instance decision than Montenegro.

In case of failure to issue a decision within the legal time-limit (the silence of administration), an appeal may be filed in all countries, if it is the silence of a public law authority the decision of which may be appealed.

If it is the silence of a public law authority the decision of which may not be appealed, an appeal to the competent administrative court is allowed in all countries (administrative dispute due to the silence of administration).

The assumptions for instituting an administrative dispute due to the silence of administration in Slovenia, Serbia and Bosnia and Herzegovina do not differ, whilst in Croatia the difference refers to the fact that, after the expiry of the legal time-limit for issuing a decision, the party has no obligation to repeat its request.

Table 16.3
Montenegro and neighbouring countries – assumptions for bringing an action against the silence of administration

COUNTRY	Assumptions for bringing an action against the silence
Montenegro	- failure to adopt an administrative act, or failure to act upon a party's appeal - failure to undertake administrative activity, or failure to decide on a party's complaint
Slovenia	- failure to issue a decision within the statutory time-limit - failure to issue a decision within seven days after the repeated request
Croatia	- failure to issue a decision within the statutory time-limit - an action may be brought at the earliest eight days upon the expiry of the time-limit prescribed for issuance of the decision
Serbia	- failure to issue a decision within the statutory time-limit - failure to issue a decision within seven days after the repeated request
Bosnia and Herzegovina	- failure to issue a decision within the statutory time-limit - failure to issue a decision within seven days after the repeated request

- The powers of the court in administrative disputes on the grounds of silence of administration are very similar in all countries

Table 17.4
Montenegro and neighbouring countries – powers of the court in the event of founded action on the grounds of silence

COUNTRY	Powers of the court in the event of founded action on the grounds of silence
Montenegro	- the court will accept an action and order the public law authority to decide on the administrative issue concerned - the court can decide on an administrative matter if so permitted by the nature of the matter

Slovenia	- the court will accept an action and decide on the matter or - order the competent authority what type of administrative act should be passed or - if the decision was not served, it will order its service
Croatia	- the court will accept an action and resolve the matter by itself, except where this cannot be done on the grounds of the nature of the matter or where the defendant has decided at their discretion - in that case, the defendant will be ordered to issue the decision and thus will be given the appropriate time-limit
Serbia	- the court will accept the action and order the competent authority to issue a decision - if the necessary facts are at the disposal of the court, and if so permitted by the nature of matter, the court can directly decide on the administrative matter
Bosnia and Herzegovina	- the court will accept the action, annul the contested administrative act and establish in which sense the competent authority will issue a decision or - decide the administrative matter by itself in a judgement

- The powers of the court in cases where the public law authority fails to act upon the court's judgement are also very similar in all countries

Table 18.5
Montenegro and neighbouring countries – powers of the court in case where the public law authority fails to act upon the court's judgement (fails to issue a decision within the time-limit prescribed by the court)

COUNTRY	Powers of the court in case where the public law authority fails to act upon the court's judgement (fails to issue a decision within the time-limit prescribed by the court)
Montenegro	- the court will ask the appealed public law authority about the reasons for which it did not pass the act - if the authority fails to give notice within the time-limit or if the given notice fails to justify the non-enforcement of the judgment, the court will issue a decision that entirely replaces the act of the appealed public authority - the court will serve this decision on the authority responsible for the enforcement of the administrative act and, at the same time, give notice to the authority performing supervision over that authority

Slovenia	- the court may decide on the administrative matter (if so permitted by the nature of the matter and if the data of the proceedings constitute a reliable basis for the issuance of the decision)
Croatia	- at the request of the party to enforce the judgment, the court will issue a decision approving the request and pronounce the forced execution of judgment - the decision in which the request has been accepted and the forced execution of judgment pronounced, shall also be served on the authority performing supervision over the public law authority in charge of enforcement - the court may impose a fine to the responsible person in a competent public law authority that fails to enforce a court judgment for an unjustified reason[512]
Serbia	- the court will, under certain assumptions[513], render a decision which, entirely replaces the act of the competent authority if the nature of the matter so permits
Bosnia and Herzegovina	- the court will, under certain assumptions[514], take a decision that entirely replaces the final administrative act of the competent authority and serve it on the authority competent for enforcement, which shall execute this decision without delay

Table 19.6
Montenegro and neighbouring countries – powers of the court in case where the public law authority fails to act upon the court's judgement (issues a decision contrary to the court's judgement)

[512] The fine can not be higher than the one-month average net salary in the Republic of Croatia.

[513] If the party requests passing of such act, if the competent authority fails to pass the act even within seven days from the request of the party, after which the party requests from the court that pronounced the judgement to pass such act. Upon this party's request, the court will order the competent authority to give notice of the reasons for not passing the administrative act. The competent authority shall give notice immediately, and no later than within seven days. If it fails to do so, or if the given notice, in the opinion of the court, fails to justify the non-enforcement of the court's judgment, the court will issue a decision that entirely replaces the act of the competent authority, if the nature of the matter so permits.

[514] If the competent authority, after the annulment of the final administrative act, fails to issue immediately, and within 15 days at the latest, a new administrative act or a new administrative act in the execution of a judgment pronounced pursuant to Article 37, paragraph 6 of the Administrative Dispute Act / B&H, the party may, by filing a special submission, request the passing of such act. If the competent authority fails to pass an administrative act even within seven days of this request, the party may request passing of such act from the court that pronounced the first instance judgment[514]. At the request of a party, the court will request the competent body to deliver the case file and give notice of the reasons for the failure to pass an administrative act. The competent authority shall deliver the file and give notice immediately, and within seven days at the latest. If it fails to do so, or if the given notice, as per the court's judgment, does not justify the non-execution of the court's judgment, the court will issue a decision that entirely replaces the final administrative act of the competent authority and serve it on the authority competent for enforcement which shall execute this decision without delay.

COUNTRY	Powers of the court in case where the public law authority fails to act upon the court's judgement (issues a decision contrary to the court's judgement)
Montenegro	- the court will ask the appealed public law authority about the reasons for which it did not pass the act - if the authority fails to give notice within the time-limit or if the given notice fails to justify the non-enforcement of the judgment, the court will issue a decision that entirely replaces the act of the appealed public authority - the court will serve this decision on the authority responsible for the enforcement of the administrative act and, at the same time, give notice to the authority performing supervision over that authority
Slovenia	- the court may decide on the administrative matter (if so permitted by the nature of the matter and if the data of the proceedings constitute a reliable basis for the issuance of the decision)
Croatia	- at the request of the party for the enforcement of judgment, the court will issue a decision approving the application and determining the enforced execution of the judgment - the responsible person in the competent public law authority that in the execution of judgment acts contrary to the pronouncement of judgment, legal understanding or remarks of the court for an unjustified reason, the court may impose a fine
Serbia	- the court will annul the contested act and resolve the administrative matter itself with a judgment, unless this is not possible due to the nature of matter or the full jurisdiction is excluded by law
Bosnia and Herzegovina	- annul the contested final administrative act and resolve the matter itself with a judgment

- all countries have provisions governing the supervision over the implementation of the law regulating the administrative procedure
- in compliance with the normative decisions, a special attention is paid to the verification of the effectiveness of acting of public law authorities in the supervision procedure
- in the event of established failures in conducting administrative procedures, different sanctions[515] are prescribed for both the officer conducting the procedure and his/her superiors all the way to the head of the authority
- for the purpose of preventing the repetitive return of cases to a new (first instance administrative) procedure, the obligation of the second instance authority to resolve the matter itself in certain cases is stipulated

[515] Repeated training for conducting the administrative procedure, disciplinary proceedings, fines

Table 20.7
Montenegro and neighbouring countries – cases in which a second instance authority resolves the matter itself

COUNTRY	Cases in which a second instance authority resolves the matter itself
MONTENEGRO	- if the second instance authority finds that the reasons for which the first instance authority has not issued a decision within the prescribed deadline are not justified, it shall decide on the request of the party itself, within 45 days from the receipt of appeal - if the second instance authority finds that on the grounds of the established facts, the administrative matter must be decided on differently than in the first instance decision, it shall annul the first instance decision and decide on the administrative matter itself - when the second instance authority has already annulled the first instance decision on appeal, and the party appeals on the new decision of the first instance authority, the second instance authority shall annul the first instance decision and decide on the administrative matter itself
SLOVENIA	- if the first instance authority, after the second instance authority has annulled the first instance decision, fails to comply with its decision, the second instance authority will resolve the matter itself
CROATIA	- the second instance authority will annul the decision and resolve the matter itself if it establishes the following: - that in the first instance proceedings the facts were incomplete or erroneously established, - that in the course of the proceedings, the rules of the proceedings that would have effect on the resolution of the matter were not taken into account - that the pronouncement of the contested decision is vague or in contradiction with the reasoning - that the legal regulation on the grounds of which the matter is being resolved has been incorrectly applied

BOSNIA AND HERZEGOVINA	- if the first instance authority, after the second instance authority has annulled the first instance decision, renders a new decision contrary to the legal understanding of the second instance authority or to the remarks of the second instance authority with reference to the proceedings, and the party files a new appeal, the second instance authority shall annul the first instance decision and resolve the administrative matter itself - in such case, the second instance authority shall give notice to the administrative inspection about the conduct of the first instance authority for the purpose of initiating the misdemeanor proceedings - if the second instance authority establishes that the first instance decision has already been annulled regaring the same administrative matter, and in particular if the first instance authority failed to comply with the second instance decision or if it finds that at its discretion a different decision should have been rendered, it will annul the first instance decision and resolve the matter itself
SERBIA	- if it finds that the factual situation was erroneously or incompletely established or that the rules of proceedings have been violated that has affected the legality and legitimacy of the contested decision, the second instance authority shall annul the contested decision and decides on the administrative matter itself if it finds that on the grounds of facts established in the amended proceedings it must be resolved differently than in the first instance decision - the second instance authority shall annul the first instance decision and decide on the administrative matter itself if it finds that the substantive law has been wrongfully applied or the evidence erroneously assessed in the contested decision, or that an incorrect conclusion on the factual situation was made of the established facts or that the authorization for deciding at its discretion has been improperly applied

The protection of right to trial within a reasonable time in administrative and judicial proceedings in the countries of the region is governed in different manners.

Slovenia, Serbia and Montenegro have adopted special acts governing the protection of right to trial within a reasonable time, whilst this protection in Croatia is governed by the Constitutional Law on the Constitutional Court of the Republic of Croatia and the Law on Courts. Bosnia and Herzegovina has not fully regulated its legal system of protection of right to trial within a

reasonable time, but solely one segment of protection is governed by the Rules of the Constitutional Court of Bosnia and Herzegovina.

As regards the model of protection in some countries, the analysis indicates the following:

The remedies protecting the right to trial within a reasonable time in the **Republic of Serbia** are the following:

- a complaint to expedite the proceedings
- an appeal
- a request for just satisfaction.

A complaint and an appeal may be filed during the proceedings. The party files a complaint to the court conducting the proceedings or to the court before which the proceedings are conducted. The proceedings involving a complaint are conducted by the president of the court, who also decides on the complaint. The president of the court shall decide on the complaint within two months following the date of receipt of the complaint.

The party is entitled to appeal if its complaint has been refused or if the president of the court fails to decide on it within two months following the date of receipt of the complaint.

An appeal may also be filed also if the complaint has been accepted but the immediately senior public prosecutor has failed to issue the mandatory instruction within eight days following the date of receipt of decision of the president of the court, then if the president of the court or the immediately senior public prosecutor has failed to order the judge or the public prosecutor the procedural actions that effectively expedite the procedure, or if the judge or the public prosecutor has failed to take the procedural actions as ordered within the set time-limit.

A right to just satisfaction is granted to a party whose complaint has been accepted but who has failed to file an appeal, a party whose appeal has been refused by way of upholding the first instance decision on the acceptance of complaint and a party whose appeal has been accepted.

A party whose complaint has been accepted and who has not filed an appeal and a party whose appeal has been refused by way of upholding the first instance decision on the acceptance of the complaint acquires the right to fair satisfaction upon the expiry of the time-limit within which the judge or the public prosecutor was obliged to take the procedural actions as ordered, and the party whose appeal was accepted – upon the receipt of the decision on acceptance of the appeal.[516]

Types of just satisfaction

- the right to payment of a monetary compensation for non-pecuniary damage caused to a party by a violation of right to trial within a reasonable time,
- the right to publish a written statement of the State Attorney's Office establishing that the party's right to trial within a reasonable time has been violated,

[516] Article 22 of the Act on protection of right to trial within a reasonable time.

– the right to publish a judgment establishing that the party's right to trial within a reasonable time has been violated.

The protection of right to trial within a reasonable time in the **Republic of Slovenia** is governed by the Act on the protection of the right to a trial without undue delay. Two basic types of remedy for the protection of right to trial within a reasonable time were introduced by this Act:

- remedies for expediting the proceedings

- remedies for making a fair compensation.

The remedies for expediting the proceedings are:

- complaint due to delays (*nadzorstvena pritožba*)

- motion for setting the time-limit (*rokovni predlog*).

The remedy for making a fair compensation is:

- a request for just satisfaction (*zahteva za pravično zadoščenje*).

The remedies for expediting the proceedings can be used during the first instance or the second instance proceedings.

An appeal on the grounds of delay is filed with the court before which the proceedings are conducted. The president of the court decides on the appeal.

The motion for setting the time-limit may be submitted if:

- the appeal with the motion for expediting the proceedings is refused

- the party is not provided with a response to the appeal within two months

- the party is not given notice of the expected duration of the proceedings within two months

- if the appropriate procedural acts are not carried out within the time-limit specified in the notice given to the party or in the decision of the president of the court.

The proposal for setting the time-limit is submitted to the court before which the proceedings are conducted. The president of the directly higher-instance court decides on the motion. The time-limit for deciding on the motion is 15 days following the receipt of the motion.

The following assumptions (cumulative) must be met in order to apply for fair compensation:

– filing an appeal due to delays or the motion for setting the time-limit during the first instance and/or the second instance proceedings
– legally completed proceedings.

If on an appeal for delay, a president of the court gives notice to the party, issues a decision on the need to take action in the proceedings or orders the prioritized resolution of the case, or if a party submits a motion for determining the time-limit, the party may apply for a fair compensation.

Fair compensation can be determined as:

- (monetary) compensation for damages caused by the violation of right to trial within a reasonable time
- a written statement of the State Attorney's Office on the violation of party's right to trial within a reasonable time
- publication of judgment establishing the violation of right to trial within a reasonable time.

As per the current legal regulations, there are two remedies for the protection of right to trial within a reasonable time in **the Republic of Croatia**:

1. A request for the protection of right to trial within a reasonable time,

2. A request for payment of appropriate compensation on the grounds of the violation of right to trial within a reasonable time.

A request for the protection of right to trial within a reasonable time is filed with the court before which the proceedings are conducted. The president of the court decides on the request, and if it is the case in which the president of the court acts, the deputy president of the court decides on the request.

In the proceedings conducted with reference to the protection of right to trial within a reasonable time, the party is entitled to appeal in two events:

- against a negative decision on the request,
- if the president of the court fails to take a decision on the request within 60 days following the receipt of the request.

The president of the directly higher-instance court decides on the appeal.

A request for payment of an appropriate compensation is submitted to a directly higher-instance court within six months of the expiry of the time-limit for the termination of the proceedings. The time-limit for deciding on the request is six months. The request for payment of an appropriate compensation has a double effect. Namely, acting upon the request for compensation, the competent court will:

- set the time-limit in which the court before which the proceedings are pending must resolve the case, and

- define the appropriate compensation to the applicant for violating their right to trial within a reasonable time.

The protection of right to trial within a reasonable time in the Republic of Croatia is also governed by the Constitutional Act on the Constitutional Court of the Republic of Croatia, establishing a special constitutional and judicial procedure for the protection of that fundamental right. A remedy for the protection of right to trial within a reasonable time under the Constitutional Administrative Dispute Act is a constitutional action brought before the exhausted remedy.

VI. ANALYSIS OF PRACTICE BY REMEDIES FOR THE PROTECTION OF RIGHTS TO TRIAL WITHIN A REASONABLE TIME - COMPARATIVE EXPERIENCES

Empirical research: protection of the right to take a decision within a reasonable time in administrative matters in the Republic of Croatia from 1 January 2015 to 31 December 2017

For the purpose of a comprehensive analysis of exercise or protection of right to take a decision within a reasonable time, we have conducted an empirical research on the total number of cases of administrative courts in Osijek, Split, Rijeka and Zagreb and of the High Administrative Court of the Republic of Croatia in proceedings due to the silence of administration and the protection of right to trial within a reasonable time from **1 January 2015 to 31 December 2017** (the period covered by the research).

Administrative Court in Osijek

Statistical data on the operation of the Administrative Court in Osijek from 2015 to 2017

Table 21.8
Administrative Court in Osijek – received and resolved cases and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Cases resolution rate (*clearance rate*)	Average duration of proceedings (in days)
2015	2.112	1.889	89,44%	146
2016	2.202	2.027	92,05%	168
2017	1.649	1.772	107,46%	166
2015 - 2017	5.963	5.668	96,31%	160

Source: Administrative Court in Osijek
Note: Cases resolution rate (clearance rate) in this and in the following tables was established by the author as per the CEPEJ methodology.

Table 22.
Administrative Court in Osijek – cases of the silence of administration and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Average duration of proceedings (per day)
2015	191	121	283
2016	245	243	145
2017	86	153	69

2015 - 2017	522	517	166

Source: Administrative Court in Osijek

If we compare the data from the above table with the data on the total number of cases in the Administrative Court in Osijek, we reach the conclusion that the number of cases received due to the silence of administration in the course of the reviewed period constitutes 8,7% of the cases of that court, whilst the resolved cases of this type constitute 9% of all resolved cases. As regards the duration of administrative disputes due to the silence of administration, the figures show that the average duration of this type of disputes (166 days or 5 and a half months) exceeds the average duration of all administrative disputes.

Table 23.
Administrative Court in Osijek – Method of resolving the cases of the silence of administration from 2015 to 2017

Action refused	Action accepted	Action dismissed	Dispute stayed	Lack of jurisdiction	Other method	Total
23	269	41	181	2	1	517

Source: Administrative Court in Osijek

The data referred to in Table 16 show that the action to the administrative court due to the silence of administration was in most cases well-founded, thus justifying the purpose of the existence of such remedy. If we would assess the effectiveness of the action due to the silence of administration according to the decision-making in such cases, it could be concluded that the action due to the silence is an effective remedy. However, the number of cases in which the action was accepted or the dispute stayed due to the adoption of a decision of public authority cannot be considered sufficient to emphasise the effectiveness of this remedy. We could speak of the effectiveness of this remedy only where the proceedings (administrative dispute) as regards such action would be short and where a specific administrative matter would be resolved within a short time-limit. [517]

Table 24.
Administrative Court in Osijek - received and resolved requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Received	Resolved
2015	2	2
2016	3	3
2017	0	0
Total	5	5

Source: Administrative Court in Osijek

[517] Pritom je bez utjecaja okolnost tko rješava upravnu stvar: sam Upravni sud ili javnopravno tijelo.

Table 25.
Administrative Court in Osijek - the method of deciding on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Accepted	Refused
2015	1	1
2016	1	2
2017	0	0
Total	2	3

Starting from the proportion of received and resolved cases at the Administrative Court in Osijek for the period reviewed, as well as from the duration of administrative proceedings before that court, data on the number of requests for the protection of right to trial within a reasonable time before that court are not surprising. Namely, from 2015 to 2017, administrative proceedings before the Administrative Court in Osijek lasted for 160 days on average, which supports the conclusion that it is a court resolving the cases promptly and managing to comply with the constitutional and convention request for trial within a reasonable time.

Table 26. 9
Administrative Court in Osijek - the average length of proceedings as regards the request for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Average duration of the proceedings (in days)
2015	20
2016	38
2017	-
2015 - 2016	29

Note: the average length of proceedings was defined by the author in line with the data collected from the Administrative Court in Osijek.

As for the duration of proceedings initiated upon the request for the protection of right to trial within a reasonable time before the Administrative Court in Osijek, the data show that the length of these proceedings is significantly below the maximum prescribed by the law.

Acting of the Administrative Court in Osijek on the grounds of the request

In assessing the merits of the request for the protection of right to trial within a reasonable time, the Administrative Court in Osijek, including all other first instance administrative courts, takes into account not only the length of the administrative proceedings in respect of which the request was submitted, but also the length of the preceding administrative proceedings.[518]

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Administrative Court in Osijek does not asses the merits of the request solely on the grounds of the length of the proceedings in respect of which the request was submitted, but takes into account also the type of case, factual and legal complexity of case, conduct of parties and acting of courts.[519]

In the event of rendering a decision in an administrative dispute during the proceedings initiated as per the request for protection of right to trial within a reasonable time, the Administrative Court in Osijek refuses the request.

Acting of the Administrative Court in Osijek upon the accepted request

Table 27. 10
Administrative Court in Osijek - average duration of proceedings after the acceptance of requests for protection of right to trial within a reasonable time and the setting the time-limit for reaching a decision (2015-2017)

Year	Average duration of proceedings after setting the time-limit (in days)
2015	171
2016	148
2017	-
2015 - 2016	159

Data relating to the observed period show that the request for the protection of right to trial within a reasonable time has led to a speedy completion of the proceedings after the approved application. In cases in which the application was approved, the administrative dispute was terminated within time-limit determined in the decisions as per which the requests for the protection of right to trial within a reasonable time were approved, which indicates that the request for the protection of right to trial within a reasonable time is an effective remedy for expediting the proceedings.

Administrative Court in Rijeka

Statistical data on the operation of the Administrative Court in Rijeka from 2015 to 2017

The fact that the Administrative Court in Osijek ruled in only five cases with respect to the protection of right to trial within a reasonable time, in which he/she evaluated the requests two cases as well-founded and set the time-limit for rendering the decision to the court (decisions, pursuant to relevant provisions of the Law on Courts, do not have to be reasoned) makes it difficult to make conclusions as to whether relevant principles have been applied in specific cases to assess the merits of the application. Nevertheless, the analysis of the duration of administrative court proceedings concerning the length of which the applications have been submitted shows that the Administrative Court in Osijek took into account also the duration of administrative proceedings that preceded the administrative judicial proceedings.

[519] Administrative Court in Osijek, Decision number: Su UzpI-2 / 16-4 of 24 June 2016.

Table 28.
Administrative Court in Rijeka – received and resolved cases and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Cases resolution rate (*clearance rate*)	Average duration of proceedings (in days)
2015	2.493	2.261	90,69%	481
2016	2.300	2.677	116,39%	355
2017	2.199	2.903	132,01%	239
2015 - 2017	6.992	7.841	113%	358

Source: Administrative Court in Rijeka

Table 29.11
Administrative Court in Rijeka - cases of the silence of administration and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Average length of proceedings (in days)
2015	100	100	185
2016	92	88	97
2017	97	94	149
2015 - 2017	289	282	144

If we compare the data from the previous table with the data on the total number of cases in the Administrative Court in Rijeka, it can be concluded that the number of cases received due to the silence of administration in the observed period only make 4.1% of the cases in that court, whilst the resolved cases of that type make 3.6 % of all resolved cases. As regards the duration of administrative disputes due to the silence of administration, the figures show that the average duration of this type of disputes is significantly shorter than the average duration of all administrative disputes.

Table 30.
Administrative Court in Rijeka - Method of resolving the cases of the silence of administration from 2015 to 2017

Action refused	Action accepted	Action dismissed	Dispute stayed	Lack of jurisdiction	Other method	Total
10	118	18	128	4	4	282

Table 31.
Administrative Court in Rijeka - received and resolved requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Received	Resolved
2015	14	14
2016	12	12
2017	11	11
Total	**37**	**37**

Source: Administrative Court in Rijeka

Table 32.
Administrative Court in Rijeka - the method of deciding on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Accepted	Refused	In other manner
2015	4	7	3
2016	6	4	2
2017	6	2	3
Total	**16**	**13**	**8**

Source: Administrative Court in Rijeka

Table 33.
Administrative Court in Rijeka - the average length of proceedings as regards the request for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Average length of proceedings (in days)
2015	32
2016	38
2017	46
2015 -2017	39

Note: the average length of proceedings was determined by the author in line with the data collected by the Administrative Court in Rijeka.

As for the duration of the proceedings instituted upon the request for the protection of right to trial within a reasonable time before the Administrative Court of Rijeka, it follows from the data collected that the duration of proceedings is relatively short and that in no case the time-limit for deciding on the request specified in Article 65 paragraph 6 of the Law on Courts has exceeded.

Action by the Administrative Court in Rijeka on the grounds of requests

When evaluating the merits of the request, the Administrative Court in Rijeka shall take into account not only the duration of the administrative proceedings in respect of which the request was submitted, but also the relevant period of the preceding administrative proceeding, from the submitting of the appeal in the administrative proceedings. In certain situations where the date of filing the appeal is not possible to be established, the Administrative Court of Rijeka acts in favour of the party, taking the day the first instance decision was made as the commencement of the legally relevant period.

The exclusive reason for refusing a request for the protection of right to trial within a reasonable time by the Administrative Court in Rijeka is the view that the procedure in respect of which the request has been submitted does not exceed the decision making limits within a reasonable time.

From the reasoning of decisions of the Administrative Court in Rijeka regarding the requirements for the protection of right to trial within a reasonable time, it is not clear whether, when assessing the merits of the request, the criteria under which the ECtHR evaluates the compliance of duration of proceedings with the request for trial within a reasonable time are taken into account. As per the practice, the request is accepted in the event of a legally relevant period of more than three years, whilst in the event of a duration of proceedings of up to three years, the request is refused as ill-founded.[520]

After analysing the method of conduct of the Administrative Court in Rijeka, it can be concluded that in assessing the reasonableness of the duration of proceedings, there is no distinction between certain types of proceedings in relation to which the request is submitted. Thus, the length of the proceedings due to the silence of administration is assessed in the same way as the duration of administrative judicial proceedings for the purpose of the assessment of the legality of individual decision. An example of such acting is found in the case in which the request for protection of right to trial within a reasonable time was refused for the reason of the length of administrative dispute due to the silence of administration in the housing procedure. When assessing the merits of the request for the protection of right to trial within a reasonable time, the Administrative Court of Rijeka found the most important the length of the legally relevant period, which in the particular case was one year ten months and fourteen days. The Court held that the length of the proceedings did not constitute a violation of right to trial within a reasonable time, particularly taking into account the fact that the administrative dispute can be finalized within a reasonable time by the up-to-date proceedings of the Court[521]. Such approach is not acceptable, given the fact that the request was submitted due to the silence of administration, that is, in a situation in which the competent public law authority neither decided on the party's request, nor was it decided on a remedy against the silence of administration filed within the administrative procedure, which was why the party had to institute an administrative dispute. We consider that this approach of the court, extending the period of the illegal situation caused by the failure to issue a decision on the party's request, undermines the purpose of the administrative judicial proceedings due to the silence of administration and does not contribute to the realization of a constitutional and convention request for deciding on the rights and obligations within a reasonable time. In support of this conclusion, we can refer to the evaluation of the ECtHR regarding the acting of the Administrative Court of the Republic of Croatia in the case: *Počuča v. Croatia* (2006).[522]

In this case, the administrative dispute over the silence of administration before the Administrative Court lasted for over three years. According to the ECtHR, such delays

[520] Thus, for example, by way of the decision of the Administrative Court of Rijeka, the number: Su-UzpI-12/14-5 of 22 August 2014, the application was rejected with reference to the administrative court proceedings lasting for two years, six months and twenty-three days.
[521] The Administrative Court in Rijeka, Decision No: Su-UzpI-4/15-2 of July 7 2015.
[522] ECtHR, *Počuča v. Croatia*, judgement of 29 June 2006, Application No. 38550/02.

undermined the possible effectiveness of the set of all remedies for expediting the proceedings in a particular case. [523]

In the reasoning of the negative decisions of the Administrative Court in Rijeka on the request for protection of right to trial within a reasonable time, rendered in 2013 and 2014, the actions taken within the administrative procedure, as well as an estimation of further duration of the proceedings were given in detail, with regard to the actions to be taken[524]. This practice was abandoned in 2015, therefore the reasoning of decisions only state that the inspection of the case was carried out, and the ruling of the judge acting in the case was obtained, without any information on the actions taken in the course of the proceedings.

Decision-making in the course of the proceedings on the grounds of the request

Where a decision in the administrative dispute during the proceedings initiated in a request for the protection of right to trial within a reasonable time, the Administrative Court of Rijeka shall stay the proceedings[525]. It can be justifiably asked whether the Court acts properly in such cases, given that it cannot be concluded from the decision whether the judgment was served on the party before the decision on the request for protection of right to trial within a reasonable time was rendered. Namely, the fact of rendering the decision still does not mean that the proceedings have been terminated given that the judgment produces legal effects for the parties since the date of service. Therefore, if in a specific case, the decision in the administrative dispute was not served on the party before the decision on the request for protection of right to trial within a reasonable time was rendered, the completion of the procedure cannot be taken into account, therefore, rendering a decision to stay the proceedings cannot be considered.

The Administrative Court in Rijeka shall stay the proceedings also if they were completed before submitting the request.[526] This way of making decisions seems to be contrary to the generally accepted rule under which the remedy is dismissed if already at the time of its submission the procedural assumptions for conducting the proceedings have not been fulfilled. Unlike this procedural situation, the initiated proceedings or the proceedings that was conducted shall be stayed, as at the time of their initiation, the procedural assumptions were fulfilled, which, however, ceased to exist in the course of the proceedings.

Acting of the Administrative Court in Rijeka after the accepted request

[523] ECtHR, *Počuča v. Croatia*, § 40.

[524] E.g., the decision of the Administrative Court in Rijeka, number: Su-UzpI-1/13-5 of 1 July 2013, it was, inter alia, includes the following: "... until the hearing is held, it will be necessary to ask for an inspection of the case file of the defendant's administrative proceedings, which is in the High Administrative Court of the Republic of Croatia with reference to the appeal against the decision on stay of proceedings in the related case, number: 2 UsI-62/12. (...) With reference to the above, it was established that the length of this trial does not constitute a violation of the right to trial within a reasonable time, guaranteed by the provision of Article 29 paragraph 1 of the Constitution of the Republic of Croatia (Official Gazette, Nos. 56/90, 135/97, 8/98 - consolidated text, 113/00, 124/00 - consolidated text 28/01, 41/01 - consolidated text, 55/01- correction, 76/10 and 85/10 - consolidated text), particularly taking into account the fact that the administrative dispute can be completed within a reasonable time by way of prompt acting of this Court, in which the hearing is scheduled for the 23 September 2013."

[525] The Administrative Court in Rijeka, Decision number: Su-UzpI-14/14-5 of 5 November 2014, Decision number: Su-UzpI-7/15-4 of 28 August 2015 and Decision number: Su-UzpI- 11/16-4 of 21 December 2016

[526] The Administrative Court in Rijeka, Decision number: Su-UzpI-1/15-4 of 15 January 2015 and Decision number: Su-UzpI-5/15-4 of 27 August 2015.

Table 34.
Administrative Court in Rijeka – average duration of proceedings after the acceptance of requests for protection of right to trial within a reasonable time and the setting the time-limit for reaching a decision (2015-2017)

Year	Average length of proceedings after setting the time-limit (in days)
2015	78
2016	108
2017	68
2015 -2017	85

As for the effectiveness of the remedy with reference to the duration of administrative judicial proceedings before the Administrative Court in Rijeka, the data relating to the cases in which the requests have been accepted show that in those cases the new remedy has achieved its purpose - expediting the proceedings and its termination within the several months after the decision on setting the time-limit for the rendering the decision was made. In all cases, after the requests were accepted and the time-limits for the completion of proceedings set, the decisions of the Court were rendered within the time-limit set in the ruling of the president of the court.

However, given the approach described as regards the terminated proceedings in the course of proceedings for the protection of right to trial within a reasonable time, there is a possibility that the parties were denied the protection they should be entitled to in a certain number of cases.

Administrative Court in Split

4.1.3.1. Statistical data on the operation of the Administrative Court in Split from 2015 to 2017

Table 35.
Administrative Court in Split - received and resolved cases and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Cases resolution rate (*clearance rate*)	Average duration of proceedings (in days)
2015	4.399	4.715	107,18%	375
2016	5.158	6.839	132,57%	169
2017	3.503	4.598	131,26%	164
2015-2017	13.060	16.152	123,67%	236

Source: Administrative Court in Split

Table 36.
Administrative Court in Split - cases of the silence of administration and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Average length of proceedings (in days)
2015	51	84	448
2016	80	116	211
2017	78	85	258
2015 - 2017	209	285	306

By comparing the data from the previous table with the data on the total number of cases in the Administrative Court in Split, we may conclude that the number of cases received over the silence of administration in the period observed constitutes a negligible 1.6% of the cases of that court, while the resolved cases of that kind constitute 1.7% of all resolved cases. As for the duration of administrative disputes over the silence of administration, the figures indicate that the average duration of this type of disputes exceeds the average duration of all administrative disputes.

Table 37.
Administrative Court in Split - Method of resolving the cases of the silence of administration from 2015 to 2017

Action refused	Action accepted	Action dismissed	Dispute stayed	Lack of jurisdiction	Other method	Total
12	45	40	149	27	12	285

Table 38.
Administrative Court in Split - Received and resolved requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Received	Resolved
2015	24	19
2016	30	35
2017	6	6
Total	60	60

Source: Administrative Court in Split

Table 39.
Administrative Court in Split - the method of deciding on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Accepted	Refused	In other manner
2015	7	12	0

2016	21	14	0
2017	3	1	2
Total	31	27	2

Source: Administrative Court in Split

Table 40.
Administrative Court in Split - average duration of proceedings after the acceptance of requests for protection of right to trial within a reasonable time and the setting the time-limit for reaching a decision (2015-2017), per years

Year	Average length of proceedings (in days)
2015	68
2016	52
2017	24
2015 -2017	48

Note: the average length of proceedings was defined by the author in line with the data collected from the Administrative Court in Split.

As regards the duration of proceedings initiated upon the request for the protection of right to trial within a reasonable time before the Administrative Court in Split, the data show that the those proceedings lasted for 68 days in 2015 on average, exceeding the maximum number of days prescribed by law. In 2016, the duration of the proceedings was shortened to an average of 52 days, which restored the length of proceedings within the statutory limits, while in 2017 the duration of proceedings halved compared to the previous year. Given the average duration of the proceedings, it is clear that in certain cases, the duration of the proceedings for the protection of right to trial within a reasonable time significantly exceeds the prescribed 60 days. As for 10 cases resolved in 2015, the proceedings lasted more than 60 days, out of which for three cases they lasted for over 100 days, while for seven cases resolved in 2016, the proceedings lasted for more than 60 days, out of which four cases lasted for over 100 days. The average length of proceedings in 2016 halted the previous trend of the extended length of proceedings, which, if such a trend continued, could question the effectiveness of the remedy in the near future. However, the positive trend from 2016 continued in 2017, which dispelled any doubt with regard to the effectiveness of the remedy, given the length of the proceedings.

Acting of the Administrative Court in Split on the grounds of the request

In assessing the merits of the application for the protection of right to a trial within a reasonable time, the Administrative Court in Split takes into account not only the duration of the administrative court proceedings in respect of which the application was submitted, but also the period of the administrative procedure preceding it, referring to the decision of the Constitutional Court number: U-IIIA-4885/2005 of 20 June 2007.[527]

If the decision in the administrative dispute has not been taken prior to the completion of the proceedings for the protection of the right to trial within a reasonable time, the Administrative Court in Split shall take the date of the decision on application for the protection of right to trial

[527] For example, a decision of the Administrative Court in Split No: Su-Uzp I-20/16-4 of 29 July 2016.

within a reasonable time as the date of the termination of the legally relevant period[528,529]. If, however, the dispute was completed during the course of the proceedings on the request, various actions of the Administrative Court in Split have been noticed. In certain cases, the Administrative Court in Split took the day of the decision-taking in the administrative dispute as the date of the completion of the legally relevant period[530], whilst in others it considered the day of decision-taking on the request for the protection of right to trial within a reasonable time as the date of the completion of the legally relevant period. [531] Irrespective of the proceedings being completed, in all such cases, the merits of the request are examined in the same manner as in the case of the proceedings pending.

The reason for rejecting an applications for the protection of the right to a trial within a reasonable time is the duration of the administrative court proceedings in respect of which the applications have been submitted within the reasonable time-limits.

From the decisions as per which the requests are assessed as being founded and the time-limits for taking a decision set, it is unclear how long the proceedings last in these cases and whether the criteria such as the relevance of the case to the applicant have any impact on the outcome of the proceedings for the purpose of the protection of the right to trial within a reasonable time or whether the requests are approved exclusively in cases the duration of which exceeded the set limits.

In the reasoning of negative decisions, it is stated that when assessing the merits of the application, the criteria under which the ECtHR assesses the compliance of the duration of proceedings with the request for trial within a reasonable time are taken into account.

Irrespective of the fact that in the decisions it is stated that when deciding on the request, the criteria under which the ECtHR evaluates the compliance of the duration of proceedings with the request for trial within a reasonable time are taken into account, the criteria are very often not applied or they are applied in a way that leads to the wrongful decisions.

Acting of the Administrative Court in Split after the accepted request

Table 41.
Administrative Court in Split - average duration of proceedings after the acceptance of requests for protection of right to trial within a reasonable time and the setting the time-limit for reaching a decision (2015-2017)

Year	Average length of proceedings after setting the time-limit (in days)
2015	63
2016	105
2017	81
2015 - 2017	83

[528] Administrative Court in Split, Decision No.: Su-Uzp I-18/15-4 of 26 October 2015.
[529] Administrative Court in Split, Decision No.: Su-Uzp I-15/16-4 of 6 June 2016.
[530] Administrative Court in Split, Decision No.: Su-Uzp I-6/2014 of 23 May 2014.
[531] Administrative Court in Split, Decision No.: Su-Uzp I-26/16-5 of 14 October 2016.

Based on the analysis of the collected data, it can be stated that the remedy submitted by the parties due to the excessive length of administrative court proceedings before the Administrative Court in Split produced a positive effect in the cases in which the application was approved and the decision-taking was ordered. The decision was as a rule taken within a relatively short period.

Administrative Court in Zagreb

Statistical data on the operation of the Administrative Court in Zagreb from 2015 to 2017

Table 42.
Administrative Court in Zagreb - received and resolved cases and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Cases resolution rate (*clearance rate*)	Average duration of proceedings (in days)
2015	5.335	4.425	82,94%	532
2016	4.679	4.129	88,22%	619
2017	4.465	5.670	126,99%	373
2015 - 2017	14.479	14.224	99,4%	508

Source: Administrative Court in Zagreb

The data presented in Table 35 show that a decrease in the reception of cases has been recorded at the Administrative Court in Zagreb since 2015, which had an impact on the increase in the clearance rate to some extent. However, despite the trend of increasing the clearance rate of cases during the period under review, the Administrative Court in Zagreb was unable to resolve as many cases as it had received, which resulted in an increasing number of pending cases and the extended length of the proceedings. The grounds for the relatively low clearance rate in 2015 and 2016 was an inadequate staffing of the Court in relation to the reception of cases.[532]

Table 43.
Administrative Court in Zagreb - cases of the silence of administration and duration of proceedings from 2015 to 2017, per years

Year	Cases received	Cases resolved	Average length of proceedings (in days)
2015	174	159	339

[532] On 30 November 2016, the Administrative Court in Zagreb had 12 judges and three court advisers. Of the three advisors, two of them were temporarily transferred from the High Administrative Court to the Administrative Court in Zagreb for the period of six months. Taking into consideration the reception of cases, we come to the conclusion that even with the one hundred percent effectiveness of each judge pursuant to the Framework benchmarks for the work of judges and the court as a whole, the number of judges and court advisers is insufficient to achieve the speediness of the Court. In 2017, the situation improved with regard to the fact that by decision of the State Judicial Council of 27 October 2016, five judges were transferred to the Administrative Court of Zagreb, after which that court had 17 judges. In 2018, the situation with the number of judges has improved even more.

2016	144	149	350
2017	180	157	386
2015 - 2017	498	465	358

If we compare the data from the previous table with the data on the total number of cases in the Administrative Court in Zagreb, we come to a conclusion that the number of cases received due to the silence of administration in the period reviewed makes up a low 3.4% of the cases of that court, whilst the resolved cases of that kind make up 3.3% or the resolved cases. As for the length of administrative disputes due to the silence of administration, the figures show that this on average, this type of disputes is significantly shorter than all administrative disputes.

Table 44.
Administrative Court in Zagreb - Method of resolving the cases of the silence of administration from 2015 to 2017

Action refused	Action accepted	Action dismissed	Dispute stayed	Lack of jurisdiction	Other method	Total
25	102	74	201	59	4	465

Table 45.
Administrative Court in Zagreb - received and resolved requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Received	Resolved
2015	14	13
2016	41	39
2017	21	21
Total	76	73

Source: Administrative Court in Zagreb

From the given data on the number of received applications for the protection of right to trial within a reasonable time, it can be concluded that the parties have not often used a new remedy regarding the duration of proceedings before the Administrative Court in Zagreb. On the one hand, this is a consequence of the fact that the administrative courts in the Republic of Croatia were established on 1 January 2012, due to which in the first few years, the court proceedings did not last too long, as well as the fact that the provisions of the Administrative Procedure Act from 2009 that sought to reduce the problem of repeated remittals of the case, have to a certain extent shortened the length of administrative procedures the duration of which is relevant in evaluating the reasonableness of the procedure as a whole[533]. On the other hand, a relatively

[533] Šikić points out that the problem of repeated re-opening of the case for re-decision was sought by the legislator in the ZUP / 09 by extending the duty of the second-instance bodies to resolve administrative matters on the occasion of the appeals of the parties and considers that: "an important step forward in the attempt to eradicate repeated repatriation of cases re-trial to first-instance bodies. " Šikić, Marko, Timing of decision-making in administrative dispute, Proceedings of the Law Faculty in Split, Vol. 47, 1/2010, p. 106

frequent change in the system of protecting the right to trial within a reasonable time requires the parties to continuously monitor the relevant regulations governing that legal area as well as the specific time during which the parties will be familiarized with the legal remedy for the protection of right to trial within a reasonable time.

Table 46.
Administrative Court in Zagreb - the average length of proceedings as regards the request for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Average length of proceedings (in days)
2015	13
2016	15
2017	22

Note: the average length of proceedings was defined by the author in line with the data collected from the Administrative Court in Zagreb.

As for the duration of proceedings initiated upon the request for the protection of right to trial within a reasonable time before the Administrative Court in Zagreb, the data show that the duration of these proceedings is very short and significantly below the limit of 60 days prescribed by the law.

Acting of the Administrative Court in Zagrebu on the grounds of requests

Table 47.
Administrative Court in Zagreb - the method of deciding on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Accepted	Refused	Dismissed
2015	5	8	0
2016	12	24	3
2017	7	13	1
Total	24	45	4

Source: Administrative Court in Zagreb

In the period from 2015 to 2017, in the Administrative Court in Zagreb there were more rejected requests for the protection of right to trial within a reasonable time than those approved[534]. Taking into account the fact that, in certain cases, only the duration of administrative dispute

Šikić states that the legislator in the Administrative Procedure Act/09 tried to resolve the issue of repeated remittals of the cases by extending the duties of the second instance authorities to resolve administrative matters themselves on the appeals of the parties and therefore, he considers that: "an important step forward in the attempt to eradicate the multiple repeated remittals of the cases to the first instance authorities." Šikić, Marko, Timeframes of decision-making in administrative dispute, Proceedings of the Faculty of Law in Split, 47, 1/2010, p. 106.

[534] See data in Table 40. .

was considered the legally relevant period, and not the administrative procedure preceding it[535], it can be concluded that the proportion of rejected and approved applications should be different.

When assessing the merits of the application, the Administrative Court in Zagreb does not have a unified approach with reference to the legally relevant period. As regards the case, it takes into account not only the duration of the administrative court proceedings in respect of which the application was filed, but also the period of the preceding administrative procedure (and any earlier administrative court proceedings conducted before the Administrative Court of the Republic of Croatia), whilst in a certain number of cases the duration of the proceedings is taken only from the time the action was brought.

Some of the decisions of the Administrative Court in Zagreb clearly show that this court also considers the period of the first instance administrative procedure (conducted on the first application of the party) as a legally relevant period, thus extending the scope of protection of the right to trial within a reasonable time beyond the time frames in which this protection is provided by the ECtHR and the Constitutional Court of the Republic of Croatia.

The date of taking the decision on the application is considered as the end of the legally relevant period. However, there are also cases where the date of submission of application was considered as the end of that period, without specifying the reasoning for such viewpoint[536]. If during the proceedings for the protection of the right to trial within a reasonable time, the Court issues a decision on the completion of the proceedings, the application will be rejected. If the administrative court proceedings has been completed before submitting the application, the Administrative Court in Zagreb has not established a unified practice. In some cases, the application is rejected[537], while in some cases the application is dismissed[538].

Regarding the length of the procedure leading to the approval of the application, it can be concluded that the applications were approved in the case of a legally valid period for more than two years, while the applications regarding the duration of the proceedings for the period of up to two years were rejected. It is not clear from the majority of the reasons provided for in the decisions of the Administrative Court in Zagreb whether, in evaluating the merits of the application, the criteria under which the ECtHR evaluates the compliance of the duration of procedure with the application for trial within a reasonable time are taken into account. Nevertheless, there are also examples proving that some of the ECtHR criteria were considered.

Acting of the Administrative Court in Zagrebu after the accepted request

[535] Such wrong approach in counting the legally relevant period was sanctioned by the High Administrative Court in appeals against the decisions of the Administrative Court in Zagreb (for example, the decision of the High Administrative Court No. Su-Užzp I-11/16-4 of 8 December 2016, No.: Su-UžzpI-17/16-4 of 2 February 2017).
[536] The Administrative Court in Zagreb, Decision number: Su-Uzp I-9/15-3 of 24 August 2015.
[537] The Administrative Court in Zagreb, Decision number: Su-Uzp I-41/16-2 of 23 December 2016 and Decision number: Su-Uzp I-20/16-2 of 30 June 2016.
[538] The Administrative Court in Zagreb, Decision number: Su-Uzp I-12/16-3 of 23 March 2016.

Table 48.
Administrative Court in Zagreb - average duration of proceedings after the acceptance of requests for protection of right to trial within a reasonable time and the setting the time-limit for reaching a decision (2015-2017)

Year	Average duration of proceedings after setting the time-limit (in days)
2015	111
2016	76
2017	58
2015 - 2017	82

As regards the effectiveness of requests for the protection of right to trial within a reasonable time, the data relating to cases in which the applications were approved show that in these cases the remedy produced the outcomes, resulting in a relatively expeditious completion of procedures after the application was approved. In general, it can be stated that the remedy has produced a positive effect in almost all cases in which the (admissible) application was submitted, since the submitted application, i.e. a call from the president of the court to the judge acting in the case to submit a report on the case, in the most of cases has resulted in issuing a decision in the administrative court proceedings in a relatively short period. In the period under review, the time-limit for the issuance of the decision set forth by the President of the Court has not exceeded in any of the case in which the applications have been decided upon. A shorter length of administrative court proceedings after the approved application adds to the value of the procedure for the protection of the right to trial within a reasonable time before the Administrative Court in Zagreb.

Deciding of the High Administrative Court on appeals against decisions of presidents of administrative courts

Table 49.
High Administrative Court - received and resolved appeals against decisions of administrative courts on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per years

Year	Received	Resolved
2015	17	11
2016	20	18
2017	8	12
Total	45	41

Table 50.
High Administrative Court – the method of deciding on appeals against decisions of administrative courts on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per years

Year	Accepted	Refused	Decided in other manner
2015	0	10	1
2016	3	15	0
2017	3	8	1
Total	6	33	2

Note: the data referred to in the above table were collected by the author by inspecting the files of the High Administrative Court.

The above data show that at this moment the violation of the right to trial within a reasonable time in the proceedings before the administrative courts is not emphasised. Out of 88 cases in which the presidents of first instance courts rejected requests for protection of the right to trial within a reasonable time, in 45 cases the appeals were filed to the High Administrative Court. Of the 41 resolved cases, the appeals were rejected in 33 cases.

In the decisions of the High Administrative Court, the length of the proceedings in relation to which the proceedings are conducted has been examined and it was assessed whether the length of the proceedings affected the applicant's right to a trial within a reasonable time. If the duration of the proceedings is shorter than three years, the High Administrative Court shall confirm the position of the first instance court on the duration of proceedings within a reasonable time within the meaning of Article 29 paragraph 1 of the Constitution and Article 6 paragraph 1 of the Convention, without evaluating the proceedings under the principles used by the ECtHR. The most convenient example demonstrating the inadmissibility of such approach is the case in which the duration of an administrative dispute for the silence of administration for a year, seven months and twenty-seven days is considered reasonable by the Administrative Court, thus rejecting the appeal against the decision of the first-instance court rejecting the request for the protection of rights to trial within a reasonable time[539]. The only deficiency of first-instance courts on the request for the protection of right to trial within a reasonable time that the High Administrative Court found in the appeal proceedings is an erroneous establishment of the completion of the legally relevant period. However, in specific cases, it found that the said deficiency did not question the assessment of the first-instance court that the length of the proceedings has not exceeded the limits of a reasonable time.[540]

High Administrative Court of the Republic of Croatia

Statistical data on the operation of the High Administrative Court from 2015 to 2017.

Table 51.
High Administrative Court - received and resolved cases and duration of proceedings from 2015 to 2017, per years

[539] High Administrative Court, Decision number: Su Užzp I-9/2015 of 29 September 2015.
[540] High Administrative Court, Decision number: Su Užzp I-6/2015 og 17. July 2015, Decision number: Su Užzp I-17/2015 of 5 January 2015.

Year	Cases received	Cases resolved	Cases resolution rate (*clearance rate*)	Average duration of proceedings (in days)
2015	3.436	4.270	124,27%	61
2016	5.017	4.327	86,25%	119
2017	5.040	4.545	90,18%	153
2015 - 2017	13.493	13.142	97,4%	111

Source: High Administrative Court of the Republic of Croatia

Out of the total number of cases of the High Administrative Court during the period under review, a large number of cases refers to cases marked with "UrII" which include various submissions which mostly do not require the issuance of the formal decision of the court (in the form of a judgment or a ruling), which leads to the conclusion that the High Administrative Court receives a relatively small number of cases in which it conducts the proceedings and issues a decision. Those figures, reviewed along with data on the average length of proceedings before the High Administrative Court[541], provide the grounds for the conclusion that the court is currently expeditious and that the duration of the proceedings before that court does not extend the (significantly) a total duration of the proceedings.

Table 52.
High Administrative Court - received and resolved requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Received	Resolved	Average length of proceedings (in days)
2015.	11	12	39
2016.	19	19	22
2017.	17	15	34
Total	47	46	32

Table 53.
High Administrative Court - the method of deciding on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per year

Year	Accepted	Refused	Dismissed	Assigned	Resolved in other manner	Total
2015	0	8	2	1	1	12
2016	1	12	0	3	3	19
2017	2	9	4	0	0	15
Total	3	29	6	4	4	46

If we take into account the fact that on 1 January 2013 there were 18,123 administrative disputes pending before the High Administrative Court and that on 1 January 2014, there were 7,254

[541] See Table 44.

unresolved cases, the number of applications received with regard to the protection of the right to trial within a reasonable time during these years can be considered insignificant[542]. Such situation can to a certain extent be explained by the circumstance that, after the entry into force of the Administrative Dispute Act from 2010, which completely changed the concept of administrative dispute, with the new establishment of administrative courts in the Republic of Croatia, significantly reduced the inflow of cases to the High Administrative Court, which led to a significant reduction in the backlog of that court. Given that, after the entry into force of the Law on Courts from 2013, the administrative court proceedings before the High Administrative Court lasted for less than three years on average, it was not reasonable to expect a larger number of applications for the protection of right to trial within a reasonable time due to an insufficient prospect for success. As on 1 January 2016, the High Administrative Court had only 722 unresolved cases left, it is understandable that the number of applications for the protection of right to trial within a reasonable time was not large.[543]

As regards the length of the proceedings instituted on the request for protection of right to trial within a reasonable time, the data show that the duration of these proceedings is largely below the 60-day time-limit specified by law.[544]

Acting of the High Administrative Court on the grounds of request

As the beginning of the legally relevant period, the High Administrative Court takes the date of filing an appeal in the administrative procedure, or the date of bringing an action if the appeal is not admissible, which is in line with the practice of the ECtHR, the Constitutional Court and the Supreme Court. The end of the legally relevant period shall be the day of decision-taking in the administrative court proceedings, that is, the date of sending of the High Administrative Court's decision, and in the event that such decision has not been issued until the decision on the request for protection of right to trial within a reasonable time is taken, the legally relevant period ends on the date of deciding on the request.
The validity of the order and the time-limit for the decision-making in the case of the judge dealing with the case is questionable, since the decisions of the High Administrative Court are taken in the panel. The position of the judge-rapporteur in the case differs from the position of the other members of the panel insofar as the judge rapporteur prepares the case and presents its content at the session of the panel, after which the decision is made by the panel.

Rejection of requests

An analysis of decisions by way of which the request was rejected indicates that the majority of such decisions have been made as in the course of the procedure for applying for the protection of right to trial within a reasonable time the court proceedings due to which the request was submitted was completed, which refers to the effectiveness of the remedy as a legal

[542] On the procedures for the protection of right to trial within a reasonable time before the High Administrative Court in 2013 and 2014 more by Dominković, Franciska, *Protection of right to trial within a reasonable time in the practice of the High Administrative Court of the Republic of Croatia in 2013 and 2014*, Informator, Zagreb, . 6411, 2016, p. 18-19.
[543] On the protection of right to trial within a reasonable time before the High Administrative Court in 2015 more by: *Dominković, Franciska*, *Protection of the right to trial within a reasonable time in practice of the High Administrative Court of the Republic of Croatia in 2015*, Informator, Zagreb, no. 6417, 2016, p. 9-10..
[544] See Table 45.

remedy with an accelerating function. [545] However, the negative side of this type of acting is emphasised in cases where the length of an administrative court proceedings has gone beyond the limits of a reasonable time, but it is impossible to establish a violation of the right to trial within a reasonable time due to the completion of the proceedings before the decision on the request was made.

In cases where a decision in an administrative court proceedings was brought prior to submitting a request for the protection of right to trial within a reasonable time, a certain inconsistency in the method of the decision-making process may be observed. Namely, the request was rejected in a number of such cases[546], while in a smaller number of cases the request was dismissed[547], whereby the reasons for the different treatment are not clear from inspecting the file.

The reasoning of the decisions to reject requests in cases where it was assessed that the length of the administrative court proceedings is in compliance with the request for trial within a reasonable time refer to the fact that the High Administrative Court assessed the merits of the request solely on the grounds of the length of the proceedings in respect of which the request was submitted without applying other criteria pursuant to which the ECtHR and the Constitutional Court assess the existence of a violation of the right to trial within a reasonable time. In cases where administrative court proceedings lasted for the period of over three years, the requests were approved[548], while the requests for proceedings lasting up to three years were rejected[549].
There are no indications in any of the case that the issue of the complexity of proceedings, the importance of the case for the applicant, or the possible contribution of the applicant to the duration of the proceedings were considered.

[545] Almost all cases from 2016, in which a request for the protection of the right to trial within a reasonable time was filed during the course of the administrative court proceedings, were terminated before the decision of the President of the Court on the request was made. In only one case, the administrative procedure was not completed before the decision on the request was made.
[546] During 2013, nine decisions were issued in respect of which the requests were rejected as the proceedings were completed prior to submitting a request (e.g. Decision No: Su-UzpI-30/2013-5 of 19 September 2013), and six such decisions were issued throughout 2014. This practice, which continued over 2015 and 2016, was accepted also by the Supreme Court (e.g. Decision No. Su-Gžzp I-25/16-2 of 19 September 2016 rejecting the applicant's appeal and confirming a decision issued by the High Administrative Court number: Su-Uzp I-9/16-5 of 25 August 2016).
[547] For these reasons, the request was dismissed in four cases from 2013 and in three cases from 2014 (for example, Decision number: Su-UzpI-3/2014-5 of 6 February 2014).
[548] For example, the High Administrative Court assessed the request as well-founded in the case in which the proceedings over the legally relevant period lasted for three years and 13 days (Decision number: Su-UzpI-3/2013-7 of 3 June 2013).
[549] For example, the High Administrative Court rejected a request in relation to administrative court proceedings the length of which was two years, 11 months and 15 days (Decision number: Su-UzpI-44/2013-5 of 6 December 2013)

The High Administrative Court assesses in the same manner the reasonableness of the length of proceedings, for example, for the purpose of recognizing the right to retirement[550] and proceedings that share no such importance for the applicant, for example, for the purpose of establishing the Statute of limitations for collection of the fine and the costs of the proceedings.[551]

This serves as an evidence that the High Administrative Court does not assess whether the duration of the specific proceedings meets the requirements of a reasonable time within the meaning of the Convention as per the criteria of the ECtHR, which, over the course of years of implementation of earlier remedies for the protection of the right to a trial within a reasonable time, have been accepted by the Constitutional Court and the Supreme Court. Thus, one can expect the response of the ECtHR in the case of submitting a request after an exhausted legal remedy in the Republic of Croatia in the course of which the party would complain to the deficiencies of the High Administrative Court in the referred sense.

Dismissal of requests

The High Administrative Court shall reject the requests for the protection of the right to a trial within a reasonable time in the following cases:

- if, prior to submitting a request for the protection of the right to a trial within a reasonable time, the proceedings in respect of which the request was submitted, have been completed,
- if the request was submitted due to the duration of the proceedings on the occasion of the repeated remittal of the proceedings,
- if the request was submitted due to the duration of the proceedings for determining the legality of the general act,
- if proceedings on request for the protection of the right to a trial within a reasonable time with reference to the same administrative court proceedings are pending,
- if the request was submitted with reference to the proceedings before the administrative authority,
- if the request was submitted with respect to the duration of the proceedings not being conducted before the High Administrative Court.

Acting of the High Administrative Court in Osijek upon the accepted request

Table 54.
High Administrative Court - average duration of proceedings after the approval of requests for the protection of the right to a trial within a reasonable time and setting the time-limit for issuing a decision (2015-2017)

Year	Issuing a decision (in days)	Sending a decision (in days)
2015	-	-
2016	2	72
2017	119	164

[550] The High Administrative Court, Decision number: Su-UzpI-7/2013-4 of 27 May 2013.
[551] The High Administrative Court, Decision number: Su-UzpI-44/2013-5 of 6 December 2013.

2015-2017	61	118

Deciding of the Supreme Court on appeals against decisions of the President of the High Administrative Court

Table 55.
The Supreme Court - appeals against decisions of the High Administrative Court on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per years

Year	Received	Resolved
2015	2	2
2016	5	5
2017	4	4
Total	11	11

Source: High Administrative Court of the Republic of Croatia

Table 56.
The Supreme Court - a manner of deciding on appeals against decisions of the High Administrative Court on requests for the protection of right to trial within a reasonable time from 2015 to 2017, per years

Year	Refused	Accepted
2015	2	0
2016	5	0
2017	4	0
Total	**11**	**0**

Source: High Administrative Court of the Republic of Croatia

The number of appeals against decisions of the High Administrative Court as per which the requests for the protection of the right to a trial within a reasonable time have been rejected refers to the fact that the parties do not question the regularity of the proceedings of the High Administrative Court on request. However, the fact is that in most of the cases the party cannot exercise the right to monetary compensation due to the excessive duration of the proceedings. Specifically, in none of the case there were any possibilities for submitting a request for payment of appropriate compensation with regard to the violation of the right to a trial within a reasonable time, as in all cases in which the High Administrative Court approved the request and ordered the decision to be taken within a time-limit stipulated in the decision of the High Administrative Court, for which reason the prerequisites for submitting a request for payment of compensation were not met.

The results of the appellate proceedings refer to the conclusion that the High Administrative Court decides upon the requests for the protection of the right to a trial within a reasonable time pursuant to the relevant provisions of the Law on Courts and the criteria set in the Supreme Court's case-law regarding the right to the trial within a reasonable time in administrative proceedings.

Table 57.
The Supreme Court - requests for payment of compensation for failure to issue a decision in the proceedings before the High Administrative Court from 2015 to 2017, per years

Year	Submitted
2015	4
2016	0
2017	6
Total	10

All cases from 2015 and 2016, in which the requests for payment of appropriate compensation were submitted for failure to reach a decision of the High Administrative Court in an administrative dispute, were referred to the Supreme Court of the Republic of Croatia as the competent court for deciding on that remedy. As per the available data, the Supreme Court ruled in one case rejecting the request, holding that the assumptions for applying for payment of compensation were not met. As for the cases from 2017, all six of them were resolved before the High Administrative Court, which rejected the requests due to the lack of procedural requirements for submitting the request. The Supreme Court of the Republic of Croatia rejected appeals against the decision of the High Administrative Court to dismiss the request.[552]

CONCLUDING CONSIDERATIONS

The greatest value of the current system of protection of the right to a trial within a reasonable time in administrative court proceedings in the Republic of Croatia is and emphasised accelerating function of requests for the protection of rights to trial within a reasonable time, due to which this remedy may be regarded as an effective remedy with reference to administrative court proceedings pending.

The analysis of data collected by way of empirical research of proceedings for the protection of the right to a trial within a reasonable time before the first-instance administrative courts and the High Administrative Court shows that in cases where the requests have been assessed as well-founded, a newly-established remedy produced outcomes resulting in a relatively rapid completion of proceedings after the approved request. In general, it can be concluded that the request for the protection of the right to trial within a reasonable time had a positive effect in almost all cases in which the (admissible) request was submitted. The submitted request, i.e. the invitation of the president of the court to the judge acting in the case to deliver a report on the case, in numerous cases resulted in the decision-making in the administrative court proceedings over a relatively short time. Such activity was to a large extent shown before the High Administrative Court, which in most of the cases in which the decision on the request was judged on its own merits, finalised the administrative court proceedings during the procedure on request. This can be explained by way of the procedural position of the High Administrative Court, as an appellate court, i.e. its authorisations in the procedure of appeal, which in certain situations enable decision-making on appeals without the hearing, which is, from the point of view of effectiveness of the proceedings, an advantage, compared to acting of the first-instance courts, which generally conduct oral hearings. In other cases, the courts, as a rule, took decisions

[552] Two such appeals were filed.

in the administrative court proceedings within the time-limit set by the court president' decision. Exceeding of that time-limit recorded in several cases may be considered insignificant. From the above, it can be concluded that the request for the protection of the right to a trial within a reasonable time is a remedy with an emphasised accelerating function and that this is an effective remedy with reference to the administrative proceedings pending.

The request for the protection of the right to a trial within a reasonable time is not an effective remedy in respect of administrative proceedings for the silence of the administration.

By inspecting the cases of administrative courts in the proceedings for the protection of the right to a trial within a reasonable time, it was established that administrative courts in the same manner assess the length of administrative proceedings due to the silence of the administration and of all other proceedings. Such approach leads to deprivation of protection even in cases where the administrative proceedings for the silence of the administration lasted even for several years. Given the purpose of the administrative court proceedings for the silence of the administration, such approach of administrative courts makes the request for the protection of the right to a trial within a reasonable time in this type of proceedings an ineffective request.

An action for the silence of administrative is not an effective remedy for expediting administrative procedures.

Given the fact that under the established practice of the ECtHR, the length of the administrative procedure preceding the administrative court proceedings reaches a legally relevant period for assessing the reasonableness of the duration of the administrative court proceedings, the action for the silence of the administration should be considered a remedy for the purpose to prevent an excessively long procedure for resolving the rights and obligations of parties in administrative matters. Therefore, in this sense, the action for the silence of the administration is a means for the protection of the right to make a decision in an administrative matter within a reasonable time. The data collected from all first-instance administrative courts prove that administrative disputes instigated by way of actions brought with reference to the silence of the administration generally outreach the limits that would be acceptable from the point of view of the purpose of such remedy[553]. Therefore, without any further analysis, it can be concluded that the average duration of this type of administrative court proceedings undermines the purpose for which the action is brought and prevents the effectiveness of that remedy, and that the action for the silence of the administration is not an effective remedy for expediting administrative procedures.

VII. CONCLUSIONS

1. In adopting the Law on Administrative Procedure, Official Gazette of Montenegro, 56/14 and the Law on Administrative Dispute, Official Gazette of Montenegro, 54/16, the Montenegrin legislator paid attention to the creation of normative prerequisites for complying with the conventional right to issuing a decision in administrative matters within a reasonable time. If we would reach conclusions exclusively pursuant to the normative framework of the

[553] Out of the available data (The Administrative Court in Split and the Administrative Court in Rijeka did not provide us with the requested information on the silence of the administration), we can enlist the latest available data on the average length of this type of proceedings in 2015 before the Administrative Court in Zagreb (351 days) and before, otherwise expedite, the Administrative Court in Osijek (283 days).

administrative procedure in Montenegro, we could say that in Montenegro, the new Law on Administrative Procedure from 2017, legal prerequisites for the duration of administrative proceedings have been created within the limits not exceeding the frameworks of a reasonable time as per the standards of the ECtHR. The relevant provisions of the LAP stipulate strict time-limits for (different) actions of public law bodies, setting the short time-limits for acting of public law bodies in the administrative procedure, as well as for issuing decisions and govern the legal effects of non-compliance with the provisions on the time-limits. It is in particular relevant that the LAP includes decisions that serve to prevent multiple repeated remittals of the cases.

There is no doubt that the consistent application of the legal provisions on the time-limits for acting in the administrative procedure and for deciding on the right, obligation or legal interest of the party in the administrative procedure would prevent a violation of the rights of parties to issue a decision within a reasonable time. However, it needs to be established how public law bodies apply these provisions in practice, or how the possible non-compliance with these provisions of the LAP reflects on the parties' conventional right to make a decision within a reasonable time.

The normative decision from the LAP of Montenegro as per which the second-instance authority resolves the request of the party if it finds the illegality of the first-instance decision or the preceding procedure and if it determines the failure to act of the first-instance authority within the legally prescribed time-limit, is one of the best methods to prevent long-lasting administrative procedures. However, the final outcome depends on whether the second-instance authorities act in compliance with their authorisations or they use more often the possibility of the repeated remittals of cases to the first-instance authorities for reconsideration.

In order to exercise the right to issue a decision within a reasonable time, a legally regulated procedure of competent authorities in a case where the first-instance decision has already been annulled is of special importance. In this sense, the LAP stipulates that, where the second-instance authority has already annulled the first-instance decision by way of an appeal, and the party files an appeals against the new decision of the first-instance authority, the second-instance authority is obliged to resolve the administrative matter itself. This legal decision is one of the most effective ways of preventing the excessive length of proceedings given that it prevents repeated remittals of the cases, which was, until recently, not only in Montenegro, but in other countries in the region, one of the key reasons for the excessive length of administrative procedures. However, the very quality of such a normative solution does not constitute at the same time a guarantee of its application in practice given that the application depends on the entities applying the norm.

Remedies against the silence of the administration

Appeal for the silence of the administration

The basic rule of the LAP is that the party is entitled to appeal if the decision has not been issued within the legally set time-limit. The statutory regulation of acting on appeal (both the first-instance and the second-instance authority), as well as the set time-limits for acting, enable the completion of this procedure within a time-limit which will not be in opposition to the purpose for which such procedure is conducted (as expeditious completion of the unlawful situation caused by the failure to decide on the party's request). In this regard, we should support the legal solution as per which in the situation where the second-instance authority finds that

the grounds on which the first-instance authority has failed to reach a decision within the prescribed time-limit are not justified, it decides on the request of the party itself within a relatively short period of time, whereas the prescribed alternative of imposing on the first-instance authority deciding on the party's request, although in a very short time, it is not welcome from the aspect of the effectiveness of the procedure, i.e. exercise of the right to issue a decision within a reasonable time.

Administrative dispute over the silence of the administration

The Administrative Dispute Act stipulates that an administrative dispute may be instigated also where the public law body has failed to adopt an administrative act, that is, it has not decided on the party's appeal or has not undertaken the administrative activity, i.e. has not decided on the complaint of the party.

When the Administrative Court finds that an action has been brought for the silence of the administration is well-founded, it will approve the action and impose on the respondent public law body to resolve the administrative issue in question. However, with respect to the reasonableness of the length of the procedure, even better solution in such case is to grant the Administrative Court the power to decide on the administrative matter, which reduces the length of the proceedings for at least the same amount of time that the administrative proceedings would take to be conducted after an approving decision of the Administrative Court, and most often, due to a potentially new administrative dispute, for as long time as necessary to terminate the dispute. The Montenegrin legislator stipulated such powers of the Administrative Court, thereby creating the prerequisites for preventing lengthy proceedings in cases for the silence of the administration.

In order to assess the effectiveness of the action for the silence of the administration, a preliminary analysis of the relevant statistical data related to acting of the Administrative Court in this type of dispute is necessary. For the purposes of this analysis, we have submitted the data related to the number of actions for the silence of the administration before the Administrative Court of Montenegro within the observed period[554]. According to these data, in 2015, the Administrative Court received 393 actions for the silence of the administration, in 2016 there were 1,016 actions, and 2,013 actions were brought in 2017. The above data show an upward trend in the number of such actions brought before the Administrative Court and provide a grounds for the conclusion on a growing percentage of this type of cases in the total number of cases before the Administrative Court[555]. However, these data do not allow us to make any conclusions as regards the effectiveness of the action for the silence of the administration in Montenegro.

[554] Due to the issue of entry of data into the judicial information system which the Administrative Court of Montenegro was facing over the past years, there are no records of the duration of proceedings, the manner of decision-making and other parameters related to administrative disputes due to the silence of the administration.

[555] In 2015, the Administrative Court of Montenegro received a total of 3,685 cases, in 2016 there were 4,691 cases, and in 2017, a total of 12,828 cases were received. Pursuant to these data, we come to the following percentage of administrative disputes arising for the silence of the administrative in the total number of administrative disputes before the Administrative Court of Montenegro: in 2015 - 10.66%, in 2016 - 21.65% and in 2017 - 23, 56%.

The provision that should positively affect the duration of the proceedings in which the rights, obligations and legal interests of the parties in administrative matters are decided upon is specified by Article 36 (3) of the Administrative Dispute Act, stipulating that where the Administrative Court has already annulled the disputed act in in the same administrative matter, it is obliged to resolve the matter in question itself on a complaint against the new act of a public law body in that administrative matter, where the nature of the administrative matter so permits. In this case, the Court's decision replaces the annulled act in all cases.

The legal effects of failure to comply with a judgment

If the respondent public law body, after the decision was issued by the Administrative Court annulling its act, fails to adopt forthwith, and no later than within 30 days, the new act in the course of that procedure or fails to adopt the act on the execution of judgment of the Administrative Court on the action brought for the silence of the administration within that time-limit, the party may request the adoption of such act through a special submission.

If the respondent public law body fails to adopt the act within seven days from the date of referring the submission, the party may request the adoption of such an act by the Administrative Court. The Administrative Court will request the respondent public body to notify of the reasons for failing to adopt the act. The respondent public law body must deliver the notification forthwith, and at the latest within seven days. If it fails to give notice within the time-limit or if the submitted notice does not justify the non-execution of the decision of the Administrative Court that approved the action brought for the silence of the administration, the Administrative Court shall issue a decision that entirely replaces the act of the respondent public law body. The Administrative Court will submit this decision to the authority competent for the execution of the administrative act and, simultaneously, give notice to the authority performing the supervision over that authority. The authority in charge of executing an administrative act shall, without delay, execute the decision of the Administrative Court replacing the act of the respondent public law body.

Legal effects of repeated failure to comply with a judgment

If the respondent public law body, after the Administrative Court annuls the act of that body, fails to adopt the act pursuant to the court's judgment, and the plaintiff brings a new action, the court will annul the disputed act and, as a rule, resolve the administrative matter by way of a judgment. Such judgment entirely replaces an act of the respondent public law body. In that case, the Administrative Court shall notify the body supervising the operation of the respondent public law body that has failed to comply with the judgment of the Administrative Court. The authority performing supervision over the respondent public law body shall inform the Administrative Court of the measures taken, within 30 days.

In the context of exercising the right of the parties to a trial within a reasonable time, it is important to refer to Article 28 of the Administrative Dispute Act stipulating that in an administrative dispute the Administrative Court shall adjourn the non-public session or on the grounds of an oral hearing. The Administrative Court is obliged to conduct an oral hearing if the party requests it in the action or in the response to the action, except in the case referred to in Article 25 of the LAD. Given the fact that the parties require the hearing also and in disputes where the facts are not in dispute, and which, as per a valid legal decision, impose on the

Administrative Court an obligation to conduct a hearing, in such cases the proceedings are unnecessarily prolonged.

The Law on Civil Servants and State Employees can indirectly and to a certain extent affect the length of administrative proceedings, which, inter alia, governs the obligations and responsibilities of civil servants. Civil servants are responsible for the legality, expertise and efficiency of their work. A civil servant or a state employee, pursuant to the law, shall be responsible for the damage caused by his or her illegal or improper work to a state authority or a third person. The quality of work of civil servants is subject to an assessment that ultimately affects the possibility of the promotion of a civil servant, however, on the other hand, the possibility of imposing sanctions for violations of official duties, including the termination of service. The work of civil servants is evaluated according to various, numerous criteria, among which are those that can be related to the duty to act effectively in administrative proceedings and issue a decision within a reasonable time. [556]

The provision of the Law on Civil Servants and State Employees specifying that the evaluation of the quality of work of persons performing the tasks of senior management in a state authority is carried out two times a year, should contribute to the continuous monitoring of the work of persons responsible for the legitimate and effective acting of public law bodies and a timely response in the event of evaluation indicating the deficiencies in the organization and operation of the public law body.

Civil servants are liable for disciplinary measures for violations of official duties arising from employment, which include different acts or the failures to act that may negatively reflect on the decision on the rights and obligations of the party within a reasonable time. For such violations of official duty, diverse disciplinary measures may be imposed, including a two to six months fine in the amount of 20% to 40% of the salary paid for the month during which a serious violation of official duty was committed and the termination of employment.

2. As all countries in the region, Montenegro faces the problem of lengthy court proceedings and therefore takes various measures in order to reduce the number of unresolved court cases and to expedite the proceedings. The importance that the Montenegrin legislator attaches to exercising or protecting the right to a trial within a reasonable time, not only in administrative matters, but also in other disputes that fall under the scope of Article 6 of the Convention is obvious from the fact that in 2007 Montenegro adopted a special law governing the protection of that important convention law, and the exercise i.e. the protection of which, to a greater or to a lesser extent, was a challenge in numerous European legal orders, especially in the countries of the region. By having limited the application of the Law on the Protection of a Right to Trial within a reasonable time to the proceedings relating to the protection of rights within the meaning of the Convention, the Montenegrin legislator stated the relevance of the Convention but at the same time denied the protection of this important fundamental right in those proceedings which, according to the position of the ECtHR, fall outside the scope of Article 6 para. 1. of the Convention. As regards the selected model of protection of the right to trial within a reasonable time, it is immediately clear that it was taken over the Slovenian model without any significant deviation. It is a system consisting a remedy with an accelerating function (request for review) and another remedy with the compensatory purpose (action for

[556] Carrying out work tasks, work results in terms of quality and quantity, scope and timeliness in the performance of jobs within the work position, other abilities and skills in the performance of tasks.

just satisfaction). In addition to these remedies, Montenegro introduced another legal remedy in its legal order that could protect the right to a trial within a reasonable time - constitutional appeal. From the relevant practice of the ECtHR, it can be concluded that after nearly six years of implementation of the Law on the Protection of the Right to Trial within a reasonable time, Montenegro succeeded in complying with the convention request for an effective remedy regarding the length of the proceedings. In the judgment *Vukelić v. Montenegro (2013*), the request for review was proclaimed an effective remedy. Three years later, in the case *Vučeljić v. Montenegro (2016),* an action for just satisfaction was proclaimed an effective remedy for the protection of the right to trial within a reasonable time, while in the judgment *Siništaj and Others v. Montenegro (2015),* the ECtHR assessed the constitutional appeal as an effective remedy for the protection of the right to trial within a reasonable time..

The ECtHR's judgment in *Stanka Mirković and Others v. Montenegro* case (2017) [557] showed that the Montenegrin system of protecting the right to issue a decision within a reasonable time in certain cases has weaknesses which turn an effective system[558] into the ineffective one. This judgment shows that the legal solutions in force at the time of conducting the procedure in this case are not effective in resolving the issue of excessive length of administrative procedures and administrative court proceedings in the events of multiple revocation of a specific act of public law bodies and the repeated remittals of cases. Therefore, the obligation of Montenegro is to take general measures to prevent such violations in future. Following this judgment, the ECtHR identified the same or a similar problem in few other cases. [559]

3. Use of requests for review in the period 2015-2017 before the Administrative Court of Montenegro

From 2015 to 2017, the Administrative Court received 63 control requests. The parties addressed the Administrative Court of Montenegro by submitting a request for review after a relatively lengthy administrative proceedings that preceded the administrative dispute. In the period from 2015 to 2017, the parties submitted a control request on average after more than 400 days from the first appeal in the administrative procedure, which is, in most cases, sufficient to reach a conclusion on the excessive duration of the proceedings in which an administrative matter is decided upon. The length of proceedings preceding the request for review explains the fact that in most of the cases where the request for review was submitted, the President of the Administrative Court assessed the request as well-founded. In the period from 2015 to 2017, in only six cases, a decision was made to reject the request as manifestly ill-founded, pursuant to Article 14 of the Law on the Protection of a Right to Trial within a reasonable time. From 2015 to 2017, total of 56 notices were given pursuant to Article 17 of the Law on the Protection of a Right to Trial within a reasonable time (88.8% of the total number of requests for review). Out of 56 notices, in 40 cases (71.4%), the party was informed that the proceedings would be

[557] ECHR, *Stanka Mirkovic and Others v. Montenegro*, judgment of 7 March 2017, applications no. 33781/15, 33785/15, 34369/15, 34371/15.

[558] In the decision *Vuković v. Montenegro* of 27 November 2012 (application No. 18626/11), the ECtHR concluded that the national remedy against the silence of the administration (Article 212, paragraph 2 of the Law on General Administrative Procedure, Official Gazette of Montenegro , 60/03 and Article 18 of the Law on Administrative Dispute, Official Gazette of Montenegro, 60/03 and 32/11), in the circumstances of the case, is an effective remedy.

[559] *Sineks d.o.o v. Montenegro*, judgment of 18 July 2017, application no. 44354/08, *Nedić v. Montenegro*, judgment of 10 October 2017, application no. 15612/10, *KIPS d.o.o. and Drekalović v. Montenegro*, judgment of 26 June 2018, application no. 28766/06.

accelerated, i.e. that it would be completed within four months, while in 16 cases (28.6%) the parties were given notice of the completion of the case.

With reference to the notification referred to in Article 17 of the Law on the Protection of a Right to Trial within a reasonable time, the Administrative Court acted in due time, within the time-limit specified by Article 20 of the Law on the Protection of a Right to Trial within a reasonable time. The case-law with regard to the request for review is transparent. The Administrative Court publishes all of its decisions on its website, which makes it easier to follow the date of issuing the decision, or provides an answer to the question whether the Court acted in compliance with the decision on the request for review.

Data on the average length of the procedure under the request for review for the period from 2015 to 2017 lasting for 18 days show that this is an effective remedy for exercising i.e. protecting the right to trial within a reasonable time.

The next component which the assessment of the effectiveness of a remedy for the protection of the right to trial within a reasonable time depends on is the length of the proceedings in respect of which the request was submitted, after a decision on the remedy. The information on the average duration of administrative dispute, following a decision on the request for review, leads to the conclusion that after the decision on the request for review, administrative disputes are completed in a relatively short time, which could refer to the accelerating function of that remedy. However, without the exact data on the average length of administrative disputes in the period under review, it is impossible to determine whether the request for review expedites the procedures in relation to which it is submitted, i.e. whether that remedy has an accelerating function.

The collected data show that in the cases in which the requests for review were submitted in the period from 2015 to 2017, the legally relevant period lasted for 508 days on average, which is unacceptable from the aspect of the right to trial within a reasonable time in cases in which administrative matters are decided upon. On the other hand, it is possible to conclude that procedures in cases where the parties did not use the request for review, were even longer, therefore, from this aspect it cen be referred to the positive effect of the request for review.

In the period from 2015 to 2017, 10 appeals were filed against the decisions of the Administrative Court on the request for review, i.e. due to the failure of the decision of the president of the court on the request for review. Out of the total number of appeals, four appeals were filed against the decision of the President of the Administrative Court issued pursuant to Article 14 of the Law on the Protection of a Right to Trial within a reasonable time, and six appeals for failure to respond to the request for review. The Supreme Court approved four appeals and rejected six of them. All the appeals received referred to the non-execution of decisions on the request for review due to the improper legal approach regarding the procedural prerequisites for deciding on the request for review.

Based on the number of cases in which an appeal against the decision (or against the failure of the President of the Administrative Court) was admissible as regards the request for review and the number of filed appeals, we may conclude that the parties were not satisfied with the

decision of the President of the Administrative Court on the request for review or his/her failure to act on the request for review, thus they filed appeals to the Supreme Court. However, the analysis of the manner of acting of the Supreme Court on appeals shows that in 60% of cases, the President of the Administrative Court complied with the request for review, pursuant to the Law on the Protection of a Right to Trial within a reasonable time, while the information on 40% of the approved appeals refer to the failure to reach a decision on the request for review in situations in which the legal requirements for acting were fulfilled.

4. The actions of the Supreme Court on actions for just satisfaction

In the period from 2015 to 2017, the Supreme Court received 19 actions for just satisfaction as regards the administrative dispute. If this number is compared to the number of filed requests for review over the same period (63), we come to a conclusion that the action for just satisfaction was brought with reference to 30% of the cases in connection to which the request for review was submitted. As for the manner of deciding on actions for just satisfaction, four actions were partially approved, four of them were rejected, and ten actions were dismissed. In one of the cases the action was withdrawn.

In all cases in which the actions for the violation of the right to a trial within a reasonable time were partially approved, in the administrative procedure and in the administrative dispute, the Supreme Court found that the action was partly founded given that the state authorities were not sufficiently efficient, that is, the competent authorities caused delays and unreasonable duration of proceedings.

In carrying out the analysis of acting on the action brought, it can be said that in a situation in which the request for review submitted in the course of the administrative dispute was legally rejected as unfounded, the Supreme Court previously assesses whether in the procedure for resolving the administrative matter of the plaintiff in relation to which the action is brought, his or her right to trial within a reasonable time was violated. Only after that, the Supreme Court is involved in determining the amount of pecuniary compensation. In establishing the duration of the legally relevant period, the Supreme Court shall take into account the relevant case-law or the position of the ECtHR, determining that period, as a rule, from filing an appeal until the day of bringing an action for just satisfaction. Then, the Supreme Court analyses acting of the administrative bodies and the Administrative Court in the legally relevant period, as well as all the criteria applied by the ECtHR in the proceedings referring to the right to a trial within a reasonable time. It is interesting that from the decisions of the Supreme Court it may be concluded that this court considers urgent all administrative proceedings with regard to the legal time-limits for issuing decisions in administrative procedure, referring to the case-law of the ECtHR which points to the need for a special promptness of the state or its authorities in domestic law the cases are envisaged to be completed urgently.

We consider that such understanding of the nature of administrative procedure makes the approach in assessing the reasonableness of the length of procedure in administrative matters as such unjustifiably strict, given that from the fact of the existence of legal time-limits for deciding in administrative matters there is no general conclusion that all procedures in which decisions are made in administrative matters are urgent. Acting in administrative matters should be seen as a whole including two separate, yet closely related procedures: an administrative

procedure and an administrative dispute. In administrative procedures, the general rule followed by all countries in the region, as well as by other European countries (e.g. Austria), is prescribing relatively short time-limits for deciding of a public law body in an administrative matter. However, after this procedure, there follows an administrative dispute that, in Montenegro, but also in other countries from the region, is conducted by administrative courts, which are not subject to the legal obligation to complete the administrative dispute within the time-limits prescribed by laws governing the administrative procedure. Administrative courts act pursuant to the procedural rules of the Administrative Dispute Act, which, neither in Montenegro, nor in other countries stipulates a general rule on urgent action, but such a rule is found in some laws governing a particular administrative area. Therefore, in observing the uniqueness of the administrative procedure and the administrative dispute in the context of exercising the right to a trial within a reasonable time, it is not possible to accept the position of the Supreme Court, by which all the procedures in the course of which administrative decisions were made would be urgent, which would then reflected on the assessment of reasonableness of the length of the procedure. On the other hand, in assessing the reasonableness of the length of the procedure, the importance of the case for the applicant is of significance, therefore, from that aspect, in each case, it is necessary to assess whether it is a process requiring more promptness than usual. In acting so, in the light of the importance of the case for the applicant in various procedures in administrative matters, it is necessary to act particularly expeditiously due to the number of administrative areas in which the rights and obligations of parties having direct or indirect effects on the vital interests of individuals are decided upon.

In determining the amount of compensation, the Supreme Court starts from the purpose of compensation for non-pecuniary damage (adequate pecuniary compensation for suffering mental pain, frustration and uncertainty due to an unreasonable length of the court proceedings). Along with the purpose of compensation, the importance of the proceedings for the applicant, the principle of fairness as well as the standards of the case-law of the European Court and the Supreme Court of Montenegro shall be taken into account.

In cases in which an action for just satisfaction relates to the length of the proceedings instituted on the request for the repeated remittal of the finally completed administrative procedure, the Supreme Court starts from the relevant positions of the ECtHR.

As regards the compensation for just satisfaction, out of four partially approved actions for violating the right to a trial within a reasonable time in the administrative procedure and the administrative dispute, in one case, the lowest, legally prescribed fee in the amount of 300 EUR was granted, while in the remaining three cases the fees in the amount of 600 EUR, 1300 EUR and 1500 EUR were granted. The fee in the legally prescribed maximum amount of 5,000 EUR was not granted in any case.

In the period from 2015 to 2017, in four cases that referred to the Administrative Court, the action for just satisfaction was rejected as unfounded, given that there was no violation of the right of the plaintiff to a trial within a reasonable time, as the duration of the proceedings in those cases cannot be considered unreasonable, i.e. the action was rejected for the fact that public law bodies were taking actions aimed at protecting the right of the party to a trial within a reasonable time. In three cases, the request was rejected as unfounded also for the fact that just satisfaction and damages were already granted.

The latest access of the Supreme Court is questionable from different points of view. Primarily, we consider that irrespective of the fact that in the same case the violation of the right to trial within a reasonable time has been established earlier, a further period of time during which the proceedings have not been completed with reference to the same case cannot lead to the conclusion that the violation has ceased, i.e. that, due to the short period that has elapsed since the previously established violation, the "new" violation has not occurred. If, for example, the decision-making process in an administrative matter lasted for three years, it is highly probable that a violation of the right to a trial within a reasonable time will be established and the party will be granted an appropriate compensation. However, if, after granting the fee, the proceedings are still conducted and pending, for example, for an additional one year and at the time of the repeated remittal of the action for just satisfaction it has not yet been completed, it should be indisputable that the proceedings in this case last for four years, which is why the position that in this case there is no longer a violation of the right to a trial within a reasonable time is questionable. In our view, in this case the violation is even more emphasised due to the prolongation of the time in the course of which the procedure has not been completed. The fact that a party has been compensated for a violation that extended until the first decision on the action for just satisfaction does not mean that the violation exists. On the contrary, the violation, due to the further prolongation, became more serious. Therefore, due to a "subsequent" failure to comply with the request for a decision within a reasonable time, it would be justified to reconsider the length of the proceedings, in its entirety, and in accordance with that, to take the appropriate decision on the action for just satisfaction. In addition to the above reason, we consider that it is necessary to take into account the general context in which such cases occur. Namely, the biggest problem in the Montenegrin system of an administrative procedure and a dispute in the context of decision-making within a reasonable time is still the problem of repeated remittal of the case.

The reasons for rejecting actions for just satisfaction in the period from 2015 to 2017 are as follows:

- non-exhaustion of available remedies, or failure to submit the requests for expediting the procedure (request for review) before the Administrative Court
- actions brought before the expiry of the period in which the president of the court was obliged to decide on the request for review
- actions brought in cases not referring to the "civil law" within the meaning of Article 6 paragraph 1 of the Convention, i.e. due to the lack of a "real and severe dispute" over "civil" law
- incomprehensible actions
- a request for review submitted after the administrative dispute has already been completed.

VIII. RECOMMENDATIONS

1. Introduce the monitoring of the work or the actions of the public law bodies in order to establish whether the public law bodies act pursuant to the legal obligations from the Administrative Procedure Act with reference to:

- The compliance with time-limits for issuing decisions in administrative procedures
- The obligation of the second-instance authorities to complete the procedure without the repeated remittals of cases to the first-instance authority, in particular pursuant to each article of the Administrative Procedure Act governing such situations
- Length of administrative procedures in total.

2. In this respect, it is necessary to impose an obligation for all public law bodies to establish and keep appropriate records and annually publish a report on the key components for monitoring the duration of administrative procedures and the actions of public law bodies in compliance with the request for issuing a decision within a reasonable time.

3. If these reports would show that public law bodies fail to act in line with their obligations to comply with the time-limits for issuing a decision in the administrative procedure and/or with the duty in the event of the second annulment of the first-instance decision, the procedure to be completed by issuing a decision of the second-instance authority, but, in opposition to the Administrative Procedure Act, the cases are referred to the first-instance authority, the sanctions should be imposed on the head of the authority, as well as on the responsible person in the authority with respect to which the violation was determined.

4. In cases where the public law body fails to act following the judgment pronounced by the Administrative Court, or fails to act within the set time-limit, sanctions should be imposed on the head of the body.

5. Introduce compulsory education of public and civil servants acting in administrative proceedings on the Convention and the case-law of the ECtHR concerning the exercise of the right to issue a decision within a reasonable time and the manner of conducting the proceedings pursuant to Article 6 paragraph 1 of the Convention and the consequences of the failure to act in compliance with the request of a reasonable time.

6. Introduce the obligation of the Administrative Court and the Supreme Court (and other courts) to compile annual reports on the application of the Law on the Protection of the Right to a trial within a reasonable time, along with a review of the situation and possible recommendations for eliminating the observed problems in the application.

7. Introduce the urgency of acting in administrative disputes for the silence of the administration.

8. Align the number of judges of the Administrative Court with the receipt of cases.

9. Extend the set of disputes in which court advisors may act.

10. Introduce the possibility of resolving the administrative dispute without the hearing:

    - if the plaintiff disputes only the implementation of the right, whereby the facts are indisputable, irrespective of whether the party requires the hearing to be held.

11. Introduce the obligation to keep records of the Administrative Court that would contain statistical data on the number of cases (in absolute number and percentage) in which the

court decided in a dispute of full jurisdiction, i.e. in a dispute on the legality and on the manner of deciding of the Court in disputes for the silence of the administration.

12. Conduct a continuous education of attorneys for better understanding of the system of protection of the right to a trial within a reasonable time and more frequent use of remedies for the protection of the right to a trial within a reasonable time.

13. Introduce citizens with a system of protection of the right to a trial within a reasonable time.

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