RIGHT TO A TRIAL WITHIN A REASONABLE TIME - COMPARATIVE OVERVIEW

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence.

1. General overview

The analysis was conducted and the report was produced in the context of regional conference on the topic "Harmonisation of judicial practice: length of proceedings – standards and case law", which took place on 2nd and 3rd June 2022 in Skopje, North Macedonia. The Conference brought together representatives of the Supreme, Constitutional and Appellate courts from North Macedonia, Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo, as well as judges and lawyers of the European Court of Human Rights and experts in the subject matter who were among speakers at the Conference and authors of the report. The event was organised in co-operation with the Supreme Court of North Macedonia under the action "Initiative for Legal Certainty in the Western Balkans", implemented in the framework of the joint programme of the European Union and Council of Europe "Horizontal Facility for Western Balkans and Turkey - Phase II (2019–2022)".

The right to trial within a reasonable time became a component of the standard of an independent and fair trial in the 20th century.[1] More specifically, the 20th century brought about the adoption of international legal instruments, that are now the cornerstones of the right to a fair trial[2], such as the United Nations' Universal Declaration on Human Rights, International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR").[3]

Article 6, paragraph 1 of the ECHR ("Article 6(1) provides as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

One of these guarantees concerns compliance with the reasonable-time requirement, intended by the ECHR to counter excessively long judicial proceedings.[4] In fact, the reasonable time of proceedings is one of the most important procedural guarantees of the right to a fair trial enshrined in Article 6 (1), since the entire system of these procedural rights is based on the idea of effective legal protection, which is only possible if such protection is timely.[5]

1.1 PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME AND EFFECTIVE REMEDY

The success of the ECHR depends on the interaction between the domestic systems of human rights protection and the European umbrella system exercised by the European Court of Human Rights ("ECtHR")[6]. In accordance with the ECHR's principle of subsidiarity, the issue of the excessive length of the proceedings should be dealt with in the first place by domestic courts.

As established by the ECtHR's case-law in *Zimmermann and Steiner v Switzerland*[7] "the ECHR places a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 (1) including that of a trial within a "reasonable time". This means that the State shall be held responsible not only for any undue delay of the proceedings, but that it also has a

duty to improve the situation of the judiciary or adjust it accordingly in order to cope with any backlog and repetitive cases. The State shall also be held responsible for all errors in the organisation of its own judiciary that contribute to undue delays in proceedings.

In *Kudla v. Poland*[8] the ECtHR established the existence of a systemic connection between the right to a fair trial within a reasonable time in Article 6 (1), and the right to an effective remedy in Article 13 of the ECHR. Until that judgment, the ECtHR's position was that Article 6(1), constituted a *lex specialis* in relation to Article 13 of the ECHR and was not considered even when the former was found to have been violated.[9] However, in *Kudla v. Poland*, the ECtHR acknowledged that the Article 13 claim is not absorbed by the claim under Article 6(1) and clearly pointed out that complaints related to the excessive length of proceedings should in the first place be addressed within the national legal system. After the adoption this judgment,, the conclusions of the European Ministerial Conference on Human Rights and Commemorative ceremony of the 50th Anniversary of the ECHR[10] and of Recommendation (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies,[11] national systems started developing domestic remedies that could address the specific issue of breach of the right to trial within a reasonable time.[12]

Two types of remedies are possible to address a violation of the reasonable time standard:

- preventive and
- compensatory.

Ideally, a combination of both types of remedies is to be developed, thus permitting asolution to be found for the fundamental problem of excessive delays,[13] allowing the national court to "substantially correct" the unduly long judicial proceeding in favour of the applicant.

Excessive time proceedings can still be remedied before the ECtHR, following the exhaustion of national remedies.

1.2. SCOPE OF PROTECTION

According to the ECHR, the right to a trial within a reasonable time may be invoked in relation to a tribunal responsible for determining "civil rights and obligations" or "any criminal charge", which are interpreted autonomously by the ECtHR. The ECtHR's ample dynamic jurisprudence has broadly interpreted the scope of "civil rights and obligations" under Article 6, so as to cover "all the proceedings the result of which is decisive for private rights and obligations"[14] thereby encompassing all aspects of private law. The fields to which Article 6 does not apply are those in which proceedings call into question the state's law-making prerogatives or political rights and obligations, e.g. tax disputes,[15] litigation concerning immigration-control measures (decisions regarding entry, stay and deportation of aliens),[16] disputes concerning political representation[17] and disputes concerning certain categories of public servants.[18]

The ECtHR uses the term "criminal charges" in the general sense, including also where the applicant is accused of committing disciplinary offenses,[19] in customs cases,[20] in relation to administrative offenses,[21] and even in some tax cases[22] where some tax fines essentially had a deterrent and punitive purpose. Therefore, in practice, the right to a trial within a reasonable time clearly applies to any judicial proceedings, apart from certain spheres ruled out by judicial doctrine as being impossible to assimilate to civil or criminal cases.[23] It is important to note that under the jurisprudence of the ECtHR, the execution of a judgment must also be regarded as an integral part of the 'trial' for the purposes of Article 6.[24]

1.3. CRITERIA FOR ASSESSING THE LENGTH OF PROCEEDINGS

Whilst the reasonable time concept reflects an optimal balance between the length and quality of the examination of a case[25], it is an open standard. As pointed out in legal science,[26] this is a maximum time limit with which the failure to comply results in a violation of a human right. It is not an optimal, or an ideal time limit, which, depending on the circumstances, can even be shorter than a reasonable time. This is why the reasonable time concept is based on an individual approach to the case. This approach is based on the following criteria which developed in the ECtHR's case-law:

- complexity of the case;
- conduct of the parties;
- actions of the court in question and other government authorities involved in the proceedings; and
- importance of the case for the claimant.

These criteria are often incorporated in the national legislation prescribing legal remedies for the excessive length of proceedings, either by the relevant laws referring to the same criteria as the case is in Serbia[27] or even through direct reference to the ECtHR's jurisprudence, as the case is in Montenegro.[28] Set out below is a simplified breakdown of the criteria, with selected illustrations from the ECtHR's jurisprudence. [29]

The criterion of **complexity** of the case is elaborated in ECtHR case-law, and may refer to facts or legal issues or procedural matters. The **factual complexity** of the case may be attributable to, for instance, the:

- number and nature of charges,[30]
- presence of foreign nationals in the case,[31]
- highly sensitive nature of the case,[32]
- advanced age and health condition of the accused,[33]
- complexity of the examinations[34] etc.

The **legal** complexity of the case can be caused, for instance, by:

- the structure and content of certain categories of crimes, the need to interpret an international agreement:or to
- the need to apply an unclear statute; or[35]
- questions of jurisdiction[36] etc .

Procedural complexity can also be due to:

- the number of parties in a case (and also of defendants and witnesses);[37]
- obtaining materials from, from example a foreign court[38] .

It is important to note that this does not mean that the court does not need to take all possible measures to avoid periods of inaction or delays, for which the state can be subsequently responsible.[39]

Only **delays attributable to the State** are regarded as a failure to comply with the requirements of reasonable time. The ECtHR has confirmed that objective limitations in the functioning of the courts such as administrative or organisational difficulties,[40] insufficient funds, excessively heavy workloads of the courts that are of both a temporary and, moreover, structural nature,[41] large case backlog, or even

comprehensive justice system reforms[42] cannot be considered as a justification for the excessive length of proceedings.[43]

The ECtHR also examines the **conduct of the parties**, as they may also cause delays in case proceedings, particularly in criminal proceedings, for instance, by frequent requests to postpone a court session due to the absence of lawyers,[44] frequent substitutions of lawyers,[45] an excessive number and inadequate justification of requests to postpone sessions due to health conditions and for other reasons[46] and even the defendant's behaviour in the courtroom.[47] In such cases, it is important also to analyse the actions of the courts, as they must not stay indifferent towards the parties' abuse of procedural rights.

The significance of the **proceeding's outcome** for the applicant, or rather, "**What is at stake for the applicant**", is another important criterion. The criterion was used for the first time in *König v. Germany*,[48] and subsequently led to the emergence of a special category of cases requiring urgent consideration, such as: family disputes,[49] establishment of paternity,[50] civil status and capacity,[51] victims of criminal violence[52] and of police violence,[53] employment and social security[54] and pension disputes,[55] defendants held in custody.[56] Furthermore, particular diligence is necessary in the spheres of restriction of parental authority, adoption,[57] placing and keeping children in public care[58] and in cases involving persons with a reduced life expectancy suffering from incurable diseases.[59]

It is important to note that ECtHR uses a different standard of scrutiny in cases involving a **structural problem** of unreasonable delays in some national systems (Italy, Poland, Serbia). If the problem is structural and persistent, the ECtHR will apply a **lower standard** of proof, not going into detailed scrutiny, especially when the absence of effective domestic remedies against violations had been established in its previous case-law.[60] Those cases fall under the category of so-called "the ECtHR well-established case-law".

1.4 LEVEL OF COMPENSATION

In case of the availability of domestic remedies, courts examining complaints about the length of proceedings do not have to award compensation on the same basis as applicable in the ECtHR. In fact, national legal systems employ different approaches in regulating the levels of compensation, particularly with regards to non-material damage. Some national systems prescribe the range of lump sums that can be awarded for non-material damages, whilst others prescribe the amounts to be awarded for the given period of violation. These sums seem to broadly informed by the amounts that were awarded by the ECtHR for violations of the right to a trial within a reasonable time. Domestic practices, however, are not always fully harmonised with ECtHR's approach. Thus, the applicant will retain victim status if the amount awarded domestically is manifestly unreasonable when compared to the amount that the ECtHR would have awarded for non-pecuniary damage. This is a particularly relevant point to consider, as this means low awards on domestic level can create additional costs on the whole, given that both domestic and ECtHR mechanism are employed. Amounts ranging from 14 to 25% of the ECtHR's award have been considered unacceptable,[61] whilst a smaller amount can be considered adequate if the redress offered also had an accelerating effect on the proceedings.[62] The ECtHR's line of reasoning with regards to Western Balkan countries concerning victim status varies across countries. When it comes to North Macedonia, the ECtHR[63] found that the level of the compensation awarded on non-pecuniary grounds (1050 EUR), approximately 35% of what the Court generally awards for non-pecuniary damage in similar cases against the respondent State was **manifestly inadequate**. When it comes to Serbia, ECtHR found that an 800 EUR award for non-pecuniary compensation could be considered sufficient and appropriate redress for the violation alleged, taking into account the value of the award judged in the context of the standard of living in the Serbia, and the fact that, under the national system, com-

pensation is, in general, awarded and paid more promptly than before the ECtHR.[64] However, it should be noted that the above mentioned amount refers mostly to cases related to the non-enforcement of final judgments adopted against state/socially owned companies. Following a similar line of reasoning, in *Muhović and others v. Bosnia and Herzegovina*[65] and *Ćavar and others v. Bosnia and Herzegovina*,[66] the ECtHR accepted that a **comprehensive solution** aimed at ensuring the enforcement of domestic judgments is acceptable even if the timeframe for the said enforcement amounts to thirteen years and the amounts awarded are low.

An excessive duration of proceedings remains one of the most frequent violations of Article 6(1) . Overall, 18.28% of the violations found by the ECtHR have concerned the length of the proceedings.[67]

Council of Europe member states try to respond to this challenge not only by way of domestic remedies, but also through other systemic measures aimed at reducing backlogs and disposition times. While some countries have managed to reduce their disposition times in civil and commercial cases (Bosnia and Herzegovina, Monaco and Portugal); problems persist in others with regards to e.g. administrative cases, particularly in the first instance (Serbia).

1.5. THE APPROACH UNDERTAKEN IN THE REPORT

The following sections outline the national legislative approaches and jurisprudence with respect to the protection of the right to a trial within reasonable time and its harmonisation with ECtHR jurisprudence. Whilst the national reports follow the same general structure, some differences are determined by the variety of national institutional and legislative setups, and the type, quantity and quality of information that could be collected and processed. They also reflect the various styles of their authors.

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1 Poznić, B., Rakić-Vodinelić, V., *Građansko procesno pravo"*, Pravni fakultet Univerziteta Union u Beogradu i JP Službeni glasnik, Beograd, 2015, p. 175. Historically speaking, the standard of trial within a reasonable time can be traced back to the Magna Carta Libertatum, or rather, the comments on the Magna Carta by Sir Edward Coke, who, in his "Institutes of the Laws of England", described "delay" as a kind of "denial".

2 Passed and proclaimed a Resolution by the UN General Assembly 217 (III) on Dec. 10, 1948.

3 Milošević, M., & Knežević Bojović, A. (2018)., "Trial Within Reasonable Time in EU Acquis and Serbian Law", EU and Comparative Law Issues and Challenges Series (ECLIC), 1, 447–470, https://doi.org/10.25234/eclic/6540.

4 I. Roagna, "The right to trial within reasonable time under Article 6 ECHR – A practical handbook", Council of Europe, 2018, p. 5.

5 Uzelac, A. (2010). Pravo na pravično suđenje u građanskim predmetima: Nova praksa Europskoga suda za ljudska prava i njen utjecaj na hrvatsko pravo i praksu. Zbornik Pravnog fakulteta u Zagrebu, 60 (1), 101–148.

6 Rotfeld D., Welcome Speeches, The improvement of domestic remedies with particular emphasis on cases of unreasonable length of proceedings, Workshop held at the initiative of the Polish Chairmanship of the Council of Europe's Committee of Ministers, Directorate General of Human Rights, Council of Europe, 2006, p. 5, http://echr.coe.int/Documents/Pub_coe_Domestics_remedies_2006_ENG.pdf. Accessed on 29 January 2017.

7 Zimmermann and Steiner v. Switzerland, Application No. 8737/79, judgment of 13 July 1983.

8 Kudla v. Poland, Application No 30210/96.

9 Harris D. J., O'Boyle M., Bates E., Buckley C., Harris, O'Boyle, and Warbrick Law of the European Convention on Human Rights, Oxford University Press, 3rd Edition, p. 777.

10 Proceedings. European Ministerial Conference on Human Rights and Commemorative Ceremony of the 50th Anniversary of the European Convention on Human Rights, Rome, 3–4 November 2000, Strasbourg: Council of Europe Publishing, 2002, p. 39.

11 Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session, available at: https://rm.coe.int/16805dd18e.

12 See item III of the Recommendation and paragraphs 20–24 of the Appendix to the Recommendation. Some countries have adopted separate statutes to introduce a judicial remedy addressing the unreasonable length

of proceedings. Italy, which was infamous for a high number of applications before the ECtHR and ECtHR judgments in which violations of Article 6 were established, adopted the so-called Pinto Act, No 89, 24 March 2001, as the first special national act regarding the protection of the right to a trial within a reasonable time. In its initiall version, had limited results and was thus perceived by legal scholars as an expensive placebo (see: Carnevali D. "La violazione della ragionevole durata del processo: alcuni dati sull'applicazione della 'legge Pinto'", C. Guarnieri e F. Zannotti (eds), Giusto processo?, Milano, Giuffré pp. 289–314). The Pinto Act was subsequently amended. The Czech Republic adopted Act No. 192/2003 in response to the Hartman judgment (*Hartman v. The Czech Republic*, Application no. 53341/99); The ECtHR conducted an examination of *in abstracto* conformity of this remedy with the Convention, and found it was ineffective, because the request only constituted an extension of the ordinary appeal, which give rise to additional legislative interventions. Slovenia, Germany, Cyprus, and other countries followed suit by adopting specific remedies for excessive duration of proceedings.

13 M. Filatova, "Reasonable time of proceedings: Compilation of Case-law of the European Court of Human Rights", Council of Europe, 2021, p. 13.

14 *König v. the Federal Republic of Germany* Application No. 6232/73.

15 *Ferrazzini v. Italy* Application No. 44759/98.

16 *Maaouia v. France* Application No. 39652/98.

17 *Pierre-Bloch v. France* Application No. 24194/94)

18 *Pellegrin v. France* Application No. 28541/95, *Vilko Eskelinen and others v. Finland* Application No. 63235/00.

19 *Engel and others v. the Netherlands* Nos. 5100/71 et al.

20 *Salabiaku v. France* Application No. 10519/83.

21 *Ozturk v. Germany* Application No. 8544/79.

22 *Bendenoun v. France*, Application No. 12547/86, *A.P., M.P. and T.P. v. Switzerland* Application No. 19958/92.

23 I. Roagna, p. 9.

24 *Hornsby v. Greece* Application No. 18357/91.

25 M. Filatova, p. 9.

26 Uzelac, op.cit.p.112.

27 See Article 4 of the Serbian Law on Protection of the Right to Trial within Reasonable Time.

28 See Article 2 of the Montenegrin Law on Protection of the Right to Trial within Reasonable Time.

29 A detailed account of these criteria and reference to relevant caselaw can be found in M. Filatova, 2021.

30 *Arap Yalgin and others v. Turkey* Application No. 33370/96.

31 *Petr Korolev v. Russia* Application No. 38112/04.

32 *Dobbertin v. France* Application No. 13089/87.

33 *Konashevskaya and Others v. Russia* Application No. 3009/07.

34 *Scopelliti v. Italy* Application No. 15511/89.

35 *Pretto and others v. Italy* Application No. 7984/77.

36 *De Moor v. Belgium* Application No. 16997/90.

37 *H. v. the United Kingdom*, Application No. 9580/81, *Manieri v Italy* Application No. 12053/86, *Bejer v. Poland* Application No. 38328/97, *Milasi v. Italy* Application No. 10527/83.

38 *Manzoni v. Italy* Application No. 11804/85.

39 M. Filatova, p. 33

40 *Komracheva v. Russia* Application No. 53084/99.

41 *Muti v. Italy* Application No. 14146/88.

42 *Bara and Cola v. Albania*, Applications Nos. 43391/18 and 17766/19,.

43 *See Zimmermann and Steiner v Switzerland* Application No. 8737/79, *Guincho v Portugal* Application No. 8990/80. ECtHR, however, took a different position in *Buchholz v Germany*, Application No. 7759/77.

44 *Sergey Denisov and Others v. Russia*, Nos. 1985/05 et al.

45 *Klamecki v. Poland* Application No. 25415/94.

46 *Lazariu v. Romania* Application No. 31973/03.

47 *Sergey Denisov and Others v. Russia*

48 *Konig v Germany* Application No. 6232/73.

49 *Bock v. the Federal Republic of Germany* Application No. 11118/84, *Voleský v. the Czech Republic* Application No. 63627/00, *Laino v. Italy* Application No. 33158/96.

50 *Mikulic v. Croatia* Application No. 53176/99, *Ebru and Tayfun Engin Colak v. Turkey* Application No. 60176/00.

51 *Taiuti v. Italy* Application No. 12238/86, *Maciariello v. Italy* Application No. 12284/86.

52 *Caloc v. France* Application No. 33951/96.

53 *Krastanov v. Bulgaria*.

54 *Doustaly v. France* Application No. 26256/95, *Zawadzki v. Poland* Application No. 34158/96, *Caleffi v. Italy* Application No. 11890/85.

55 *Nibbio v. Italy* Application No. 12854/87.

56 E.g. *Abdoella v. the Netherlands* Application No. 12728/87, *Kalashnikov v. Russia* Application No. 47095/99, §132, *Portington v. Greece* Application No. 28523/95, *Sari v. Turkey and Denmark* Application No. 21889/93.

57 *Paulsen-Medalen and Svensson v. Sweden* Application No. 16817/90.

58 E.g. *Schaal v. Luxembourg* Application No. 51773/99, *E.O. and V.P. v. Slovakia* Applications No. 56193/00 and 57581/00.

59 E.g. *Matrena Polupanova v. Russia* Application No. 21447/04, *Angelova v. Russia* Application No. 33820/04, *X v. France* Application No. 18020/91, *A. and others v. Denmark* Application No. 20826/92.

60 M. Filatova, p. 30. With regards to Serbia see in particular *Kačapor and Others v. Serbia* Application No. 2296/06 and subsequent cases. Also see: V. Deloski, V. Rodić "Needs Assessment on the Execution of the Judgments of the European Court Of Human Rights in Relation to Serbia", Council of Europe, 2022, available at: https://rm.coe.int/needs-assessment-execcution-of-ecthr-judgments-in-respect-to-serbia/1680a04f05, accessed on 24.5.2022.

61 *Cocchiarella v. Italy* Application no. 64886/01 and *Musci v. Italy.* Application no. 64699/01

62 *Scordino v. Italy*, Application No. 29 March 2006.

63 *Petrović v. Macedonia* Applicaiton No.30721/15.

64 *Stanković v Serbia* Application No. 41285/19.

65 *Muhović and others v. Bosnia and Herzegovina* Application No. 40841/13

66 *Ćavar and others v. Bosnia and Herzegovina*, Applications No. 12371/21 and 18563/21.

67 ECHR Overview 1959–2021, Council of Europe, 2022, available at: https://www.echr.coe.int/Documents/Overview_19592021_ENG.pdf

ALBANIA[2]

1. RELEVANT LEGAL FRAMEWORK DETERMINING THE LENGTH OF PROCEEDINGS REMEDY

The right to a fair trial is guaranteed by Article 42 of the Constitution of the Republic of Albania[1], which provides that everyone has the right to a fair trial within a reasonable time in order to protect his or her constitutional and legal rights. This norm should be read in conjunction with Article 17 of the Constitution, which states that the rights and freedoms guaranteed by the Constitution can only be limited in exceptional cases, proportionate and that such limitations may in no event exceed the limitations provided in the ECHR.

In the judgments in the cases of *Marini v. Albania*[2] and *Gjonbocari and Others v. Albania*,[3] the ECtHR noted that there was no effective remedy in respect of the length of pending or terminated proceedings at the material time. In addition, in the pilot judgment *Luli and Others v. Albania*[4] (at paragraph 115),the ECtHR, noted that the growing number of applications in this context was not only an aggravating factor as regards the State's responsibility under the Convention, but also represent a threat to the future effectiveness of the system put in place by the Convention, since the legal deficiency identified in the applicants' particular cases may subsequently give rise to other numerous well-founded applications. It considered that the issue of prolonged domestic proceedings constitutes a systemic deficiency and under Article 46 of the Convention considered that general measures at the national level were necessary including, in particular, introducing a domestic remedy as regards the undue length of proceedings. The ECtHR reiterated its principles derived from the case-law as regards the effectiveness of remedies for lengthy proceedings and referred to the Resolution (Res (2004)3) and Recommendation (Rec(2004)6) of the Committee of Ministers of the Council of Europe both adopted on 12 May 2004.

In *Gjyli v. Albania*[5], theECtHR analysed the role of the Constitutional Court as regards remedying lengthy proceedings before the adoption of the amendments of two laws described below. The ECtHR held that its decisions were declaratory and did not offer any redress and in particular, that the Constitutional Court did not make any awards of pecuniary and/or non-pecuniary damages, nor could it offer a clear perspective to prevent the alleged violation or its continuation. Similarly, in *Luli and others,* it held that the Constitutional Court did not make any awards of non-pecuniary damages for the delay experienced by the appellant, nor could it offer a clear prospect of expediting the impending proceedings.

Reflecting on the relevant jurisprudence, Albania adopted amendments of Law 99/2016 On the organisation and functioning of Constitutional Court on 'reasonable time' and length of proceedings – and Law 38/2017 On Amendments of the Civil Procedure Code addressing the issue of 'reasonable time' – which entered into force on 5 November 2017. The amendments provide a combination of acceleratory and compensatory remedies for ordinary court proceedings. They give applicants at a domestic level, a personal right to compel the State to take action.

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Moreover, the Law on the organization and functioning of the Constitutional Court permits applications for the review of requests for the excessive length of the proceedings before the Constitutional Court. This remedy is available to a party to proceedings before the Constitutional Court or a party to a trial suspended, as a result of an incidental consideration or review of the constitutionality of a law initiated by other entities. If it is found that the rights and freedoms of the applicant provided by the Constitution have been violated by the excessive length of the proceedings, the applicant can request fair compensation from the Constitutional Court. The application may be lodged after one year has elapsed since the start of the examination of the case .

2. JURISDICTION *RATIONE MATERIAE* AND AVAILABLE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

According to the court instances, as defined in Chapter X of the Code of Civil Procedure,[6] the jurisdiction of the courts also includes the review of requests for fair compensation of a person who has suffered material or non-pecuniary damage, due to the unreasonable duration of a case, as defined in Article 6(1) of the ECHR.

This chapter of the Code of Civil Procedure regulates the assessment of the reasonable duration of the proceedings, as well as the fair compensation, when an excessive duration is found in the investigation procedures, trial of cases, as well as in the execution of of judgments.

The reasonable duration for the completing the investigation, trial or enforcement of a final judgment is considered to be:

a) in administrative proceedings in the first and second instance, the completion of the trial within one year from its beginning in each instance;

b) two years for the completion of the trial in the first instance, on appeal and for civil litigation in the High Court;

c) in the procedure of execution of a civil or administrative decision, with the exception of periodic obligations or determined in time, one year, starting from the date on which the request for execution was submitted;

d) in the investigation of criminal offenses, the maximum duration of the investigation, according to the Code of Criminal Procedure;

e) in the criminal trial at first instance, the term for the trial for crimes is two years and one year for minor offences; on appeal the trial for crimes is to be completed within one year and for minor offenses within six months and before the High Court the trail for crimes is to completed within a period of one year that is within six months for offenses.

The parties to the proceeding may request the ascertainment of the excessive length of the proceedings even if the deadlines cited above did not expire, given the complexity of the case, the subject-matter of the dispute, the proceeding or the trial, the behaviour of the body conducting the proceedings, and of other persons related to the case, In the above duration of the trial or proceedings, the time-period when the case has been suspended for legal reasons, when it has been postponed due to the requests of the requesting party or when circumstances cause objective impossibility to further proceed, such time will not be counted towards the length of the trial or proceedings.

The law governing the organization and functioning of the Constitutional Court envisages applications for the review of requests for undue extension of proceedings before the Constitutional Court. This

remedy is available to a party to proceedings before the Constitutional Court or a party to a trial suspended as a result of an incidental consideration or review of the constitutionality of a law initiated by other entities. The application may be lodged one year from the beginning of the examination of the case at the earliest. If it is found that the rights and freedoms of the applicant provided by the Constitution have been violated by the extension of the proceedings, the applicant can request fair remuneration from the Constitutional Court.

3. ADMISSIBILITY TEST (LEGAL STANDING OF THE CLAIMANT; FULFILMENT OF THE DEADLINE TO CLAIM THE RIGHT AFTER THE JUDGMENT BECAME FINAL AND ENFORCEABLE; MERITS ASSESSMENT AND FREQUENT REASONS FOR ACCEPTING AND REJECTING CLAIMS)

The application to establish a violation and expedite proceedings must be lodged with the competent court, according to the type of dispute; criminal, civil or administrative:

- if the alleged violation concerns proceedings before a first-instance court, the request will be examined by the competent court of appeal;
- in cases when the matter in which the alleged violation is being adjudicated before the courts of appeal, the request is reviewed by the relevant panel of the High Court;
- in cases where the matter in which the alleged violation is being adjudicated before the High Court, the request is reviewed by another panel of the High Court;
- if the alleged violation concerns the enforcement procedure, the request will be reviewed by the court of first instance, competent for enforcement.

The request must indicate:

a) the name of the parties, the body alleged to have committed the violation, the object of the dispute or the execution;

b) a summary of the facts of the case;

c) the reasons why there is a violation of the reasonable time requirement and the need to expedite the proceedings;

d) the measures required to be taken.

The request must be accompanied by the documents supporting the claim that reasonable time was exceeded and interim decisions, evidence of enforcement practice and, as the case may be, the power of attorney, if the request was made by the lawyer or the complainant's representative. The filing and review of the request does not suspend the adjudication of the case on the merits, or the enforcement proceedings.

In adjudicating the claim, the courts will apply common rules of civil procedure. The court that examines the case makes a decision within 45 days from the submission of the request. Within 15 days from the submission of the request, the body that is alleged to have committed the violation, sends a copy of the file and a written opinion to the court that reviews the request.

If, during the examination of the request the body that is carrying out the actions, takes the steps required by the party, within 30 days starting on the date of lodging the request, the examination of the request will cease. If the request is rejected, it cannot be filed again on the basis of the same facts.

After reviewing the request, the court decides to accept the request, ascertain the violation and order for necessary actions to be taken within the prescribed procedural deadlines of certain procedural actions. The court may also reject the request. The decision is final and enforceable.

In determining the violation, the court assesses the complexity of the case, the subject-matter of the dispute, the course of proceedings or the trial, the conduct of the parties and the trial panel during the trial, or the bailiff, as well as any other person related to the case. The Civil Procedure Code, however, does not specify when or reasons for which the court can reject the claim.

When there is a final decision establishing the violation and expediting the proceedings, the requesting entity may file a lawsuit for damages. The claim for compensation for damage is addressed to the civil court of the first instance where the body against which the violation has been ascertained has its registered office. The lawsuit is statute-barred within six months from the finding of the violation with a final decision.

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING A VIOLATION ON THE LENGTH OF PROCEEDINGS

According to the Code of Civil Procedure, the just satisfaction for the violation of the right to trial within a reasonable time is the recognition of the violation, any measure taken to expedite the procedures of investigation, trial of the case and execution of the decision, and/or a decision to award compensation .

Every party to the proceedings is entitled to fair compensation, except prosecutors.

The claim is addressed to the civil court of the first instance, according to the general rules, only after the procedure for ascertaining the violation and accelerating the proceedings has been exhausted and the court decision has not been executed by the body that committed the violation.

The instructions and conclusions of the highest court, given during the review of the request, are binding on the court that examines the case on the merits or the body that is carrying out the execution of the final court decision.

The final decision of the competent court is forwarded to the High Inspector of Justice, to assess whether the delays caused by the judges, according to this chapter, constitute a disciplinary violation.

5. COMPENSATION AWARDED FOR UNREASONABLE LENGTH OF PROCEEDINGS

After reviewing the claim, the court can award compensation for non-material damage in the amount from 50 000 ALL (400 EUR) to 100 000 ALL (800 EUR) for each year, or month in relation to the year, beyond the reasonable deadline.

The amount is awarded taking into account:

a) the complexity of the proceedings in which the violation was verified;

b) the conduct of the trial panel or the bailiff and the parties;

c) the nature of the interests in question;

d) the value and importance of the case in relation to the object of the dispute or execution, assessed also in relation to the personal conditions of the parties.

The amount of compensation for damage may not exceed the value of the object of the lawsuit or execution.

In every lawsuit filed before the Constitutional Court assesses the nature of the procedure and the case, as well as the circumstances that have influenced the decision-making process of the Constitutional Court. It decides on the amount of compensation, referring to the consequences for the applicant due to the extension of the proceedings before it.[7]

If the Constitutional Court concludes that the trial has been extended beyond a reasonable time, then it will compensate the applicant up to the amount of 100,000 ALL [euro 800] for each year of delay.

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING LENGTH OF PROCEEDINGS

The ECtHR has recently issued the decision *Bara and Kola v. Albania*[8] on the issue of the duration of court proceedings before the High Court, where the first applicant also claimed that the new reasonable time remedy introduced in the Albanian legal system is not effective. The case is pivotal as it addresses one of the key issues faced by the Albanian judiciary, namely the effects of far-reaching judicial reforms and the vetting process. Albania has undergone judicial reform in recent years, including, after the 2016 constitutional changes, the make-up of the High Court, re– organization of the judiciary, vetting of judges etc . Sometimes this has led to courts, including the High Court, having to operate with a reduced number of judges. The High Court has even found itself without a quorum and with a recorded backlog of over 36 000 cases in early 2021.

In *Bara and Kola v. Albania*, the first case concerned the length of administrative proceedings challenging the fairness of elections to the position of a public university rector and the second case concerned the length of criminal proceedings. The ECtHR joined the cases given their similar subject, namely the allegedly excessive duration of court proceedings attributable to the comprehensive judicial reform.

Concerning the applicant Bara, the Government accepted that the proceedings before the High Court had not complied with the "reasonable time" requirement in the Convention, arguing that the delay had been justifiably due to judicial reforms in Albania at the time. The ECtHR noted that the proceedings had started on 23 April 2016 and were still pending, thus, lasting over five years at three levels of jurisdiction. The ECtHR held that the applicant's cassation appeal had not been dealt with sufficiently quickly and that the effects of judicial reforms did not absolve the State in this case of their obligation to ensure a trial within a reasonable time.

Concerning the applicant Kola, the Government argued that the on 23 March 2017 there was a final decision in the applicant's criminal case, meaning the length of proceedings had been within the norms. They also pointed to the judicial reforms in Albania, which may have led to delays in proceedings before the High Court. The ECtHR, however, held that the proceedings at issue had not ended in 2017, but that they were in fact on going. The ECtHR ruled that judicial reforms did not absolve the State of their obligation to ensure a trial within a reasonable time. That was particularly so given the seriousness of the criminal charge against the applicant. and its impact on his rights, despite the understandable impact of far-reaching judicial reforms. The ECtHR, thus, took once again a firm position *vis-à-vis* the obligation of the state to ensure a timely processing of cases.

Concerning the claim that the relevant domestic remedy was not effective within the meaning of Article 13 ECHR, the ECtHR found that the new remedy in Civil Procedure Code was in principle compatible with Article 13 and had, therefore, to be exhausted before bringing similar complaints to ECtHR. It also found that in that specific case, there had been a breach of the applicant's rights under Article 13.

It is interesting to note that in its admissibility decisions nos. 269 and 270 of 7 December 2017 and no. 49 of 22 February 2018, the Constitutional Court, having regard to the new remedy introduced by virtue of Articles 399/1 et seq. of the CCP, which the complainants had failed to exhaust in respect of the length of non-enforcement and finished proceedings, declined to examine the complainants' constitutional appeals in that regard.

6.1. Jurisprudence of the Supreme Court and lower courts

In decision no. 1 of 24 January 2018, the Supreme Court's administrative panel accepted the claimant's request and found a breach of the "reasonable time" requirement by the appellate court. It ordered the Administrative Court of Appeal to continue the proceedings in accordance with the procedural rules provided for in the CCP.

In decision no. 5 of 17 April 2018, the Supreme Court's administrative panel discontinued the proceedings before it (in accordance with Article 399/7 § 3 of the CCP on the grounds that the Administrative Court of Appeal before which the proceedings were pending had decided to examine the claimant's appeal at a public hearing on 12 April 2018.

In decision no. 4/8 of 31 January 2019, the Supreme Court's administrative panel accepted the claimant's request and found a breach of the "reasonable time" requirement by the appellate court. It ordered the Administrative Court of Appeal to schedule the examination of the claimant's case as soon as practicable.

In decision no. 9 of 28 February 2019, the Supreme Court's administrative panel discontinued the proceedings before it in accordance with Article 399/7 § 3 of the CCP on the grounds that the appellate court before which the proceedings were pending had already taken a decision in the claimant's case.

As regards a claim for compensation filed under Article 399/6 § 3 of the CCP, in decision no. 6853 of 27 July 2018, the Tirana District Court, recognising that a Constitutional Court decision had acknowledged a fourteen-year delay in the enforcement proceedings, partly allowed the claim for compensation and awarded the claimant ALL 700,000 (approximately EUR 5,700) for the delay. In examining the claim, the court held that, even though it had been lodged prior to the entry into force of the new remedy, it would refer, by analogy, to the statutory provisions relating to the new remedy in determining the amount of compensation. The court dismissed the claim for late payment interest on the outstanding debt and stated that the decision was amenable to appeal.

In decision no. 11–2019–4385 of 25 July 2019, the Durrës District Court, recognising that a prior court decision had acknowledged a delay in the proceedings at one level of jurisdiction (the district prosecutor's office), allowed the claim for compensation and awarded the claimant ALL 100,000 (approximately EUR 800) for the delay.

In decision no. 8016 of 25 November 2019, the Tirana District Court, recognising that a Supreme Court decision had acknowledged a fifteen-month delay in the proceedings at one level of jurisdiction (the Administrative Court of Appeal), allowed the claim for compensation and awarded the claimant ALL 180,000 (approximately EUR 1,400) for the delay.

Despite some specific standings taken by the court, as indicated above, it transpired that the High Court has generally maintained its position – for example in decision no. 14, dated 17 March 2022 – reasoning that the delays in adjudication are attributable to the comprehensive justice reform, which entailed a dismissal or suspension of a number of judges. The High Court acknowledge that this process has created costs for citizens in extending the timelines for adjudication of cases, but found that these diffi-

culties are proportionate to the general benefits of the reform process. The High Court further invoked the objective impossibility of the court in question in this case due to a shortage of staff and extensive backlog, (the Administrative Court of Appeal) to resolve the case expeditiously, stressing that there was no negligence on the part of the relevant court.

Such a standpoint of the High Court does not seem to have respected the decision of the Constitutional Court Decision no. 2 dated 17 February 2022. The decision also concerned the excessive times of adjudication before the Administrative Court of Appeal. The Constitutional Court recognized the high workload and insufficient number of judges. Nevertheless, it still considered that that the behaviour of state authorities, in particular those which adopt laws and policies of the justice system, has not been at the appropriate level of efficiency, causing the applicant unreasonable delay in the trial of its issue.

The Constitutional Court emphasizes that the trial beyond a reasonable time, based only on the fact that the state has failed to take effective measures, that the effects of the implementation of justice reform are temporary and that the courts are not staffed and organized in a timely manner and according to constitutional standards, cannot justify the violation of the constitutional rights of individuals. Moreover, the overload in the courts is a well-known and protracted situation, which does not depend on the applicant, but only on those responsible for the administration of the justice system, whose task is to establish an efficient and well-equipped judicial system. The state has the obligation to best respond to the requirements of the rule of law, including the conclusion of court proceedings in accordance with the standards imposed by the right to due process.

Nevertheless, given the continuing high workload of court cases in the Administrative Court of Appeal, it seems that despite the firm positions taken by the Albanian Constitutional Court and the ECtHR it is likely that a violation of the right to a trial within a reasonable time is likely to persist .

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

As indicated above, Albania is still dealing with the effects of its comprehensive judicial reform, reflected in the high workload dealt with a reduced number of judges at all levels. According to the annual report of the High Judicial Council[9] during 2021, the judicial system has faced an increase in workload, where the number of cases registered in 2021 is about 21.8% higher than in 2020. Most of the courts have functioned with a reduced capacity of judges, below 70%, whilst at the national level, only 62.4% of the staff of judges have been effectively in office during 2021. The workload in the courts has been carried out by only 224 judges or 7.91 judges per 100.00 inhabitants. This ratio is less than 40% of the European rate.

The High Court has started 2021 with a total of 36,288 cases pending trial. This volume is largely inherited from previous years as the backlog (stock of pending cases) marks an increase of 1,768 cases which means only 5% higher than the 2020 backlog.

The judicial system in the country operates with six appellate courts with general jurisdiction. During 2021 in six courts of appeal of general jurisdiction only 29 judges out of 78 defined in the staff have effectively exercised their duties.

For the courts of appeal of general jurisdiction, the backlog of 2021 has increased by 24%, marking 22,702 cases across the appeal. • The Tirana Court of Appeals contributed mainly to the increase of the backlog with 13,873 cases (61% of the total backlog) and Vlora with 3,436 cases (15% of the total

backlog). • During the reporting year, 17,162 new cases were registered (3,359 cases more than in 2020) which are mainly in Tirana (38% of cases) and Vlora (21%). • The average workload per judge (WR indicator) has increased throughout the group of courts, while the increase of workload in Tirana with 2 572.7 cases per judge (142% higher than in 2020) is considered problematic.

For the Administrative Court of Appeal – the only court in Albania – according to the Annual Report of the High Judicial Council, for the total review of the backlog of 18 415 cases (backlog at the end of 2021), with the efficiency rate of 2021 (128 cases) the tendency is that it would take 11 years of work with a full staff (13 judges) dedicated only to the elimination of the backlog, which dictates the need for interventions in the legal framework or other interventions of an organizational nature such as reviewing the number of judges in the staff, in order to reduce the workload of this court.

In its framework programme[10], the CEPEJ observed that "*mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational procedures, and provide compensation only a posteriori in the event of a proven violation instead of trying to find a solution to the problem of delays*." This holds true for Albania in view of the fact that the amendments do not deal with the sources of the systemic deficiency. In Recommendation CM/Rec(2010)3 it is recommended that the states recognize that when an underlying systemic problem is causing an excessive length of proceedings, measures are required to address this problem, as well as its effects in individual cases. Simply indicating deadlines for courts to conduct their proceedings will not be sufficient given the realities on the ground.

The lack of human resources (judges, court staff) and case backlog in the courts are identified as systemic problems in the Albanian judiciary, which have an adverse impact on the length of court proceedings. This is more evident during the last five years due to the implementation of a profound judicial reform coupled with carrying out a transitory evaluation of judges and prosecutors. This has seriously affected the number of judges in the country as well as increased the court backlog. Albania has adopted the necessary legislative provisions to protect the right to a fair trial within a reasonable time. However, such provisions will affect significantly the work of judges and court staff. This will place an additional burden on the already overburdened courts. It seems that the deadlines noted in the legislation will hardly be attainable given the average length of proceedings currently**.** Such issues cannot be overcome by budget increases and new posts alone, or by the reorganization of the judiciary (judicial map).

7.2. Recommendations

1. **Increased number of judges and court staff is needed where a significant backlog and a high number of cases per judge is identified.**

   The reduced number of judges and court staff in Albania, due to the vetting process has had a negative impact on the length of proceedings. To mitigate the consequences in July 2022, the Council of Ministers[11] adopted the new judicial map of Albania.[12]

   The reorganization of judiciary is intended to increase the efficiency of the judiciary and shorten the time of adjudication of cases before the courts and reduce the backlog, especially in the courts of appeal. The "judicial map" will be fully implemented on 1 July 2023. However, the new judicial map may bring up a few concerns toward the access to the judiciary for the individuals.

2. **Track statistics on the instructions for expedition of proceedings and its compliance rate.** In principle, each court/judge keeps their own statistics including backlog and duration of pending cases (cases which have a certain duration or are beyond the indicative reasonable deadline). However, if the country does not have a modern and comprehensive case management

system it will be very difficult to keep track of the statistics in terms of length of proceedings. This is particularly challenging in Albania where the CSM system is of an old generation and it does not ensure the generation of accurate and reliable data. Therefore, efforts to ensure a new CMS capable to withdraw the relevant data will be needed beforehand.

3. **It is observed that the legislation under review as it stands, is in general compliant with European standards on the right to a trial within a reasonable time with room for improvement in some aspects.** At the same time, it has to be acknowledged that currently, the analysis is mainly theoretical as the provisions are often yet to be applied in practice. In Albania, the implementation of laws in general is a serious problem and it can be assumed that this might be the case with the legislation under review. The judicial system needs to have sufficient resources to cope with its regular workload in due time and the resources have to be distributed according to the needs and must be used efficiently.
4. **Judges can be subject to disciplinary proceedings for the ineffective management of proceedings.** However, this carries the risk of affecting the independence of judges and should be done by structured procedures and objective criteria, which must not be reduced to quantitative indicators, as noted by CEPEJ. The Republic of North Macedonia was criticised by GRECO for relying exclusively on elements of productivity, even among the so-called "qualitative" criteria of the evaluation of judges in its system of appraisal.[13] Therefore, this kind of measures must be introduced and applied with due regard to the independence of judges independence.
5. The new laws cannot be effectively implemented without adequate training. It would be advisable to provide **more in-depth and systematic training** on the application of the amendments to judges, court staff and lawyers. particularly those who are or will be in responsible for dealing with the length of proceedings in cases.

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1 Adopted by Law no. 8417, dated 21.10.1998; Amended by Law no. 9675, dated 13.01.2007; Amended by Law no. 9904, dated 21.04.2008; Amended by Law no. 88/2012, dated 18.09.2012; Amended by Law no. 137/2015 dated 17.12.2015; Amended by Law no. 76/2016, dated 22.07.2016; Amended by Law no. 115/2020, dated 30.07.2020.

2 No. 3738/02, §§ 147–158.

3 No. 10508/02.

4 Nos. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09.

5 No. 32907/07, paragraph 58

6 Adopted by Law no. 8116, dated 29.03.1996;Amended by Law no. 8431, dated 14.12.1998; Amended by Law no. 8491, dated 27.05.1999;Amended by Law no. 8335, dated 18.10.1999; Amended by Law no. 8812 dated 17.05.2001; Amended by Law no. 9953, dated 14.07.2008; Amended by Law no. 10052, dated 29.12.2008; Amended by Law no.122/2013, dated 18.04.2013; Amended as per Constitutional Court decision no. 11, dated 05.04.2013; Amended by Law no. 160/2013, dated 17.10.2013; Amended by Law no. 114/2016, dated 03.11.2016; Amended by Law no. 38/2017, dated 30.03.2017; Amended by Law no. 44/2021, dated 23.3.2021.

7 Article 71/ç of the Law no. 8577, dated 10.2.2000 "On Organization and Functioning of the Constitutional Court of Albania" Article 71 / ç Review of requests for prolongation of the process before the Constitutional Court

(Added by law no. 99/2016, dated 6.10.2016) "Anyone who is a party to a proceeding before the Constitutional Court or a party to a suspended trial as a result of an incidental review or review of the constitutionality of a law initiated by other entities provided for in Article 134 of the Constitution, and claims that the trial was conducted beyond a reasonable time, has the right to seek fair compensation from the Constitutional Court, if it is found that the extension of the proceedings has violated his rights and freedoms provided by the Constitution.

In any case, regardless of the consequences, the applicant may not file a claim without having to wait for at least one year to have elapsed from the beginning of the examination of the case

The Constitutional Court, in each case, assesses the nature of the proceedings and the case, as well as the circumstances that have influenced the decision-making process of the Constitutional Court. It decides on the amount of compensation, referring to the consequences for the applicant of the extension of the

If the Constitutional Court concludes that the trial has been extended beyond the deadline, without reasonable cause, then it must compensates the applicant up to the amount of 100,000 ALL for each year of delay.

8 *Bara and Kola v. Albania,* Applications No. 43391/18 and 17766/19.

9 http://klgj.al/raporti-vjetor-klgj-2021/.

10 CEPEJ (2004) 19 Rev paragraph 6)

11 Decision of Council of Ministers no. 495, dated 21.7.2022 "For the reorganization of judicial districts and land powers of the courts".

12 As per the new judicial map, the judicial structure in Albania will be as follows:

1. Courts of first instance of jurisdiction total rearranged to 13 (thirteen) courts of judicial districts;

2. Courts of Appeal are reorganized into one Court of Appeal General Jurisdiction (from 6 courts of appeal).

3. Administrative courts of first instance are reorganized into 2 (two) administrative courts (from 6 administrative courts).

13 Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth evaluation round, Evaluation report "The Former Yugoslav Republic of Macedonia", Greco Eval IV Rep (2013) 4E available at https://rm.coe.int/16806c9ab5.

BOSNIA AND HERZEGOVINA[1]

1. RELEVANT LEGAL FRAMEWORK DETERMINING THE LENGTH OF PROCEEDINGS REMEDY

Until recently, an appeal to the Constitutional Court of Bosnia and Herzegovina ('BiH')represented the only available domestic remedy against the excessive length of proceedings. Pursuant to Article 18, paragraph 2 of Rules of the Constitutional Court, the Constitutional Court may exceptionally examine an appeal, if there is no decision of a competent court and if the appeal concerns a grave violation of the rights and fundamental freedoms safeguarded by the BIH Constitution or by the international documents applied in BiH ."[1] Article II (3)(e) of the Constitution of BiH and Article 6(1) of the ECHR, which is directly applicable in BiH guarantee the right to a fair trial, including the right to a trial within a reasonable time.

With its four court systems for [1. of Bosnia and Herzegovina, 2. of the Federation of Bosnia and Herzegovina (FBIH), 3. theof the Republika Srpska I (RS), and 4. of the Brčko District (BD)], and the four sets of procedural laws (governing criminal, civil and enforcement proceedings), BiH is unlike any other Western Balkan country. **While the relevant procedural laws guarantee the general principles of the right to a fair trial within a reasonable time, the reality is that not each of the four different BiH court systems has a remedy for excessive lengths of proceedings.**

More specifically:

- In 2020, **Republika Srpska** adopted a Law on the Protection of the Right to a trial within a Reasonable Time ("RS Law"),[2] which entered into force on 1 January 2021.
- In February 2021, the Assembly of **Brčko District** adopted its Law on the Protection of the Right to Trial within a Reasonable Time ("BD Law"), which entered into force on 6 March 2021.[3]
- In February 2021, the **Federation of Bosnia and Herzegovina** House of Representatives adopted Proposal of the Law on the Protection of the Right to a Trial Within a Reasonable Time. However, the House of Peoples of the FBH did not accept this Proposal.[4] On 4 March 2021, the Council of Ministers adopted the Draft Law on the Protection of the Right to a Trial within a Reasonable Time before the Court of BiH,[5] but the Parliamentary Assembly has not yet adopted the Draft law

Consequently, the only available domestic remedy for the excessive length of proceedings in **Bosnia and Herzegovina** and FBiH is the appeal to the Constitutional Court. [6]

2. JURISDICTION AND AVAILABLE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME (*RATIONE MATERIAE*)

With the above structure in mind, the available remedies need to be analysed in all four court systems.

1 Dženana Hadžiomerović, Attorney at Law

2.1. Protection of the right to a trial within a reasonable time in the Republika Srpska

Article 1 of the RS Law guarantees the right to a trial within a reasonable time, as well as the right to the just satisfaction for a violation of this right, which is ensured by court proceedings. This right belongs to anyone who considers that their civil claim or criminal charge has not been decided within a reasonable time. To that end, the injured party in criminal proceedings and property claimants in such proceedings are also entitled to challenge the unreasonable length of the proceedings.

Crucially, the RS Law provides that a violation of the right to a trial within a reasonable time should be determined in accordance with the case law of the ECtHR (Article 2 of the RS Law). The RS Law provides two types of remedies: (1) an application to expedite proceedings (application), and (2) a petition to establish a violation of the right to trial within a reasonable time and to seek just satisfaction for the violation (petition). The application is a preventive remedy, and is decided on in single-party proceedings, conducted pursuant to the rules of the Law on non-contentious proceedings.

The application must include personal information about the name and address of the applicant the case number and the circumstances of the case.[7] The application is decided by the Court President (or his/her deputy). Within 15 days of receiving the application, the President will request the responsible judge to submit a report on the length of the proceedings together with an opinion on the time frame in which the case can be decided on.[8] This report is to be submitted within eight days at the latest. Following the receipt of the report, the President of the Court decides on the application, within 60 days from its receipt[9], at which time he/she may:

- reject the application if it does not meet the formal conditions;
- refuse the application, if it is found to be unsubstantiated
- if the case is found to be unreasonably delayed, adopt a decision obliging the responsible judge to take measures in order to accelerate the proceedings, within three months.

The applicant has right to appeal this decision to the President of the immediately higher court, or, in the case of the Supreme Court of the RS, to a panel of three judges. The appeal is decided on within a 30-day time limit.

The Law also envisages the possibility of filing a new application, after six months from the date of the rejection of the initial application.[10]

The Supreme Court of the RS has the jurisdiction to decide on the petition to establish a violation of the right to a trial within a reasonable time and to seek just satisfaction, which can only be submitted by a petitioner who has previously submitted an application to the competent court.

The RS Law defines the following four types of just satisfaction for a violation of the right to a trial within reasonable time:

1. A Declaration of a violation of the right to a trial within a reasonable time;
2. A Declaration of violation of the right to a trial within a reasonable time and an award of monetary compensation;
3. A Declaration of a violation of the right to a trial within a reasonable time, an award of monetary compensation and the publication of the judgment confirming the violation;
4. A Declaration of a violation of the right to a trial within a reasonable time and the publication of the judgment confirming the violation.[11]

Article 34 the RS Law provides that a person who submitted an appeal to the Constitutional Court cannot submit the application for the acceleration of the proceedings according to that law.

2.2. Protection of the right to a trial within a reasonable time in Brčko District

Article 4.1. of the BD Law states that *"a party that considers that the competent court has not decided of their right, obligation or criminal charge within a reasonable time has the right to protect this right and use the available remedies in accordance with this law."* Administrative bodies and other holders of public authority are specifically excluded from the protection granted by this Law. Article 5.1 of the BD Law also recognises the following two remedies: (1) a request for protection of the right to a trial within a reasonable time, and (2) a request for the payment of monetary compensation for a violation of the right to a trial within a reasonable time. The President of the Court is responsible to decide on both requests within 60days

Article 6 of the BD Law states that the criteria for assessing the length of the proceedings are defined by directly referring to the standards of the Constitutional Court and the ECtHR. Furthermore, according to the BD Law, the President of the Court is obliged to decide on the first request, that is, the request for protection of the right to a trial within a reasonable time.

If the President of the Court finds that the request is substantiated, they will issue a decision by ordering the responsible judge to take the necessary measures to resolve the case at hand within six months.[12] The President may also reject the request.

The applicant can lodge an appeal against the President's decision in the event of a rejection and also in the event that the President has not decided on the request within 60 days. Furthermore, the party whose request was rejected or refused, or whose appeal was rejected has the right to submit a new request within six months from the date of receipt of a (valid) decision.

The request for monetary compensation can be submitted if the Court fails to not take any measures based on a prior request for protection, or if the request is not decided on.

2.3. Protection of the right to a trial within a reasonable time in the FBIH

According to the BIH Draft Law, every party in court proceedings, (i.e., a party or intervener in civil proceedings, a party and an interested person in an administrative dispute, as well as suspects, the accused and injured parties in criminal proceedings) has the right to protection of the right to a trial within a reasonable time. The BiH Draft Law provides for two remedies against the excessive length of the proceedings: a request for the protection of a trial within a reasonable time and a petition of just satisfaction for the violation of the right to a trial within a reasonable time. However, since the Draft Law has not been promulgated, the only available remedy against the unreasonable length of proceedings in the FBIH and BiH State Court is the appeal to the BiH Constitutional Court .

3. ADMISSIBILITY TEST (LEGAL STANDING OF THE CLAIMANT; FULFILMENT OF THE DEADLINE TO CLAIM THE RIGHT AFTER THE JUDGMENT BECAME FINAL AND ENFORCEABLE; MERITS ASSESSMENT AND FREQUENT REASONS TO REJECT AND TO ACCEPT CLAIMS)

With regard to the legal standing of the claimant, a point of departure for the legal analysis can be the comparison between the BD and RS Laws, considering that the BD Law is somewhat more precise than the RS Law. As mentioned above, the BD law excludes administrative bodies and other holders of public authorities from the protection granted by this BD Law. Such as exc-

lusion does not exist in the RS Law and it may create certain problems in its application. Article 20 of the RS Law provides that the right to just satisfaction (defined in Article 19 of the RS Law) does not include republican public bodies, bodies of local administrative units and other holders of public authorities. Thus, it appears that republican public bodies, bodies of local administrative units and other holders of public authorities may submit applications to expedite proceedings but not a petition to the Supreme Court of the RS.

The RS Law is relatively new and the Constitutional Court and/or the ECtHR have not yet adjudicated any case that relates to possible human rights violations with regard to the implementation of the RS Law. In this respect, it is worth recalling that according to the Constitutional Court case law "*state bodies and public authorities, as the parties in the court proceedings, cannot enjoy the rights from the European Convention, but they enjoy the guarantees of the right to a fair trial and protection of property pursuant to Article II/3 e and k of the Constitution.*"[13]

With that in mind, in **several decisions, the RS Supreme Court rejected the** petition **on procedural grounds, most notably due to the absence of a final and executable decision on the expedition of proceedings**.[14]

One might argue that the RS Law is not applicable to criminal investigation cases or to proceedings before other (e.g., administrative) bodies that may precede court proceedings. However, as Article 2 of the RS Law explicitly refers to the jurisprudence of the ECtHR, presumably the scope of the protection granted by this law would be interpreted in the same manner.

This is particularly relevant since the Constitutional Court[15] issued a number of decisions relating to the interpretation of the right to a trial within a reasonable time in accordance with the jurisprudence of the ECtHR. In its decision No. U 15/03 of 28 November 2003, the Constitutional Court emphasised that "*The Constitutional Court, in principle, is not competent to examine the course of proceedings before administrative bodies, but only before courts, given that only courts are strictly bound by the provisions of the European Convention. However, when deciding whether the procedure was completed within a reasonable time, the length of the procedure before* the *administrative bodies must also be taken into account. Otherwise, the Constitutional Court would not be able to make a fair decision as to whether the proceedings were completed within a reasonable time.*" Furthermore, the Constitutional Court interprets the beginning of the relevant period in criminal matters, when assessing a reasonable time, in the same manner as the ECtHR.[16]

Both the RS Law and BD Law follow the same approach as the Constitutional Court of BIH and the ECtHR[17] regarding the criteria for assessing the "reasonableness" of the length of proceedings.

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING VIOLATION ON THE LENGTH OF PROCEEDINGS

According to data from 2019, Bosnia and Herzegovina had a staggering total of 2.2 million unresolved cases in its courts. Of that number, 1.9 million cases related to unpaid utility bills.[18] In the five-year period from 2013 to 2018, the Constitutional Court received 5,700 appeals regarding the unreasonable delay in proceedings. The Court found a violation of the right to a trial within a reasonable time in 85% of these cases.

Considering the extent of this issue, on 16 March 2016, the Constitutional Court adopted a Decision on admissibility and Merits in case No. AP 303/16, in which it recognised, *inter alia*, that it is evident that the High Judicial and Prosecutorial Council (HJPC) has taken certain steps to mitigate the staggering backlog and delays in proceedings, but nevertheless considered that these measures were not effecti-

ve. Consequently, the Constitutional Court found that systemic shortcomings resulted in the violation of the appellant's constitutional right. The Court further qualified the backlog as the result of a practice incompatible with the constitutional right to a fair trial.

On 10 May 2017, the Constitutional Court adopted a pilot Decision[19] **in which it held that the excessive length of proceedings was a systemic problem.** It also found a breach of Articles 6 and 13 of the ECHR and indicated general measures, including the introduction of a preventive remedy for the length of pending proceedings. Having established that the general measures indicated in the pilot decision had not yet been fully implemented, the Constitutional Court decided to no longer deal with the issue of the length of pending (as opposed to terminated) proceedings. Since the adoption of this Decision in the pilot case, the Constitutional Court has rejected hundreds of appeals. However, it continued to deal with the issue of the length of finished court proceedings.[20]

5. COMPENSATION AWARDED FOR UNREASONABLE LENGTH OF PROCEEDINGS

On 17 November 2005, the Constitutional Court of BiH adopted the Decision in the case No. AP 938/04 in which, for the first time, it determined the criteria for calculating the amount of just satisfaction.[21] Following the example of the ECtHR, the Constitutional Court concluded that the sum must be harmonised with the living standard of the State, which is estimated based on the gross domestic product. Thus, **it was determined that the amount of compensation is approximately 150 KM for each year, or approximately 300 KM in proceedings that require urgency, such as labour disputes that require "special diligence in the proceedings**".[22]

The BiH Constitutional Court also decided on issues such as the application of the rule on statutory default interest on the amount of compensation and the eligibility for enforcement. The Court took the position[23] that a decision ordering the payment of just satisfaction constitutes an executed public document in enforcement proceedings. Previously it had been foreseen that the rules on payment of statutory default interest in case of delay in payment by the competent body should be applied to the awarded amount of compensation for non-pecuniary damage due to a violation of the right to trial within a reasonable time.[24]

According to Article 27 of the RS Law, monetary just satisfaction can be awarded in the amount of 300 KM (approximately 153 EUR) to 3,000 KM (approximately 1538 EUR) in a single case. Furthermore, in cases in which there are more victims of the violation of the right to a trial within a reasonable time, compensation can be awarded up to a maximum of 20,000 KM (approximately 5127 EUR) per case.

In the Republika Srpska the compensation is paid from the budget of the RS within the time three months from the date of submitting the request**.**

According to its publicly available jurisprudence, the Supreme Court of the RS has awarded just satisfaction in the amounts of 700,[25] 1000[26] and 1500 KM[27], or, in EUR equivalent approximately 358, 513 and 769 EUR, respectively.

The **BD Law** provides that a request for payment of monetary compensation for the violation of the right to a trial within a reasonable time can be submitted if no measure for acceleration of proceedings is taken within in the prescribed time limit. The request is to be submitted within six months from the expiry of this deadline**. Similar to the RS Law, the BD Law prescribes the amount of monetary compensation ranging from 300 KM to 3,000 KM**. However, unlike the RS Law, in cases in which more victims allege a violation of the right to a trial within a reasonable time, the maximum amount of compensation that can be awarded is **10,000** KM (approximately 5127 EUR). Funds for the payment of

monetary compensation are provided in the budget of the Brčko District. Unlike the RS Law, the BD Law does not specify the time limit within which these amounts must be paid, but Article 19(3) provides that the payment decision is an enforceable document.

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING LENGTH OF PROCEEDINGS

Taking into account that the RS Law and BD Law were adopted fairly recently, and taking into account that, at the level of the FBIH and BIH, the relevant laws have not yet been adopted, **the practice of the BiH Constitutional Court and ECtHR still offers a better picture of the issues regarding the unreasonable length of proceedings in BiH.**

On 17 December 2019, the Constitutional Court issued a Decision in the case AP 3565/18 rejecting the appeal as unsubstantiated. In this case, The Constitutional Court noted that the period taken into consideration began on 26 November 2007 on which the applicant brought his claim against the Municipality of Zavidovići and ended on 16 January 2018, on which the FBiH Supreme Court delivered its judgment. The relevant court proceedings, thus, lasted ten years and one month. Furthermore, the Constitutional Court noted that, in the relevant period, the competent Court issued five judgments in three instances. The Court further noted that the case was of a complex nature (taking into account the number of parties in the proceedings, and the number of witnesses and expert witnesses). **Nevertheless, the Constitutional Court found no violation of the applicant's right to a fair trial within a reasonable time.**

Similarly, in the case AP 3133/19, the Constitutional Court declared the application inadmissible (*prima facie*). The Constitutional Court found that the trial in the applicant's case, which lasted for eight years, in which the courts of three instances issued five judgments, did not exceed the limits of a "reasonable time" guaranteed by Article 6 (1) of the ECHR.

However, on 16 December 2021, the ECtHR adopted a judgment in *Stojanović and Jusufović v. BIH*[28] in which it found that that the proceedings in the two cases mentioned above were in fact excessive and failed to meet the reasonable time requirement. **The ECtHR awarded non-pecuniary damages of 2,400 Euros to one applicant and 1,600 Euros to the other.**

Recently, the ECtHR considered the consequences of the Constitutional Court Pilot decision of 10 May 2017., In the case of *Delić v. BiH*[29], the applicant, under Article 13 of the Convention, argued that "*a constitutional appeal was clearly not an effective remedy for the length of pending proceedings and that no other remedy was available.*" The Government maintained that the applicant's appeal to the Constitutional Court accelerated the proceedings under question, although, formally, the appeal was rejected. The ECtHR stated that "*if an acceleratory remedy is used to speed up proceedings which have already lasted too long, it will not be considered effective unless accompanied by a compensatory remedy*" and, thus, found a violation of Article 13 of the Convention.

On 20 April 2022, the Constitutional Court adopted a Decision in the case AP 473/21 and rejected the appeal as unsubstantiated. In this specific case, **the applicants complained that, because of the non-enforcement against the FBiH within a reasonable time, their rights guaranteed by the Article II/3 e) of the Constitution and Article 6(1) of the ECHR were violated.** In response to the appeal, the Municipal Court pointed out that it had served the competent bank with the decision on enforcement. The Government of the Federation informed the Court that on 3 April 2021 it adopted an Action Plan on modalities with a view to securing the enforcement of all Court judgments against it. In accordance with the Plan, the total debt amounts to 42,000,000 KM and noted that all judgments would

be enforced, in chronological order, by 2030. In rejecting the appeal, the Constitutional Court relied on the recent decision of the ECtHR in the case *Ćavar and Šunjić v. BIH*[30] in which the ECtHR cited the same Action Plan of the FBiH, finding the enforcement time frames with a longer duration acceptable. Consequently, the Constitutional Court found the applicants' complaints unsubstantiated.

On 6 April 2022, the Constitutional Court adopted a decision in the case AP 406/21. The three applicants initiated the employment dispute before the Municipal Court in Sarajevo against their employer in 2015. In December 2017, the Municipal Court partially granted their petition. Both the second and third applicants and defendant lodged their appeal. The Cantonal court in Sarajevo received the case in May 2018. In February 2021 the Cantonal Court issued its judgement on the appeals. **The applicants complained to the Constitutional Court regarding the unreasonable length of proceedings before the Cantonal Court in Sarajevo.** In response to their appeal, the Cantonal Court stated that the concrete case was not on the list of old priority cases formed by the High Judicial and Prosecutorial Council. Furthermore, **the Cantonal Court stated that, at the present, the court deals with the cases from 2016, and since those specific cases do not deal with alimony, disturbance of possession and dismissal from the workplace, there is no reason to depart from the priority to deal with such cases.** The Constitutional Court relied on the consistent practice of the ECtHR that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and must take into account the following criteria: complexity of the case, conduct of the parties, actions of the court in question and other government authorities and the importance of the case for the petitioner. Furthermore, the Court recalled that in particular cases that are defined as urgent by the domestic law special diligence in the proceedings was required.

The Constitutional Court noted that the overall length of the proceedings before the Cantonal Court in Sarajevo was three years and nine months. The Court did not consider that the argument that '*the cases were not on the list of old cases prepared by* the *HJPC*' as justified. The Court relied on its practice from the Pilot decision[31] in which it held that the excessive length of the proceedings was a systemic problem caused by the inadequate administration of justice, contrary to the standards of a fair trial. Consequently, the Constitutional Court found a violation of Article II/3 e) of the Constitution and Article 6 of the Convention. The Court awarded amount of 500 KM to each applicant as compensation for non-pecuniary damage.

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

- The violation of the right to a trial within a reasonable time in Bosnia and Herzegovina was, until recently, a systemic problem caused by the inadequate administration of justice, contrary to the standards of a fair trial;
- The HJPC undertook a series of activities to reduce the number of the oldest cases;
- In 2021, the RS Law and the BD Law entered into force;
- Both the RS Law and the BD Law combined two types of remedies – one designed to expedite the proceedings and the other to provide compensation;
- The texts of both the RS Law and the BD Law. In general comply with the Constitutional Court and ECtHR case-law;
- It is still too early to assess the implementation of the RS Law and BD Law;

- Regrettably, both the Parliamentary Assembly of Bosnia and Herzegovina and Parliament of the FBIH failed to adopt their respective laws on the protection of the right to a trial within a reasonable time;
- There is a lack of mechanisms for monitoring the results once the instruction for expedition of proceedings is being issued;
- Administrative proceedings before the administrative bodies (organs) that precede the administrative dispute at the Administrative Court are often very lengthy**.**

7.2. Recommendations

- Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina should, as a matter of urgency, adopt legislation to address the excessive length of proceedings;
- The HJPC should continue its activities aimed at reducing the number of the oldest cases by increasing the productivity of judges and prosecutors, improving the organisation of the operations of judicial institutions, improving their capacities for strategic planning, as well as ensuring better working conditions for judges, prosecutors and support staff.
- Increase of the number of judges and court staff is needed where a significant backlog and high number of cases per judge is identified.

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1 The Constitutional Court Rules are available at https://www.ustavnisud.ba/en/rules-of-court,

2 See Official Gazette of the R no. 99/20 of 13 October 2020. RS law is available at: https://www.narodnaskupstinars.net/?q=ci/%D0%B0%D0%BA%D1%82%D0%B8/%D1%83%D1%81%D0%B2-%D0%BE%D1%98%D0%B5%D0%BD%D0%B8-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B8/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD-%D0%BE-%D0%B7%D0%B0%D1%88%-D1%82%D0%B8%D1%82%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D0%BD%D0%B0-%D1%81%D1%83%D1%92%D0%B5%D1%9A%D0%B5-%D1%83-%D1%80%D0%B0%D0%B7%D1%83%D0%BC%D0%B-D%D0%BE%D0%BC-%D1%80%D0%BE%D0%BA%D1%83 visited on 12 May 2022.

3 See Official gazette BD No. 2/21 of 26 February 2021, the BD law is available at the following website https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20zas--titi%20prava%20na%20sudjenje%20u%20razumnom%20roku/01B02–21%20Zakon%20o%20zas--titi%20prava%20na%20sudjenje%20u%20razumnom%20roku.pdf

4 The Proposal of the Law on the Protection of the Right to Trial Within a Reasonable Time and information from the Sessions are available at the following website: https://parlamentfbih.gov.ba/v2/bs/propis.php?id=476

5 Draft Law on the Protection of the Right within a Reasonable Time before the Court of BiH is available at this website https://www.ekonsultacije.gov.ba/legislativeactivities/details/109529-

6 See the judgment of the European Court of Human Rights in the case Delic v. Bosnia and Herzegovina, Application no. 59181/18)

7 Article 7 of the RS Law

8 Article 9 of the RS Law

9 Article 10 of the RS Law

10 Article 18 of the RS Law

11 Article 19 of the RS Law

12 Article 13 of the BD Law

13 See Decision of the Constitutional Court in the case AP 1774/15 of 17 January 2018

14 Decision of the Supreme Court of RS, case no. 118 0 Srr 002663 22 Sr of 16 March 2022.

15 On its session on 2 February 2001, the Constitutional Court adopted the first decision on the length of proceedings, No. U 23/00 dated 2 February 2001.

16 The Constitutional Court established that "*the beginning of the relevant period is related to the moment when the person in question became aware that they are suspected of a crime, because from that moment they have an interest in the Court making a decision. Such a determination of the relevant period is evident in cases where the arrest preceded a formal charge*". The Constitutional Court further established that "the end of the relevant period is the moment when the uncertainty regarding the legal position of the person in question has ended..." There is also a number of decisions where the Constitutional Court examined the length of time of the enforcement proceedings. In its Decision No. AP 200/05 of 12 April 2006, the Court underlined that: "Bearing in mind the simplicity, as well as the urgency of the enforcement procedure determined by law, the fact that in it, except for expertise, no actions were carried out, nor was there any need to carry out any other actions, that the debtor did not challenge the enforcement decision, that the appellant necessary actions with a view to speeding up the proceedings, the enforcement proceedings lasting two and a half years until their suspension exceeded the limits of a "reasonable time" within the meaning of Article 6 § 1 of the European Convention."

17 The same applies to the BIH Draft Law and FBIH Draft Law

18 See the report https://www.parlament.ba/Publication/Read/18956?title=prosjecno-vrijeme-potrebno-za-rjesavanje-predmeta-u-sudovima&pageId=0

19 See the Decision of the of Constitutional Court AP 4105/12 in the case of Avdo Žugić and others

20 See the Decisions of the Constitutional Court in the case AP 3979/18 of 11 March 2020 and case AP 5000/18 of 6 May 2020. In the meantime, the BIH HJPC undertook a series of activities aimed at reducing the number of the oldest cases. by increasing the productivity of judges and prosecutors, improving the organisation of the operations of judicial institutions, improving their capacities for strategic planning, as well as ensuring better working conditions for judges, prosecutors and support staff.

After the adoption of the Instruction for Drafting Backlog Reduction Plans, all courts were required to draft their backlog reduction plans. Due to the adoption of this measure, courts completed over 100,000 of the oldest cases along with their regular activities each year (See the as the Updated Action Plan (*Hadžajlić group v. Bosnia and Herzegovina*) submitted to the CoE Committee of Ministers by the Acting Agent of the BiH COM before the ECtHR). According to the latest data from the HJPC (https://vstv.pravosudje.ba/vstvfo/B/141/article/112313), 1,480,032 of the oldest cases have been resolved since 2010, which has greatly reduced the total number of unresolved cases in the courts

21 See the Decision in the Constitutional Court case AP 938/04 at the fooling website: https://www.ustavnisud.ba/uploads/odluke/_bs/AP-938–04–49263.pdf

22 https://www.ustavnisud.ba/uploads/odluke/_bs/AP-1400–08–397657.pdf

23 Decision No. AP 1448/18 of 17 July 2018

24 Decision No. AP 3865/12 of 17 of 6 June 2015

25 Judgment No. 18 0 Srr00269522Srr of 30.8.2022.

26 Judgment No: 118 0 Srr00273022Srr of 30.8.2022.

27 Judgement No. 118 0 Srr 002547 21 Srr of 09. 11. 2021 and Judgment No. 118 0 Srr 00276222Srr of 14.9.2022. and Judgment No. 118 0 Srr002700 22 Srr of 5.8.2022.

28 *Stojanović and Jusufović v. BIH* Applications No. 11207/20 and 23081/20

29 *Delić v. BiH* Application no. 59181/18*)*

30 *Ćavar and Šunjić v. BIH* Applications No 12371/21 and 18563/21

31 See the Decision of the of Constitutional Court AP 4105/12 in the case of Avdo Žugić and others.

KOSOVO[1]

1. RELEVANT LEGAL FRAMEWORK RELATED TO THE LENGTH OF PROCEEDINGS

Unlike other countries in the region, Kosovo does not yet have a special law (*lex specialis*) related to the right to a trial within a reasonable time (the need to adopt such a law has been occasionally discussed). Another exception is the fact that Kosovo is not yet a member state of the Council of Europe and, consequently, the decisions of the Kosovo courts are not subject to review by the ECtHR[1]

The Constitution of Kosovo, in Chapter II [Fundamental Rights and Freedoms], provides some general constitutional safeguards for fair and effective court proceedings, including trial within a reasonable time, which are applicable to every judicial procedure. Below the Constitutional level, various court procedures are regulated comprehensively by the specific laws (i.e., criminal, civil, administrative).

1.1. The Constitution of Kosovo

The Constitution of Kosovo approaches the issue of the length of proceedings from the the perspective of human rights protection – not from that of the effectiveness of the judiciary *per se*. The constitutional provisions related to the length of proceedings are included under the Chapter II of the Constitution dealing with Fundamental Rights and Freedoms, not in Chapter VII entitled the Justice System. Within this constitutional milieu, the right to a trial within a reasonable time is related to Article 31 and, indirectly, to Articles 32, 53 and 54 of the Constitution of Kosovo. Even though Kosovo is not yet a member of the Council of Europe, the ECHR is directly applicable.

- Article 31 guarantees the right to a fair and impartial trial, which also includes the right to a trial within a reasonable time. The courts interpret this article in conjunction with Article 6 of the ECHR.
- Article 32 provides for the right to an effective legal remedy against judicial and administrative decisions infringing the rights or interests whilst y Article 54 guarantees judicial protection of and effective remedies in cases of violation of rights guaranteed by the Constitution.
- Article 53 provides that human rights and fundamental freedoms are interpreted in a manner consistent with ECtHR jurisprudence.

Article 53 [Interpretation of Human Rights Provisions] provides that *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*

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1.2. Criminal procedure

The Criminal Procedure Code[2] ("CPC"), in Article 68 defines four distinct stages of the criminal proceedings: 1. The investigation stage; 2. The indictment and plea stage; 3. The main trial stage; 4. The legal remedy stage. The CPC also envisages some important time limits (mainly for the procedures in the first instance court), which also addresses the reasonable time standard.

Article 159 of the CPC provides that the criminal investigation is be completed within two years and if an indictment is not filed during this period, the investigation shall automatically be terminated. In exceptional circumstance, a six-month extension of an investigation may be authorized by the pre-trial judge, but only if the defendant is not held in detention.

With regard to time limits in criminal cases, the CPC provides deadlines only for the decision of the first instance courts (Basic Courts), but there are no strict procedural time limits for decision of the Appellate Court (second instance) and the Supreme Court (third instance).[3]

Overall, Article 314 of the CPC provides that, in general, the main trial is to be completed within 90 days if held before a single e judge, or 120 days if held held before a trial panel."[4] CPC also provides for strict deadlines for the announcement and drafting of the judgement by the first instance court.[5]

The Juvenile Justice Code, governing criminal proceedings against juveniles, prescribes even stricter time deadlines for the procedural stages and decisions.[6]

In the legal remedies stage, the CPC provides preclusive deadlines only for the defendants to use the ordinary and extraordinary legal remedies. There are no clear and express time limits for the courts of second and third instance, for conducting every procedural action and completing the trial at the stage of legal remedies of the criminal procedure.[7]

In summary, the CPC provides deadlines only for the decision of the Basic Court, but there is no time limit for decision of the Appellate Court and Supreme Court. However, even the deadline for the first instance court is treated more as instructive, rather than preclusive and, as such, it is often disregarded by the first instance courts.[8] Therefore, although there has been constant improvement in the efficiency of the judiciary in criminal cases, the excessive length of proceedings in the criminal cases continues to be one of the most acute problems of the justice system. Furthermore, the absence of the preparatory session in criminal cases in the first instance exacerbates the problem of the excessive length of proceedings.

1.3. Civil case/Contested procedure

The Law on Contested Procedure[9] ("LCP") does not set out any specific procedural time limits for deciding cases, at any instance.

While the courts are not generally bound by the time limits in the contested procedures, they are "bound to carry out proceedings without delay" (Article 10.1 of the LCP), or to decide certain cases as soon as possible – such as employment cases.[10] Moreover, in the contested procedure, courts have more discretion in setting certain procedural deadlines and postponing them (Article 387 of the LCP).

The LCP provides for the preparatory session in the contested procedure, in which the courts rule on the proposals of the parties about the facts (e.g., disputed and undisputed facts and which facts will be considered at the main hearing).

When prepared and applied properly, the preparatory session contributes to the shortening the length of proceedings. In practice, very often the preparatory session is not applied properly.

1.4. Administrative proceedings

Administrative proceedings are governed by two specific laws, namely the Law on General Administrative Procedure[11] and the Law on Administrative Conflicts.[12]

Section II of the Law on General Administrative Procedure provides that the general deadline for the conclusion of administrative proceedings shall be (45 days from the date of its institution (a special law may provide for different deadlines) and also provides that in case of so-called "silence of the administration" the request shall be deemed to have been fully granted.[13]

These time limits are prescribed for the completion of proceedings within the administrative organs (not courts). The Law on Administrative Conflict prescribes preclusive deadlines for the parties to take procedural actions (indictment, claims, complains etc.), but there are no limitation periods for the courts to conduct each step of the procedure. Only in one some very specific issue, does the Law on Administrative Conflict set time limits for the courts to take specific decisions – such as Article 22.[14]

2. JURISDICTION *RATIONE MATERIAE* AND AVAILABLE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

There are no specific legal remedies which can be used in the regular courts with regard to the length of proceedings and the right to a trial within a reasonable time. The regular courts do not approach the court cases from the perspective of human rights, including the right to a trial within a reasonable time. Consequently, the constitutional complaint – before the Constitutional Court of Kosovo – is the only legal remedy available for excessive length of proceedings and the right to a trial within a reasonable time.

The jurisprudence of the Constitutional Court of Kosovo on the length of proceedings is solid and relatively consistent, yet the approach of the Court to these cases has not been very effective. The issue of the length of proceedings has been raised at the Constitutional Court within the scope of allegations for violation of the right to a fair trial (Article 31 of the Constitution and Article 6 of the ECHR).[15]

3. ADMISSIBILITY TEST (LEGAL STANDING OF THE CLAIMANT; FULFILMENT OF THE DEADLINE TO CLAIM THE RIGHT AFTER THE JUDGMENT BECAME FINAL AND ENFORCEABLE; MERITS ASSESSMENT AND FREQUENT REASONS TO REJECT CLAIMS AND TO ACCEPT)

In adjudicating constitutional requests related to the length of proceedings, the Constitutional Court has consistently referred to the test established in the judgment of the ECtHR in the case *Tomazic v. Slovenia*[16]. Accordingly, the Constitutional Court has repeatedly held that the reasonableness of the length of proceedings should be assessed in the light of the circumstances of the case and having regard to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (i.e. the conduct of court), as well as what was at stake for the applicant in this dispute".[17]

Following the case-law of the ECtHR, the Constitutional Court has developed "a test" composed of five cumulative criteria based on which it decides whether the right to a trial in a reasonable time has been violated.

a. *The time span of the court proceedings*

The time span of the judicial proceedings in a given case is calculated from the time when the parties file a request before the court (i.e., from the time of the initiation of proceedings in the regular courts), until the date on which the request is lodged with the Constitutional Court.

b. *The complexity of the case*

The complexity of a case is analysed by taking into consideration the factual and legal aspect of the dispute in question.

c. *Conduct of the parties involved in the proceedings*

The conduct of the parties is scrutinized – particularly the actions taken by the applicant who lodges the constitutional complaint – in order to ascertain whether they have contributed to the length of proceedings, with their actions.

d. *Conduct of the courts*

In determining whether the length of proceedings infringed the right to trial within a reasonable time, the Constitutional Court pays particular attention to the conduct of the regular courts in adjudicating the specific case, in order to determine how active the courts in the proceedings were (hypothetically, this means that a case that lasts for several years but during which the courts were active with actions and decisions, may not constitute a violation of a right to a trial within a reasonable time).

e. *What is at stake in the specific court case*

Lastly, based on the test of the ECtHR, before ruling on whether the length of proceedings in the specific case amounts to a violation of right to a trial within a reasonable time, the Constitutional Court analyses what is at stake in the specific case.

It is important to highlight the fact that the Constitutional Court of Kosovo has been consistent in finding a violation of the right to trial within a reasonable time only in cases when after several years of court proceedings, the regular courts have decided for suspension of the proceedings indefinitely, or *sine die.*[18] Yet, even in these cases, the Constitutional Court did not specifically find a violation of the right to a trial within a reasonable time, but rather referred to the violation of right to a fair trial in general.

Moreover, the Constitutional Court has relied on the above test of the ECtHR not only for determining the merits of the cases related to the right to a trial within a reasonable time, but also for deciding the admissibility of the request. Statistically, the overwhelming majority of the requests (complaints) submitted to the Constitutional Court by individuals are declared inadmissible, as manifestly ill-founded, because the applicants "do not sufficiently prove and substantiate their claims."[19] In reaching the conclusion that the applicants have not substantiated their claims for a violation of a right to a trial within a reasonable time (which consequently rendered their referrals inadmissible), the Constitutional Court has almost always relied in the test described above, which has been construed by reference to the jurisprudence of the ECtHR.[20]

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING VIOLATION ON THE LENGTH OF PROCEEDINGS

The Constitutional Court does not adjudicate with any expedited procedure on the cases related to the right to a trial within a reasonable time. On average, the time frame within which the Constitutional Court has decided these cases varies from a few months (KI 183/19, KI 18/18), to one

year or more (KI 148/18, KI 19/17). This is the general time period within which the Constitutional Court decides cases submitted to that Court, regardless of the nature of the case.

5. COMPENSATION AWARDED FOR UNREASONABLE LENGTH OF PROCEEDINGS

The practice of awarding financial compensation by the Constitutional Court – which exists in some countries – is not applicable in Kosovo. Hence, the Constitutional Court does not award directly any compensation in the judgements for violation of the right to a trial within a reasonable time. In these cases, most typically, the Constitutional Court has ordered the regular courts "to notify the Constitutional Court as soon as possible, but not later than within six months, regarding the measures taken to implement the judgment of the Constitutional; Court."[21]

It is important to underline that in some cases when the Constitutional Court had established that their constitutional rights have been violated, it instructed the applicants to seek compensation of damage in civil proceedings.[22]

The financial compensation for any constitutional and legal violation by the Courts, against the persons, is paid from the budget of the Kosovo Judicial Council.

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING LENGTH OF PROCEEDINGS

It is difficult to identify any specific structural issues concerning the length of proceedings other than those already referred to in the examination of the procedural frameworks and limited use of procedural mechanism for ensuring that procedures are conducted pursuant to the principle of effectiveness.

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

- Even though, in the Kosovo legal system, the right to a trial within a reasonable time is embodied within the confines of the constitutional right to a fair trial, the lack of a specific law on the protection of the right to a trial within a reasonable time is a serious setback.
- Another handicap for Kosovo, with regard to the judicial protection of the right to a trial within a reasonable time, is the fact that Kosovo is not yet a member state of the Council of Europe and, consequently, is not subject to the jurisdiction of the ECtHR.
- The legal system of Kosovo does not provide for any specific legal remedy that can be used in the regular courts against the excessive length of proceedings. The organic procedural laws in Kosovo – which regulate criminal, civil and administrative procedures – do not provide explicit and strict time limits for the adjudication of cases, with the exception of the criminal proceedings in the courts of first instance.
- The only available legal remedy for safeguarding the right to a trial within a reasonable time is a request (complaint) before the Constitutional Court of Kosovo.
- In line with its general practice of following the jurisprudence of the ECtHR, the Constitutional Court has adopted the test composed of five criteria for adjudicating the cases related to the

trial within a reasonable time. The Constitutional Court has used the same test for deciding the admissibility as well as the merits of the cases. This has considerably raised the bar of admissibility of the constitutional complaints against the excessive length of proceedings. Furthermore, the Constitutional Court has yet to establish a clear and reasonable threshold for finding a violation specifically on the right to trial within a reasonable time. So far, this has not been the case.

- Based on its general practice, if the Constitutional Court finds a violation of the right to a trial within a reasonable time, it can instruct the parties to initiate a civil proceeding for requesting compensation of damage, which is to be paid from the budget of the Kosovo Judicial Council.

7.2. Recommendations

Legislative measures:

- Adoption of the law for protection of a right to a trial within a reasonable time.
- Scrutinizing the existing organic procedural laws which regulate the major court procedures (i.e., criminal, civil, administrative), for closing the gaps and loopholes that exacerbate the problem of the excessive length of proceedings.
- Introducing the preparatory session in the criminal procedure in the first instance courts.

Change of practices:

- The Constitutional Court to be more flexible in applying the admissibility test for the requests related to the excessive length of proceeding and to establish reasonable standard for finding violation of the constitutional right to a trial within a reasonable time.
- Analysing the need for increasing the number of judges and court staff in the courts and court departments where significant backlog and high number of cases is identified.
- The infringement of the right to a trial within a reasonable time by individual judges to be taken into account as one of the criteria for the regular evaluation of the performance of judges and their promotion by the Kosovo Judicial Council.
- Organizing trainings for the judges, particularly in the first instance courts, on the standards of the ECtHR on the right to a trial within a reasonable time.

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1 On 12 May 2022, Kosovo submitted a formal application for membership in the Council of Europe.

2 Article 68 of the Criminal Procedure Code. No. 04/L-123

3 Article 242 of the CPC provides that after the filing of the indictment by the state prosecutor, the single trial judge or the presiding trial judge shall immediately schedule an initial hearing, which shall be held within 30 days. Furthermore, paragraph 5 of Article 242 provides that if the defendant is being held in detention on remand, the initial hearing shall be held at the first opportunity, not to exceed 15 days from the indictment being filed. Article 245.5 provides that during the initial hearing, the single trial judge or presiding trial judge shall schedule a second hearing no less than 30 days after the initial hearing, and no more than 40 days after the initial hearing. Alternatively, the single trial judge or presiding trial judge may only require the filing of motions by a date set no more than 30 days after the initial hearing. The third hearing may be called, exceptionally, if the single trial judge or the presiding judge considers it necessary to hold a hearing to assess the objections of the defendant and it shall be scheduled as soon as possible and no later than 3 weeks from the date of the second hearing (Article 255).

4 In both cases, the main trial may be extended upon the decision of the trial judge/panel. The main trial may be continued when there are circumstances which require more time, including but not limited to: numerous witnesses; the testimony of one or more witnesses is very long; the number of pieces of evidence is extremely large; the security of the main trial makes continuation necessary.

5 Another important deadline is stated in Article 366, which requires that the judgment shall be announced by the single trial judge or presiding trial judge immediately after the court has rendered it. If the court is unable to render judgment on the day the main trial is completed, it shall postpone the announcement by no more than 3 days and shall determine the time and place for the announcement of the judgment. Further, Article 369 provides that the judgment shall be drawn up in writing within 15 days of its announcement, if the accused is in detention on remand or if detention on remand has been imposed on him/her, while in all other cases it is drawn within (30) days of its announcement. When a case is complex, the single trial judge or presiding trial judge may ask the president of the court to extend the deadline by up to 60 60 more days for the judgment to be drawn up.

6 Thus, according to this Code, a juvenile can be held in detention after being arrested only for 24 hours; after this period of time they need to either be taken into custody or set free. The preparatory procedure must be completed within six months from the day of its commencement and if the preparatory procedure is not completed within a period of six months, the prosecutor submits to the juvenile judge a reasoned written request for the continuation of the preparatory procedure and the reasons for which have influenced this procedure not to be completed. After the criminal procedure for the juvenile has ended, the judge drafts the ruling or judgment in writing within eight days from the day of its announcement, except in complex cases the deadline may be extended with the permission of the president of the court but not more than 15 days. There is no exact deadline regarding the execution of the sanction, but according to the Juvenile Justice Code, the exectution of the measure or the sanction will start immediately after the final decision of the court and when there are no more legal obstacles for its execution, unless the Code provides otherwise. When the juvenile is found guilty, the court orders in writing for them to appear at the educational-correctional institution on a certain day for the execution of the educational correctional measure. The time period from the receipt of the order and the day of submission shall not be shorter than eight 8 days nor longer than 15 days.

7 There are very few time limits for specific procedural actions during the stage of the legal remedies. Thus, the Appellate Court has to decide within 48 hours on the complaints on decision on the pre-trial detention by the Basic Court (Article 189). However, the Appellate Court often fails to comply with this deadline prescribed by the CPC . Furthermore, when an appeal has been lodged against a judgment of the Court of Appeals and if the accused is in detention on remand, the reporting judge of the Court of Appeals shall examine *ex officio* whether reasons for detention on remand still exists, within five days upon receiving the case file (Article 389 of the CPC).

8 According to a Report of the Ministry of Justice, 43% of the procedures for grave criminal offences (16,016 cases), in the year 2020, were at least two years old. Source: *VLERËSIM KRAHASUES I TË DHËNAVE MBI FUNKSIONIMIN E SISTEMIT TË DREJTËSISË NË KOSOVË (2014 – 2020). MD. Shkurt 2022* (English*: COMPARATIVE ANALYSIS OF THE DATA ON FUNCTIONING OF THE JUSTICE SYSTEM IN KOSOVO ((2014–2020)*, February 2022).

9 LAW No. 03/L-006 ON CONTESTED PROCEDURE.

10 LCP Article 475. *"In contentious procedures in work environment, especially is setting the deadlines and court sessions, the court will always have in mind that these cases need to be resolved as soon as possible. Article 476 Court sets a deadline of seven days in the order that an obligation is forced."*

11 LAW NO. 05/L-031 ON GENERAL ADMINISTRATIVE PROCEDURE. According to Article 1 of the Law on General Administrative Procedure, "*the purpose this Law is to ensure the effective pursuance of public authority in the service of the public interest whilst guaranteeing the protection of the rights and legitimate interests of the persons."*

12 LAW NO. 03/L-202 ON ADMINISTRATIVE CONFLICTS. According to the Article 1 of the Law on Administrative Conflict, "*with this law are regulated competencies, composition of the court and rules of procedure, based on which the competent courts shall decide on lawfulness of administrative acts by which the competent authorities of public administration shall decide on rights, obligations and legal interests of legal and natural persons and other parties as well as for the lawfulness of actions of administrative authorities."*

13 According to the Law on General Administrative Procedure, "*if the party has requested the issuance of a written administrative act and the public organ does not notify the party of its administrative act within the original deadline and fails to notify of the extension or fails to notify the act within the extended deadline, the request made by the party shall be considered to be fully granted.*"

14 Article 22 of the Law on Administrative Conflict provides that the Curt decides within 3 three days on the request of the plaintiff that the administrative body whose act is being executed, respectively the competent body for execution, to postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.

15 The right to a trial within a reasonable time is occasionally raised together with the right to effective legal remedy (Article 32 of the Constitution) and the right to judicial protection of rights (Article 54 of the Constitution).

16 No. 38350/02

17 See the decisions of the Constitutional Court of Kosovo in cases: KI 93/16; KI 81/16; KI 148/18; KI 177/19; KI 135/20; KI 109/17; KI 18/18; KI 186/18; KI 19/17)

18 For example, in cases: KI 93/16; KI 81/16.

19 Rule 39 [Admissibility Criteria] of the Rules of Procedure of the Constitutional Court, among other admissibility criteria, provides that: [...] *"(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."*

20 See, among others, decisions of the Constitutional Court in cases: KI 18/18; KI 148/18; KI 19/17; KI 109/17; KI 183/21

21 See, for example, the judgments in the cases: KI 93/16, KI 81/16

22 E.g., the case KI 193/18

MONTENEGRO[2]

1. RELEVANT LEGAL FRAMEWORK DETERMINING THE LENGTH OF PROCEEDINGS REMEDY

The Constitution of Montenegro of 2007 outlines the right to a fair trial within a reasonable time[1], and the special law, the Protection of the Right to a Trial within a Reasonable Time Act ("the Act")[2], adopted in the same year, provides for legal remedies for the excessive length of proceedings. The constitutional appeal is available following exhaustion of all remedies provided by the Act.[3]

The ECHR is part of the Montenegrin legal order, and applies directly when regulating relations differently from national legislation.[4]

The Act explicitly provides for the application of the standards established in the jurisprudence of the ECtHR in the assessment of the scope of legal protection to be afforded by domestic courts in relation to the right to a trial within a reasonable time. More specifically, the ECtHR standards apply to the assessment of the reasonable time period and determination of proceedings to which the reasonable time requirement applies.[5]

The Act limits the amount of just satisfaction (fair redress) that may be awarded in case of a violation of the right to a trial within a reasonable time from 300 to 5000 €,[6] although the ECtHR has been awarding higher amounts also in cases involving Montenegro.[7]

2. JURISDICTION AND AVAILABLE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN REASONABLE TIME (*RATIONE MATERIAE*)

2.1. Jurisdiction

The right to court protection for the violation of the right to a trial within a reasonable time applies to:

- parties in civil proceedings, including an intervening party
- parties in administrative dispute, including the interested party

persons subject to a criminal charge and injured parties (victims) in criminal proceedings if all those proceedings relate to the protection of rights in accordance with the Convention (Act, Art. 2 para. 1).

The right to court protection as well as the duration of the reasonable time is determined in accordance with the caselaw of the ECtHR (the Act, Art. 2 para. 2).

The Supreme Court denied protection in relation to the proceedings:

2 Tea Gorjanc Prelević, LL.M., director of Human Rights Action

- instituted by the request for a re-enactment of the proceedings, an irregular remedy[8];
- upon request for free access to data where the claimant has not shown that revealing the requested data could have a significant influence on the exercise of a civil right[9];
- related to tax disputes[10];
- following a request for provisional measure in accordance with the *Micallef*[11] test[12];
- regarding a political representation dispute involving representatives of the NGO assembly[13];
- related to a judgment correction[14]; and
- for acquiring citizenship and a passport related dispute[15].

2.2. Remedies

Montenegro opted for a combination of legal remedies for the acceleration of proceedings and just satisfaction in the event of a determination of a violation of the right to a trial within a reasonable time.

The legal remedies are: 1) the **request for review** and 2) the **action for fair redress**.

1) **The request for review** is a motion aiming at expediting the procedure lodged with the president of the competent court dealing with the case at the relevant time (Art. 9, para. 2). One may appeal the decision of the president of the court to reject the request for review or if the president does not act within 60 days with the president of the higher court (Art. 24, 26). In *Vukelić v. Montenegro*[16] the ECtHR established that a request for review is to be considered an effective legal remedy. The Constitutional Court does not act upon requests for review[17].
2) **Action for fair redress** may be filed with the Supreme Court by the party that has previously filed the request for review to the competent court (Art. 33 para. 1). The exception applies when a party was objectively incapacitated incapable of filing the request for review (Art. 33 para. 2). The Supreme Court has interpreted this to apply to the Constitutional Court proceedings and administrative proceedings involving a determination of a property right.[18] Fair redress is monetary compensation for immaterial damage caused by a violation of the right to a trial within a reasonable time and/or publication of a judgment that a party's right had been violated (Arts. 31, 34). The amount of fair redress is limited to between 300 € to a maximum of 5000 € (Art. 34 para. 2). The ECtHR found the claim for just satisfaction to be an effective legal remedy in the case of *Vučeljić v. Montenegro*[19].

3. THE CONSTITUTIONAL APPEAL[20] IS THE ULTIMATE REMEDY AVAILABLE FOLLOWING THE EXHAUSTION OF THE TWO SPECIFIC REMEDIES. ADMISSIBILITY TEST

From 2016 to the end of 2021, 421 actions for fair redress were decided by the Supreme Court, of which 110 or 26% were rejected on procedural grounds.

3.1. Legal standing of the claimant

As to reasons *ratione personae* for rejection of claims on procedural grounds, those included a claimant unaware that the proceedings they referred to had been finally concluded;[21] a claimant without standing as a party in bankruptcy proceeding;[22] a claimant who was the guardian of the defendant in misdemeanour proceedings;[23] a claimant who was not a party or an intervening party in civil proceedings,[24] a claimant in expropriation proceedings for whom the "dispute" never arose, as the decision on expropriation that could have been appealed had not been passed[25].

3.2. Fulfilment of deadline

In nine cases from 2016 to 2021, the action was rejected as being outside the six-month deadline from the day of receipt of the final judgment in the proceedings the duration of which is the subject of the complaint[26]. In all cases the passing of the deadline was significant, from at least 13 days[27] up to ten years[28].

One of those judgments was quashed by the Constitutional Court because the action was rejected as out of time although the lower court misled the claimant as to the deadline for submitting it.[29]

Submitting an irregular remedy has no significance for the calculation of the deadline when such remedy does not influence the final decision, i.e. is rejected and does not lead to a retrial[30].

3.3. Other reasons for rejection on procedural grounds

Actions for fair redress have been rejected due to an abuse of the right to petition, by providing misleading information and/or failing to disclose relevant information[31], and also when filed by lawyers who did not specify the amount of the fair redress[32]. In some cases, the actions failed to specify reasons for the allegation of a violation of the right to a trial within a reasonable time[33].

Other common reasons for rejection on procedural grounds involved a failure, among others, to exhaust the request for review[34]; failure to enclose a final decision on the request for review[35]; failure to file an appeal in relation to a rejection of the request for review or lack of a decision by the president of the court[36]; failure to file the request for review before the final judgment[37], failing to deliver a valid power of attorney[38].

3.4. Frequent reasons to reject claims and to accept on merits

3.4.1. Reasons for rejection

From 2016 to2021, 59 actions were rejected as the courts were found to have undertaken adequate, efficient measures in due time and in continuity**,** that there was no delay, or the delay was not serious enough to cause a violation[39].

Out of those, 25 cases were instituted by victims of a 1991 war crime, former prisoners of a concentration camp. In those cases, the Supreme Court found that approximately four to five years for the total duration of civil proceedings was not unreasonable, where the first instance proceedings varied from approximately one to three years, which was found acceptable[40]. In ten cases, the court found that the claimants contributed to the duration of the proceedings by requesting a postponement of court sessions in order to complete medical documentation.[41]

In at least eight cases, where the action for fair redress had already been submitted and positively decided, the claimants filed second claims, as the proceedings were again not efficiently concluded. The Supreme Court rejected all of them, finding that even if there were some periods of inaction, ranging from 2 ½ to 8 months, such delays were too short to cause a violation[42]. In most of these cases, the Supreme Court appears to have taken the position that the continuing period of delay in the same case should be assessed as an entirely new case, although it represented a continuation of an already established breach of law[43].

3.4.2. Reasons for adopting claims

Judging the cases involving the highest awards of fair redress, the reason for finding a violation was an overall long duration of proceedings (from 13 up to 25 years), which should have been processed with particular urgency, as they were employment disputes[44] or criminal charges[45]. In those and other cases the delays were caused by numerous factors such as year-long periods of inactivity, extensive breaching of deadlines for scheduling the hearings[46], several changes of judges in the same proceedings[47], postponement of court hearings due to inactivity of expert witnesses[48], „moving the case around" between various bodies, for example, between the investigating judge, the state prosecutor and the court council, lack of effort to understand the findings of the expert witness[49], two or more committals of the case for a retrial, i.e. „ping-pong" between the Administrative court and administrative bodies[50].

In some cases, which were not complex at all, there was no justification for the extreme duration of the proceedings. Such cases suggested negligence and a lack of expertise on the part of judges and should be used as educational tools. For example, one case was about a claim for damages for destruction of a plum tree and ownership of several square metres of land, and the Supreme Court noted that it should have been decided after only one hearing and not dragged on for 19 years[51]. In a criminal case, it was especially criticized that both the state prosecutor and court had not even noticed for eight years that the case had become time-barred[52]. The Constitutional Court found a violation when it took 10 years for the courts to determine they lacked jurisdiction to decide on compensation in the restitution of property case[53]. Similarly, the first instance court first took 13 years to decide in a retrial, and an additional 14 years and 9 months, and devoted most of the time to deciding whether the request for reopening of proceedings had been submitted in due time[54].

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING VIOLATION ON THE LENGTH OF PROCEEDINGS

Montenegro does not measure the effectiveness of remedies with a view to expediting the proceedings following positive decisions on the request for review, nor after the Supreme Court or Constitutional Court find a violation of the right to a trial within a reasonable time, in case the proceeding in relation to which the violation was found had not been concluded at the time of finding a violation.

Two NGO reports measuring the effectiveness of remedies from 2008 to 2015 suggested that the requests for review had not been sufficiently effective in practice. According to the report covering the period 2011–2015, every fourth request for review had been adopted, but two thirds of those adopted did not lead to the expedition of the proceedings within the envisaged deadline of four months.[55]

The reports of the Ministry of Justice on the implementation of the Act from 2012 to 2017 suggested that legal remedies had been effective but provided little or no evidence to support such a conclusion or make it transparent[56]. Since 2018, the reports on the work of courts have included general statistics on the legal remedies for the length of proceedings but without an assessment of their effectiveness.

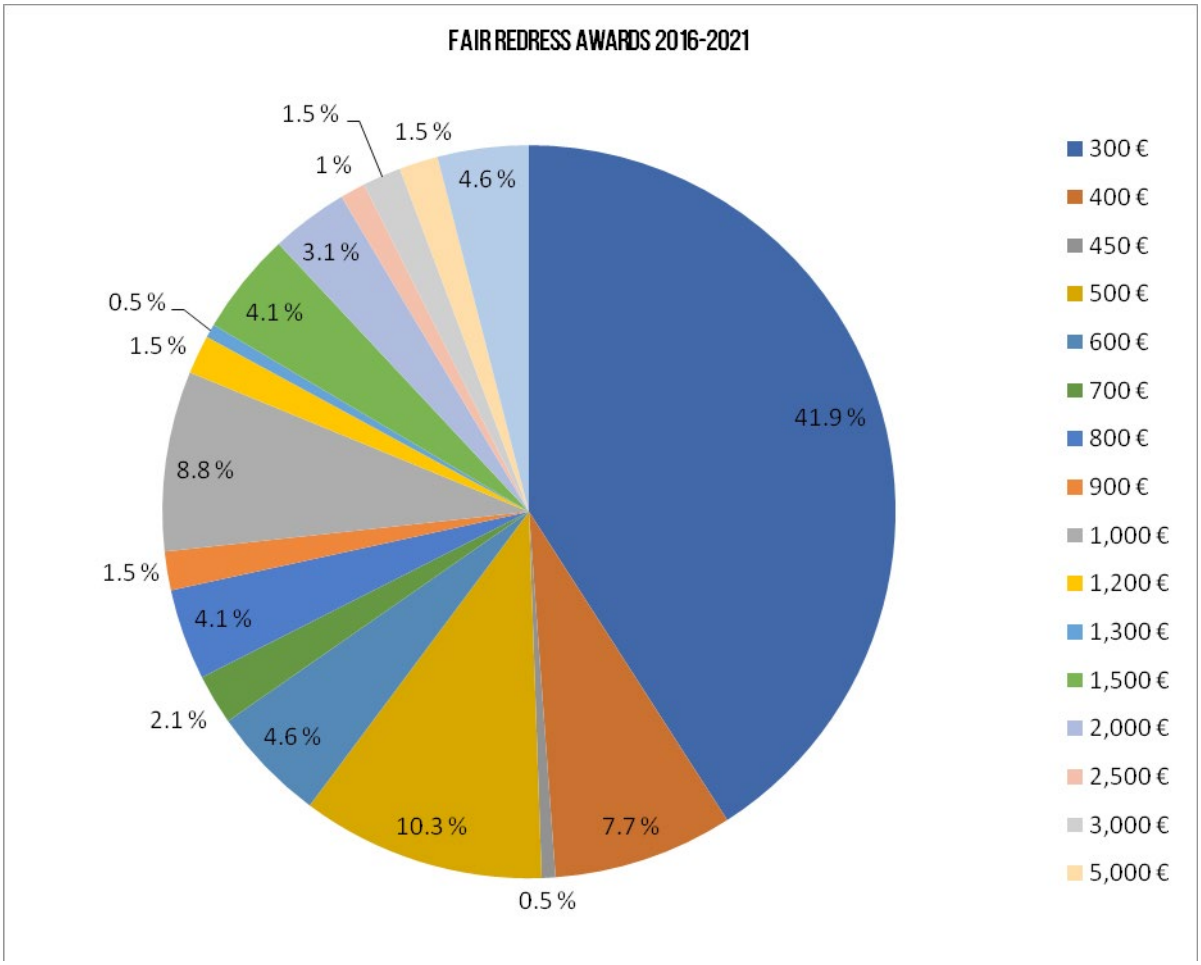
The EU Commission has observed that data on the total length of proceedings is still not available[57], and that statistical information on the performance of the judicial system is not systematically analysed nor used for management and policy-making purposes[58]. However, information on "disposition time", i.e. the average time from filing to decision is available, and it indicates a significant backlog problem with the Administrative Court[59]. In relation to that court, research of decisions on requests for review from 2015 to 2017 suggested the proceedings were expedited in all cases where a notification had been provided under Art. 17 (in 40 cases)[60].

However, in Montenegro, the action for just satisfaction is not intended as an instrument of acceleration. In some cases, the parties needed to file such claims for the second time, as the proceedings had not been finalised in due time.[61] All judges deciding on cases where the action for fair redress was adopted should be informed of such decisions and ordered **to accelerate** proceedings in such cases.

5. COMPENSATION AWARDED FOR THE UNREASONABLE LENGTH OF PROCEEDINGS (LEVEL OF COMPENSATION)

5.1. General data on level of awards

From the beginning of 2008 until the end of 2021, 693 actions for fair redress were decided by the Supreme Court. A total of 306 claims were adopted or roughly every second claim (44%). The maximum award of 5000 € was awarded in three cases only, in two civil cases and one criminal one[62]. There were two awards of 4000 € in civil cases[63], 3500 € in one criminal case[64], 3000 € in one civil and two criminal cases[65]. The lowest award of 300 € involves by far the largest number of cases, close to one half. The chart below shows awards in the last 6 years.



5.2. Lack of formula for the calculation of the amount of compensation

The major problem with fair redress awards throughout the years has been the lack of any explicit formula for calculating the amount of compensation awarded. The Supreme Court has never called upon the formula established by the ECtHR in *Apicella v. Italy*[66] case, nor did it establish a scale of its own, as

suggested in *Scordino v. Italy*[67]. Therefore, it is impossible to discern how the Court reaches decisions on the amounts of compensation. For example, in three criminal cases with the awards from 2000 to 3500 €, both periods of unjustified court inactivity and interests of plaintiffs appeared much more significant than in two civil cases where the Court awarded 4000 € of fair redress[68]. In the vast majority of cases, where the compensation ranged from 300 to 500 €, the factual situations varied considerably, while the awards remained at the same level. The introduction of a scale on equitable principles should provide for equivalent results in similar cases and increase trust in fairly ensuring justice.

5.3. Cases where the publication of judgment served the purpose of fair redress

Out of all adopted claims (306), monetary compensation was not awarded in seven cases; instead the Court found the publication of judgments served the purpose of fair redress. In those cases, the Court did not consider that the delay had been significant, noting that the violation had already been determined by the president of court and the case was soon to be decided[69], the claimant f contributed to delay by not specifying the claim as requested by the court multiple times[70], or by not filing remedies due to the inaction of administrative bodies[71], or the interest of the claimant was found not to be particularly significant and/or the value of dispute had been minor, for example 100–125 €, and, therefore. the Court found it inappropriate to award 300 € for fair redress, double the size of the amount claimed in the civil suit[72]. However, the value of the claim filed in the original lawsuit should not have a significant effect on the award of fair redress for violation of the right to a trial within a reasonable time, since the purpose of the award is unrelated to the value of proceedings, unless it otherwise involves the criteria of "what is at stake for the applicant". Conversely, this approach was not employed in cases that were of extreme material value[73].

In one case from the above group, involving a civil dispute over the annulment of a contract, the claim was filed in April 2015, the response to the claim in June 2015 and the first hearing was scheduled for April 2016, in considerable violation of the 30 day –deadline[74]. The Supreme Court, controversially, found that as July and August coincided were the time for vacation of court employees, one could not have expected the court date to be scheduled at the time, and for more than seven months of further delay, it found a violation, but without an award, finding the delay had not been excessive[75].

5.4. Consideration of delays in utilising remedies

The fact that claimants did not avail themselves of a request for review as soon as possible was assessed as their contribution to the extension of the proceedings and led to either a lesser award of fair redress or no award at all[76]. For example, in the case related to payment for expropriated property, which lasted for 25 years and was marked by long periods of inactivity, although the proceedings were urgent, the Court awarded 3000 € out of a maximum 5000 €. The court made such a decision since the claimant filed the request for review only in August 2015, although it had been available ever since the beginning of 2008[77]. Similarly, in a case for damages that lasted for 19 years although the Court assessed that it could have been decided after one hearing, it awarded 2500 € assessing that the claimant should have filed the request for review much sooner[78]. However, while assessing the conduct of the party who delayed in using a remedy, the ECtHR stated that "... delay in instituting proceedings is in any event not decisive in the present context: what the Court has to do under Article 6§1 is to assess the reasonableness of the length of the proceedings as they actually took place"[79]. Also, under domestic legislation, the court is obliged to efficiently conduct the proceedings, without delay, in a reasonable time[80], and this obligation is not conditional upon parties making use of remedies under the Act.

5.5. Continuation of proceedings by heirs

In some cases, the claims for fair redress filed by heirs were rejected, and the long duration of the proceedings before the death of their the testator was not considered[81]. Such a position was justified by reference to the Law on Obligations, stating that the right to claim immaterial damages passes on to heirs only if determined by a final decision or a written agreement[82]. However, the ECtHR stated in *Apicella v. Italy*, that only a reduction in the amount awarded may be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in their capacity as heir. Furthermore, the Act is *lex specialis* to the Law on Obligations and does not particularly envisage a subsidiary application of that law.

5.6. Complaints on the amount of compensation

The Constitutional Court rejected all constitutional appeals related to the amount of compensation awarded by the Supreme Court arguing a lack of competence, as it is "not a constitutional issue"[83]. Such a position of the Constitutional Court may render it an ineffective remedy for the purpose of providing protection against insufficient compensation, as the ECtHR already determined in 2006 that the awards by domestic courts in the amount of 25% or less than of the amount awarded in its caselaw are unacceptable[84]. However, the ECtHR has not yet communicated to Montenegro a single case where an applicant complained about the amount of fair redress[85].

5.7. Budget source for payments of compensation

The compensation payments are made from the state budget, and not that of the courts, so the payments have never been jeopardized. However, the usual practice has been that the payments needed to be enforced, i.e. were not voluntarily executed by the state, meaning that the whole procedure had been delayed and involved unnecessary costs of execution proceedings.[86]

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING LENGTH OF PROCEEDINGS

6.1. Administrative proceedings and administrative dispute

The Montenegro Administrative Court has by far the largest number of cases, the largest delay, and in 2021 again received by far most of the requests for review then all other Montenegrin courts[87]. Disposition time before the Administrative court in 2021 increased to 521 days, 83 days more than in 2020, when the EU Commission highlighted it was the cause for concern[88].

6.1.1. Problem of repeated re-examination of a single case

The Administrative Procedure Act and Administrative Dispute Act were amended on of 1 July 2017 to prevent multiple repeated re-examinations of a single case following remittal (*ping-pong effect*) between the court and administrative bodies, and between the first and second instance administrative bodies, but problems still persist.

The newly amended legislation envisages more deadlines for administrative bodies, and an obligation, in principle, for the second instance administrative bodies and the Administrative Court to decide the case *in meritum* when they receive it on appeal for the second time[89].

Moreover, an amendment to the Administrative Dispute Act attempted to resolve the problem of failures in implementing the Administrative Court's judgments as now when the administrative body fails to implement the judgment of the Administrative Court, the court may enact a decision that fully replaces the act the administrative body should have issued (art. 57–58). Furthermore, if the administrative body fails to implement the judgment, the court must notify the inspectorate in charge of monitoring implementation of the Act, which is obliged to inform the Court on the action taken within 30 days (art. 58).

However, the new amendments do not apply to proceedings initiated before they came into force[90], which prevents expedition of many old proceedings under the new rules. The Supreme Court was in 2022 and 2021 still deciding on the vast majority on actions related to proceedings administered under old regulations, lasting, for example, over 17 years with 8 remittals[91] or over 14 years with 6 remittals.[92]

In a recently observed case, administered under the new laws, the Supreme Court found that the duration of the administrative procedure on appeal for one year, two months and 27 days due to the silence of administration did not constitute a violation of the right to a trial within a reasonable time, although in such a case the decision should be passed "as soon as possible and at the latest within 45 days from the dare on which the complaint is received".[93]

The 2021 annual report of the Ombudsperson again highlighted the problem of delays in administrative proceedings, especially emphasizing proceedings still dragging on under old regulations, where the second instance administrative bodies as well as the Administrative Court by far prefer to send back the case instead of deciding it on its merits, especially when the nature of the case would allow for decision or when a case had already been remitted once for decision by the lower body.[94] The Ombudsperson observed that second instance bodies often do not provide any explanation for finding why "the first instance body would be faster at removing detected omissions in the first instance proceedings" although such explicit reasoning had also been required by the Art. 237 para. 2 of the former Administrative Proceedings Act. The Ombudsperson suggested more training on the new rules, reporting and monitoring of the duration of the administrative procedure and acts of the administrative bodies as well as the Administrative Court, including more stringent inspection monitoring with appropriate penalties for those who fail to comply with the law and cause damage to the state in terms of fair redress for a violation of the right to a reasonable time or other material damage[95].

According to the report of the Administrative Court of Montenegro, the judges regularly receive information on the decisions of the Supreme Court in second instance in administrative disputes, but not the information on judgments adopting actions for fair redress due to the violation of the right to a trial within reasonable time.[96] It should be made a rule that both the administrative bodies as well as the Administrative Court judges are acquainted with the development of the case law in this regard.

6.1.2. Restitution of property proceedings

The ECtHR case *Stanka Mirković and others v. Montenegro*[97] presents an example of administrative proceedings before the Restitution and Compensation Commission, that lasted over ten years due to a repeated re-examination of the case. The case was remitted nine times and was still awaiting decision at the time of the ECtHR's judgment. The ECtHR in this case highlighted that the request for review was not considered effective remedy in respect of the proceedings before administrative bodies**.**

The Restitution and Compensation Commission[98] has been found to schedule a hearing only ten years after becoming competent for the case, and then failing to pass the first instance judgment in the next three years (Tpz 3/2021); or its proceedings last for more than eight years (following 3 March 2004, the

date on which when the Convention entered into force for Montenegro) without a final decision, where the Commission took eight years to pass the first decision, whereas three first instance then went on to be quashed by the second instance body and remitted (Tpz 124/2021). All this suggests that the administrative inspectorate responsible for monitoring the implementation of the new administrative procedure rules should become fully engaged in preventing the continuation of such practice.

6.2. Delay caused by sending the case-file to the court deciding on the appeal

When a request for review or action for fair redress is submitted, the whole case file is sent to the president of court or the Supreme Court[99], which prevents further action in proceedings that are already delayed.

The same problem exists in the enforcement proceedings s, which are urgent[100]. When the enforcement is ordered on the basis of an enforceable document, for example, an enforceable court decision or court settlement[101], a complaint should not, in principle, withhold the enforcement[102]. Where enforcement is sought on the debtor's pecuniary assets, the writ of enforcement is executed without delay, by blocking the debtor's bank account and satisfaction of the creditor regardless of the complaint. However, in the event of enforcement by selling immovables or movables, this is not applied, but the procedure is *de facto* withheld as the whole case file is sent to the court to decide on a complaint[103]. As a result, the proceedings are stopped due to technical reasons until the court reaches a decision, which usually lasts for at least several months, . The solution may well be in electronic casefiles, and in the meantime, in providing for certified copies of files or several original files, etc.

6.3. Employment disputes

Employment disputes make up 50–70% of all the caseload of the first instance civil courts in Podgorica, Niksic and Pljevlja.[104] Disputes originating from employment relations, i.e. employment disputes, are urgent under Montenegrin law, meaning that the judge is obliged to consider the need to decide such cases urgently and when termination of an employment contract is involved, shorter deadlines apply to all courts actions[105].

In practice, such cases also lasted for more than two, three, four, five or more years, even as much as ten, and the Supreme Court found violations in all such cases[106]. The courts were found to have delayed scheduling even the first hearing for more than six months, in breach of a 30-day deadline following the response to the action[107]; the hearings were adjourned without a justification for more than 30 days[108]; and proceedings were marked by long periods of total court inactivity[109]. Such inactivity was often due to delays caused by expert witnesses, while the judges failed to provide for experts delivering their opinions in due time (for example, instead of 15 days, the opinion is delivered after six months), or where the findings were superficial and unclear, the judge often failed to pose a clear-cut request to the expert.[110] This has been a particularly common feature of all courts in all types of proceedings.

Furthermore, in breach of a deadline of eight days for delivering the case file to the second instance court[111], the courts failed to deliver it by up to six months (Tp 20/16, Tzp 49/16), or more than one year (Tzp 51/2020), and second instance courts took more than eight or ten months to decide on an appeal, which could have been decided within a month, according to the Supreme Court.[112]

The state should consider introducing a specialisation of judges and forming special court departments, or even a special employment court[113]. On a general level, solutions should be sought for a more efficient cooperation between the courts and expert witnesses.

6.4. Criminal cases

The EU Commission's 2021 Montenegro report proposed addressing "the lengthy duration of trials and frequent adjournments in organised crime cases" (p. 39). Delays in such cases, tried before the Special Department of the High Court in Podgorica, were mostly caused by the complexity of having numerous defendants, who, when not in detention, were in turn in isolation due to Covid-19, or their lawyers were, or were otherwise incapacitated[114]. The Special Court Department still lacks proper IT and audio-video recording equipment, and judges still dictate minutes of very complex and lengthy hearings. Delays were also caused by the lawyers' strike and changes of judges, because many judges had left the judiciary[115]. In addition, delays in acquiring expert opinions frequently cause a postponement of trial dates. Some judges fail to determine deadlines for experts, or fail to provide with specified request, i.e. a question that the forensic expert should answer, or fail to understand the findings.

Nevertheless, the Supreme Court never considered an action for fair redress due to a violation of the right to a trial within a reasonable time involving proceedings for organized crime. Moreover, in the last two years, no claims relating to criminal proceedings have been observed with the Supreme Court. In 2019, the Court dealt with an action for fair redress in relation to a somewhat complex case against doctors indicted for a criminal offence that had allegedly led to the death of the daughter of the plaintiff complaining about the duration of a trial going on in the first instance for seven years without a judgment (Tpz 25/2018). A total of 18 hearings were adjourned and 23 were held. The facts presented by the Supreme Court suggest a lack of judicial skills in managing the proceedings, which involved gathering medical forensic expertise from another state, and were complex to some extent but not enough to justify such lengthy first instance proceedings in a case involving high stakes for the damaged party. Other observed criminal cases involved unjustified delays in conducting the proceedings and executing judgments.

6.5. Delays in Constitutional Court proceedings

The Constitutional Court does not accept requests for review[116], although the right to a trial within a reasonable time extends to its proceedings. In *Siništaj v. Montenegro*, the ECtHR found a violation where the Constitutional Court proceedings lasted over four years and eight months, and cited examples from its case-law of violations found in relation to proceedings lasting over three years[117].

There are numerous constitutional appeals pending before the Constitutional Court for the fifth year (from 2017), and for the fourth year (from 2018).[118] However, the number of related actions for fair redress has been low. Only three cases to date involved constitutional appeals. In two instances, the deadline of 18 months, prescribed at the time for the Constitutional Court to decide a case had passed by a month, and the Supreme Court had not found a violation[119]. In the third case, the violation was found, regarding exceptionally long proceedings involving two constitutional appeals, the first lasting for more than three years and the second for more than two years[120]. Solutions should be sought for expediting proceedings before the Constitutional Court[121].

6.6. Non-enforcement of domestic decisions against socially/state-owned companies

Non-enforcement of domestic decisions against socially/state-owned companies is a problem faced by Montenegro. Bearing in mind the relevant case-law of the ECtHR regarding other states and Montenegro (i.e. *Mijanović v. Montenegro*[122]), the state should consider instituting a mechanism of compensation of all such claimants from the state budget, and not wait for the ECtHR to order it to do so.

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

- The available statistics show that the legal remedies for the protection of the right to a trial within a reasonable time are still not used as much as they could (the request for acceleration of proceedings has been used only in every 14th case older than three years).
- The law limits the amounts of compensation for a violation of the right to a trial within a reasonable time to amounts (300–5000€) that are lower than those awarded by ECtHR also in cases in relation to Montenegro.
- Montenegro opted for a combination of legal remedies for acceleration of proceedings and just satisfaction, with a constitutional appeal following exhaustion of those remedies. The ECtHR found all remedies to be effective, except for the administrative proceedings.
- There is no monitoring of the effectiveness of remedies with a view to expediting the proceedings following positive decisions on the request for review, or an award of compensation. Some parties have filed requests and claims for compensation multiple times in the same proceedings.
- There is no explicit formula or scale for calculating the amount of compensation awards
- The Supreme Court awarding compensation pays a lot of attention to the timely use of remedies for the protection of the right to a trial within a reasonable time.
- The compensation payments are made from the state budget, and not from that of the courts, so the payments have never been jeopardized. However, payments usually need to be enforced, which adds some delay and costs of enforcement proceedings.
- The Constitutional Court would not decide complaints against the level of compensation awarded by the Supreme Court for a violation of the right to a trial within a reasonable time.
- There is still a persistent problem of repeated re-examinations of a single case, as the amended laws on administrative proceedings and administrative dispute apply only to new cases, whereas cases initiated under old version of law are still pending under the old rules allowing for, among others, multiple remittals.
- There is a special backlog in the work of commissions for the restitution of property. In addition to delays in administrative proceedings, there are delays in employment proceedings, criminal trials involving many defendants, and also before the Constitutional Court.
- Delays in obtaining opinions from expert witnesses, and related problems are a frequent cause for the protraction of proceedings.
- Some cases are still pending in enforcement proceedings and/or before the Constitutional Court involving numerous claims decided against socially or state-owned companies.

7.2. Recommendations

- The effectiveness of the remedy for accelerating the proceedings (request for review) should be monitored and results reported. The prevalence of reasons for delaying the procedure should be analysed and influenced by improving training, practice or regulations.
- Special monitoring is needed for administrative proceedings and related disputes.
- Old administrative proceedings should be diligently completed, the law should be amended to allow the application of the new procedural rules to proceedings initiated under the old

law. The state inspection should regularly administer sanctions and the state claim a refund for damages paid from civil servants who unjustifiably fail to implement the new regulations (the same proposal was advanced by the representative of Montenegro before the ECtHR)[123]. Delays before the Commissions for Restitution require particular attention.

- Judges should be trained in case management on the examples of cases where the Supreme Court determined violations of the right to a trial within a reasonable time. Special attention should be devoted to managing expert witnesses.
- Specialisation of judges and special court departments should be considered for employment disputes.
- Case files should be copied before the case is sent to be decided by the competent bodies for acceleration of proceedings and fair redress, and in enforcement proceedings where the appeal should not withhold enforcement, to facilitate the efficient completion of proceedings already delayed.
- All judgments by which the Supreme Court adopts requests for just satisfaction should be notified to the judges in charge of the main case and/or the competent administrative body, and they should be encouraged to speed them up.
- All persons acting in proceedings affecting the right to a trial within a reasonable time should be regularly informed of relevant case law of the Supreme Court, the Constitutional Court and the ECtHR, and the initial training of those applying to become judges should include examples from such case-law.
- The Supreme Court should apply a formula for calculating fair redress. An introduction of a scale on equitable principles should provide for equivalent results in similar cases and increase trust in ensuring fair justice.
- The Supreme Court should reconsider the level of importance it attributes to delays of parties to submit a request for review, in view of the obligation of the courts to conduct the proceedings within a reasonable time that is not conditional upon the parties making use of the remedies.
- A small material value of the claim from the original law suit should not lead to no award of fair redress for a violation of the right to a trial within a reasonable time, since the purpose of the award is unrelated to the material value of the proceedings, unless such a value is otherwise important for the assessment of "what is at stake for the applicant".
- The Constitutional Court should be able to assess whether the Supreme Court awards adequate amounts of fair redress in accordance with the position of ECtHR in *Cocchiarella v. Italy* as its current hesitant approach jeopardises the effectiveness of the constitutional appeal.
- An action plan providing for a mechanism of compensation by the state of all creditors of socially/state-owned companies whose claims had not been enforced to date.

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1 Constitution of Montenegro, *Official Gazette*, no. *1/2007 i 38/2013*, Art. 32: „"Everyone has the right to a fair and public hearing in reasonable time before an independent, impartial and legally founded court" (*Svako ima pravo na pravično i javno suđenje u razumnom roku pred nezavisnim, nepristrasnim i zakonom ustanovljenim sudom*).

2 *Zakon o zaštiti prava na suđenje u razumnom roku (Protection of the Right to a Trial Within a Reasonable Time Act)*, Official Gazette, No. 011/07 of 13.12.2007.

3 Constitution of Montenegro, op. cit., Art. 149, para. 1(3).

4 *Ibid*., Art. 9.

5 *Zakon o zaštiti prava na suđenje u razumnom roku (Protection of Right to Trial Within Reasonable Time Act)*, op.cit, Art. 2.

6 Ibid., Art. 34 para. 2.

7 See, for example, *Kračun v. Slovenia*, 2006, award of 9600 €; *Sinex D.O.O. v. Montenegro*, 2017, award of 5500 €; *Milić v. Montenegro and* Serbia, award of 7000 €; *Đuković v. Montenegro*, award of 5400 €, etc.

8 See, for example, Tpz 23/2013, 27.05.2019, citing *Rudan v. Croatia*, App. no. 45943/99, et. alt. The Constitutional Court of Montenegro supported such a postition in U-III br. 295/17.

9 See, for example, Tpz 70/2019, 14.1.2020, citing *Loisean v. France*, App. no. 46809/99.

10 See, for example, Tpz 61/2019, 9.12.2019, citing *Vidacar S.A. Opergrup S.L. v. Spain*, App. no. 41601/98 and 41775/98, and *Ferrazzini v. Italy*, App. no. 44759/98.

11 *Micallef v. Malta* Application No. 17056/06

12 Tpz 46/2018, 5.12.2018. The case related to the request for a provisional measure prohibiting alienation or encumbering of certain property, and the Supreme Court cited *Micallef v. Malta* (GC) App. no. 17056/06 and *Štokalo and Others v. Croatia*, dec., App. no. 22632/07, to support its finding that the scope of the provisional measure in question would not lead to total or partial satisfaction of the creditor's main claim, i.e. would not fulfill the second condition of the *Micallef* test.

13 Tpz 62/2018, 27.02.2019, finding that the dispute involves issues similar to the election disputes of representatives of local and national parliaments, citing *Pierre-Bloch v. France* judgment of 21.10.1997.

14 Tpz 15/2019, 12.03.2019. The Supreme Court cited *Sporong and Lonnorth v. Sweden*, App. No. 7152/75, para. 81 to support the conclusion that the correction proceedings did not involve a «dispute that is real and of a serious nature», and *Ulyanov v. Ukrajine*, App. no. 16472/04 for the finding that «a result of such proceedings was not directly decisive for the right in question», which were two conditions to trigger application of the Art. 6 para. 1 of the Convention as well as court protection under the Act.

15 Tpz 42/2020, 4.11.2020, finding that an individual's right to a passport is not a "civil" right under Art. 6 para. 1 of the Convention, citing *Peltonen v. Finland*, App. no. 19583/92, 1995.

16 *Vukelić v. Montenegro*, Application No. 58258/09, § 85.

17 Analysis of the Constitutional Court work targeting legal certainty and the right to a final decision *(Analiza rada Ustavnog suda Crne Gore usmjerena na pravnu sigurnost i pravo na konačnu odluku)*, dr Bosa M. Nenadić, Podgorica 2019, str. 30: https://rm.coe.int/analysis-of-the-constitutional-court-work-/168093f41b

18 See Tpz. 26/18, judgment of 10 September 2018, citing *Strahinja Đuričić v. Croatia*, Application no. 16319/02 *Süßmann v Germany,* Application No. Application No. 20024/92 and *Kraska v. Switzerland* Application No. Application no. 13942/88 in relation to constitutional court proceedings, and Tpz. 3/21, judgment of 7 May 2021 (citing *Sporrong and Lonnroth v. Sweden*, Applications No. no. 7151/75 and 7152/75 for administrative proceedings concerning the determination of the right to property.

19 *Vučeljić v. Montenegro*, dec., Application No. 59129/15.

20 Constitutional Court Act, Art. 69, para. 3, *Official Gazette* no. 11/2015, in force as of 20.3.2015.

21 Tpz 24/2017.

22 Tpz 11/2018. The claimant lost the status of the creditor in bankruptcy proceeding by a final court decision and,therefore, loss the status of a party to proceedings, who may claim the violation of the right to a trial within a reasonable time. **(** I do not understand what the author means by "proceeding by")**

23 Tpz 49/2019. This came about as a very strict interpretation of the provision from the Act that a defendant may file the claim, as parents and other legal representatives of minors including guardians in misdemeanor proceedings have an explicit right to „"file proposals" on their behalf (Art. 86 para. 1, Misdemeanor Act, *Official Gazette of Montenegro*, no. 1/2011, 6/2011, 32/2014, 43/2017 and 51/2017).

24 Tpz 20/2019.

25 Tpz 8/2017.

26 Act, Art. 33.

27 Tpz 58/2018.

28 Tpz 48/2019.

29 Constitutional Court of Montenegro, U-III 506/19 – 2021, in relation to Tpz. 58/2018.

30 Tpz 58/2018.

31 See, for example, Tpz 50/2018, Tpz 11/2020, Tpz 9/2021. There have been 22 such cases from 2018 to 2021. In such judgments, the Court referred to the ECtHR cases *Bogićević – Ristić v. Serbia*, 2018, *Matović v. Serbia,* 2018, *Ćalović v. Montenegro*, 2017 and *Ramagnoli v. Montenegro*, 2015.

32 See, for example Tpz 16/2019, where a lawyer did not clarify whether the amount of 2100 € was sought jointly for all plaintiffs or for each one of them, or Tpz 43/2019, Tpz 51/2019, Tpz 52/2019 where attorneys at law did not specify the claimed amount at all. The Court referred to Civil Procedure Act Art. 106 para. 4 in this regard.

33 Tpz 21/2020, Tpz 64/2018 and Tpz 19/2020. The Act requires the request for review and action for fair redress to contain „"data and circumstances suggesting that the court is unreasonably prolonging the procedure", Art. 9 para. 3, Art. 35 para. 1.

34 See, for example Tpz 42/2016, Tpz 14/2017, Tpz 3/2018.

35 Tpz 6/2018, Tpz 7/2018, Tpz 43/2020, etc.

36 Tpz 20/2016, Tpz 43/2016, Tpz 44/2020, Tpz 55/2019.

37 Tpz 2/2016, Tpz 32/2018, Tpz 41/2020.

38 Tpz 18/2018, Tpz 66/2018.

39 For example Tpz 8/16, 43/17, 17/18, 25/19, 2/20, etc.

40 For example, in Tpz 127/21 it was found that three years, five months and six days in total for the first instance civil proceedings conducted initially and upon retrial was reasonable. This was the longest proceeding

41 Tpz 79/21, 23/21, 134/21, 21/21, 24/21, 30/21, 95/21, 118/21, 20/21 and 93/21.

42 See, for example, Tzp 31/2016, where the Court found that an additional 8 months that have passed from the adoption of the claim is not enough to cause a violation although it acknowledged that the court did not schedule a single session in six months, while the other two months of inaction it justified due to annual vacation time. Similarly, for the period of a year and six months after the adoption of complaint see Tpz 44/2017, where the court found that a delay of 2 ½ months for "acquiring a position of the Civil Department of the Supreme Court of Montenegro" was not found unreasonable.

43 For the same criticism involving Tpz. 11/15, 24/15, 46/17 see *Analysis of existing legal framework and practice in relation to effective legal remedies for protection of the right to the trial within a reasonable time*, Sanja Otočan, Horizontal Facility for Western Balkans and Turkey, EU and Council of Europe, Podgorica, 2019, p. 58–59 and 155: https://rm.coe.int/analysis-legal-framework-fill-eng/168094c4ad.

44 Tpz 16/2017, of 19.5.2017, with the highest award of 5000 €.

45 Tpz 21/2017, of 19.6.2017, with the highest award of 5000 €.

46 For example, a 30 day deadline for scheduling the first hearing upon receipt the response to a claim extended to 4 years (Tpz 129/2021), 12 months (Tpz 144/2021), 10 months (Tpz 141/2021) or six months (Tpz 129/2021), violations found in combination with other factors.

47 For example, Tpz 59/2019, Tpz 18/2016, Tpz 23/2017.

48 For example, Tpz 5/2016, Tpz 18/2016 (where 15 hearings were adjourned due to inactivity of the expert witness); Tpz 17/20 (where 8 hearings were adjourned); Tpz 26/20 (where the court failed to provide a deadline to the expert witness);

49 For example, Tpz 21/17, where the state prosecutor and judge did not understand the opinion of the financial expert witness.

50 For example, Tpz 17/19 and Tpz 61/21. However, both the Civil Procedure Act and Administrative Dispute Act were amended to prevent quashing decisions more than once in 2015 and 2017, respectively.

51 Tpz 15/2016, 9.6.2016.

52 Tpz 21/2017, 19.6.2017.

53 Už-III br. 157/15, 4.6.2020.

54 U-III br. 7/17, 26.02.2020.

55 See *Implementation Analysis of the Right to a Trial Within a Reasonable Time Act 2011–2015*, Human Rights Action, 2017, p. 71: "For example, in cases: KI 93/16; KI 81/16. in 2/3 of cases granting of a request for review did not lead to acceleration of the procedure within the statutory deadline of 4 months" https://www.hraction.org/2017/02/06/implementation-analysis-of-the-right-to-a-trial-within-a-reasonable-time-act-2011–2015/?lang=en.

56 Report on the implementation of the Right to a Trial Within a Reasonable Time Act for the period 1 January – 31 December 2017 (Izvještaj o primjeni Zakona o zaštiti prava na suđenje u razumnom roku za period 1. januar – 31. decembar 2017. godine), Ministry of Justice, Government of Montenegro, February 2018, p. 27.

57 Montenegro 2021 Report, European Commission, Strasbourg, 19.10.2021, p. 22.

58 *Ibid.*

59 The disposition time before the Administrative Court was 438 days in 2020 and 521 in 2021. The disposition time in basic courts in 2020 was 143 days and 147 for commercial cases. See Montenegro 2021 Report, EU Commission, Brussels, 19.10.2021, p. 23 and the Yearly report on the work of the Judicial Council and state of judiciary, Judicial Council 2022.

60 *Analysis of existing legal framework and practice in relation to effective legal remedies for protection of the right to the trial within a reasonable time*, op. cit., S. Otočan, 2019, https://rm.coe.int/analysis-legal-framework-fill-eng/168094c4ad

61 For example, Tpz 5/10, where there was no decision even 10 months after the adoption of the first claim.

62 Tpz 16/2017, Tpz 44/2019, Tpz 21/2017.

63 Tpz 7/2011 and Tpz 34/2015.

64 Tpz 28/2013

65 Tpz 23/2017

66 *Apicella v. Italy* Application no. 64890/01

67 *Scordino v. Italy* Application no. 36813/97

68 The first civil case was a marital-property dispute (Tpz 7/11) lasting for approximately 15 ½ years; the second was a corporate dispute lasting for 10 years (Tpz 34/15), whilst the three criminal cases lasted from 13 to 17 years with significant periods of unjustified inactivity (Tpz 4/13, Tpz 23/14, Tpz 28/13). See *Implementation Analysis of the Right to a Trial Within a Reasonable Time Act 2011–2015*, *op.cit.*, p. 42–43.

69 Tpz 11/2016.

70 Tpz 10/2019.

71 Tpz 21/2019.

72 Tpz 9/2019, Tpz 1/20

73 Tpz 5/2020, 500 € was awarded whilst the value of the dispute, which had not been taken into account, was over 800,000 €.

74 Art. 284, para. 3, Civil Procedure Act, *op.cit.*

75 Tpz 11/2016

76 For no award, see, for example, Tpz 44/14, Tpz 6/2019, Tpz 34/2020, Tpz 22/2020.

77 Tpz 5/2016, od 25.2.2016.

78 Tpz 15/2016, od 9.6.2016.

79 *H. v. the United Kingdom*, App. No. 9580/81, para. 73.

80 Civil Procedure Act, *Official Gazette* No. 22/2004, 28/2005 ... 76/2020, Art. 11, para. 1.

81 For example, Tpz 9/13, Tpz 39/13, Tpz 43/2017.

82 Law on Obligations, *Official Gazette of Montenegro*, No. 47/2008, 4/2011, 22/2017, Art. 211, para. 1.

83 For example, Už-III br. 375/16, 24.10.2018.

84 *Cocchiarella v. Italy* and *Mussci v. Italy*, 2006, cited from „Pravo na sudjenje u razumnom roku – priručnik za primjenu člana 6(1) Evropske konvencije o ljudskim pravima (*Right to a Trial Within a Reasonable Time – A Manual for implementation of article 6(1) of the European Convenction on Human Rights*), Ivana Roagna, Council of Europe, 2018, p. 19.

85 Interview with Ms. Valentina Pavlicic, agent of Montenegro before the ECtHR, May 2022.

86 Information obtained from interviewing three different lawyers who have had such an experience.

87 Godišnji izvještaj o radu Sudskog savjeta i ukupnom stanju u sudstvu za 2021. godinu (*Yearly report on the work of the Judicial Council and the general state of judiciary for 2021*), Sudski savjet, str. 35, https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2021.pdf

88 Montenegro 2021 Report, European Commission, 2021, p. 23.

89 Administrative Procedure Act, Art. 126 para. 9, Official Gazette No. 56/14, 20/15, 40/16, 37/17 and Administrative Dispute Act, Art. 36 para. 3, *op. cit.* ("if the nature of the administrative issue allows it").

90 Administrative Procedure Act, op. cit, Art. 161; Administrative Dispute Act, op. cit, Art.

91 Tpz 11/2022

92 Tpz 5/2021

93 Tpz 12/2021, refering to Administrative Procedure Act, *op.cit.*, Art. 130.

94 https://www.Ombudsperson.co.me/docs/1652269181_final_izvjestaj_05052022.pdf, p. 85.

95 Ibid., p. 89. The same was recommended by an expert invited to observe the implementation of the right to a trial within a reasonable time in administrative procedures and disputes, see *Analysis of the current legal framework and case-law in respect of effective remedies for the protection of the right to trial within a reasonable time in administrative procedures and administrative disputes,* Sanja Otočan, Podgorica 2019, Horizontal Facility for Western Balkans and Turkey, EU and CoE. She also proposed that data on the total duration of the administrative proceedings should be provided, that the number of judges should be increased and that the hearing in the administrative dispute should not be obligatory.

96 Izvještaj o radu Upravnog suda Crne Gore za 2021. godinu (*The report on the work of the Administrative court for 2021*), Administrative Court of Montenegro, p. 34, https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_CG_-_2021._godina.pdf

97 *Stanka Mirković and others v. Montenegro*, App. nos. 33781/15 and 3 others

98 „The process of restitution of properties expropriated in the past remains slow and Montenegro still needs to ensure fair restitution proceedings within a reasonable time", Montenegro 2021 Report, European Commission, p. 33, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0293.

99 According to a general rule applying to all kind of appeals, under Rules of Court, Art. 271 (*Delivery of a casefile to the higher court*), *Official Gazette of Montenegro*, no. 65/2016.

100 Enforcement and Security of Claims Act, *Official Gazette of Montenegro*, no. 36/2011, 28/2014, 20/2015, 22/2017, 76/2017 – CC decision and 25/2019, Art. 6.

101 Other such documents are: Decisions and settlements that are considered to be enforceable documents by separate laws; Mortgage agreements, or lien statements made in accordance with the regulations governing mortgage; Notarial deed representing an enforceable document in accordance with law and foreign notarial deed if it contains all elements necessary for enforcement in accordance with law and is considered to be an enforceable document in the country of origin; Other documents set forth by law as enforceable documents. Enforcement and Security of Claims Act, *op. cit*., Art. 18.

102 Ibid., Art. 49, para. 3.

103 Ibid., Art. 49.

104 Data presented at the round table « Labour disputes and caselaw – the need for establishing employment courts in Montenegro », organised by the Free Syndicates Union of Montenegro on 21 October 2016, available at: https://www.paragraf.me/dnevne-vijesti/01112016/01112016-vijest1.html

105 Civil Procedure Act, *Official Gazette of Montenegro* no. 22/04, 28/05, 76/06, 73/10, 47/15, 48/15, 51/17, 75/17, 62/18, 34/19, 42/19, 76/20, 108/21, Art. 434.

106 Tpz 28/16, Tpz 20/16, Tpz 53/19, Tpz 122/2021, Tpz 131/2021, Tpz 16/2017, Tpz 1/19, Tpz 33/16.

107 Tpz 21/16, Tpz 23/16, Tpz 33/16, Tpz 38/16, Tpz 31/17, Tpz 1/19, Tpz 53/19, Tpz 69/19, Tpz 131/21, Tpz 17/20, Tpz 15/20.

108 In breach of the deadline set by Art. 319 of the Civil Procedure Act, *op.cit*., see Tpz 21/16, Tpz 23/16, Tpz 30/16, Tpz 33/16, Tpz 9/17, Tpz 16/17, Tpz 31/17, Tpz 1/19, Tpz 131/21, Tpz 122/21.

109 Tpz 31/16, Tpz 16/2017, Tpz 23/16, Tpz 16/2017, Tpz 15/20.

110 Tpz 30/16, Tpz 16/2017, Tpz 47/2017, Tpz 49/2018, Tpz 1/19, Tpz 53/19, Tpz 17/2020.

111 *Ibid.,* Art. 373.

112 Tpz 20/16, Tpz 30/16, Tpz 49/16, Tpz 69/19, Tpz 122/2021.

113 *Ibid.*

114 Interview with judge Ana Vukovic of the Special Department of the High Court in Podgorica, May 2022.

115 *Ibid.*

116 Analysis of the Constitutional Court work targeting legal certainty and the right to a final decision, *op.cit*, p. 30.

117 *Siništaj v. Montenegro*, App. No. 31529/15, para. 26, 32.

118 Exactly, 15 from 2017, 370 from 2018, 1066 from 2019 and 729 from 2020 (Constitutional Court, Su. 55–22/1, 4.2.2022).

119 Tpz 55/18 i 56/18, where the proceedings lasted for 19 months. The Supreme Court referred to ECtHR caselaw in *Đuričić v. Croatia*, App. No. 67399/01, and *Mehmedalija Omerović v. Croatia*, App. no. 46953/99, where it was found that app. two years was not too long to decide on the constitutional appeal.

120 Tpz 26/2018.

121 Analysis of the Constitutional Court work targeting legal certainty and the right to a final decision, *op.cit*, p. 91–93.

122 Mijanović v. Montenegro Application no. 19580/06

123 Report of the work of the office of the Representative of Montenegro before the ECtHR for 2021, p. 84, promoting the principle of financial liability.

NORTH MACEDONIA[1]

1. RELEVANT LEGAL FRAMEWORK DETERMINING THE LENGTH OF PROCEEDINGS REMEDY

The Law on the Courts (LC)[1] refers to the right to a "trial within a reasonable time" as one of the principles on which a judicial procedure is based (Art. 10, para. 1(3) of LC). The LC provides that "[i]n the determination of civil rights and obligations or of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." (Art. 6(2) of the LC). This provision corresponds to Art. 6(1) of the ECHR, a treaty which is a part of the domestic legal order and it is applicable in judicial proceedings).[2]

The *requirement to conduct and complete proceedings within a reasonable time* is prescribed by the Law on the Litigious Procedure (LLP);[3] the Law on the Criminal Procedure (LCP)[4] and the Law on Administrative Disputes (LAD).[5] The requirement "to conduct the proceedings without delay" is prescribed for civil courts (Art. 10(1) of the LLP); criminal courts (Art. 6(2) of the LCP); administrative courts (Art. 90(1) of the LAD); and administrative authorities (Art. 7 of the Law on the General Administrative Procedure (LGAP)).[6] Bailiffs are obliged to act immediately, unless the claim's nature or the circumstances require otherwise (Art. 6(1) of the Law on Enforcement).[7]

2. JURISDICTION RATIONE MATERIAE AND REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

2.1. Competent authority and criteria for filing an application

The Supreme Court (SC) decides in a procedure defined by law, in accordance with the rules and principles established by the ECHR, based on the case law of ECtHR, upon an application of the *parties* or *other participants* in proceedings concerning the right to a trial within a reasonable time (Art. 35, para. 1(5) of the LC).

An application for the protection of the right to a trial within a reasonable time may be filed before the SC by the party (Art. 36(1) of the LC), in the course of proceedings before the domestic courts or after their completion *within a period of six months* from the date on which the decision became effective (Art. 36(2) of the LC).

The requisite *content of the application* under Article 36(1) of the LC includes:

- data about the party filing the application and his/her/its legal representative;
- data about the case and the proceedings considered by the party to have violated the right to a trial within a reasonable time;

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- the reasons for the alleged violation of the right;
- a statement regarding the claim for just compensation [just satisfaction[8]]; and
- a signature of the party submitting the application (Art. 36(3) of the LC)

2.2. Proceedings for deciding upon an application filed under Article 36 of the LC

2.2.1. Criteria applicable in the SC's determination

The SC acts upon the application within a period of six months from the date of its filing and it determines whether the lower court has violated the right to trial within a reasonable time, in accordance with the rules and principles defined by the ECHR:

- the complexity of the case;
- the conduct of the parties; and
- the conduct of the lower court (Art. 36(4) of the LC)[9].

2.2.2. Procedure before the SC

The LC regulates the procedure before the SC by providing for:

- the court of first instance's obligation to submit a copy of the acts from the case file, and if necessary, acquiring a statement from the court of a higher instance regarding the duration of the proceedings conducted before it (Art. 36-a(1));
- decision-making by a three-member panel of the SC at a non-public session or, exceptionally, after hearing the party and of a representative of the court concerned (Art. 36-a(2));
- a party's right to appeal[10] within eight days from the date of receipt of the decision and the SC's obligation to decide upon the appeal (Art. 36-a (3)).

2.2.3. Types of decisions

If the SC does not reject the application on the ground of non-fulfilment of the admissibility criteria, it shall decide on the merits.

A *decision finding a violation* of the right to a trial within a reasonable time shall:

- set a time limit for completion of the proceedings by the lower court; and
- award just satisfaction ("JS")_ to the party (Art. 36(5) of the LC).

2.3. Execution of decisions of the SC

The LC lacks provisions capable of ensuring the effective compliance with the SC's instruction to complete the proceedings within a particular time limit[11], but it regulates the source and time of payment of JS (Art. 36(5))[12] and the manner of its realization. According to Article 36-b of the LC:

- The SC submits its decision eight days from the adoption thereof to the Judicial Budget Council (JBC) and the JBC within 15 days after receiving the decision requires from the applicant or his/her/its proxy to submit bank account data for payment of the awarded funds, while the latter is obliged to submit the requested data within five days from receipt of the request (paras. 1, 2 and 3);

- If the applicant fails to submit the bank account information within the above deadline, the funds shall be transferred to the deposit account of the JBC, and the JBC shall transfer the approved funds to the applicant's account after receiving the account data (paras. 5 and 6). If no account information is provided within a maximum of one year after the deposition of the awarded funds, the funds after the expiration of the said period are returned to the State Budget (para. 7).

2.4. Link between exhaustion of the domestic remedy and entitlement to apply before ECtHR

As of the date of the ECtHR's key judgment in the *Adži-Spirkoska and Others* v. "*former Yugoslav Republic of Macedonia*"[13] establishing that an application under Article 36 of the LC is an effective remedy, those who wish to claim before the ECtHR a violation of the right to a trial within a reasonable time must first exhaust the domestic remedy. In addition to applying the standard criteria, the ECtHR will analyse the amount awarded by the SC and whether the remedy before the SC contributed to expediting the proceedings (as it did in the *Petrović v. "former Yugoslav Republic of Macedonia"* case in 2017).[14]

3. ADMISSIBILITY TEST (LEGAL STANDING OF THE CLAIMANT; FULFILMENT OF THE DEADLINE TO CLAIM THE RIGHT AFTER THE JUDGMENT BECAME FINAL AND ENFORCEABLE; MERITS ASSESSMENT AND FREQUENT REASONS TO REJECT CLAIMS AND TO ACCEPT)

3.1. Admissibility criteria

3.1.1. Admissible applications

An application is *admissible* if it complies with the criteria set out in Article 36 of the LC, including compliance with the time limit and the legal standing requirements. *Locus standi* is recognised to a party or a participant (including a legal entity1[5]) to proceedings (including non-contentious,1[6] enforcement,[17] misdemeanour1[8] or administrative[19] proceedings) in which civil rights and obligations or criminal charges[20] are determined.

3.1.2. Inadmissible applications

An application is *inadmissible* if it:

a) is submitted *out of time* (Article 36(2) of the LC), after expiry of 6 months from the date of delivery of a decision to an applicant or his/her/its proxy[21] that was adopted upon a last effective remedy in proceedings in which civil rights and obligations or criminal charges were determined;

b) *fails to fulfil the criteria* referred to in Article 36(3) of the LC;[22]

c) is *incompatible* with the provisions on the competence:

c1) *ratione materiae*, where it relates to proceedings which do not concern determination of an applicant's civil rights and obligations, or any criminal charges, such as:

- administrative proceedings (for: payment of excise,[23] communal tax,[24] VAT[25] or custom debt;[26] abuse of a dominant position at the market;[27] issuance of a permit for remedial measures;[28] inscription into the Central Registry;[29] awarding an agricultural subsidy from

a State fund;[30] privatisation of a land for construction;[31] acquisition of information of a public character;[32] etc.);

- proceedings relating to purely procedural issues (such as whether a lawsuit was filed in a timely manner;[33] how to resolve a jurisdiction conflict;[34] technical correction of a judgment in civil proceedings[35] or in an administrative dispute;[36] complaint to a court's president on a judge's work,[37]);
- proceedings conducted only before an administrative body[38] or only in a non-trial procedural stage;[39]
- proceedings upon a generally ineffective remedy (a request for extraordinary mitigation of punishment which was pointless in a particular case due to challenging an acquittal;[40] or a request for reopening proceedings,[41] except if the request is accepted and the proceedings is reopened[42]);
- proceedings upon an effective remedy where the remedy failed to meet an admissibility requirement (such as an appeal filed out of time;[43] an appeal on points of law that did not reach the statutory threshold of MKD 1,000,000[44]).

c2) *ratione personae*, if an applicant did not participate in the proceedings as a party[45] or had lost that status (for example, by transferring the claim to a third party)[46].

3.2. Merits

In the course of assessing whether an application is well-founded, the Supreme Court consistently applied the criteria established in the ECtHR's case law.

3.2.1. Complexity of the case

The SC analysed whether a particular case was complex in the light of its nature, the type and number of measures taken during the proceedings. The complexity involved, *inter alia*, adducing evidence through expert report(s) in a civil case which lasted 3 years and 9 months (3 years at first instance)[47] or in proceedings which after scheduled hearings (of which 4 were postponed) lasted 2 years and 10 months at first instance and 1 year and 2 months upon an appeal on points of law (10 years and 3 months in total).[48] There was no complexity in a case of enforcement of a payment order, which lasted 14 years and 11 months owing to the applicant's failure to act.[49]

3.2.2. Conduct of the applicant and the authority conducting the proceedings

The SC assessed to what extent the overall length of the proceedings was caused by delays which could be attributed to the applicant, such as multiple and unjustified requests for postponing hearings, failure to take requisite actions for pursuing a claim (non-attendance at hearings; failure to pay the court taxes for appeal and appeal on points of law ("review"), which necessitated payment thereof by means of a court's order to the tax authority;[50] non-submission of relevant documents in nearly two-decade long proceedings for enforcement of claims for payment of heat energy bills,[51] and where the proceedings ended in a settlement).[52]

The SC's analysis of the conduct of the authorities included an assessment of their involvement in extending o the proceedings, noting that unjustified delays had occurred when the proceedings was dor-

mant due to big gap(s) between scheduled hearings; postponing of hearings due to a court's fault or negligence; delayed making and delivery of a judgment or a decision, and/or when the court failed to take specific measures that were introduced for the purpose of ensuring the protection of the parties concerned (for example, claimants in insolvency proceedings[53]) .

3.2.3. "What is at stake" for the applicant

The SC analysed whether and to what extent a "dispute" was decisive for the applicant's civil rights and obligations[54] and whether it affected the applicant substantially and significantly. For example, a claim relating to a pension was considered as an "existential issue",[55] whilst the amounts of monthly bills for payment of MKD 500 up to MKD 3,000 (EUR 8.1 to EUR 48.8) were considered to be "very low" amounts.[56]

3.2.4. Whether the length of proceedings is reasonable

The proceedings were considered to have started from the date of:

- an initial decision in civil proceedings (even when the case is at the enforcement stage[57]);
- adopting a decision establishing the claims in insolvency proceedings;[58]
- delivery of a motion to allow enforcement of a claim based on a credible document;[59]
- making the minutes of a pre-trial investigation of the applicant;[60]
- filing a private criminal lawsuit;[61]
- filing an appeal against a punitive order[62] or against a first instance administrative decision;[63] etc.

The relevant time includes the duration of proceedings upon an effective extraordinary remedy before the SC.[64]

In the light of the ECtHR's case law criteria and with regard to specific circumstances in particular (types of) proceedings, the SC held that the length of the proceedings was:

a) reasonable when, for example:

- a non-complex civil case lasted four years, five months and 20 days at two instances during which each court decided twice and delays were attributable only to the applicant, who failed to appear at one scheduled hearing, requested postponement of three hearings, and failed to submit translation of evidence at another hearing which thus had to also be postponed;[65]
- a non-complex criminal case was completed within 1 year and 4 months at two instances and the applicant and the courts did not contribute to prolongation of proceedings;[66] etc.

b) unreasonable when, for example:

- complex civil proceedings lasted three years at first instance, of which a delay of one year was caused by the postponement of four hearings upon the request of the claimant's lawyer, but some other hearings were unnecessarily postponed for reasons attributable to the trial court (absence of a judge), which "did not act in accordance with the principle of efficiency";[67]

- complex criminal proceedings lasted four years, seven months and nine days, during which the case was twice examined at first instance by adducing a considerable amount of oral and written evidence, scheduling 36 hearings of which 80% were postponed, and due to the court's negligence four times the main hearing had to start afresh owing to a lapse of excessive time between hearings, before dismissal of the indictment as time-barred owing to the statute of limitation;[68]
- a non-complex misdemeanour case lasted four years, three months and five days (it took two years 11 months and 15 days to make a decision upon an appeal), and the proceedings' length was not much extended by means of the defendant's absence from several hearings;[69]
- a non-complex administrative case relating to a claim for a medical treatment abroad lasted seven years and nine days, during which the Administrative Court was "insufficiently efficient" because it five times revoked the administrative body's decision;[70] etc.

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING A VIOLATION ON THE LENGTH OF PROCEEDINGS

4.1. Data from the domestic case law regarding the expedition of proceedings

In *Adži-Spirkoska and Others v. "former Yugoslav Republic of Macedonia"* the ECtHR noted that in 87 cases between the entry into force of the 2008 amendments to the LC (22.03.2008) and April 2011, the SC set a deadline of one to six months for the courts in question to determine the parties' claims in the substantive proceedings and in 36 cases the relevant courts had complied with the SC's order.[71] In the case of *Šurbanoska and Others* v. *former Yugoslav Republic of Macedonia*[72] the ECtHR took into account the fact that a court of appeal complied with the SC's 3-month time limit of 20.10.2008 to decide in a civil compensation case which lasted more than 17 years, of which more than 11 years after ratification of the ECHR.

The subsequent practice included some failures to comply with the SC's ruling to make a decision within a particular time limit. For example, in spite of setting a one-month time limit for deciding upon an applicant's appeal against the Pension and Disability Insurance Fund's decision,[73] the second instance administrative body failed to make a decision within seven months and ten 0 days until 27.10.2015. Thus, the total length of the proceedings amounted to 12 years, 2 months and 26 days, so the SC set a new one-month time limit.[74]

4.2. Systemic shortcoming regarding the expedition of proceedings

The provision on setting a particular time limit for the completion of proceedings is not coupled with a provision obliging the SC to keep records of the number of cases in which the lower courts were instructed to timely complete the proceedings and the number of cases in which they complied with such instructions. The SC concluded that it lacks authorization to effectively enforce its instructions for the prompt completion of proceedings and that it can examine the non-compliance only in the event of filing a new application regarding the same case.[75] The LC was not amended regarding the lack of the SC's involvement in monitoring the expedition of proceedings, despite the ECtHR's stance in the case of *Petrović v."former Yugoslav Republic of Macedonia"* that prolongation of proceedings after the SC's examination of the length of proceedings can contribute to the finding of a violation of the right to a trial within a reasonable time.[76]

5. COMPENSATION AWARDED FOR UNREASONABLE LENGTH OF PROCEEDINGS

5.1. Legal ground regarding just satisfaction and (possible) concerns of some practitioners

JS awarded on the grounds of an established violation of the right to a trial within a reasonable time, is paid out the Judicial Budget within a period of three months from the date on which of the SC's decisions' enter into force (Art. 36(6) of the LC). There are some indications that the SC's practice of awarding amounts significantly below the average amount awarded by the ECtHR may have been motivated by the concern that high(er) amounts can constitute a heavy burden for the Judicial Budget.[77] Furthermore, there is a concern as to the adequacy of paying JS from the Judicial Budget in cases in which the proceedings were initially conducted by administrative bodies. However, the latter concern seems to disregard the SC's findings in several cases that the reasons for the long duration of the proceedings includes the Administrative Court's remittal of the case to the first instance administrative body for repeated decision-making[78] instead of deciding on the merits, which means that the administrative judiciary is partly liable for some delays.

5.2. Case law in respect of JS

5.2.1. Applicable criteria and manner of awarding JS

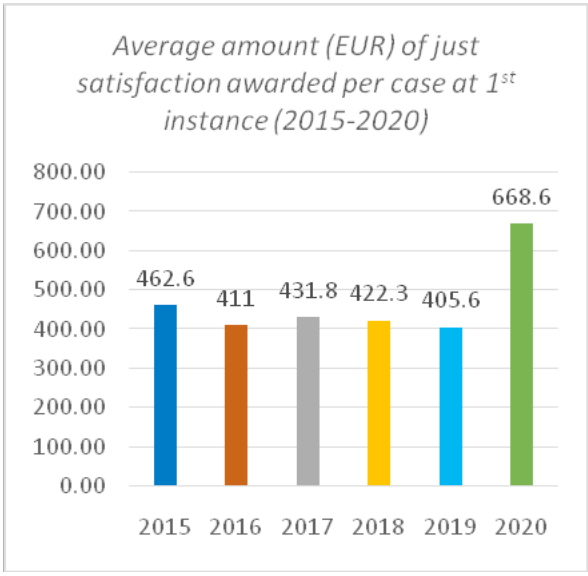
In determining the amount of JS, the SC has generally complied with the ECtHR's case law criteria, by taking into account the duration of the proceedings, complexity of the case, conduct of the court and the applicant, the economic and social situation in the State, as well as some specific circumstances affecting the applicant, such as "the applicant's suffering in the period of the duration of the proceedings".[79] JS was awarded in practice only where it was specifically claimed by the applicant under Article 36(3) of the LC (which is consistent with the stance of the ECtHR in a number of cases),[80] if there existed a causal link between the established violation of the right to a trial within a reasonable time and the alleged (non-pecuniary) damage.

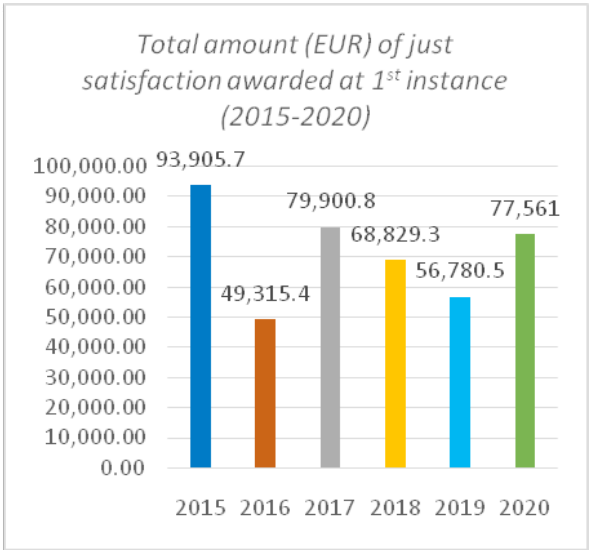
In the earlier examination of group cases, a total amount was awarded, implying a payment of an equal amount to each of the applicants.[81] However, in mid-2021 the SC concluded that JS in a case with two or more applicants shall be awarded in individual amounts for each applicant.[82]

The SC held that JS cannot include costs and expenses in litigious or other proceedings scrutinized by the SC.[83] Claimed cost and expenses for proceedings before the SC under the LC were not awarded by the SC if no evidence substantiating the relevant claim was enclosed with the application, or if the form of enclosed evidence was inappropriate (e.g. a tax invoice bill for the lawyer's services without information about the person who has paid the invoice;[84] photocopies of bank statements and payment orders[85] etc.).

5.2.1. Amounts of awarded JS and their comparison with the ECtHR's standards

In ts decision in the *Šurbanoska and Others v. "former Yugoslav Republic of Macedonia"*, the ECtHR noted the information provided by the Government that from 2008 to February 2010 a violation of the right to a trial within a reasonable time was found in 80 cases and in 46 of them the JS ranged from EUR 80 to EUR 4,000, or in average EUR 882.8 per case, which was "15–20% of the overall amount that the [ECtHR] would have awarded in comparable cases".[86] The average amount remained similar in 2010–2011,[87] but dropped from 2015 and onwards.[88]





On 18 October 2010, the SC undertook to comply with the ECtHR's case-law by establishing that JS should not be lower than 66% of the sum awarded by the ECtHR in similar cases.[89] In the *Šurbanoska and Others v. "former Yugoslav Republic of Macedonia"* case, the ECtHR considered that the JS in the amount of EUR 4,000 regarding a 17-year civil compensation case was not "manifestly unreasonable".[90] On the other hand, in the *Petrović v. "former Yugoslav Republic of Macedonia"* case concerning the restitution proceedings that had lasted 10 years, 5 months and 12 days, the ECtHR considered "manifestly inadequate" the amount of EUR 1,050 (awarded by the SC on 28 April 2015), noting that it was "approximately 35% of what the Court generally awards for non-pecuniary damage in similar cases against the respondent State", and thus insufficient to remove the applicant's "victim" status under Article 34 of the ECHR.[91] Despite this ruling, the SC in mid-2018 awarded MKD 40,000 (EUR 650.4) in a case relating to restitution proceedings that had lasted 12 years, 10 months and 24 days.[92]

5.2.3. Lack of comprehensive statistical data regarding the payment of JS

The available written sources do not indicate the existence of serious problems in relation to the payment of JS. However, the reports of the Supreme Court and the State Judicial Council do not reveal the exact amount of money (i.e. percentage of the awarded total amount) for JS per year that was not paid for various reasons (for example, due to the applicant's failure to submit bank account details within a year from the date of transfer of the awarded money to the JBC's deposit account, as prescribed by Article 36-b of the LC).

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING LENGTH OF PROCEEDINGS

6.1. Statistical and narrative overview of the relevant situation in practice

6.1.1. Reasons and circumstances affecting the right to a trial within a reasonable time

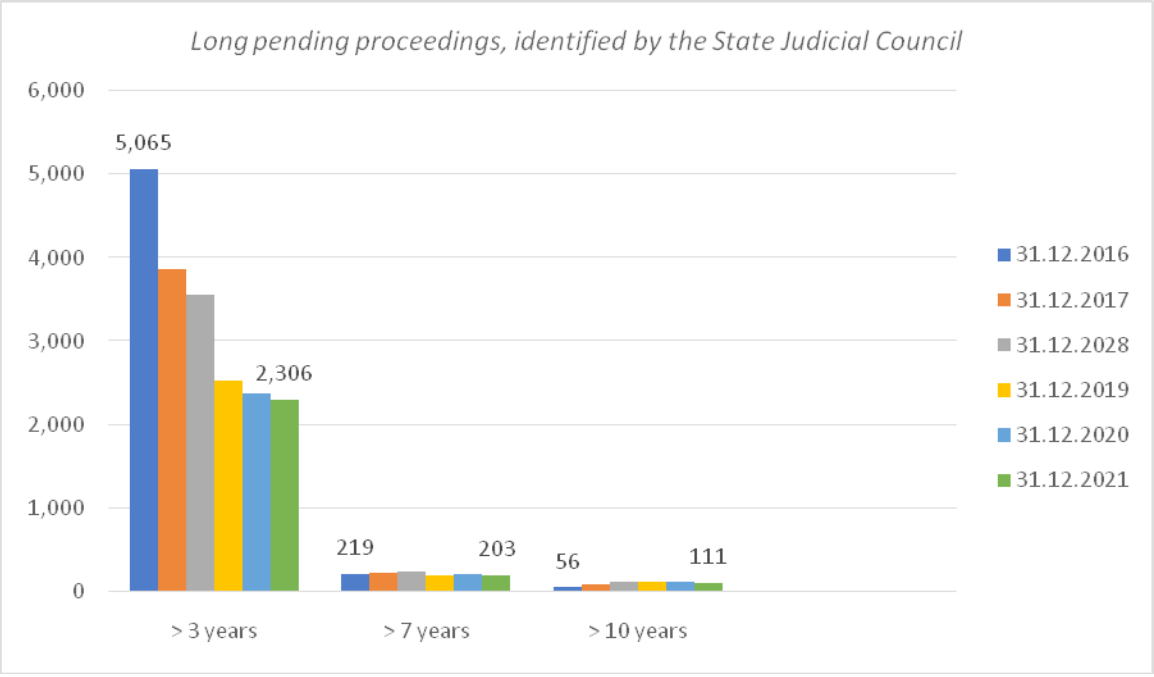
The right to a trial within a reasonable time was often affected by delays prompted by, *inter alia*:

- heavy caseload of some courts and/or inadequate case management;

- insufficient human resources (judges, associates and other court staff);
- replacement of judges and lay judges in court panels;
- slow processing of the case with big gaps between hearings;
- improper summoning of parties;
- failures of summoned parties or other persons (witnesses, experts etc.) to appear at hearings;
- failure to prevent abuses of parties aiming to protract the proceedings;
- failure to obtain evidence prior to filing an indictment and subsequent delay of the criminal proceedings by means of searching for evidence;
- inadequate communication between the administrative judiciary and the administrative authorities and the latter's failure to submit the case files in a timely manner;
- a court's failure to decide upon a lawsuit or a further remedy in a timely manner;
- multiple failure of a higher court to decide on merits and its repeated decision to remit the case back to a lower court,
- failure to make, announce and deliver a judgment or a decision in a timely manner,
- failure to enforce a final judgment (especially by administrative authorities); etc.[93]

6.1.2. Efforts to ensure the right to a trial within a reasonable time or to sanction the violation thereof

The ECtHR's indication in its judgments regarding the obligation to organize the domestic legal system in such a way that the courts can guarantee everyone's right to obtain a final decision within a reasonable time[94] seems to be reflected through tightening the procedural discipline and relieving the courts from some burdensome cases, which are now allocated to bailiffs or public notaries (these efforts were noted by the Council of Europe's Committee of Ministers in 2016[95]). The State's Strategy for Reform of the Judicial Sector included among the strategic guidelines "[i]ntroduction of special tools for identifying and prioritising cases that could lead to the violation of the principle of the right to a trial within a reasonable time."[96] The State Judicial Council, through the courts' presidents, ordered the judges in charge of cases older than seven and ten years to make a plan and projection for resolving such cases. However, the number of long proceedings (in excess of ten years) increased from 2016 and onwards.[97]



Proceedings for the determination of professional misconduct and dismissal can be initiated against a judge who had prolonged the duration of the proceedings without a justified reason (Art. 76, para 1(4) of LC). However, the LC no longer provides for the dismissal of a judge solely on the ground of an established violation of the right to a trial within a reasonable time in a single case.[98]

6.1.3 Data on proceedings for the protection of the right to a trial within a reasonable time

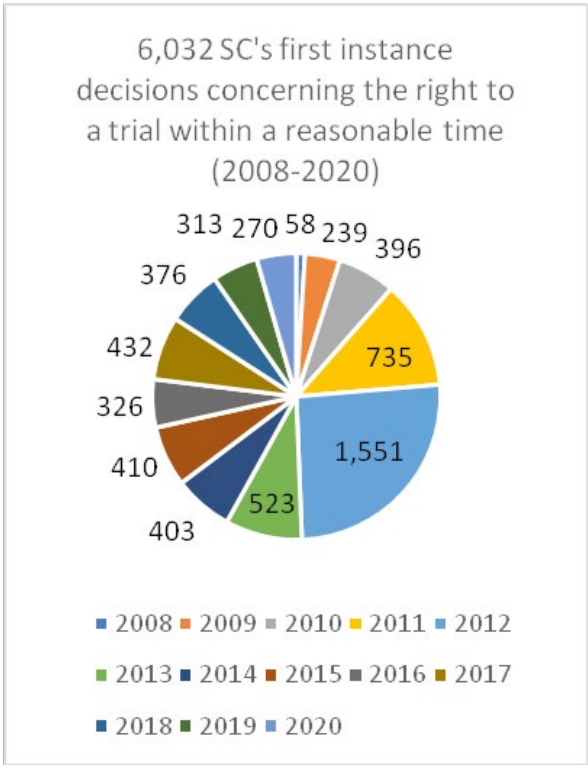
a) From 1 January 2014 to 31 December 2020, the SC adopted *2,530 first instance decisions* upon applications for the protection of the right to a trial within a reasonable time regarding:

- 807 administrative disputes (31.9% of the adjudicated caseload);
- 1,313 cases in relation to civil proceedings (51.9%); and
- 410 cases in relation to criminal proceedings (16.2%).

In the above period, a violation of the right to a trial within a reasonable time was found in 1,121 cases (44.3% of the adjudicated cases), of which:

- 418 (37.3%) were administrative disputes;
- 491 (43.8%) were civil proceedings, and
- 212 (18.9%) concerned criminal proceedings.[99]

b) From 1 January 2008 to 31 December 2020 the SC adopted *6,032 first instance decisions*, of which *1,951 (32.34%) upheld the relevant applications*. In the above period, the SC adopted *3,245 second instance decisions*, of which *437 (13.47%) upheld the respective appeals*.[100]



6.2. Delays of proceedings in particular situations and types of proceedings

6.2.1. Delays caused by multiple remittals of a case to a lower court or body ("ping pong" effect)

The practice of multiple repeated examinations of a case at the same instance after multiple remittal (rather than stopping the "ping pong" effect by making a higher court's judgment on merits) caused delays of proceedings, especially in administrative cases, due to the occasional failures of the administrative bodies in their otherwise lengthy proceedings to implement the instructions from the administrative judiciary[101] and the Administrative Court's practice of not adopting a judgment replacing the impugned administrative act.[102] The new LAD (2019) provides for punitive measures against administrative authorities and their officials that fail to comply with the Administrative Court's requests and instructions.[103]

In a case in which the SC found that the proceedings before the Pension and Disability Insurance Fund lasted 6 years and 7.5 months until 16 March 2010, and were not over until that date, it held that the administrative bodies "decided in unreasonably long time periods, which was mostly due to their inactivity after having received indications from the [courts] that declared void the decisions of the second instance [administrative] body." Noting that "the applicant did not contribute to the long duration of the proceedings", the SC observed that the courts acted ineffectively in the case due to remittal of the case on multiple occasions to administrative bodies which did not comply with the SC's guidelines.[104] On 17 March 2015, the SC noted that "the utterly passive attitude of the administrative body, which has not shown any interest at all in complying with the Administrative Court's judgment [...] and failed to take any action in the case is a basic reason for the unacceptably long duration of the administrative proceedings" whose overall length increased to 11 years, 7 months and 17 days, of which five years were a legally relevant period from its earlier decisions finding a violation. The SC, thus, set a one-month time limit for the completion of the second instance decision-making.[105] The SC's decision of 27 October 2015in the same case repeated the same statement regarding the passive conduct of the administrative body in an additional period of seven months and ten days, noting that the proceedings until the date of the first instance decision lasted 12 years, 2 months and 26 days and were still pending.[106]

6.2.2. Delays in particular types of proceedings

a) Proceedings in which *important personal values are "at stake"* for the party concerned (access to profession and income/sustenance; rights to health, freedom etc.) need special diligence. This was emphasized by the ECtHR in a number of cases relating to the following types of proceedings before the Macedonian authorities:

- *employment or employment-related* disputes;[107]
- cases relating to *social security*[108] or *pensions*;[109] and
- cases concerning *compensation for personal injuries*.[110]

Although urgency or diligence was required by particular laws,[111] these requirements were not always applied. No violation of the "reasonable time" requirement was found regarding a non-complex employment dispute which lasted three years, six months and four days at two instances (whose length was not prolonged by the conduct of the applicant or the court), during which an expert report and su-

pplement thereto were provided and six hearings were held. The SC observed that "not every instance of exceeding the legally prescribed time limits automatically constitutes a violation of the right to a trial within a reasonable time", which "depends on the complexity and specific features of each individual case", because "the provisions in the [LLP] for taking procedural actions, and decision-making in employment disputes are instructive time limits, which [...] aim to accelerate the proceedings and increase the procedural discipline."[112]

Urgent dealing with *criminal cases* is particularly required when a person is detained. The SC found that the "reasonable time" requirement was not complied with in a criminal case which lasted ten years, seven months and eight days until 3 March 2028 and was still pending on that date, whereas the applicant was in detention from 24 November 2007 to 15 April 2008 and under house arrest after the later date.[113]

b) *Insolvency/bankruptcy* proceedings were *complex* and often involved a number of employees as claimants and consideration of (sometimes numerous and geographically widespread) possessions of the applicants' (former) company, but in the light of "what was at stake" for the applicants, the delay of such proceedings was/is not justifiable, given that it reached or exceeded one or a few decades in a number of cases such as;

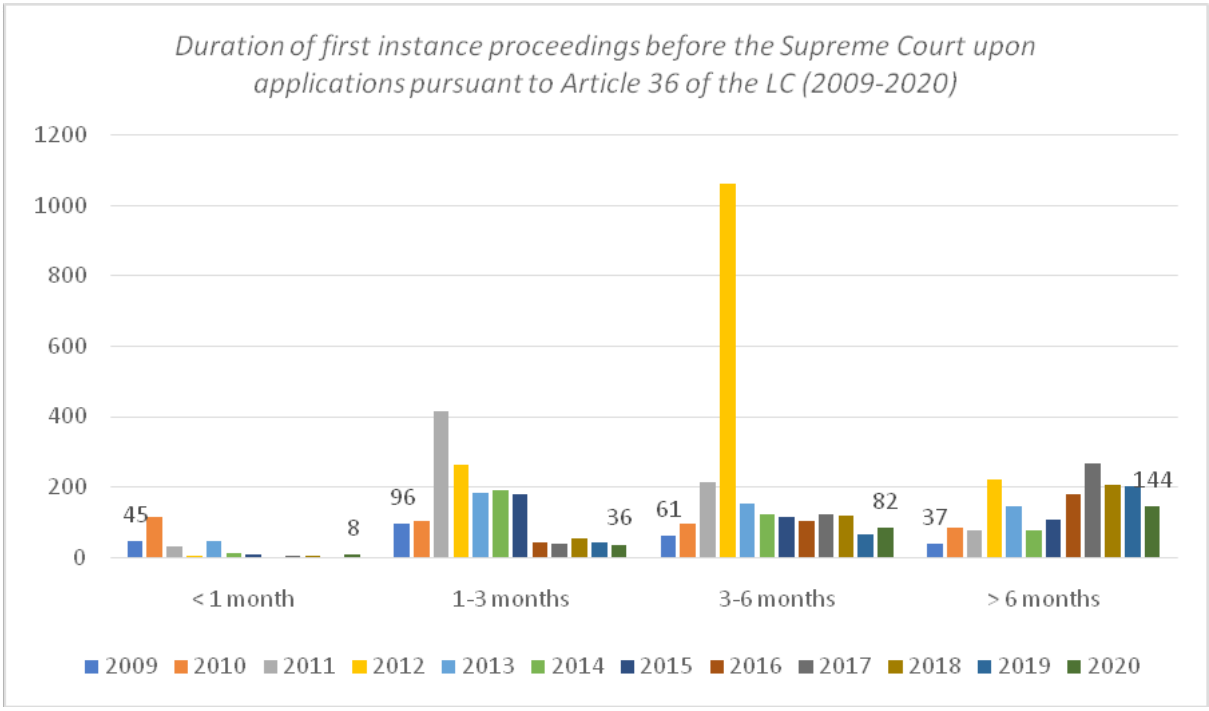
- 17 years, 9 months and 4 days in a case of 200 former employees of "C." from K;[114]
- 16 years, 2 months and 11 days in a case of 11 former employees of "S". from S;[115]
- 11 years, 9 months and 24 days in a case of 12 claimants against "M.F." from T.[116]

c) *Restitution* cases were also *complex* and often protracted (some of which had not ended yet) to excessively long duration such as:

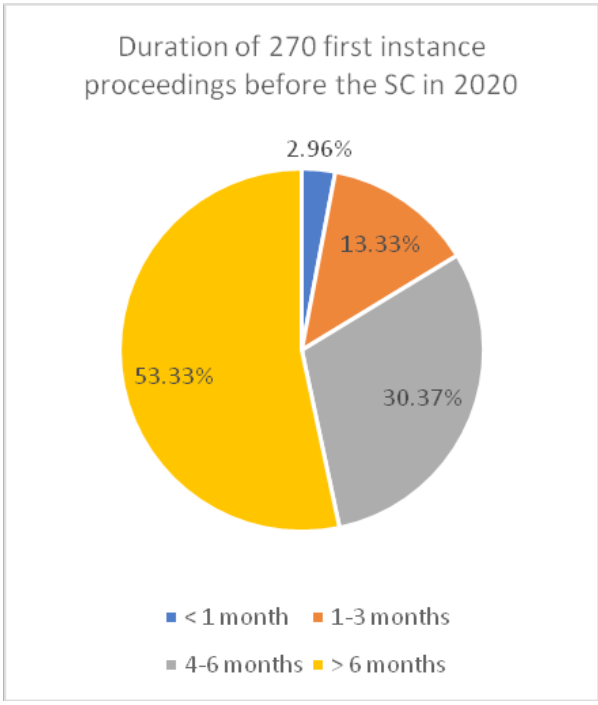
- 12 years, 10 months and 24 days (7 years, 3 months and 25 days before the administrative body; and 5 years, 6 months and 29 days before the Administrative Court);[117]
- 11 years, 5 months and 27 days, during which the first instance body made four decisions, the second instance body (commission) made three decisions, the Administrative Court made four decisions and the Higher Administrative Court made two decisions and one judgment.[118]

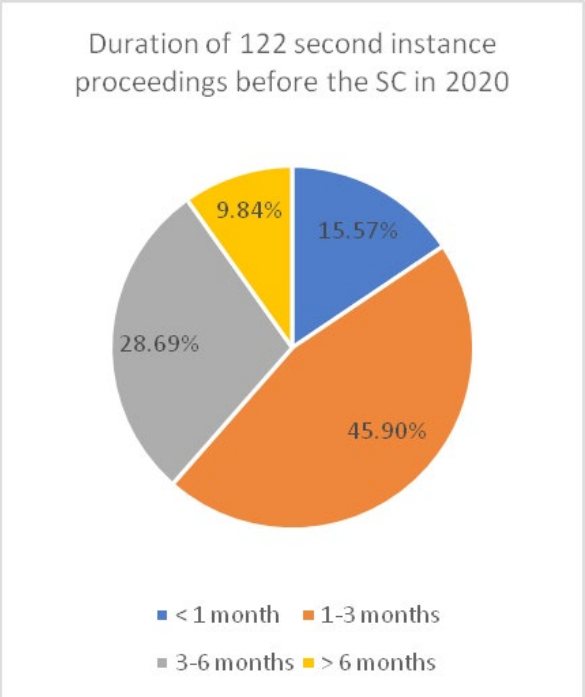
6.2.3. Delays in proceedings before the Supreme Court upon applications for the protection of the right to a trial within a reasonable time and appeals against first instance decisions

On many occasions, the Supreme Court expressed concerns about the protracted length of its own proceedings upon applications for the protection of the right to a trial within a reasonable time, noting that the delays had occurred mainly due to the failure of lower courts to timely submit the case files and the absence of adequate means to force them to fulfil their obligation under Article 36-a of the LC. The following graphical overviews show that a number of delays at first instance had occurred for nearly a decade, including in 2020:



The recent proportion of timely completed and delayed proceedings concerning the right to a trial within a reasonable time is shown below:





The SC undertook to find a solution for this problem, including extending the six-month time limit for completion of the proceedings, because delays threaten the remedy's effectiveness.[119] The failure to comply with the six-month time limit can, however, be justified in exceptional circumstances. Five years ago, in the *Petrović v. "former Yugoslav Republic of Macedonia"*, the ECtHR held that the remedy was not rendered incompatible with Article 13 ("right to an effective remedy") of the ECHR on account of processing an application under Article 36 of the LC in two instances for a period of 1 year, 8 months and 18 days due to the transfer of files between the Serbian and Macedonian authorities.[120]

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

Despite significant legislative changes aiming to ensuring that judicial proceedings are conducted within a reasonable time, the protracted or excessive length of proceedings is still a problem, albeit less serious in comparison with the situation in the early or mid-2010s. The present report identifies legislative and institutional shortcoming, and inadequacies in the case law that were/are making an adverse impact on the right to a trial within a reasonable time. It incorporates findings of general nature (including those that were stated at the regional conference on 2 and 3 June 2022 in Skopje) and findings regarding particular issues (which were adopted at the above conference on 3 June 2022).

The analysis of the legislation and practice regarding the length of proceedings reveals the following issues, challenges or possibilities for improvement:

- **Backlog of uncompleted cases**;
- **Lack of human resources** (judges, associates or other staff) for prompt conduct of proceedings and timely adjudication;
- **Delayed or other inadequate application of the laws** by particular judges or courts;
- **Multiple "back and forth" oscillation of cases** between higher and lower authorities to which particular cases were remitted back several times (the "ping pong" effect) without exercising the higher court's entitlement to decide in full jurisdiction (including notably such failures of administrative courts in administrative disputes), despite the entitlement or even the requirement in particular circumstances to decide on merits;
- **Non-compliance of administrative bodies with administrative court's indications or judgments**;
- **Failure of some authorities to submit files to the competent court** and occasional reluctance to impose a fine in the event of such non-compliances or failures; as well as **the failure of some courts to timely submit case files to the SC** for proceedings under Articles 36 and 36-a of the LC, and the lack of effective legal means to ensure compliance with this obligation in the required time;
- **SC awards of JS in amounts significantly lower than those awarded by the ECHR**, which may result (as it already had resulted) in the ECtHR's findings that the low amount of JS was in breach of the right to a trial within a reasonable time;
- **Lack of the SC's authorization to monitor and enforce the compliance with of its instructions** for completion of the relevant proceedings within a particular time limit, which jeopardizes the effective character of the LC's remedy (despite being recognized by the ECtHR as effective back in 2011);
- **Possibility of further legislating** in order to prevent delays in judicial proceedings or to better deal with applicants' complaints relating to alleged violations of the right to a trial within a reasonable time; and
- **Lack of harmonized and/or comprehensive statistical data** regarding some aspects of proceedings for the protection of the right to a trial within a reasonable time (such as data on the lower court's compliance with the instruction to complete a case within a particular time limit).

7.2. Recommendations:

- **Proper dealing with the courts' backlogs** of uncompleted cases, by means of courts' equitable distribution of cases per judges, and setting some general priorities in dealing with the backlog;
- **Increase of the number of judges and court staff** where such need is identified, notably if the relevant court cannot deal with the backlog by re-assigning cases among judges;
- **Capacity building** on the right to a trial within a reasonable time and the length-of-proceedings remedy;
- **Putting an end to the "ping-pong" effect** of multiple remittals of a case to lower instances and repeated arrival of the case before higher instances, by securing effective implementation of provisions that entitle, or even require the competent judicial authorities (including notably the administrative courts) to decide by themselves on the merits, and, ultimately (subject to proper needs assessment), considering the possibility of providing further and more stringent legally prescribed obligation of adjudication in full jurisdiction;
- **Imposing fines and/or disciplinary measures** against judges who prolong proceedings without justified reasons; and against authorities which fail to comply with court's instructions, fail to enforce a judgment or fail to submit files to a court; as well as the introduction of effective measures against courts/court's presidents which/who fail to submit case files in a timely manner to the SC for proceedings for the protection of the right to a trial within a reasonable time;
- **Consideration of the rate of determined violations** of the right to a trial within reasonable time in the cases of a specific judge **in the course of the evaluation of a judge's work** by the Judicial Council of North Macedonia, including in disciplinary proceedings;
- **Relying on the ECtHR's case law criteria regarding the amount of JS**, given that the amounts of JS awarded by the SC are significantly lower on average than those of the ECtHR;
- Introducing **amendments to the LC in order to entitle the SC to monitor the lower court's compliance** with the instructions to complete a case within a particular time limit;
- Consideration of the possibility of amending the **procedural provisions** in order to secure more efficient procedural dealing with cases [summoning, revision of deadlines (such as extension of the six-month time limit under Art. 36(2) of LC for exceptional situations where the SC is objectively unable to decide upon an application under Art. 36 of LC) in a timely manner, etc.], as well as the possibility of drafting, adopting and enacting **a specific law dedicated to the right to a trial within a reasonable time** and protection thereof;
- Maintaining **statistics on certain aspects of proceedings** for protection of the right to a trial within a reasonable time, notably concerning the SC's instructions to lower courts to complete proceedings within a particular time limit and the compliance with these instructions.

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1 The LC was published in *Official Gazette*, nos. 58/2006, 35/2008, 150/2010, 83/2018, 198/2018 and 96/2019.

2 ECHR, as other treaties ratified "in accordance with the Constitution", is a "part of the internal legal order" and cannot be changed by law" (Article 118 of the Constitution, *Official Gazette* nos. nos. 52/1991, 1/1992, 31/1998, 91/2001, 84/2003, 107/2005, 3/2009, 49/2011 and 6/2019). According to Article 2(1) of the LC: "Courts adjudicate and base their decisions on the Constitution, laws and treaties that are ratified in accordance with the Constitution."

3 LLP, *Official Gazette* nos. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015, Art. 10(1).

4 LCP, *Official Gazette* nos. 150/2010, 51/2011 and 198/2018, Art. 6 (1).

5 LAD, *Official Gazette* no. 96/2019, Arts. 11 and 90(1).

6 LGAP, *Official Gazette* no. 124/2015.

7 The Law on Enforcement (*Official Gazette* nos. 72/2016, 142/2016, 233/2018 and 14/2020) in Art. 10(1) refers to the LLP as a subsidiary applicable law regarding matters that are not regulated otherwise by this or other Laws.

8 "Satisfaction" (a word used by the ECtHR) in a legal context is tantamount to "compensation", so it is used here too.

9 Art. 36(4) of LC does not refer to "what is at stake for the applicant", but this ECtHR case law criterion was nevertheless taken into account in the SC's case law, as explained in the sub-chapters 3.2.c and 5.2.a.

10 The first instance decision PSRRG no. 86/2010 of 22.10.2012 clarified that reopening proceedings is not allowed.

11 See sub-chapter 4.2.

12 See sub-chapter 5.1.

13 ECtHR, *Adži-Spirkoska and Others v. Macedonia* (dec.), Applications No. 38914/05 and 17879/05,

14 ECtHR, *Petrović v. former Yugoslav Republic of Macedonia"*, Application no. 30721/15, paras. 2, 26 and 32.

15 Supreme Court, 1st instance decision PSRRK no. 37/2019 of 04.11.2019 (criminal and misdemeanour cases are denoted with the letter "K" ("krivični" = criminal) in the Supreme Court's case label of these cases).

16 Supreme Court, 1st instance decision PSRRG no. 90/2019 of 25.11.2019 (civil cases, including litigious, non-litigious and enforcement proceedings, are denoted with the letter "G" ("gradjanski" = civil)).

17 Supreme Court, 2nd instance decision PSRRŽ no. 97/2020 of 30.11.2020. Enforcement is a part of the civil proceedings (see the Conclusion of the SC's Reasonable Time Division of 16.01.2020 and another Conclusion of that date referring to the ECtHR's judgment in *Sinadinovska v. Macedonia*, no. 27881/06, 16.01.2020).

18 Supreme Court, 1st instance decision PSRRK no. 37/2019 of 04.11.2019.

19 Supreme Court, 1st instance decision PSRRU no. 484/2011 of 11.01.2012 (administrative cases are denoted with the letter "U" ("upravni" = administrative) in the Supreme Court's case label of these cases).

20 The Supreme Court's 2nd instance decision PSRRŽ no. 46/2020 of 14.09.2020 recognised a legal standing also to a person who has filed a private criminal lawsuit ("Ž" in the case label means "žalba" (appeal)).

21 Supreme Court, 1st instance decision PSRRG no. 10/2014 of 08.04.2014.

22 The SC rejected applications which: were not signed (1st instance decision PSRRU no. 76/2013 of 29.04.2014); lacked proxy (1st instance decision PSRRU no. 65/2019 of 21.12.2020); did not specify the impugned proceedings (2nd instance decision PSRRŽ no. 135/2021 of 14.03.2022) and were not rectified even after an indication to do so within eight days (1st instance decision PSRRU no. 26/2014 of 29.04.2014).

23 Supreme Court, 1st instance decision PSRRU no. 145/2016 of 06.07.2017.

24 Supreme Court, 1st instance decision PSRRU no. 64/2016 of 09.02.2017.

25 Supreme Court, decision PSRRU no. 12/2016 of 06.09.2017, upheld by dec. PSRRŽ no. 153/2017 of 06.10.2017.

26 Supreme Court, decision PSRRU no. 85/2020 of 29.11.2011 (with reference the ECtHR's judgment in *Ferrazzini v. Italy*, no. 44759/98, para. 27, 12.07.2001).

27 Supreme Court, 1st instance decision PSRRU no. 66/2012 of 26.02.2013.

28 Supreme Court, 1st instance decision PSRRU no. 92/2013 of 18.02.2014.

29 Supreme Court, 1st instance decision PSRRU no. 31/2017 of 29.06.2017.

30 Supreme Court, 2nd instance decision PSRRŽ no. 132 /2016 of 21.11.2016.

31 Supreme Court, 1st instance decision PSRRU no. 6/2014 of 13.05.2014.

32 Supreme Court, 1st instance decision PSRRU no. 65/2013 of 17.12.2013.

33 Supreme Court, decision PSRRU no. 112/2017 of 31.10.2017, upheld by dec. PSRRŽ no. 198/2017 of 22.01.2018.

34 Supreme Court, decision PSRRG no. 140/2016 of 06.10.2016, upheld by dec. PSRRŽ no. 133/2016 of 19.12.2016.

35 Supreme Court, 1st instance decision PSRRG no. 299/2012 of 09.10.2012

36 Supreme Court, 1st instance decision PSRRU no. 9/2012 of 21.02.2012.

37 Supreme Court, 1st instance decision PSRRG no. 11/2017 of 15.03.2017.

38 Supreme Court, 1st instance decision PSRRU no. 40/2014 of 03.06.2014.

39 Supreme Court, 1st instance decision PSRRK no. 35/2013 of 10.12.2013.

40 Supreme Court, 1st instance decision PSRRK no. 61/2019 of 18.15.2020.

41 Supreme Court, 1st instance decision PSRRG no. 152/2013 of 10.09.2013 (referring to the ECtHR's judgment in the *Naumoski v."former Yugoslav Republic of Macedonia",* Application No.. 25248/05, 27.02.2012); 2nd instance decision PSRRŽ no. 10/2021 of 02.03.2021 etc.

42 Supreme Court, 2nd instance decision PSRRŽ no. 52/2021 of 14.06.2021.

43 Supreme Court, 1st instance decision PSRRG no. 19/2021 of 27.09.2021.

44 Supreme Court, 1st instance decision PSRRG no. 56/2014 of 08.04.2014 (with reference to paragraphs 16, 18 and 34 of the judgment in *Naumoski v. ."former Yugoslav Republic of Macedonia* no. 25248/05).

45 "Parties " do not include: heirs without capacity of parties (2nd instance decision PSRRŽ no. 91/2014 of 13.06.2014, with reference to *Dimitrovska v. ."former Yugoslav Republic of Macedonia* Application no. 21466/03) because "the right to a trial within a reasonable time in the proceedings is a personal right and this right is not inherited", so only the period after the heirs joined the proceedings as parties is relevant in the meaning of Article 36 of LC (1st instance decisions PSRRG no. 196/2013 of 27.09.2013 and PSRRG no. 178/2013 of 29.10.2013); a third party intervener whose civil rights and obligations are not determined in the proceedings (1st instance decision PSRRG no. 575/2012 of 02.04.2013); a victim of a criminal offence who did not file a property claim against the defendant in criminal proceedings (2nd instance decision PSRRŽ no. 109/2021 of 14.02.2022) etc.

46 Supreme Court, 2nd instance decision PSRRŽ no. 32/2018 of 19.02.2018.

47 Supreme Court, 2nd instance decision PSRRŽ no. 23/2014 of 27.02.2014.

48 Supreme Court, 2nd instance decision PSRRŽ no. 45/2014 of 25.04.2014.

49 Supreme Court, 2nd instance decision PSRRŽ no. 135/2014 of 17.10.2014.

50 Supreme Court, 1st instance decision PSRRG no. 82/2020 of 25.01.2021.

51 Supreme Court, 1st instance decision PSRRG no. 539/2012 of 23.11.2012.

52 Supreme Court, 2nd instance decision PSRRŽ no. 135/2014 of 17.10.2014.

53 Supreme Court, 1st instance decision PSRRG no. 47/2020 of 23.11.2020.

54 Supreme Court, 2nd instance decision PSRRŽ no. 81/2020 of 19.10.2020.

55 Supreme Court, 1st instance decision PSRRU no. 51/2014 of 17.03.2015.

56 Supreme Court, 1st instance decision PSRRG no. 539/2012 of 23.11.2012.

57 Supreme Court, Conclusion of 16.01.2020.

58 Supreme Court, 1st instance decision PSRRG no. 87/2021 of 06.12.2021.

59 Supreme Court, 2nd instance decision PSRRŽ no. 97/2020 of 30.11.2020.

60 Supreme Court, 1st instance decision PSRRK no. 9/2016 of 03.07.2018

61 Supreme Court, 1st instance decision PSRRK no. 13/2021 of 04.10.2021.

62 Supreme Court, 1st instance decision PSRRK no. 7/2021 of 26.04.2021.

63 Supreme Court, 1st instance decision PSRRU no. 77/2020 of 12.07.2021.

64 Supreme Court, Conclusions of 16.01.2020.

65 Supreme Court, 1st instance decision PSRRG no. 29/2017 of 15.06.2017.

66 Supreme Court, 2nd instance decision PSRRŽ no. 98/2014 of 03.07.2014.

67 Supreme Court, 2nd instance decision PSRRŽ no. 23/2014 of 27.02.2014.

68 Supreme Court, 1st instance decision PSRRK no. 13/2017 of 17.04.2018.

69 Supreme Court, 1st instance decision PSRRK no. 37/2019 of 04.11.2019.

70 Supreme Court, 1st instance decision PSRRU no. 45/2021 of 14.06.2021.

71 *Adži-Spirkoska and Others v. ."former Yugoslav Republic of Macedonia* Applications nos. 38914/05 and 17879/05, 3.11.2011, "Facts" – B.5. "Information submitted by the Government on the SC's case-law in 'length-of-proceedings' cases.

72 ECtHR, *Šurbanoska and Others v. ."former Yugoslav Republic of Macedonia* Application no. 36665/03, paras. 12 and 39, 31.08.2010.

73 SC's decision PSRRU no. 51/2014 of 17.03.2015, upheld by the decision PSRRŽ no. 64/2015 of 27.04.2015.

74 Supreme Court, 1st instance decision PSRRU no. 78/2015 of 27.10.2015 (the appeal was filed out of time and thus it was rejected by the 2nd instance decision PSRRŽ no. 1/2016 of 08.02.2016).

75 Supreme Court, Conclusion of the SC's Trial Within a Reasonable Time Division of 22.12.2017.

76 ECtHR, *Petrović v. ."former Yugoslav Republic of Macedonia*, Application No. 30721/15, 20.06.2017, para. 26, where the ECtHR noted that the unfinished proceedings (examined by the SC on 28.04.2015) necessarily retained the character of being conducted in a non-reasonable time "throughout the subsequent period that was not susceptible to the Supreme Court's scrutiny".

77 This finding is based on, *inter alia*, a statement by the SC's judge at the CoE/SC's regional conference in Skopje on 3 June 2022 that judges know the ECtHR's case law, but the Court's Budget is not unlimited.

78 See, among many others, the SC's 2nd instance decision PSRRŽ no. 49/2021 of 31.05.2021.

79 The SC's decision PSRRU no. 51/2014 of 17.03.2015 awarded MKD 30,000.00 (EUR 488) due to 5-year duration of part of the proceedings from 16.03.2010 to 17.03.2015. By a SC's decision PSRR no. 299/09 of 16.03.2010, MKD 12,000 (EUR 195) were awarded to the same applicant due to the lapse of another 6 years and 7.5 months. The decision PSRRU no. 78/2015 of 27.10.2015 awarded MKD 10,000 (EUR 162.6) to the same applicant due to the additional delay of 7 months and 10 days.

80 Supreme Court, 2nd instance decision PSRRŽ no. 23/2014 of 27.02.2014. Compare with, among others, *Velinov v. ."former Yugoslav Republic of Macedonia*, Application no. 16880/08, paras. 100 and 103.

81 Supreme Court, 1st instance decision PSRRU no. 76/2016 of 17.11.2016.

82 Supreme Court, Conclusion of the SC's Trial Within a Reasonable Time Division of 05.07.2021.

83 Supreme Court, 1st instance decision PSRRG no. 120/2014 of 30.09.2014.

84 Supreme Court, 1st instance decision PSRRU no. 94/2015 of 20.02.2018; Conclusion of 16.01.2020.

85 Supreme Court, 2nd instance decision PSRRŽ no. 70/2014 of 22.05.2014.

86 ECtHR, *Šurbanoska and Others v. ."former Yugoslav Republic of Macedonia* Application no. 36665/03, para. 38.

87 From September 2010 to April 2011 the Supreme Court awarded just satisfaction in 115 cases in a total amount of EUR 99,000 (on average EUR 860.9 per case). Source: *Adži-Spirkoska and Others v. ."former Yugoslav Republic of Macedonia*

88 Sources: Supreme Court, *Report for: 2015, 2016, 2017, 2018, 2019, 2020*. The average amount per case for each of the years (2015 to 2020) does not necessarily reflect the average amount per individual applicant, given that there were cases with more than 1 applicant (e.g. the case with many applicants in which the SC in 2020 awarded MKD 4,770,000 (EUR 77,561), which explains the sudden rise of the average amount of awarded JS per case in 2020), The lowest amounts awarded by the SC ranged from MKD 6,000 (EUR 97.6) in 2015; MKD 3,000 (EUR 48.8) in 2016; MKD 4,000 (EUR 65) in 2017; MKD 5,000 (EUR 81.3) in 2018; MKD 5,000 (EUR 81.3) in 2019; and MKD 1,000 (EUR 16.3) in 2020.

89 The SC's Conclusion of 18.10.2010 (referred to in the Chapter B.5.d. "Conclusions of the 'length-of-proceedings' department of the Supreme Court of 18 October 2010" within the "Facts" part of the ECtHR's decision in *Adži-Spirkoska and Others v. ."former Yugoslav Republic of Macedonia*, nos. 38914/05 and 17879/05, 3.11.2011) was adopted 50 days after the aforementioned decision in the *Šurbanoska and Others* case (see the above note) whose paragraph 38 referred to the inadmissibility decision in *Vokurka v. the Czech Republic* Application No. 40552/02) in which the ECtHR established that "the amount of just satisfaction awarded at national level was 66.7% of the just satisfaction that the Court would award in similar cases against the Czech Republic".

90 ECtHR, *Šurbanoska and Others v. ."former Yugoslav Republic of Macedonia* (Application No. 36665/03, para. 39.

91 ECtHR, *Petrović v. ."former Yugoslav Republic of Macedonia*, Application No. 30721/15, para. 21, 22.06.2017.

92 Supreme Court, 1st instance decision PSRRU no. 7/2018 of 11.09.2018.

93 Ombudsperson, *Annual report 2006*, p. 36, *2013*, p. 11; *2015*, p. 32; *2016*, p. 38; Helsinki Committee, *Reports for: 2001* (p. 8); *2003* (p. 23); *2009* (p. 17); *2013* (pp. 16–17); *2014* (p. 5); and a survey with 224 lawyers at pp.40–41 in *Analysis on the Implementation of the Urgent Reform Priorities in the Macedonian Judiciary*, Kosta Petrovski *et al*., Institute for Human Rights, European Policy Institute and Macedonian Young Lawyers Association, May 2018.

94 ECtHR, *Stojanov v. ."former Yugoslav Republic of Macedonia"* Application No. 34215/02, para. 58; *Dika v. ."former Yugoslav Republic of Macedonia"*, Application No. 13270/02, para. 57, 31.05.2007 etc.

95 Committee of Ministers, Status of Execution of *Atanasović* group of cases (https://hudoc.exec.coe.int/eng?i=004–5038), Final resolution of 03.08.2016.

96 Ministry of Justice, *Strategy for Reform of the Judicial Sector for the Period 2017–2022, with an Action Plan*, p. 13.

97 State Judicial Council, *Report on the work of the State Judicial Council for: 2016*, July 2017 (p. 19); *2017*, April 2018 (p. 24); *2018*, April 2019 (p. 23); *2019*, April 2020 (p. 19); *2020*, April 2021 (p. 18); *2021*, April 2022 (p. 14).

98 The LC no longer maintains the 2010 Amendments' provision that a judge may be dismissed on the ground of a ECtHR judgment or a SC's decision establishing a violation of the right to a trial within a reasonable time that was prompted by a judge's conduct (*Official Gazette* no. 150/2010).

99 Supreme Court, *Report for: 2014* (pp. 16–17); *2015* (p. 19–20); *2016* (pp. 18); *2017* (pp. 19–20); *2018* (p. 20); *2019* (p. 21); *2020* (pp. 21).

100 SC, *Report for: 2008* (p. 16); *2009* (pp. 15–17); *2010* (pp. 15–16); *2011* (pp. 17–18); *2012* (p. 22–26); *2013* (pp. 14–17); *2014* (pp. 15–20); *2015* (pp. 17–20); *2016* (pp. 17–20); *2017* (pp. 18–22); *2018* (pp. 19–22); *2019* (pp. 19–23); *2020* (pp. 20–27). There are no data on the number of upheld appeals in the 2009 report. Some of the appeals challenged the decision to reject or dismiss the respective applications, and some others challenged the amount awarded.

101 Ministry of Justice, *Strategy for Reform of the Judicial Sector for the Period 2017–2022, with an Action Plan*, p. 25.

102 See the old (now obsolete) LAD (2006), Art. 40; as well as the new LAD (2019), Art. 60, paras. 1 and 6.

103 The LAD (2019) requires adoption of a new decision in line with the Court's legal opinion regarding the application of the substantive law or its stances regarding the procedure (Art. 60(5)) and obliges the administrative authority to proceed in line with the court's judgment that annulled an administrative act without deciding on the merits (Article 88(2). The LAD prescribes a fine in amount of 20% of the salary of the responsible natural person of the authority that failed: without a good reason to submit the case files (Art. 33(6), or other documents and information (Art. 36(2)); to adopt a new act in line with the court's legal opinion regarding the substantive law and the stances on the procedure within 30 days (Art. 60(7); to comply with the judgment's requirements within 30 days (Art. 88(3)).

104 Supreme Court, 1st instance decision PSRR no. 229/2009 of 16.03.2010 (MKD 12,000 were awarded), partly reversed by the 2nd instance decision PSRRŽ no. 77/2010 of 31.05.2010 regarding the amount of just satisfaction.

105 Supreme Court, 1st instance decision PSRRU no. 51/2014 of 17.03.2015, upheld by the 2nd instance decision PSRRŽ no. 64/2015 of 27.04.2015.

106 Supreme Court, 1st instance decision PSRRU no. 78/2015 of 27.10.2015 (the appeal was filed out of time and thus it was rejected by the 2nd instance decision PSRRŽ no. 1/2016 of 08.02.2016).

107 ECtHR, *Markoski v. ."former Yugoslav Republic of Macedonia"*, Application No. 22928/03, para. 32; *Mihajloski v. "former Yugoslav Republic of Macedonia"*, Application No. 44221/02, para. 41; *Stojanov v. ."former Yugoslav Republic of Macedonia"*, Application No. 34215/02, para. 61; *Ziberi v. Macedonia*, Application No. 27866/02, para. 47; *Gjozev v. "former Yugoslav Republic of Macedonia"a*, Application No. 14260/03, para. 45; *Manevski v. ."former Yugoslav Republic of Macedonia"*, Application no. 22742/02, para. 62; *Dimitrieva v. "former Yugoslav Republic of Macedonia"*, Application No. 16328/03, para. 36; *Josifov v. "former Yugoslav Republic of Macedonia"*, Application No. 37812/04, para. 33; and *Atanasovski v. "former Yugoslav Republic of Macedonia"*, Application No. 36815/03, para. 31.

108 ECtHR, *Mitkova v. "former Yugoslav Republic of Macedonia"*, Application No. 48386/09, para. 57.

109 ECtHR, *Docevski v. "former Yugoslav Republic of Macedonia"*, Application No. 66907/01, para. 35; *Stojković v. Macedonia*, Application No. 14818/02, para. 41; and *Blage Ilievski v. Macedonia*, Application No.. 39538/03, para. 23.

110 ECtHR, *Dika v. "former Yugoslav Republic of Macedonia"*, Application No.. 13270/02, para. 59, 31.05.2007; *Lazarevska v. "former Yugoslav Republic of Macedonia"*, Application No.. 22931/03, para. 55; *Sali v. "former Yugoslav Republic of Macedonia"*, Application No. 14349/03, para. 47; *Savov and Others v."former Yugoslav Republic of Macedonia"*, Application No.. 12528/03, para. 51,; and *Trpeski v. "former Yugoslav Republic of Macedonia"a*, Application No. 19290/04, para. 24.

111 The LLP (2005) guides a civil court to pay particular attention to the need of urgently solving the employment disputes (Art. 405(1)), or disputes regarding obstruction of possession, depending on the circumstances (Art. 411(1)). The LCP (2010) obliges the competent authorities to act urgently in dealing with cases of detained persons (Articles 164(2) and 470(5)). Urgency is prescribed for a "model" administrative dispute, instigated upon lawsuits against 20-n acts based on equal or similar facts and the same legal ground (Art. 49(2) of LAD).

112 Supreme Court, 2nd instance decision PSRRŽ no. 7/2022 of 21.02.2022.

113 Supreme Court, 1st instance decision PSRRK no. 9/2016 of 03.07.2018.

114 Supreme Court, 1st instance decision PSRRG no. 12/2021 of 18.10.2021.

115 Supreme Court, 1st instance decision PSRRG no. 81/2021 of 25.10.2021. The SC did not set a new time limit for completing the case, because after doing so by an earlier decision in another case involving the same debtor (PSRRG no. 47/2020 of 23.11.2020 by which a six-month time limit was set, upheld by the 2nd instance PSRRŽ of 6/2021 of 08.02.2021), the insolvency proceedings was closed on 31.08.2021.

116 Supreme Court, 1st instance decision PSRRG no. 90/2018 of 25.03.2019.

117 Supreme Court, 1st instance decision PSRRU no. 7/2018 of 11.09.2018. The Supreme Court set a one-month time limit for decision-making, but the case (after being referred to the Administrative Court) is still pending.

118 Supreme Court, 2nd instance decision PSRRŽ no. 87/2021 of 25.10.2021.

119 SC, *Report for*: *2014* (p. 18); *2015* (p. 20); *2016* (p. 33–34), *2017* (p. 21); *2018* (p. 21); *2019* (pp. 21–22); *2020* (pp. 23–24).

120 ECtHR, *Petrović v. "former Yugoslav Republic of Macedonia"*, Application No. 30721/15, paras. 33 and 34.

SERBIA[1]

1. RELEVANT LEGAL FRAMEWORK DETERMINING THE LENGTH OF PROCEEDINGS REMEDY

In the Serbian legal system, the right to a trial within a reasonable time is guaranteed both by the Serbian Constitution[1] and by statutes, mainly procedural ones.

The Constitution[2] places the right to a fair trial in the part of the Constitution which includes guarantees of human rights and freedoms, phrasing it in a manner very similar to the ECHR. It also expressly envisages the right to judicial protection for any violation of human or minority rights, coupled with the right to the elimination of the consequences arising from such a violation. This is of particular importance given that, in the Serbian legal system, human and minority rights guaranteed by the Constitution and generally accepted rules of international law, ratified international treaties and laws are implemented directly. Procedural laws providing for the obligation of the court to act within a reasonable time or within short timelines include the Law on Civil Procedure,[3] The Code of Criminal Procedure,[4] Law on Administrative Dispute,[5] Anti-Discrimination Law,[6] Law on the Prevention of Domestic Violence.[7] A mechanism aimed at specifically addressing unreasonable delays in court proceedings is set out in the Law on the Protection of the Right to Trial Within a Reasonable Time ("Law"), which provides a specific mechanism for protecting this right.[8] In parallel, those seeking a remedy for the violation of their rights guaranteed by the Constitution, are entitled to file a constitutional complaint. Until 2014, the constitutional complaint was the main legal remedy for violations of the right to a trial within a reasonable time[9] but the lengthy proceedings before the Constitutional Court and the number of cases in which protection was sought have prompted the Serbian authorities to transfer the competence in these cases primarily to the regular courts.[10] The constitutional complaint, nevertheless, remains an option, which is nowadays utilised in practice by parties who are not satisfied with the outcome of the cases before the regular courts. Acting on the basis of constitutional complaints, the Constitutional Court intervenes mostly in cases in which it finds that the amount of redress awarded is insufficient, in order to harmonise its approach with that of the ECtHR, as will be described in the section dealing with compensation.

2. JURISDICTION *RATIONE MATERIAE* AND AVAILABLE REMEDIES FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

The Law prescribes that the protection of the right to a trial within a reasonable time includes judicial procedure and the investigation conducted by the public prosecutor in criminal proceedings.[11] More precisely, the right to a trial within a reasonable time is grantedto:

- every party to judicial proceedings, including enforcement
- participants in proceedings governed by the Law on Non-Contentious Procedure
- the injured party in criminal proceedings, the private prosecutor and the subsidiary prosecutor

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The public prosecutor as a party to proceedings does not have the right to protection under the Law. Hence, the protection under the Law covers:

- civil proceedings;
- non-contentious proceedings;
- enforcement proceedings;
- bankruptcy proceedings;
- criminal proceedings, including investigation conducted by the public prosecutor;
- misdemeanour proceedings,
- proceedings for deciding on commercial transgressions; and
- administrative disputes.[12]

The Law states its purpose is to prevent violations of the right to a trial within a reasonable time. Following the reasoning of the ECtHR,[13] the protection granted by it combines two types of remedies:

- the complaint and the appeal – aimed at expediting the proceedings; and
- redress – aimed at providing just satisfaction to the party when a violation of the right to a trial within a reasonable time has been established (motion for compensation).

With regard to remedies designed to expedite proceedings, a complaint is filed with the court conducting the proceedings or to the court before which the proceedings are to be conducted if the alleged violation is attributed to the public prosecutor.[14] The complaint is decided by the court president. Consequently, every court in Serbia has the competence *ratione materiae* to decide on the complaint. The appeals[15] are decided on by the president of the immediately superior court.[16]

Whilst the Law provides that court presidents decide on complaints and appeals, it also allows them to designate one or more judges to also decide on these legal remedies, by way of the annual court assignment schedule.[17] In practice, the number of judges acting on complaints and appeals from the Law varies greatly among courts, ranging from just the court president acting in such cases, to almost all judges of a given court. The number of judges dealing with complaints and appeals from the Law is constantly increasing as is the number of expediting remedies lodged.

Table 1: Number of legal remedies based on the Law and the number of judges deciding on them

Year	Number of judges acting on remedies	Pending at the beginning	Incoming	Disposed	Pending at the end
2016.	652	9.961	25.854	30.966	4.849
2017.	713	4.849	35.092	31.208	8.733
2018.	868	8.731	68.720	642.73	13.178
2019.	971	13.178	100.600	90.299	23.479
2020.	1.099	23.480	90.977	88.243	26.214

Source: Lj. Milutinović, S. Andrejević and annual reports of the work of courts in Serbia

As the aim of the complaint is to expedite proceedings, if the court president/designated judge finds in favour of the complaint, he or she will order the judge or the public prosecutor acting in the case to take procedural actions that will effectively expedite proceedings. Such actions are to be taken within

a time limit ranging from 15 days to four months. When deciding on the complaint and the appeal, the judges apply rules of non-contentious procedure. The complaint can be denied,[18] dismissed[19] or an examination is conducted. The examination means that the acting judge needs to report on the course of proceedings and assess the timeline for completing the case. During the examination, the court president/designated judge may directly examine the case file.

The case can also be designed as a priority case and dealt with urgently or assigned to a different judge (if a violation is found to be due to a case backlog or extended leave of absence on the part of the judge in charge of the case).[20]

For admissible complaints concerning criminal proceedings, superior public prosecutors will mandate expedition of the proceedings within eight days, ordering procedural actions to be taken with the period of 15 days to four months.

One of the current drawbacks of the Law is that it does not include express norms that would regulate the powers of the court president in cases when a complaint is accepted in bankruptcy or enforcement proceedings.[21]

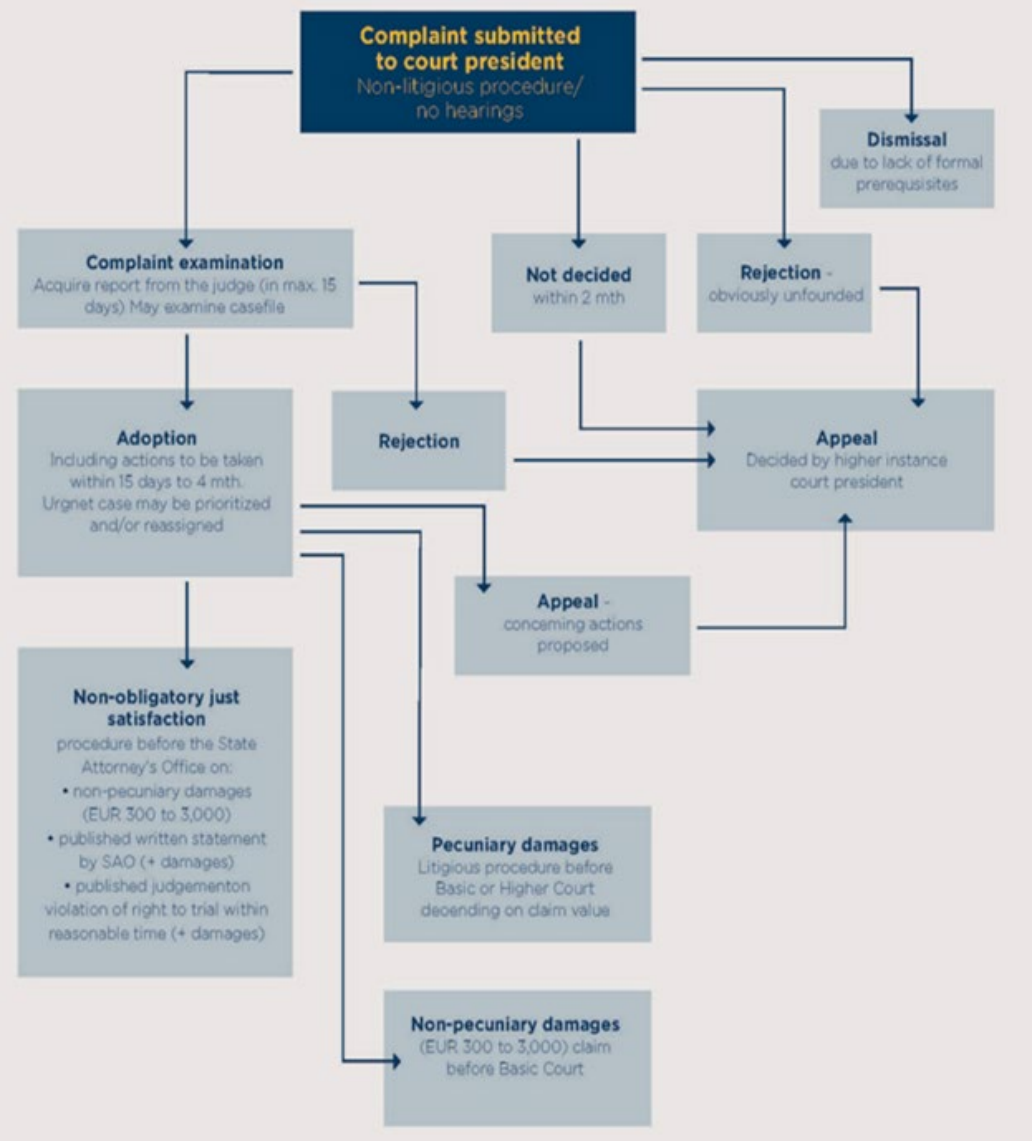

Illustration of the complaint, appeal and redress mechanisms under the Law, taken from: http://www.mdtfjss.org.rs/en/mdtf_activities/2021/trial-within-a-reasonable-time#.YqHh0XZBy5d

When it comes to compensatory remedies, the Law envisages three types of just satisfaction:

1) right to compensation for non-pecuniary damage caused to the party by the violation of the right to a trial within a reasonable time ("compensation");
2) right to publication of a written statement of the State Attorney's office, stating that a party's right to a trial within a reasonable time was violated;
3) right to publication of the judgement establishing that a party's right to a trial within a reasonable time was violated.[22]

Most parties opt for seeking redress in the form of non-pecuniary and pecuniary damages. These are sought by civil actions before the ordinary courts in accordance with the Civil Procedure Law.[23] In the procedure itself, the criteria for assessing the length of proceedings from the Law are also applied when deciding on the redress to be awarded. The Law also envisages the possibility, but not the obligation, of an attempt to reach a settlement with the State Attorney's office, whereby the party files a motion indicating whether it requests compensation, publication of a statement, or both.

Even though the number of settlements before the State Attorney's Office has increased in the course of the last three years, this option is not often used. For instance, in 2019 and 2020, the total number of actions for compensation under the Law amounted to around 20000[24] while in 2020, the number of cases in which settlement was requested amounted to around 3000.[25]

3. ADMISSIBILITY TEST (LEGAL STANDING OF THE CLAIMANT; FULFILMENT OF THE DEADLINE TO CLAIM THE RIGHT AFTER THE JUDGMENT BECAME FINAL AND ENFORCEABLE; MERITS ASSESSMENT AND FREQUENT REASONS TO REJECT CLAIMS AND TO ACCEPT)

As indicated above, the right to legal protection pursuant to the Law is granted to parties in judicial proceedings before courts, including enforcement proceedings, and participants in non-contentious proceedings. In practice, this right is mainly exercised by creditors in bankruptcy proceedings whose claims have been verified.[26] The board of creditors, on the other hand, being a body in the bankruptcy proceedings, is not entitled to the protection afforded by the Law.[27]

The Law does not expressly provide that the parties are to engage lawyers to draft the complaint and the appeal. Both remedies seem to be relatively simple and were intended to be drafted by parties on their own. However, due to formal requirements, it is useful to have the lawyers draft them, particularly in bankruptcy and enforcement cases. Based on the established caselaw, lawyers are entitled to costs in if the complaint or the appeal are upheld .

The complaint and the appeal envisaged by the Law can be filed until the proceedings are finalised. This is in practice interpreted as the moment in which the decision in the proceedings with regard to which the complaint/appeal was filed is passed in the given court. This rule is deduced from the ample caselaw whereby complaints are dismissed if they are[28] filed after the proceedings a court decision is passed,or denied[29] if proceedings were finalised after the complaint was filed but before the time limit for deciding on the complaint had expired.

The Law also envisages the possibility of the complaint being:

- dismissed as premature, without providing additional indications as to what is to be considered as a premature complaint.
- denied if, given the duration of the proceedings indicated in the complaint, it is manifestly unfounded.

Unfortunately, the Law does not allow for a nuanced differentiation between these two options – in practice, both happen.[30]

When dismissing the complaint/appeal, the court president/designated judge must take into account the criteria for assessing the duration of the trial within a reasonable time, as prescribed in Article 4 of the Law. These criteria, which are set out *exempli causa,* draw considerable inspiration from the ECtHR jurisprudence and from the standards set in the CEPEJ report,[31] with one important addition: the statutory time limits for scheduling the main hearing and for drafting decisions are also taken into account. This provision poses a particular challenge in civil litigation, which will be elaborated on below. While most judges find that the criteria provide them with sufficient flexibility when deciding on expediting remedies, the flexibility sometimes results in inconsistent practices.

The Law envisages the option of filing a new complaint.[32] In practice, new complaints are not particularly frequent in civil litigation[33] but are a regular occurrence in bankruptcy proceedings. It is worth noting one ruling whereby the repeated complaint was denied, in which the court took the position that in order for a new complaint to be upheld, a new violation of the applicant's right to a trial within a reasonable time must occur in the same proceedings.[34] This position does not have a legal grounding in the law.

The time limit for lodging a new complaint, the appeal and for initiating actions for just satisfaction can be difficult to pinpoint:

- in cases when the complaint is to be lodged immediately after the expiry of the time limit within which the judge or the public prosecutor was set to take effective procedural actions, because the applicant cannot always know whether the action has been taken;
- when the order issued to the judge is not precise enough (e.g. the judge is ordered to take all actions necessary for the finalisation of the proceedings[35]) Overall, both the grounds and timelines for lodging complaints, appeals and actions for just satisfaction are prescribed in a way which somewhat complicates the calculation of the procedural time limits. Consequently, requests for them to be simplified have been put forward.[36]

While there is no precise publicly available statistical data**, an informed estimate is that the percentage of upheld complaints and appeals ranges between 10 percent and 20 percent.**[37]

4. EXPEDITION OF PROCEEDINGS ON MERITS WITH OR WITHOUT DETERMINING A VIOLATION ON THE LENGTH OF PROCEEDINGS

One of the serious shortcomings of the Law is the fact that it does not include mechanisms that would allow for the proceedings to be expedited in cases when the right to a trial within a reasonable time is only jeopardized, but not violated. Article 7, para. 1 of the Law states that a party lodges a complaint in order to expedite the proceedings *when it finds his/her right has been violated*, meaning that the law does not refer to the situation in which the right is jeopardized as sufficient grounds for lodging the complaint.

There is no precise statistical data that could indicate the extent to which the use of remedies from the Law in fact expedites proceedings in cases where the complaints and appeals have been upheld . Publicly available statistical data only includes the duration of proceedings in different types of cases, expressed in days and the disposition times, where some improvements can be tracked.[38] However, the potential shortening of the average duration of the procedure cannot be attributed exclusively, or even mainly, to the Law. Moreover, the current court statistics is not tailored to tracking the proceedings

that were indeed expedited following the use of expediting legal remedies from the Law. The reasons for this are twofold. First, the fact that an expedited remedy was upheld does not necessarily mean that effective procedural actions were taken. Second, in practice some cases are finalised in the time between the lodging of the complaint and the expiry of the time limit for deciding on it, resulting in the complaint being denied, but the proceedings being effectively finalised.

5. COMPENSATION AWARDED FOR UNREASONABLE LENGTH OF PROCEEDINGS

The Law prescribes that compensation/just satisfaction that can be awarded ranges from 300 EUR to 3000 EUR, in dinar counter value.[39] These amounts can be awarded both in court proceedings and in settlements with the State Attorney's Office.

While in essence, the amounts are paid from the dedicated court budget, they are claimed from the budget of the court or the public prosecutor's office before which the violation had taken place, as per the Law. The courts and public prosecutors' offices, as a rule, does not have sufficient funds for such payments. Consequently, just satisfaction is usually paid through enforced collection, which, in turn, results in the accounts of the individual courts, particularly commercial courts, being blocked, impeding their everyday operation. The described mechanism itself seems to be an inherent, albeit implicit, motivation for a cautious approach to granting expediting remedies and awarding redress.

The reports on the work of the High Judicial Council provide information on the total amounts paid from the budgetary appropriation 6 – Courts in the name of just satisfaction under the Law. Given that the reports do not present the information in the same way (as of 2019, the report classifies the compensations paid voluntarily and through enforced collection separately), a consistent comparison is impossible across all the years. The available data for the 2016–2021 period is as follows:

Year	Compensation as per ECHR judgments in EUR	Compensation as per decisions of Serbian courts in EUR		
		Voluntary payment by courts	Enforced collection from the courts	Voluntary payment based on an agreement with the State Attorney's Office
2016.	401,526.66			1,741,525.42
2017.	113,725.80			1,438,449.15
2018.	124,194.92			969,135.59
2019.	418,762.71	1,933,186.44	12,892,940.67	626,966.10
2020.	222,016.94	3,243,855.93	14,400,627.12	665,228.81
2021.	713,076.27	3,248,847.45	28,032,440.68	1,055,584.74

Source: Reports on the work of the High Judicial Council

As can be seen, the total amounts paid voluntarily or through enforced collection are constantly rising, which is in line with the tendency of an increased number of requests for the protection of the right to a trial within a reasonable time.

There is no official statistical data on the average amounts of compensation awarded. Relying on information obtained from judges during interviews conducted in the course of the analysis of the effects of the Law in 2021, the non-material damages awarded range between **300 and 900 EUR**. The amounts paid for material damages vary and are awarded provided that strict causation is established between the violation and the material damage incurred. A clear exception in this regard are bankruptcy and enforcement proceedings where material damages awarded equal to the amount of the unpaid salaries recognised in bankruptcy proceedings.

It is, therefore, clear that Serbian courts do not use the full range of the amount of compensation that can be awarded pursuant to the Law. This practice cannot be considered opportune. [40] In justifying the practice of awarding sums closer to the lower end of the range prescribed by the Law, judges primarily invoke established caselaw and the fact that the economic situation of the country, which is not favourable, is taken into account when the decision is being made. It should be noted that the economic situation in the country is not one of the criteria set forth in Article 4 of the Law. In recent ECtHR jurisprudence, namely in *Stanković v Serbia*[41] in the examination of victim status, the ECtHR found that the sum of EUR 800 can be considered sufficient and appropriate redress for the violation alleged. In doing so, the ECtHR took into account the value of the award judged in the context of the standard of living in the Serbia, and the fact that, under the national system, compensation is, in general, awarded and paid more promptly than before the ECtHR.[42] Following this decision, the Serbian Constitutional Court took a corrective approach[43] in order to harmonise its practice with that of the ECtHR in dealing with constitutional appeals for the protection of the right to a trial within a reasonable time. Namely, when dealing with constitutional complaints where the amounts awarded as just satisfaction by ordinary courts were lower than EUR 800, the Constitutional Court awarded the difference between the two sums.[44] As a result, the ordinary courts started to adjust their awards to conform to the Constitutional Court decision. Therefore, they now do award the EUR 800 sums mostly in complex and long bankruptcy cases, whilst in other cases the awarded sums remain low.

6. REVIEW OF THE SPECIFIC PROCEEDINGS AT DOMESTIC LEVEL WITH STRUCTURAL ISSUES CONCERNING THE LENGTH OF PROCEEDINGS

When it comes to case law of Serbian courts, several practices in specific types of proceedings deserve particular attention and analysis

6.1. Bankruptcy proceedings

The largest number of complaints and appeals before commercial courts concern bankruptcy proceedings,[45] particularly the cases of bankruptcy of companies predominantly comprised of socially-owned capital. These cases also comprise a considerable part of the overall caseload of commercial courts – in 2018, 2019 and 2020 they accounted for, respectively, 46%, 43% and 33% of the total incoming cases before commercial courts. Bankruptcy cases also account for the largest number of structural problems identified, particularly given the problems of non-enforcement of final court decisions against socially-owned companies, which became particularly poignant following the ECtHR decision in *Kačapor and others v Serbia*.[46] In this case, the ECtHR underlined that the State must take all necessary steps to enforce a final court judgment, as well as ensure the effective participation of its entire apparatus, and that the state was liable for the debts in the given case.

In recent court practice, it has been noted that commercial courts tend to deny the remedies lodged under the Law as unfounded, even in cases when the bankruptcy proceedings lasted for rather long

periods of time. A paradigmatic example is that of a case in which the bankruptcy proceedings lasted for almost two decades.[47] Despite the manifestly long duration of the bankruptcy proceedings and uncertainty as to its conclusion, the commercial court took the position that the complaint was unfounded. The designated judge found that the fact that a ruling on the final distribution of assets and the filing of the final report on the part of the bankruptcy administrator in the course of the last two years of the proceedings were sufficient indicators that the proceedings are being conducted within a reasonable time. The decision further emphasised the objective circumstances standing in the way of finalisation of the bankruptcy proceedings – numerous other court proceedings to which the bankruptcy debtor was a party, and the fact that bankruptcy proceedings had been instituted against the debtor's of the debtors as well. What the court disregarded in this case is the fact that the applicant tried to effect rights stemming from the labour relation, whilst the bankruptcy administrator failed to regularly file reports or initiate enforcement proceedings over the course of his mandate. This is why the Commercial Court of Appeal overturned the initial decision and found that the right to a trial within a reasonable time was indeed violated.[48] In doing so, the Commercial Court of Appeal took the position that the duration of the bankruptcy proceedings of 20 years has predominant weight compared to the other factors relevant for assessing whether there has been a violation of the right to a trial within a reasonable time.[49]

There is one more potential problem in the context of the violation of the right to trial within a reasonable time in bankruptcy proceedings, namely, the excessive duration of bankruptcy proceedings can also be attributed to enforcement proceedings preceding bankruptcy. The first instance commercial courts often see these as separate proceedings, and do not take them into account when assessing the overall length of the proceedings. However, the Commercial Court of Appeal, on numerous occasions, has consistently taken the view that bankruptcy proceedings must be assessed jointly with other previous proceedings aimed at settling the claims of the creditors.[50] The identified problematic practice of first-instance commercial courts is also contrary to the established caselaw of both the ECtHR and the Serbian Constitutional Court.[51]

Commercial courts also resort to outside factors affecting the duration of the bankruptcy proceedings, which are beyond the mandate of the court as grounds for denying the complaints. In one case, such an external factor cited was the fact that the Serbian Government failed to consent to the sale of assets of companies located on the territory of one former SFRY republic.[52] In deciding on the appeal in this case, the Commercial Court of Appeal confirmed this position, outlining that the actions taken by the court can only be assessed with regard to the implementation and observance of procedural norms relating strictly to the mandate of the bankruptcy court as set out in the law. Consequently, the complaint was denied.

It is not uncommon for the commercial courts to transfer some of the responsibility for the fact that bankruptcy proceedings are not finalised to the applicant lodging the remedy.[53] In one case, for instance, the Commercial Court, whilst recognising that the proceedings in question had lasted for 10 years and shortcomings in the work of the bankruptcy administrator, resulting in the expediting complaints filed by other creditors were upheld found that one complaint cannot be sustained given that the applicant failed to propose specific actions to be taken in order to expedite proceedings!

6.2. Civil litigation

A practice has been identified whereby in second instance proceedings complaints are filed immediately after the expiry of the nine-month time limit, prescribed in Article 383 of the Civil Procedure Law**,** according to which the second-instance court must decide on the appeal within nine months if it is not going to schedule a hearing in that case. The practice relies on one of the criteria prescribed by Article

4 of the Law – statutory time limits for scheduling hearings and making decisions. Some judges indicate that the prescribed time limit is only instructional and, therefore. not mandatory, whilst others point out that some second-instance courts are overburdened and, hence, cannot observe the said time limit. There does not seem to be a common understanding as to whether the provision of Article 4 supports the mandatory nature of instructional time limits, or should they be only considered as one of the criteria to be taken into account along with others. Consequently, case law remains uneven.

6.3. Administrative dispute

One of the key problems regarding administrative disputes concerns the growing caseload and disposition times in the Administrative Court, coupled with its modest utilization of the possibility of full litigation,[54] namely, over the past three years, the duration of proceedings in Administrative court rose from 665 days in 2019 to 1071 days in 2021.[55] Since the Administrative Court does not often resort to full litigation, the cases, once adjudicated and sent back to administrative bodies sometimes come back to the court even as many as four times. This problem is additionally exacerbated by the inconsistent practice as to whether the duration of administrative procedure and/or other judicial procedures preceding administrative dispute are taken into account when deciding on the unreasonable length of proceedings.

Namely, despite a rather consistent caselaw on the Supreme Court of Cassation according to which the administrative procedure and the administrative dispute are to be viewed as one integral procedure, different interpretations can be identified in procedures initiated by the legal remedies envisaged in the Law. For instance, in one case, the Supreme Court of Cassation found that the right to a trial within reasonable time was not violated even though the applicant was unable to use a facility he was entitled to use for 14 years.[56] Over the course of 14 years, the applicant instituted civil litigation aimed at annulling the contract of lease of the said facility, and then initiated both administrative procedure and administrative dispute in an attempt to exercise his rights. In this case, however, the court took the position that the judicial protection of the right to a trial within a reasonable time can be provided only with regard to the specific ongoing proceedings, from the time it had been initiated, irrespective of proceedings that had preceded it.

The position taken by the Administrative Court in another case, where it found that the party had contributed to the extended duration of proceedings by filing urgencies (petitions for the case to be resolved urgently or with priority), even though the proceedings lasted for more than 10 years, must be assessed as problematic. Fortuitously, the Supreme Court of Cassation took the opposing view upon appeal, underlining that the filing of urgencies which are decided on by the court administration cannot be understood as the party's fault and cannot constitute a parameter when deciding whether the right to trial within a reasonable time was violated or not.[57]

An analysis of the relevant case law relating to administrative disputes also shows uneven practice with regard to the need for a priority resolution of administrative cases and sometimes an inconsistent interpretation of the criteria for assessing the length of proceedings. For instance, in one case, where the subject-matter related to a family pension, the Supreme Court of Cassation took the position that the advanced age of the applicant was not a relevant factor,[58] whilst in another case, relating to expropriation, the advanced age was considered as one of the parameters in favour of priority to be given to the case.[59]

6.4. Criminal proceedings

Complaints related to excessive duration of criminal proceedings are not frequent in Serbia. However, when lodged, they are often denied. Usually, courts find that the proceedings indeed last for a long

time, but that the underlying reasons for such an excessive duration cannot be attributed to the procedural inactivity of the court. For instance, in one case, six years had elapsed between the time the indictment was raised and the first-instance decision was passed. The court denied the appeal, invoking the complexity of the proceedings and the fact that first-instance court showed continuity of action.[60] Another problematic decision is the one passed by the Supreme Court of Cassation, which found no violation of the right to trial within a reasonable time in criminal proceedings which lasted from 2006 to 2021.[61] The proceedings in that case concerned a large number of defendants and criminal offences. The proceedings against the person who filed the complaint were severed in 2014, at which time he started to avoid attending the hearings; this was assessed as the critical reason for no violation of the right to trial within a reasonable time by both the Appellate Court and the Supreme Court of Cassation. However, both courts disregarded the fact that a total of eight years transpired between the time the indictment was raised and the proceedings against the applicant were severed.

It is also worth noting that different criteria are applied in practice when assessing the overall duration of criminal proceedings:

- the raising of the indictment is taken as a relevant point in time[62]; or
- the date on which the main hearing is scheduled is taken as the relevant point in time.[63]

In the latter case, all actions taken prior to the scheduling of the main hearing are disregarded, even though they have a considerable influence on the overall duration of the court proceedings. In a paradigmatic example, the indictment was raised in 2013, after which the defendant was heard and an order was issued for economic and financial expert report to be carried out. It took the court expert a total of five years to deliver the report, after which the proceedings were continued. The Supreme Court of Cassation found no violation of the right to a trial within a reasonable time, invoking the rescheduling of the hearing due to the defendant being infected by COVID-19 and the declaration of the state of emergency, as factors over which the court had no influence.[64] The court failed to address the five years spent waiting for the expert report.

6.5. Enforcement proceedings

Enforcement proceedings in Serbia that give rise to the use of remedies under the Law last for a very long time, sometimes over ten years. Non-enforcement of court decisions is one of the structural problems related to the right to a trial within a reasonable time. Dealing with this issue, ECtHR clearly stated in *Lilić and other v Serbia,*[65] that there is a violation of the right to a trial within a reasonable time whenever the period of enforcement exceeds one year. Additionally, it is worth recalling that the ECtHR finds that a delay in the execution of a judgment may be justified only in particular circumstances.[66] Relying on this, many parties file complaints and appeals due to the non-enforcement of court decisions. Nevertheless, the remedies are not always successful.

In one interesting case, the motion for enforcement based on a credible document was upheld by a ruling in 2008, but the proceedings were continued according to civil litigation rules due to a complaint filed by the debtor. The creditor had filed the complaint from the Law in 2021.[67] However, both the court of first instance and the Supreme Court of Cassation found there was no violation of the reasonable time standard, asserting that the relevant point in time in the case was the date on which the case was received by the Appellate Court. Therefore, in the procedure upon complaint, both courts focused on the duration of proceedings from that moment, which amounted to only a couple of months.[68] In another case, the court invoked the applicant's failure to propose the means for enforcement as the grounds for not upholding the complaint from the Law The case concerned enforcement proceedings

that lasted for over 13 years. Additionally, the courts took the position that, since the enforcement court took procedural actions in time and in continuity, there were no grounds to grant the reasonable time remedy.[69] Both cases are a paradigmatic example of the courts' reluctant approach in upholding complaints and appeals alleging the excessive duration of proceedings despite rather manifest violations of the reasonable time standard.

7. FINDINGS AND RECOMMENDATIONS

7.1. Findings

The analysis of the practice in the implementation of the Law shows that it does, to a certain extent, expedite proceedings and prevents further violation of the right to trial within a reasonable time. Additionally, according to judges[70], the Law has a strong psychological effect on them, motivating them to consider the standards of a trial within a reasonable time. However, it seems that this effect of the law is limited. The judges themselves are often critical of the persons filing the complaints and appeals prescribed in the Law, pointing out that the Law is often used primarily to ensure the payment of redress, not to expedite proceedings. There is also a perception that remedies from the Law are lodged without consideration of the objective circumstances relating to the work of courts and judges, including the caseload, implying that they may have unrealistic expectations as to the duration of proceedings. It goes without saying that the parties to the proceedings need not consider the challenges faced by the courts in resolving the case backlog prior to resorting to remedies envisaged in the Law. Whilst the Law itself envisages objective liability for violations of the right to a trial within a reasonable time, the prescribed mechanism for payment of the awarded redress does seem to be understood to an extent as an attribution of fault to a given court or a given judge/panel; as a result, remedies are frequently denied. It is, therefore, fair to say that a more balanced approach needs to be struck and that increased compliance with ECtHR jurisprudence needs to be achieved in implementing the Law.

7.2. Recommendations

In the light of the observations made in the analysis, the following key recommendations aimed at advancing the Serbian legislative framework and practice can be formulated:

I LEGISLATIVE AMENDMENTS

1. **Consider the introduction of a comprehensive solution for bankruptcy and non-enforcement**

   Particularly challenging in this respect are the enforcement proceedings against companies with a majority social capital, where final domestic decisions are not enforced and where the prospects for the expediting remedy are very limited. High amounts paid by Serbia primarily in bankruptcy and enforcement cases where the debtor is a company with a majority social capital, both domestically and in accordance with ECtHR judgments, show that the solutions of the Law are not balanced nor sufficiently nuanced to fully recognise the particularities of these proceedings, whilst, at the same time, these cases account for a considerable proportion of all remedies lodged pursuant to the Law. The adoption of a comprehensive solution is therefore advisable[71] but should be preceded by a thorough *ex ante* impact analysis.

2. **Consider amending the Law in the part envisaging that redress is paid from the accounts of the courts**

The statutory norm envisaging that the compensation of both non-pecuniary and pecuniary damage is to be paid from the account of the court or the public prosecutors' office before which the violation had taken place constitutes an inherent motivation for a cautious award of compensation. Additionally, the enforced collection of compensations awarded from the court's accounts creates problems in the everyday functioning of the courts. Furthermore, the fact that the compensation awarded by ordinary courts, the Constitutional Court and the ECtHR are not paid from the same budgetary appropriations sometimes complicates the cross-comparison and tracking of the amounts of compensation paid through the use of various remedies, whilst at the same time complicating budgetary planning for the next year. This issue needs to be systemically addressed.

3. **Reconsider the invocation of statutory time limits as a criterion for assessing the length of proceedings in the Law**

   The reference to statutory time limits in the Law, particularly to those that are instructional in terms of procedural law, seems to cause different interpretations and may result in different outcomes for the parties. There is a need to re-examine the effectiveness of this criterion in the Law.

4. **Provide clear powers in the Law with regard to public notaries, public enforcement agents, bankruptcy administrators and other state and public bodies**

   This recommendation is aimed at addressing two drawbacks identified in the Law.

The first one concerns the fact that the Law does not address the role of the public notaries and public enforcement agents in the exercise of powers vested in them, which may also result in a violation of the right to a trial within a reasonable time. Even though the powers of the court vis-à-vis the members of these two judicial professions are limited, they are an important link in the overall system and should not be left out of the reach of the protection of the right to a trial within a reasonable time. There is, therefore, a clear need to address this gap.

The second one concerns the need to address the fact that several different state or public bodies tend to be inactive in court proceedings, which sometimes results in the violation of the right to a trial within a reasonable time. Whilst the Serbian legislation on administrative disputes addresses this issue to an extent, it has a limited reach. Examples can be found in comparative practice, where effective powers with regard to other state bodies are incorporated in the legislation governing the protection of the right to a trial within a reasonable time. There, the statutes governing the protection of the right to trial within reasonable time expressly envisage the power of the court president to order other state bodies, public services and other categories of persons vested with public powers, to forward public documents or other evidence, including also the power to file an initiative for disciplinary action or dismissal procedure to be instituted against them in case of failure (e.g. Article 22 of the Montenegrin law governing the protection of the right to a trial within a reasonable time.)

II IMPROVED PRACTICE

1. **Improve the practice relating to awards of non-pecuniary damages before ordinary courts so as to ensure they are more harmonised with the just satisfaction awards at the ECtHR level**
2. **Improve and harmonise the practices with regard to the length of proceedings in the light of the court or administrative proceedings that have preceded the trial in which remedies prescribed by the Law are sought**.

3. Improve the use of procedural norms aimed to reducing the ping-pong effect between various court instances, particularly in administrative disputes

4. Continue with systemic and comprehensive training related to the protection of the right to a trial within a reasonable time in the context of the Law and Article 6 ECHR.

The number of judges in Serbia adjudicating on reasonable time remedies is constantly increasing. This increase is not necessarily accompanied by systemic and/or targeted trainings dedicated to the implementation of the Law and ECtHR jurisprudence. In order to facilitate and promote a harmonised approach between national courts and the ECtHR, there is a need to continue with systemic trainings for judges and judicial assistants at all levels. Following a training needs assessment, mid-term goals for the overall scope of trainings and targeted trainings could be set. This exercise could at the same time help address some of the practical shortcomings identified in the analysis. This issue is particularly important in the light of the fact that the Serbian judicial system will need to replace over 500 judges in the next five years.[72]

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1 RS Constitution, Official Gazette No. 98/2006, 16/2022 (Decision on the declaration of the Constitutional Act for Implementation of the Act on Constitutional Amendments – Amendments I – XXIX – RS Official Gazette No. 115/2021).

2 Article 32.

3 RS Official Gazette No. 72/2011, 49/2013 (Constitutional Court decision) 74/2013 (Constitutional Court decision 55/2014, 87/2018, 18/2020. This law even envisages that the failure of the judge to act within the timeline for taking procedural actions in civil procedure constitutes grounds for initiating disciplinary proceedings pursuant to the Law on Judges. However, to date, disciplinary bodies of the High Judicial Council have never invoked this provision as grounds for disciplinary liability. See: T. Papić, Pravo i praksa disciplinske odgovornosti sudija u Srbiji, OEBS Misija u Srbiji, 2016, p. 22, A. Knežević Bojović, Disciplinska odgovornost sudija u srbiji –ažurirani pregled pravnog okvira i prakse, Projekat EU za Srbiju „Podrška Visokom savetu sudstva", 2019, as well as A. Knežević Bojović, Analiza disciplinskih odluka iz 2020. godine i presek usklađenosti sa preporukama iz 2020. godine Projekat EU za Srbiju „Podrška Visokom savetu sudstva", 2021.

4 RS Official Gazette, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 (Constitutional Court Decision), 62/2021 (Constitutional Court Decision), Article 14. Criminal Procedure Code additionally prescribes that criminal proceedings conducted against a defendant who is in custody is urgent.

5 RS Official Gazette, broj 111/09, p.: 39 of 29.12.2009., Article 2.

6 RS Official Gazette No. 22/2009, 52/2021, Article 41.

7 RS Official Gazette, No. 94/2016.

8 RS Official Gazette, No. 40/15. It should be noted that, within the ordinary court system, the remedies envisaged in the LPRTR are not the only legal remedies available to parties to judicial proceedings in Serbia aimed at expediting the judicial proceedings. Most notably, Article 8 of the Law on Organisation of Courts gives every party or other participant in judicial proceedings the right to a remonstration relating to the work of the court, inter alia, in cases when he/she considers that the procedure is being stalled. Additionally, the Serbian judicial system recognises an instrument called urgency, or, more specifically, a petition for the case to be resolved urgently or with priority, which is accompanied by supporting documents justifying such a petition (e.g. advanced age of the petitioner and the like), which is also submitted and decided on by the court president. In the light of the ECtHR caselaw (*V.A.M. v Serbia*, Application No. 39177/05, and *Mirjana Marić v Croatia*, Application No. 9849/15, judgment of July 30, 2020) the complaint from Article 8 cannot be considered an efficient legal remedy, given that the ECtHR takes the position that an expediting legal remedy in case of excessively lengthy proceedings should be accompanied by a remedy affording compensation.

9 It was deemed as an effective remedy by the ECtHR in *Vinčić and others v Serbia,* Application no. 44698/06. However, in 2011, in *Milunović and Čekrlić v Serbia* (Application nos. 3716/09 and 38051/09), ECtHR held that constitutional complaint cannot be considered to be an effective remedy in cases concerning non-enforcement

of judgments rendered against companies predominantly comprised of socially-owned capital undergoing restructuring and in insolvency. The Serbian Constitutional Court then started to harmonize its practice with that of the ECtHR, and consequently in *Marinković v. Serbia* (Application no. 5353/11013) and in *Ferizović v Serbia* (Application no. 65713/13) ECtHR confirmed that constitutional complaint was effective also in these cases.

10 The first such legislative intervention was the adoption of the Law on organization of courts, RS Official Gazette no. "Sl. glasnik RS", br. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013. The application of the Law started in May 2014. Subsequently, a separate Law on the Protection of the Right to a Reasonable Time was adopted in 2015, and started to be applied as of 1 January 2016.

11 Caselaw has confirmed that pre-trial procedure is a part of criminal procedure. Position from the ruling of the Supreme Court of Cassation Rž k 148/2015 of 17.11.2015. established on 30.5.2016. at the session of the Department for Protection of Right Within Reasonable Time.

12 Pursuant to the position of the Supreme Court of Cassation and the principle of unity, when assessing whether the right to a trial within a reasonable time has been violated, the court shall also take into account the duration of administrative proceedings; this is in line with ECHR jurisprudence (see judgment *Božić v Croatia* Application No. 22457/02). A paradigmatic example of this position can be found in Supreme Court of Cassation Rž1 u 26/2017 of 1.6.2017.

13 ECtHR took a position on this practice in its seminal judgment *Scordino v. Italy*, Application no.36813/97.

14 Article 7 of the Law.

15 A party is entitled to an appeal if:

- the complaint was denied,
- the court president fails to decide on the complaint within two months of receipt
- the complaint was upheld, but the immediately superior public prosecutor fails to pass a mandatory instruction within eight days of receiving the court president's ruling,
- the court president or immediately superior prosecutor fails to order the judge/public prosecutor to take procedural actions that effectively expedite the proceedings,
- the judge or public prosecutor fails to take the ordered procedural actions within the designated time limit.

16 Article 16 of the Law. If the alleged violation occurs in a proceedings before the Supreme Court of Cassation, the appeal is decided on by a panel composed of three Supreme Court of Cassation justices.

17 Practice with regard to this issue varies across different courts in Serbia. In some courts, it is only the court president who acts on the complaints, in others, two or three more judges, in addition to the court president, act on the complaints – these are usually deputy court presidents. However, in some courts, almost all judges act on the complaints. In addition to judges, judicial assistants are also engaged in those cases – their number cannot be precisely established based on the data available. A. Knežević Bojović, V. Ćorić, Analiza efekata Zakona o zaštiti prava na suđenje u razumnom roku, available at https://rm.coe.int/analiza-efekata-zakona-o-zastiti-prava-na-sudjenje-u-razumnom-roku-275/1680a8d29e (hereinafter: A. Knežević Bojović, V. Ćorić, 2022)

18 If, given the duration of the procedure indicated in the complaint, the complaint is manifestly unfounded.

19 If there are no elements for taking action in the case; if the complaint was filed by an unauthorised person; if the complaint or appeal is lodged prematurely).

20 In practice, reassignment rarely happens and is reserved for cases of prolonged leave of acting judge e.g. due to illness. A. Knežević Bojović, V. Ćorić, 2022.

21 A. Mojašević, A. Jakovljević, „Razumni rok u stečajnom postupku: Analiza predmeta Privrednog suda u Nišu", Zbornik radova Pravnog fakulteta u Nišu, No. 90 (2021), 111.

22 Article 23 of the Law.

23 The basic court in which the plaintiff resides or has registrated officehas territorial competence for deciding on actions for compensation. In these proceedings, the court applies the small value claims procedure from the law governing civil procedure.

24 S. Andrejević and LJ. Milutinović, „Comparative analysis – Protection of the Right to Trial within Reasonable Time, September 2021, p. 35.

25 A. Knežević Bojović, V. Ćorić, 2022.

26 The report on the state of fact and problems in the implementation of the Law before commercial courts, including an initiative and proposals for statutory amendments, a memo to the Ministry of Justice No. I Cy 1/21–171 of July 20, 2021.

27 Position from the ruling of the Supreme Court of Cassation Rž gp 441/2015 of 25.9.2016k, established on 30.5.2016. at the session of the Department for the Protection of the Right within Reasonable Time

28 See, for instance, Supreme Court of Cassation rulings R4 g 1/2020 of 6.3.2020, R4 r 1/2020 of 25.2. 2020.

29 See, for instance, Supreme Court of Cassation ruling R4 g 1/2022 of 23.03.2022.

30 For instance, in cases when the complaint was lodged before the Supreme Court of Cassation for expediting review procedure that had not yet commenced before that court. See, Supreme Court of Cassation ruling R4 r 4/2021 or 07.05.2021.

31 CEPEJ Report, Council of Europe editions, F-67075 Strasbourg Cedex.

32 More specifically, it envisages the following deadlines for filing new complaints: four (4) months from receiving the ruling whereby the complaint, that is, appeal, is denied; five (5) months from the receipt of the ruling whereby the complaint was sustained; immediately after the expiry of the time limit within which the judge or public prosecutor was ordered to take procedural actions, which had not been taken. The time limit for lodging the appeal, as set by the Law, is eight (8) days following the expiry of the time limit for the decision to be made on the complaint, that is, from receiving the ruling whereby the complaint was denied, or the expiry of the time limit for issuing the mandatory instruction or ordering procedural actions, or the expiry of the time limit for taking the ordered procedural actions.

33 A. Knežević Bojović, V. Ćorić, 2021.

34 Commercial Court of Appeal ruling Rž St 527/2021 of 11.8.2021.

35 This is a practice noted in bankruptcy cases. A. Knežević Bojović, V. Ćorić, 2022.

36 S. Andrejević, Lj. Milutinović, p. 48.

37 A. Knežević Bojović, V. Ćorić, *Analiza efekata Zakona o zaštiti prava na suđenje u razumnom roku,* 2021

38 This information is available in the annual reports on the work of courts in Serbia, https://www.vk.sud.rs/sr/%D0%B3%D0%BE%D0%B4%D0%B8%D1%88%D1%9A%D0%B8-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-%D0%BE-%D1%80%D0%B0%D0%B4%D1%83-%D1%81%D1%83%D0%B4-%D0%BE%D0%B2%D0%B0

39 Article 30 of the Law.

40 It should be noted that according to the established caselaw of the ECtHR, the compensation awarded by domestic courts can be lower, given that the award was faster, see *Scordino v. Italy.*

41 *Stanković v Serbia* Aplication no. 41285/19.

42 Stanković v Serbia, para. 23.

43 On other instances of proactive and corrective approach by the Serbian Constitutional Court see: N. Plavšić, „Primena prakse Evropskog suda za ljudska prava od strane Ustavnog suda u postupcima po ustavnim žalbama", Fondacija centar za javno pravo, 2019, available at: http://www.fcjp.ba/analize/Natasa_Plavsic-Primena_prakse_Evropskog_suda_za_ljudska_prava_od_strane_Ustavnog_suda_u_postupcima_po_ustavnim_zalbama.pdf.

44 Constitutional Court decision Už 277/2017 of 4 June 2020, published in RS Official Gazette No. 102/2020.

45 A. Knežević Bojović, V. Ćorić, 2022.

46 *Kačapor and others v Serbia*, Application no. 2269/06.

47 Ruling of the Commercial Court in Belgrade R4 St 37/2021 of 11. 02. 2021.

48 Ruling of the Commercial Court of Appeal Rž St 818/2021 of 20. 04. 2021.

49 The Commercial Court applied a similar line of reasoning when deciding on the appeal of a bankruptcy creditor who found that his right to a trial within a reasonable time was violated since the bankruptcy proceedings lasted for 14 years. See: ruling of the Commercial Court in Pančevo 3 R4 St 158/21 of 26. 03. 2021 and ruling of the Commercial Court of Appeal Rž St 1776/2021 of 30. 07. 2021.

50 For example, see Commercial Court of Appeal rulings Rž St 2257/21 of 17. 08. 2021 and Rž St 3128/21 of 22. 07. 2021.

51 ECtHR decision of 22. 10. 2013. *Marinković v Serbia*, Application no. 5353/11, Constitutional Court judgment Už-2700/2015 of 29. 10. 2015.

52 Commercial Court in Belgrade ruling R4 St 3599/21 of 10. 05. 2021. The appeal was dismissed by the Commercial Court of Appeal ruling Rž St 3599/21 of 30. 07. 2021.

53 Commercial Court in Sremska Mitrovica ruling R4 St 38/2021 of 10. 05. 2021.

54 The Law on Administrative Dispute envisages this option in Articles 43 and 70. Article 43 envisages the general rule for a full litigation dispute, whilst Article 70 in fact orders the Administrative Court to decide on a matter in cases where the administrative body has failed to act on the previous order of the court.

55 Annual report on the work of the courts in the Republic of Serbia, p. 60, available at /https://www.vk.sud.rs/sites/default/files/attachments/Publilacija%20eng_0.pdf

56 Supreme Court of Cassation Ruling Rž1 u 23/2019 of 07. 05. 2019.

57 Supreme Court of Cassation Ruling Rž1 u 68/2019 of 27. 06. 2019.

58 Supreme Court of Cassation Ruling Rž1 u 4/2019 of 24. 01. 2019.

59 Supreme Court of Cassation Ruling Rž1 u 68/2019 of 27. 06. 2019.

60 Appellate Court in Novi Sad ruling Ržk 1/19 of 11. 04. 2019. For a contrary position of the Supreme Court of Cassation, see Supreme Court of Cassation Ruling Rž1 k 1/2021 of 08. 04. 2021.

61 Supreme Court of Cassation Ruling Rž1 k 2/2021 of 23. 06. 2021.

62 Appellate Court in Novi Sad Ruling Ržk 1/19 of 11. 04. 2019.

63 Supreme Court of Cassation ruling Rž1 1/2022 of 09. 02. 2022.

64 Supreme Court of Cassation ruling Rž1 K 1/2022 of 9.2.2022.

65 *Lilić and others v. Serbia,* Applications no. 16857/19 and 43001/19. Even though this specific case concerns a company with majority state capital, it was underlined in *Kačapor and others v Serbia* that irrespective of whether a debtor is a private or a State-controlled actor, it is incumbent on the State to take all necessary steps to enforce a final court judgment (para. 108).

66 *Kačapor and others v Serbia*, para. 107.

67 Appellate Court in Belgrade ruling R4g 91/21 of 23. 08. 2021.

68 Commercial Court of Appeal rulings Rž1 g 31/21 of 18. 11. 2021 and R4 P 6/21 of 29. 04. 2021

69 Higher Court in Niš ruling R4 I 9/16 of 16. 12. 2021; Supreme Court of Cassation ruling Rž g 1/2022 of 22. 02. 2022.

70 Source: A. Knežević Bojović, V. Ćorić, 2022.

71 For jurisprudence of the ECtHR allowing for a comprehensive solution see: Muhović and others v. Bosnia and Herzegovina, Application no. 40841/13 and Ćavar and others v. Bosnia and Herzegovina, applications no. 12371/21 and 18563/21

72 See: Strategija ljudskih resursa u pravosuđu za period 2022–2026. godine, available at: https://www.vk.sud.rs/sites/default/files/attachments/СТРАТЕГИЈА%20људских%20ресурса%20у%20правосуђу%20за%20период%202022–2026.%20године.pdf , p. 23.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS FROM WORKSHOPS[1]

1.1. CONCLUSIONS/RECOMMENDATIONS OF THE WORKSHOP ON RESTITUTION OF PROPERTY

Conclusions:

- One of the causes for the lengthy proceedings lies in the fact that in all examined national legislations, the regulation and the procedure of the property restitution is very complex and lengthy before the authority in charge of restitution of the property. However, some of the countries do not have a dedicated law envisaging restitution of property.
- The problem of restitution is of systemic nature, since in a number of the countries examined, land registry documents are often taken from different sources, and/or are incomplete and incoherent. This is additionally complicated by the fact that, as a rule, there have been numerous changes of the ownership of the land that is subject to the restitution procedure. Another issue lies in the fact that numerous parties with different interests and varying supporting documents are involved in a single case.
- The legislation governing restitution envisage different legal remedies that are available to the parties to the proceedings, some of which are instituted in administrative proceedings, and some of which are instituted in civil proceedings. Consequently, one case of restitution can be subject to different proceedings, resulting in exceeding the reasonable time for adjudication.
- In restitution cases, numerous returns of the cases to lower instances, and the so-called "ping-pong" effect have been recorded, also contributing to exceeding the reasonable timelines for adjudication. There are no specific rules to prevent this occurrence.
- Legislation governing restitution sometimes lack sufficiently precise restitution criteria, which also undermines the decision-making process and legal certainty.

Recommendations:

- Consideration should be given to introducing the specialization of judges for dealing with cases on the restitution of property or to increase the capacities of judges dealing with restitution case both on substantive and procedural issues.
- Where restitution is not expressly regulated, the adoption of the law on restitution of property is recommended.
- Put an end to the "ping-pong" effect by amending relevant legislation (laws on administrative proceedings/dispute and/or law on restitution).
- Revise the procedural deadlines in the relevant legislation on the restitution of property.

1.2. Conclusions/Recommendations of the Workshop on compensation

Conclusions:

- It has been agreed that **no specific formula for calculation of compensation is used in the Western Balkan region** when it comes to calculating the compensation awarded for the protracted length of proceedings (for instance for certain years of duration; type of proceedings; number of remittals).
- There is **no comparable scheme with the awarded amount by the ECtHR in similar situation. The awards are** assessed on a case-by-case basis.
- Under some domestic laws (for instance Serbia, Montenegro, Albania there is a **specific limitation and threshold under which the compensation is awarded**. In practice, the sums awarded tend to be on the lower end of the set minimum-maximum thresholds.
- **Budget for compensation:** Under the majority of national jurisdictions the compensation for the protracted length of proceedings is paid from the Judicial Budget, even when it concerns administrative proceedings. For example, in Montenegro, it is offset by a norm envisaging that, in case the excessive duration of the procedure can be attributed to actions of local self-government authorities, public services or other holders of public powers, the state of Montenegro can seek a redress. In Serbia, the compensation is paid from the budget of the court before which the proceedings in which the right to a trial within a reasonable time had been found to be in violation. As a result of the enforced collection of the awards, the accounts of some of the courts are blocked (it has been reported that in June 2022 the accounts of fifteen Commercial Courts were blocked due to the enforced collection of compensation for the violation of the right to a trial within a reasonable time). Conversely, the relatively new laws governing the protection of the right to a trial within a reasonable time in BiH, such as the relevant law of the Republic of Srpska[2] and of the Brčko Disctrict[3] envisage that the award is paid directly from the state budget.

Recommendations:

- **A check list** to be developed in order to facilitate the work of the judicial institution/judges responsible for dealing with the remedy in line with the ECtHR standards.
- **Development of comparative tables with the ECtHR awards** could facilitate the amounts of compensation awarded at a national level, fostering a harmonized approach with the ECtHR case-law and avoiding further violations.
- **Legal initiative to amend the relevant laws,** when it comes to compensation for protracted administrative proceedings (to introduce possibility for the latter to be paid by the State Budget).
- **Increased dialogue among Supreme Court; High Councils and relevant Ministries** (Ministry of Justice and Ministry of Finance) aimed at finding a suitable solution about payment of compensation under each respective Budget, state or judicial budget would be welcome.

1.3. Conclusions/Recommendations of the Workshop on non-enforcement of domestic decisions against socially/state-owned companies

Conclusions

- Insolvency procedures against socially/state-owned companies are burdened with complex problems, and often entail problems with regard to the restitution of property, ancillary civil and enforcement proceedings.

- Limited opportunities for selling bankruptcy estates of socially/state-owned companies from which the payments in non-enforced decisions are to be made, attributable to complex proprietary issues, result in a repeated violation of the reasonable time standards. However, the power the courts have to speed up the procedure is limited.

Recommendations:

- A separate budget allocation/appropriation for compensation should be established in order to prevent a particular court's account from being blocked due to the amount to be paid as compensation.
- Setting up a database/registrar where all payments made on the basis of lengthy proceedings would be visible and accessible to the competent authorities in order to avoid misuses of applications to the ECtHR or available procedures before the Constitutional Court (when an applicant fails to report he/she already received money from the state).
- Consideration should be given to developing, on a national level, comprehensive solutions for enforcement of decisions against socially/state-owned companies.

2. GENERAL CONCLUSIONS

Conclusions:

- In some of the countries, such as Montenegro, the remedies for violations of the right to a trial within a reasonable time are not often used. In other countries, such as Serbia, the number of remedies lodged is high (around 100000 remedies on an annual basis) but the rate of their adoption is generally low (under 20%). What is common for all the analysed systems is the lack of mechanisms for monitoring the results of the ordered expediting remedies. Consequently, regardless of the extent to which the remedies are used or requests for expediting the proceedings are sustained, there is a lack of information on the extent to which they in fact contribute to the proceedings being concluded within a reasonable time.
- A common occurrence in all the countries included in the study is that administrative proceedings which precede administrative disputes before the courts are often very lengthy and largely contribute to violation of the reasonable time standard. Additionally, the so-called "ping-pong" effect between the administrative courts and the administrative bodies is identified in administrative dispute cases, further contributing to exceeding the reasonable time standard. This occurrence, however, cannot be attributed to the relevant legislative framework, since the laws governing administrative disputes envisage the possibility or sometimes even the obligation of the court to decide in full jurisdiction disputes.[4] It seems that the administrative courts are reluctant to use this procedural possibility and interpret the conditions for utilising it rather strictly.[5] As a result, there are cases that go back and forth from the administrative court to administrative bodies as many as three times, which is certainly not in line with reasonable time standards.
- Considerable case backlog in the courts and the lack of both human and material resources in the courts have been identified as systemic problems that significantly influence the length of proceedings and result in violations of the right to a trial within a reasonable time. It should be noted that, when it comes to human resources, the analysed countries, according to the latest CEPEJ data[6] have more than 20, and sometimes even more than 30 judges per 100000 inhabitants, 21.4 being the CoE average. The only exception in this regard is Albania, with 12.1 judges per 100000 inhabitants. The same is true for non-judge staff, as only Albania has less non-judge

staff per 100000 inhabitants then the CoE median, whilst the other countries considerably exceed it. However, some countries, such as Montenegro and Serbia did at one point face two to three times more incoming civil and commercial cases per 100 inhabitants than the European median.[7] All the countries except for Bosnia and Herzegovina are assessed as countries with standard efficiency, while Bosnia and Herzegovina is fighting a backlog in civil and commercial cases. When it comes to administrative cases, satisfactory to some extent higher disposition times are reported in North Macedonia and Montenegro, Bosnia and Herzegovina was creating a backlog, whilst Serbia reported a rather high disposition time of over 900 days in administrative cases. Some of the judicial systems analysed have also undergone or are undergoing systemic reforms. Nevertheless, there is a clear and consistent jurisprudence of the ECtHR underscoring that case backlog, staffing issues and even systemic reforms cannot justify the violations of a trial within a reasonable time. Consequently, all relevant structural and systemic causes for delays in adjudication, should be systemically investigated and addressed.

Recommendations:

- The introduction of a mechanism for monitoring the statistics and the effects (compliance rate) of instructions for expediting the proceedings resulting from remedies for violation of the right to a reasonable time should be introduced in all the analysed systems. It is true that the introduction of such a mechanism is easier in the system where the entire remedy system is funnelled through a single court, as the cases is, for instance, in North Macedonia, rather than through all courts in the country, as the case is in Serbia. Nevertheless, the introduction of a monitoring mechanism could help identify key factors contributing to the excessive length of proceedings both at the level of a given court and overall, and, thus, help improve practice and potentially amend certain norms. It could also contribute to reducing the number of instances in which several remedies are lodged in the same proceedings, and also help minimize delays attributable to the conduct of the relevant authorities whilst at the same time increasing their accountability.
- The conclusions indicate that there is a need for capacity building, through dedicated training, on two sets of issues. The first set concerns procedural efficiency and utilisation of available procedural norms, so that 1) the principle of procedural economy and efficiency is observed 2) procedural discipline is imposed on all participants in the proceedings, even if these are state bodies 3) reasonable time for adjudication is observed, while justice is being served. The second concerns the application of national legislative solutions envisaging remedies for violations of the right to a trial within a reasonable time and due regard of the jurisprudence of the ECtHR on this subject-matter. Any and all such exercises need to be preceded by a systemic and targeted training needs assessment. Particular regard should be given to the needs of the judges to be introduced in the judicial system due to the number of judges set to retire in the forthcoming period. The trainings should include both judges and non-judicial staff such as judicial assistants, who also have an important role in handling of cases initiated by remedies for violations of the right to a trial within a reasonable time.
- Particular importance should be given to measures aimed at putting an end to the "ping-pong" effect between administrative courts and administrative bodies, particularly through ensuring the implementation of the procedural norms envisaging the possibility of deciding in a full jurisdiction dispute. Such norms could also be reinforced by envisaging a limited number of returns of a single case to lower instances.
- Procedural laws can also be analysed with a view to introducing rules aimed at increasing the efficiency of certain procedural actions.

- The problems in the functioning of the judicial systems that result in exceeding the reasonable time for adjudication cannot be solely attributed to the low number of judges and non-judicial staff. In some of the countries, due to the structure of the court network and the rules governing subject-matter jurisdiction, certain courts face a considerably higher number of cases per judges, and often, as a consequence, create a significant backlog. In some cases, this may call for a revision of the court network or introduction and/or implementation of case management or human resource management measures.
- Some of the countries included in the study do not have a *lex specialis* governing the protection of the right to a trial within a reasonable time. The adoption of such a law is recommended in these cases. This exercise should be preceded by a thorough *ex ante* regulatory impact analysis in order to ensure that adequate resources, both human and financial, are planned for the implementation of this law. In countries that have a dedicated law on protection of the right to a trial within a reasonable time, there seems to be a need for an *ex post* regulatory impact analysis, to identify the extent to which the legislative instrument and its implementation have achieved their goals and identify potential areas for improvement.
- Consideration can be given to having the rate of determined infringements of the right to a trial within a reasonable time be taken into account as one of the criteria used in performance appraisal of individual judges.

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1 Workshops were part of the Regional Conference "Harmonisation of judicial practice: length of proceedings – standards and case law" organised under the Project "Initiative for Legal Certainty in the Western Balkans", implemented in the framework of the joint programme of the European Union and Council of Europe "Horizontal Facility for Western Balkans and Turkey-Phase 2019–2022". The Conference took place on 2 and 3 June 2022.

2 Zakon o zaštiti prava na suđenje u razumnom roku, Službeni glasnik Republike Srpske 99/20, Article 28.

3 Zakon o zaštiti prava na suđenje u razumnom roku, Službeni glasnik Brčko distrikta Bosne i Hercegovine 2/21, Article 19.

4 See for instance Articles 43, 45 and 70 of the Serbian Law on Administrative Disputes, Article 40 of the North Macedonia Law on Administrative Disputes, Article 36 of the Montenegrin Law on Administrative Disputes, laws governing administrative disputes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republic of Srpska and of the Brcko District

5 In most of the analysed legislations, one of the requirements for the administrative court to decide on the issue instead of the administrative body is for the "nature of the administrative matter so allows". This notion is open for interpretation.

6 European judicial systems CEPEJ Evaluation Report, 2020 (2018 data), part 1.

7 *Ibid.*