CENTRE FOR MONITORING AND RESEARCH

Right to a trial within a reasonable time

Analysis of national legislation and practice

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Vlada Crne Gore
Ministrastvo javne uprave

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INTRODUCTION

The Centre for Monitoring and Research (CeMI), in cooperation with the Center for Democracy and Human Rights (CEDEM), European Integration Affirmation Network (MAEIP) is implementing a project entitled **"Judicial Reform: Upgrading CSO's capacities to contribute to the integrity of judiciary"**, with the support of the Delegation of European Union in Montenegro. The project aims to contribute to the achievement of a higher level of rule of law in Montenegro, reflected in increasing the level of professionalism, accountability, efficiency and integrity of the judiciary and strengthening cooperation between the civil society and judicial institutions. In addition, the project aims to strengthen the capacity and greater involvement of civil society in judicial reform and accession negotiations under Chapter 23 (Judiciary and Fundamental Rights).

The most important activity of the project is the monitoring of criminal proceedings in Montenegro, selected by the method of random selection, but also the so-called targeted cases that arouse great public interest. Observers were not focused on the *meritum* of the observed cases, but only on the respect of procedural guarantees in accordance with international fair trial standards and relevant national legislation. The results of the trial monitoring are presented to the expert and general public through annual reports, as well as special thematic reports related to the implementation of new criminal justice institutes (plea agreement and deferred prosecution), as well as to specific aspects of the observed court proceedings: trial within a reasonable time, respect of the presumption of innocence and the right of access to court.

The thematic report before you is the result of the work of the trial monitoring team, made up of representatives of the Centre for Monitoring and Research (CeMI) and the Center for Democracy and Human Rights (CEDEM). In the period from February 22 of 2018 to November 1 of 2019, a team of monitors followed 228 criminal cases and 453 main hearings in 9 basic courts (Basic Court in Podgorica, Basic Court in Nikšić, Basic Court in Danilovgrad, Basic Court in Bar, Basic Court in Cetinje, Basic Court in Plav, Basic Court in Berane, Basic Court in Rožaje, Basic Court in Kolašin) and in the High Court in Podgorica.

Trial monitors and experts of non-governmental organizations CEMI and CEDEM stated their experiences from monitoring the named trials throughout this thematic report, aware of the importance which a trial within a reasonable time has for any judicial proceeding, as a part of the right to a fair trial. In addition, we have made an effort, through this report, to further promote the importance and mechanisms of protecting the right to a trial within a reasonable time.

Methodology

The Protection of the Right to a trial within a reasonable time Act was approved on 27 November 2007 and entered into force on 21 December 2007. The immediate legal grounds for its adoption are Articles 6 and 13 of the European Convention. Given the need for expedited court proceedings (including the judicial control of the administration), the Act provides two legal remedies: 1) a request for the expedited process - control request, which is filed to the court presidents; 2) just satisfaction claim, which is filed to the Supreme Court of Montenegro. Proceedings for deciding in these legal matters are urgent and free of court taxes.

This thematic report aims to analyse the existing legal mechanisms for the protection of the right to a trial within a reasonable time in Montenegro. The report has four thematic units. The first part contains introductory notes, the methodology used in the preparation of the report, as well as the general context. The second section presents an overview of international standards for the protection of the right to a trial within a reasonable time, with particular reference to the case law of the European Court of Human Rights (hereinafter: the European Court), including judgments against Montenegro regarding the determination of a violation of the right to a trial within a reasonable time.

The third section refers to the analysis of the national strategic, normative and institutional framework for the protection of said rights, as well as to the implementation of national judicial remedies aimed to expedite court proceedings. Within this unit, statistics on cases regarding control requests, appeals against decisions rejecting control requests and just satisfaction claims have been analysed. It also contains certain qualitative assessments of the implementation of the Law, based on the analysis of annual reports of the Protector of Human Rights and Freedoms of Montenegro (hereinafter: the Ombudsman), monitors' observations and reports of the Human Rights Action and CeMI, prepared in the framework of the project Judicial Reform Monitoring 2014 – 2018.

The final section of the report contains key findings regarding the scope and frequency of legal remedies for the right to a trial within a reasonable time. Also, certain shortcomings in the implementation of the Law have been analysed and recommendations for their elimination have been defined.

For the purposes of drafting the report, we used the annual reports of the Judicial Council and the Supreme Court, downloaded from the website of courts www.sudovi.me, as well as the analysis of the Ministry of Justice on the implementation of the Protection of the Right to a Trial Within a Reasonable Time Act and annual reports of the Ombudsman. For the purpose of accessing court rulings and judgments of the European Court, the Hudoc database was used: https://hudoc.echr.coe.int, searches according to Article 6 § 1, or by words "reasonable time", as well as the database of Montenegrin courts: https://sudovi.me/vrhs/european-sud-esljp/decisions-against-Montenegro/[1]

[1] Please note that there has not been a review of the cases. However, in addition to the findings of the monitoring, the report is also based on the Ombudsman's assessments, which is based on first-hand insight into certain cases on complaints about the work of the courts.

General context

According to the European Commission, Montenegro is moderately prepared to implement the acquis in the field of justice. Progress is being made year by year, especially in the legislative and institutional capacity to implement judicial reform.

The current network of regular courts in Montenegro established by the Law on Courts of 2015 consists of: a) The Supreme Court of Montenegro; b) Court of Appeals of Montenegro; c) Administrative Court of Montenegro; d) Commercial Court of Montenegro; e) Two High Courts; f) 15 basic courts divided by territorial jurisdiction into one or more municipalities in Montenegro; g) the High Misdemeanour Court of Montenegro; h) Three Basic Misdemeanour Courts. The number of judges in Montenegro, with the exception of misdemeanour judges, amounts to 253, of which 56 are judges of higher courts and 135 are judges of basic courts.[2]

At the beginning of 2018, the courts in Montenegro already had 40,781 unresolved cases, they received another 98,786 cases, of which 97,696 cases were resolved, while 38,971 cases (28.52%) remained unresolved.[3] The cumulative update rate is 98.90% and the efficiency rate is 84.22%. The average monthly inflow per judge was 33.33 cases.[4] The average number of cases per judge was 565.02, of which 395.53 is completed. The number of unresolved cases per judge, annually, is 157.78. [5]

Table 1: Statistical overview of the work of courts in 2018[6]

COURT	Number of pending cases at the beginning of the year	Number of cases received	Total of pending cases	Number of cases resolved	Number of pending cases at the end of the year	Average number of cases resolved per judge
Basic Courts	24731	59738	84469	58671	22925	447,87
High Courts	3175	16058	19233	15832	3381	282,71
Court of Appeal of Montenegro	643	1895	2538	2292	246	176,31
Administrative Court of Montenegro	10743	9196	19932	9535	10397	681,07
Supreme Court of Montenegro	441	7572	8013	7217	796	424,53
IN TOTAL	40781	98786	139560	97696	38971	395,53

[2]Annual report on the work of the Judicial Council and total balance in the Judiciary for 2018, p. 13, http://sudovi.me/files/L3Nkc3YvZG9jLzEwOTY3LnBkZg===

[3]Ibid. p. 31.

[4]Prompt performance of courts, according to up-to-date indicators: basic courts – 98,21%, higher courts – 98,59%, Commercial Court of Montenegro - 98,15% Court of Appeal of Montenegro - 120,95%, Administrative Court of Montenegro - 103,69% and the Supreme Court of Montenegro - 95,31%.

[5]For comparison, in Montenegrin courts in 2011 there were 158,916 cases (percentage of resolved cases from 2010 and earlier: 69.10%). At the end of the year, there was not a single unfinished case in 2010 in the Supreme, Appeal and Administrative Courts, nor in 2 high courts of appeal (Report of the Judicial Council for 2011, p.36), http://sudovi.me/files/L3ZyaHMvZG9jLzYzMjcucGRm=

[6]See Supra note 2. p. 34.

Of the total of 97,696 court decisions issued in 2018, appeals was filed on 16,331 cases (13,845 cases resolved on appeal). Out of the total number of cases in which a remedy was filed, in 10,429 or 75.33% of decisions were upheld, in 2,244 decisions or 16.21%, were abolished, while 4.24% was partially upheld / modified / abolished.

Decisions were mostly made within the legal deadline (one month after the last hearing or two months after the last hearing in complex cases), with only 0.6% of decisions in complex types of cases were made outside the legal deadline.

The percentage of 59.46% of cases was resolved up to 3 months, 14.71% up to 6 months, 8.05% up to 9 months, 8.72% up to a year, while in 12.06% of cases the procedure lasted longer than one year.

In terms of work on cases older than three years, compared to the previous year, the number of resolved cases is down by 6.44%, while per judge, the average number of unresolved "old" cases is 12.47. The number of unresolved cases at the end of 2018 is 38,971 cases, which is down by 1,810 cases compared to the end of 2017 (4.44%).

The high courts have completed 98.72% of the inflow, with the total number of pending cases increasing by 206 compared to 2017. The Specialized Department for organized crime, corruption and war crime at the High Court in Podgorica had 84 cases in operation, 32 of which were pending cases, with 52 remaining or 61.90% remaining unresolved.

The Administrative Court's promptness is 96.44%, with 96,86% of confirmed, and 3.05% of decisions reversed.

In 2018, the Court of Appeal of Montenegro had 2,538 cases, of which 90 were resolved, 31% and 9.69% of cases, respectively, were unresolved in relation to the total number of cases.

The Supreme Court had 7572 cases in 2018 (a total of 8013, with cases from the previous period), of which 90.07% were resolved and 9.93% still pending.[7]

The **European Commission Report** for 2019 states that in 2018 the backlogs were reduced by 4.5% (38 970 pending cases), while the number of cases older than 3 years decreased by 4% (total 3,081). It was emphasized that Montenegro needs to intensify its efforts to the strengthening of judicial efficiency, through the monitoring of backlog, reducing number of current cases and implementation of the Guidelines of the European Commission for the Efficiency of Judiciary (CEPEJ). Also, it was stated that there were shortcomings in the field of judicial statistics and precise data on the overall length of proceedings, as well as that there was no progress in this area.[8]

International standards for protection of the right to trial within a reasonable time

The right to a trial within a reasonable time, as an inseparable part of a fair trial standard, has been recognized by many international documents that decisively emphasize the right of a suspect (defendant) to a public and impartial trial. Article 10 of the **Universal Declaration of Human Rights** (1948) states that "everyone is equally entitled to a fair and public trial by an independent and impartial court, which shall determine his/her rights and obligations and the justification of any criminal charge against him" (Article 10 refers to a fair trial but does not explicitly contain the term "reasonable time").

[7]Ibid, p. 30

[8]COMMISSION STAFF WORKING DOCUMENT, Montenegro 2019 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions, 2019 Communication on EU Enlargement Policy, {COM (2019) 260 final}, p. 17 and 18, https://www.eu.me/mn/pregovori-o-pristupanju/dokumenti-pregovori/category/57-izvjestaji-o-napretku

International Covenant on Civil and Political Rights (1966), Article 14, stipulates more guarantees of fair trial rights, including the right of everyone to "have their case heard fairly and publicly by the competent, independent and impartial court established by law, which will decide on the merits of any charge of criminal-legal nature levelled against them, or in a dispute about his/her rights and obligations of a civic nature (paragraph 1); the right of anyone who is charged in a crime to be presumed innocent until his/her guilt is proven (paragraph 2); the right of the defendant not to be compelled to testify against him/herself or to admit guilt (paragraph 3, point g); and the provision that no one can be held criminally responsible or punished for acts for which he/she has already been acquitted, or convicted (paragraph 7). The right of the accused to be trialled without unnecessary delay is explicitly provided in paragraph 3, point c."[9]

The most extensive catalogue of the rights of the defendant is contained in The **European Convention on Human Rights of 1950** (hereinafter: The Convention).[10] The Convention represents an international treaty of regional character which the high contracting parties have signed and ratified by defining the substantive, procedural and other issues of importance for protection of human rights and freedoms.[11] The Convention is supplemented by 16 Protocols.[12]

Article 6, paragraph 1 provides guaranties of the rights of parties in civil cases (Art. 6, para. 1) and the rights of the accused in the criminal proceeding (Art. 6, para. 1, 2, 3).[13] Article 6 implies an evaluation of the fairness of the proceeding as a whole, in relation to all phases of the procedure. The contracting parties are, according to Article 1 of the Convention obliged to organize their legal systems so to secure respect of Article 6, regardless of financial or practical difficulties.

Taking into account the systematics of comments and doctrinal interpretation, following elements of the right to a fair trial can be presented:

- Right to access the court,
- Right to legal aid,
- Right to procedural equality,
- Right to a public and adversarial trial,
- Right to be heard,
- Right to proof,
- Right to make judgments public,
- Right to a court established by law,
- Right to independence and impartiality in the trial,
- Right to a trial within a reasonable time,
- Prohibition of arbitrary conduct.[13]

[9]Any person can act upon violation of law from the entry into force of the Optional Protocol on 17 August 1994, which places the responsibility of the Human Rights Committee to hear individual cases of violation of the rights guaranteed by this Covenant. Montenegro ratified this instrument in 2006.

[10]Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, CETS No. 005), Rome, 4 November 1950, Treaty Series No. 71/1953: Cmd. 8969.

[11]"The original system of protection, in which the European Commission for Human Rights and the European Court of Human Rights existed as decision-making bodies for violations of human rights and fundamental freedoms, was replaced in 1998, with Protocol no. 11 to the European Convention, under which the only decision-making body is the European Court of Justice, with compulsory jurisdiction. The Committee of Ministers of the member states of the Council of Europe, set up by the Statute of the Council of Europe, is responsible for the enforcement of the judgments of the European Court of Justice": Ivana Krstić, PhD, Tanasije Marinković, PhD; European Human Rights Law, Council of Europe, Belgrade, 2016. p. 15, https://rm.coe.int/16806fbc17

[12]Protocol no. 16 which came into force on 1 August 2018 and by which the highest courts and tribunals of the High Contracting Parties may request the European Court of Justice to give an advisory opinion on fundamental questions concerning the interpretation or application of rights and freedoms in the case before them, signed and ratified, https://www.paragraf.me/dnevne-vijesti/24052018/24052018-vijest1.html. All protocols with The European Convention are available via link: https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/results/subject/3[13]Salesi v. Italy, Application no. 13023/87, Judgment of 24 February 1993, para. 24.

[13]*Salesi v. Italy*, Application no. 13023/87, Judgment of 24 February 1993, para. 24.

Article 15 of the Convention provides the possibility of derogation from the guarantee of the rights recognized by the Convention in emergency situations "threatening the existence of a nation" and allow restrictions "to the extent strictly required by the exigencies of the situation", but this possibility is ruled out in the case of absolute rights: the right to life (Article 2), prohibition of torture and inhumane and degrading treatment (Article 3) and *nulla poena sine lege* (Article 7).[15]

All measures to limit the so-called conditional, not absolute rights and access to court must be taken in accordance with the principles of the European Convention.[16]

Right to a trial within a reasonable time in terms of the Convention has autonomous content and refers to criminal cases, as well as civil cases. Considering that a reasonable time as legal standard is not regulated more closely by the Convention, the question is which timeframe can be considered "reasonable"[17] in each individual case depending on the complexity and nature of the case, taking into account the number of court instances that have acted in a concrete case, and the conduct of the applicant, the conduct of relevant authorities and the importance of the subject of a dispute to the applicant's petitions.[18] European Court considers these issues individually, and then determines whether there were any excessive delays at some stage of the proceeding, or the case in general.

In civil proceedings, a reasonable time generally begins from the time when judicial proceedings commenced in relation to solving the dispute concerning civil rights and obligations (usually the date when private lawsuit was filed, or earlier, if the applicant was legally prevented to file the lawsuit).[19] In the criminal proceedings that moment is related to the date of the notification of a criminal charge (not necessarily just a moment of filing a formal charge, but practically moment of notifying of the accused that there is a possibility they committed criminal offence), or the date of arrest, or interrogation when these procedural steps substantially affected the position of the accused, or the moment of filing a criminal charge against a party from the state authorities.[20]

Reasonable time is applicable to the entire proceeding (pending final judgment, including appeal and review proceedings (in cases where review proceedings may directly affect the outcome of the case[21]), and even the deciding upon the constitutional complaint filed in conjunction with Article 6, para. 1 of the Convention.

The Charter of Human Rights of the European Union[22], which is recognized as equivalent to the EU Contracts by the Treaty of Lisbon, guarantees the right to human dignity (Article 1), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), and the right to liberty and security (Article 6). In Article 47 paragraphs 1 and 2, the Charter states that anyone who has their rights and freedoms guaranteed by the law of the Union has the right to an effective legal remedy before a court, and that everyone is entitled to a fair and **public trial within a reasonable time**, by an independent and impartial tribunal established by law. Article 52, paragraph 3 the Charter states: "In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection."

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[17] "A reasonable trial period is an open standard. In its case-law, the ECJ does not set absolute limits on duration, but assesses the reasonableness of proceedings on a case-by-case basis, taking into account several factors: the complexity of the case, the applicant's conduct, the actions of the competent authorities, the value of the protected property (i.e. meaning for the applicant) and the need for urgency, the number of procedural stages the case went through.": Prof. Ph.D. Alan Uzelac, The Right to a Fair Trial in Civil Matters; new case law of the European Court of Human Rights and its impact on Croatian law and practice, p. 8, http://echr.pravo.unizg.hr/materijali/Uzelac_Hrvatsko%20pravo%20i%20cl%206%20ECHR.pdf

[18] Frydlander v. France, Judgement of 31 May 1978, p. 91-111.

[19] Koenig v. FR Germany, Judgment of 31 May 1978, p. 91 - 111.

[20] Eckle v. FR Germany, Judgment of 15 July 1982, p. 73 - 74.

[21] Garzicic v. Montenegro, Application No. 17931/07, Judgment of 21 September 2010, finding that the Supreme Court of Montenegro had violated the applicant's right of access to a court by refusing to decide on an appeal on the merits.

[22] Charter on Fundamental Rights of the European Union, 2007/C 303/01), Strasbourg, 12. 12. 2007

Review of the case law of the European Court of Human Rights regarding the length of proceedings and the effectiveness of legal mechanisms to protect the right to a trial within a reasonable time

Between 1959 and 2018, the European Court processed 841,300 applications and delivered 21,600 judgments. A violation of at least one right guaranteed by the European Convention was recognised in 84% of these judgments. The violation of the right to a trial within a reasonable time represented not only the most frequent violation in relation to Article 6 of the European Convention, but also the most frequent violation of all rights protected by the Convention. Almost 40% of violations determined by the Court were in regard to Article 6 of the Convention, either because of the fairness of the trial (17.01%), or the length of the proceeding (20.06%). In 2018, almost a quarter of all violations determined by the European Court concerned excessive length of proceedings.[23]

The European Court, since 2000 and its judgement **Kudla v. Poland**[24], in its decisions permanently argued that the lengthy duration of court proceedings, as a result of the court's lack of efficiency constitutes a violation of two rights of the Convention: the right to a trial within a reasonable time (Article 6) and the right to provide an effective legal remedy for the protection of rights and freedoms and its use in proceedings before national and state authorities and judicial institutions, before addressing the European Court (Article 13). In cases of excessive length of proceedings, which leads to violations of the right to a trial within a reasonable time, states are addressed to establish a special legal remedy for eliminating delays of the proceedings and compensation for damage and thus ensure effective protection of this right. According to the European Court, the nature of Article 6, para. 1 of the European Convention impose an obligation to the Contracting States to organize their judicial system in such a way that their courts can fulfil every requirement from that article, including the obligation to decide on cases within a reasonable time. If the judicial system is deficient in this regard, the most effective solution is a remedy designed to expedite the proceedings[25], emphasizing that this remedy is effective to the extent that it expedites the court's decision-making.[26]

In case of a violation, the delay or stalling in the proceedings, this situation must be attributed to the State responsible, in regard to Article 6 of the European Convention.[27] In cases when a delay in the dispute is caused by a private entity who is a party in the proceeding, State bares no direct responsibility, but questions can be raised as to whether the court has taken adequate steps to expedite the proceeding and whether the proceeding has been delayed without a valid reason, which led to a reasonable time limit being exceeded.

Prerequisite: exhaustion of domestic remedies

In its judgment in **Handyside v. The United Kingdom** of 7 December 1976, the European Court stated that the safeguard mechanism established by the Convention has a subsidiary character in relation to the national systems to guarantee human rights, and that from that subsidiary character derives the requirement that all domestic remedies are previously exhausted. The European Court, however, recognizes certain exceptions to this rule, in the manner that the applicant should first and foremost use those remedies which could be reasonably expected in a domestic law, but not those remedies that are expected to fail. In the absence of an effective remedy, the applicant may invoke the violation of the right to a trial within a reasonable time even if the proceeding is still pending.[28]

[23]Overview 1959 - 2018, European Court of Human Rights, mart 2019., https://www.echr.coe.int/Documents/Overview_19592018_ENG.pdf
[24]Kudla v. Poland, Application no. 30210/96, Judgment of 26 October 2000.
[25]Scordino v. Italy, Application no. 36813 / 97, Judgment of 29 March 2006.
[26]Bacchini v. Switzerland, Judgement of 26 October 2000.
[27]Baraona v. Portugal, Application no. 10092/82, Judgment of 8 July 1987.
[28]Zanghi v. Italy, Judgment of 19 February 1991

Establishment of elapsed time criteria

The European Court has not precisely determined the length of a reasonable time, in terms of absolute time limits within which the procedure should be completed, but has accepted casuistic approach by establishing criteria for the assessment of a reasonable time in each particular case. In this respect, the Court generally uses the following wording: "the reasonableness of the length of the proceeding must be assessed on the basis of the circumstances of the case and taking into account the criteria established by the case-law of the Court, and in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities." The judgment of König of 28 June 1978 added another criterion - the importance of the dispute to the applicant, i.e. *"what is at stake".*[29]

Complexity of the case

The European Court found the legal and factual complexity of the case, including the legal nature of the case, the number of court instances that have acted in this particular case, the ratio of criminal and civil procedure (when there is a need to suspend the criminal process to end the civil one), the need for hearing a higher number of witnesses, the need for specialist expertise, etc.). As a rule, the European Court considers cases that lasted more than three years in one instance more strictly.[30] Special attention is paid to cases which, due to their specificity require urgent treatment and respect for a reasonable time, such as cases concerning adolescents, child custody proceedings, labour disputes, etc. The shortest deadline for which a violation was determined was two years and four months, for a case of two-stage jurisdiction.[31]

The conduct of the applicant

The applicant's conduct may also have a significant impact on the length of the proceeding - in which case the responsibility for the length of the proceeding cannot be attributed to the responsible authorities of the Contracting Party. Practically, the only judgments in which the proceeding was beyond a reasonable time, in which the European Court did not find a violation of Article 6, paragraph 1 were those in which the length of proceeding was exceeded due to the applicant's conduct. In its judgment **Wiesinger v Austria** of 30 October 1991 (paragraph 57), the European court stated that "the applicant's conduct is an objective fact that cannot be attributed to the responsible State and which must be taken into account in determining whether reasonable time limit under Article 6.1 ... was exceeded". It excludes, however, any delays that could be considered as the result of a force majeure (**Lavents v Latvia**, judgment from 28. February 2003.).[32]

The conduct of authorities

There are numerous judgments in which the European Court has stated that delays can be attributed to domestic courts, such as the case of **Martins Moreira v. Portugal**[33], which included a three-months interval between hearing the applicant before the court and making a preliminary decision, as well as a four month delay in reaching a decision on the request of the applicant of the petition for obtaining expert medical opinion. The other delays in the case concerned the eight-month interval between the time when the applicant lodged his appeal and the date on which the case was formally recorded (reached the archive) at the Court of Appeal. Court stated that the domestic courts are burdened with fairly big amount of unresolved cases, which is a part of the organizational problem, but also noted that nothing was done to solve these problems and concluded that the right to a hearing within a reasonable time has been violated, contrary to Art. 6 para.1 of the European Convention.

[29]Length of proceedings in Council of Europe member states, based on the case law of the European Court of Human Rights, CEPEJ (2006) 15, Strasbourg, 8 December 2006, p. 13.
[30]Guincho v. Portugal, Judgment of 10 July 1984, p. 29 – 41.
[31]X. v. France, 1982.
[32]Wiesinger v. Austria, Judgement of 30 October 1991.
[33]Lavents v. Latvia, Judgment of 28 February 2003.
[34]Zimmermann and Steiner protiv Švajcarske, presuda od 13. jula 1983.

In the previously mentioned **Steiner and Zimmermann** case[34], three and a half years had passed by the time the applicants' appeal was heard before the Court of Appeal of Switzerland. In this case, the European Court noted that at that during this time, the Court of Appeal was overloaded with unresolved cases, and that the national authorities have taken certain measures to ensure that this problem is resolved, by voting to increase the number of judges from 28 to 30 and the number of the Court Secretaries and Registrars from 24 to 28 - which, in turn, were not sufficient, which caused the number of cases to increase in proportion to the increase of civil cases. The timeframe of three and a half years to resolve the case at the appellate level was, in the Court's view, too long. Accordingly, there has been a violation of Article 6 § 1.

Judgments of the European Court towards Montenegro in cases related to a trial within a reasonable time

The European Court delivered its first judgment in respect of Montenegro (in which it considered the temporal validity of obligations of Montenegro and Serbia under the European Convention) in 2009.[35] As of 2018, the European Court has acted on 2,449 petitions filed against Montenegro and delivered 50 judgments. In 46 cases, the European Court found that Montenegro had breached the Convention; while in three cases it was decided that there was no violation of the rights guaranteed by the Convention[36]. Of the total number of judgments related to Montenegro, 20 were about the excessive length of proceedings.[37] In these 20 cases, the European Court ruled on payment of 75090 EUR in respect of non-material damage and/or costs of proceedings. In 2019, two judgments were issued; one determined a violation of Articles 3 and 5 of the European Convention and the other a violation of Article 5 of the Convention.[38]

An assessment of the Protection of the Right to a Trial within a Reasonable Time Act was given by the European Court of Human Rights in the **Mijušković v. Montenegro** judgment of 21 September 2010. In this case, the applicant complained about the delayed execution of a final custodial judgment, obliging her ex-spouse to hand over their children to her for raising, guarding and upbringing. The enforcement proceeding lasted for 3 years and 7 months after the final judgment, and the European Court noted that the judgment was enforced less than 3 months after the Government had received a notification about the case from the European Court. In the course of the proceeding, the Government maintained its position that the applicant had not exhausted all effective domestic remedies and had failed to file an appeal following a review of the control request and a just satisfaction claim under the Protection of the Right to a Trial Within a Reasonable Time Act.

The Court had found that the domestic court in this case had used the notice under Article 17 of the Act, informing the applicant that the opposite party would be fined without delay, but stating that it was impossible to say when and how the enforcement proceeding would end. In accordance with Article 17 of the Act, when the delivery of notification is as such, it is considered that the control request of the applicant is resolved. The Court considered that, since the applicant

[35] *Bijelic v. Montenegro*, Application no. 11890/05, Judgment of 28 April 2009.
[36] Overview 1959 - 2018, European Court of Human Rights, March 2019, https://www.echr.coe.int/Documents/Overview_19592018_ENG.pdf
[37] *Bujkovic v. Montenegro*, Judgment of 10 March 2015; *Mijanovic v. Montenegro*, Judgment of 17 September 2013; *Vukelic v. Montenegro*, Judgment of 4 June 2013; *Milic v. Montenegro and Serbia*, judgment of 11 December 2012; *Novovic v. Montenegro*, Judgment of 23 October 2012; *Stakic v. Montenegro*, Judgment of 2 October 2012; *Velimirovic v. Montenegro*, Judgment of 2 October 2012; *Boucke v. Montenegro*, Judgment of 21. February 2012; *Barac et al. v. Montenegro*, Judgment of 13 December 2011; *Zivaljevic v. Montenegro*, Judgment of 08 March 2011; *Garzicic v. Montenegro*, Judgment of 21 September 2010; *Mugosa v. Montenegro*, Judgment of 21 June 2016; *Radunovic et al. v. Montenegro*, Judgment of 25 October 2016; *Mirkovic et al. v Montenegro*, Judgement of 2 March 2017; *Đukovic v. Montenegro*, Judgement of 13 June 2017; *Svorcan v. Montenegro*, Judgement of 13 June 2017; *Tomasevic et al. v. Montenegro*, Judgement of 13 June 2017; *Jovović v. Montenegro,* Judgement of 18 July 2017; *Sineks d.o.o. v. Montenegro*, Judgement of 5 September 2017; *Vucinic v. Montenegro*, Judgement of 5 September 2017; *Nedic v. Montenegro*, Judgement of 10 October 2017; *Tripcovic v. Montenegro*, Judgement of 7 November 2017; *Dimitrijevic v. Montenegro*, Judgement of 12 December 2017. According to: Ivana Roagna, Pravo na suđenje u razumnom roku – Priručnik za primjenu člana 6 (1) Evropske konvencije o ljudskim pravima, Council of Europe, September 2018, p. 67-73, https://rm.coe.int/mne-pravo-na-sudjenje-u-razumnom-roku-mne/16808e729c
[39] *Milicevic v. Montenegro*, Application no. 27821/16; Judgement of 6 November 2018, Bigovic v. Montenegro, Application no. 48343/16, Judgement of 19 March 2019, Saranovic v. Montenegro, Application no. 31775/16, Judgement of 5 March 2019

had been duly notified, she had no legal right to appeal, and therefore the appeal could not be considered as a remedy for the applicant. The Court found that even if the applicant could have been compensated for the delays in the procedure, this would not have led to the accelerating of the execution, as the related proceeding case was still ongoing. Therefore, in the Court's assessment, the final execution of the questioned judgment was a consequence of the fact that the Government was informed of the case and not the result of any domestic remedy. [39]

In the judgments of **Bujković, Milić, Vukelić, Velimirović and Boucke**, the European Court also found that failure to execute the judgment constituted a violation of Article 6 of the Convention.[40] In the judgments of **Novović, Stakić and Živaljević**, the Court found violation of Article 6 on the ground that the total length of proceeding was beyond the reasonable time. In the judgment of **Mirković et al. v. Montenegro**, the Court found a violation of Article 6 para.1 of the Convention, due to the length of the proceeding before administrative bodies.

In the case of **Svorcan v. Montenegro**[41], The European Court dealt with the issue of a violation of the right to a trial within a reasonable time, concerning a civil case of determining property rights, which lasted for 13 years and 11 months, with even 3 years and 8 months only before the Supreme Court of Montenegro. According to the European Court, the length of the proceeding was calculated from 3 March 2004, *rationae temporis*, from the date of the ratification of the Convention, although the proceeding began on 30 December 1997. The aforementioned procedure was completed by the date of the judgment of the Supreme Court of Montenegro Rev. no.25/06 from 14 February 2008, and the European Court found that there was an unreasonable delay in the proceedings before the Supreme Court of Montenegro and on this basis found a violation of Article 6 § 1 of the Convention.

In the case of **Vučinić v. Montenegro**[42], which related to several civil proceedings, which lasted over 12 years (of which 3 years and 5 months only at the High Court in Podgorica), which were filed due to his inability to conduct business and gain profit. The Government stated that they could not be held responsible for delays that occurred before the Convention entered into force in relation to Montenegro on 3 March 2004. In this regard, the Court stated that the applicant instituted civil proceedings before the Basic Court in December 1998 and that the proceedings were still pending and therefore fall within the *rationae temporis* jurisdiction of 3 March 2004.[43]

The proceedings were initiated on 29 December 1998, but the period considered for the review began on 3 March 2004. The period in question ended on 1 April 2010. Therefore, it lasted six years and one month at three levels of jurisdiction. When assessing the reasonableness of the length into account, the state of the proceeding when the Convention entered into force in relation to Montenegro must be considered. On this basis, the Court recalls that by that date the proceedings had already lasted five years and two months. The Court considered that there was no justification for the length of the proceeding lasting for more than six years and therefore found a violation of Article 6 § 1 (see paragraphs 36 and 37).

With regard to other civil proceedings, the Court assessed one part of the application as inadmissible, respecting the circumstances of the case and the Government's arguments concerning the part of the civil proceedings that the applicant brought before the domestic courts. The Court recalls that the complaint related to the length of proceedings of the second set of civil cases filed to the European Court on 26 November 2013, after the decision of the Constitutional Court was awarded to the applicant. The applicant was due to file a petition to the Court within six months of being served Supreme Court's decision, which means no later than 7 August 2011. On that basis, the Court concluded that the appeal was filed outside the time limit of six months period and must be declared inadmissible in accordance with article 35, paragraphs 1 and 4 of the Convention (see paragraphs 38-40).

[39] Judgement *Mijuskovic v. Montenegro*, p. 71

[40] "These cases, however, concerned situations that arose before the new Law on Enforcement and Securing came into force in July 2011. The new law entrusts the enforcement of court decisions to public bailiffs. Since then, timeliness of enforcement proceedings was no longer the subject of complaints". *Handbook on the application of Article 6 (1) of the European Convention on Human Rights, Council of Europe, p. 29.*

[41] *Svorcan v. Montenegro*, Application no. 1253/08, Judgment of 13 June 2017, para, 24-28.

[42] *Vucinic v. Montenegro*, application no. 44533/10, Judgment of 5 September 2017.

[43] Ibid, para. 24-27.

In the case of **Vukelić v. Montenegro**[44], the European Court has considered whether a control request is an effective remedy in the domestic system[45], i.e. that it represents a remedy which must be used before addressing the European Court. The petition was filed because of the lengthy duration of the enforcement procedure for collecting a claim by selling the property, which began before the Basic Court in Bar in 1997, and which at the time of the decision, on 4 June 2013 was still ongoing. In this case, the European Court has taken the view that the applicant was not required to file a control request because the petition was filed long before an adequate court practice was established in acting upon control requests (see paragraph 83).[46]

The European Court accepted the petition and ordered the Government of Montenegro to secure enforcement of the case within three months and to pay the applicant 3,600 EUR in compensation. The judgment is particularly important because the European Court concluded that "in the meantime, the court practice of control requests has been significantly developed in the respective country" (paragraph 84)[47], and that "in view of the significant development of relevant domestic court practice in this area, a control request must, in principle and whenever available in accordance with the relevant legislation, be considered as an effective remedy within the meaning of Article 35 § 1 of the Convention in relation to any petition filed against Montenegro after the date on which this judgment becomes final" (paragraph 85).

In the **Dimitrijevic v. Montenegro** judgment, The European Court of Human Rights also found a violation of the right to a trial within a reasonable time, in a civil proceeding lasting 7 years, concluding that the proceedings conducted in the present case was not particularly complex to justify the inaction of the domestic courts, and therefore did not meet the requirement of "reasonable time". However, the European Court did not award just satisfaction to the applicant in respect of material or non-material damage, nor of the costs of proceeding, although both were requested in the Application.

In the decision of **Vučeljić v. Montenegro**[48], The European Court concluded that, in addition to the control request, the just satisfaction claim and constitutional appeal should have also been used before addressing the Court, i.e. that these remedies are also effective for expediting the proceeding and/or just satisfaction. Namely, in this case, the applicant complained, inter alia about the length of the civil proceeding, which lasted from 28 March 2005 to 23 January 2013. The Court stated that the applicant had not exhausted domestic remedies, because he did not use a control request to expedite the process of execution of the final court decision, so his petition was dismissed. The Court further assessed that, in addition to the control request, the Applicant had to file a just satisfaction claim to the Supreme Court, as well as the constitutional complaint to the Constitutional Court regarding the protection over the length of the proceeding, stating that a constitutional complaint could in principle be considered an effective remedy of 20 March 2015 (paragraph 31).

In **Bulatović v. Montenegro**[50], regarding, *inter alia* the length of the criminal proceeding, the European Court reiterated its position in *Eckle v. Germany*, from 15 July 1982, regarding the violation of the right to a trial within a reasonable time (paragraph 66), stating that a natural person can no longer claim to be the victim of the violation of the Convention, when the national authorities acknowledge, either formally or in essence, the violation of the Convention and provide just satisfaction. Given the fact that the Supreme Court explicitly admitted that the criminal proceeding against the applicant was unreasonably long and awarded him 2,000 EUR on that basis, the Court considered that he can no longer claim

[44] *Vukelic v. Montenegro*, Application no. 58258/09, Judgment of 4 June 2013.
[45] For the purposes of section 17 of The Protection of the Right to a Trial Within a Reasonable Time Act, when notice is given to a party that a specific action will be taken or a decision made within a time period that does not exceed 4 months, or under section 18 of the Act, when the president of the court ordered a judge to take certain actions within 4 months at the most.
[46] The same position is taken by the European Court of Justice in Boucke v. Montenegro, Application no. 26945/06, Judgment of 21 February 2012, para. 72-74, as well as Zivaljević v. Montenegro, Application no. 17229/04, Judgment of 8 March 2011, para. 60-65.
[47] On the available sample submitted by Montenegrin judges, the measured period was from the date of notification, i.e. the decision on the adoption of the control request, until the date of the decision before that court. The results obtained are divided into cases in which the decision was taken within a period of less than 4 months, within a period of 4 months to a year, and within a period of more than a year, and expressed as a percentage of the number of cases that were available in the form of a submitted sample.
[48] *Dimitrijević v. Montenegro*, Application no. 17016/16, Judgment of 12 December 2017.
[49] *Vuceljic v. Montenegro*, Application no. 59129/1 5, Judgment of 18 October 2016.
[50] *Bulatović v. Montenegro*, Application no. 67320/10, from 22 July 2014.

victim's status. Although the constitutional appeal of the applicant in this regard is still not resolved, the Court, in its judgment *Boucke against Montenegro*, dated 21 February 2012 (paragraphs 76-79), already expressed the view that the constitutional appeal can't be considered an effective remedy for the length of the proceeding during that period, and that it was therefore not necessary to exhaust that remedy. Because of the aforementioned, the petition was rejected in accordance with Article 35 § 4 of the Convention.[51]

In the judgments **Stakić v. Montenegro** and **Novović v. Montenegro**, the European Court, however, expressed a view that a just satisfaction claim cannot expedite the proceeding while it is still pending, and that a constitutional appeal cannot be considered an effective remedy for the length of the proceeding. Accordingly, the Court considers that the just satisfaction claim is an effective legal remedy in terms of just compensation, but that itself does not yet represent an effective instrument for expediting a proceeding.

Bearing in mind the aforementioned case law of the European Court in relation to Montenegro, it is important to note that this Court will in the future, in any *in concreto* case evaluate whether the remedies provided by the Protection of the Right to a Trial within a Reasonable Time Act, were sufficient and effective. In this regard, the statement from the last Annual Report on the Work of the Representative of Montenegro before the European Court, should also be mentioned. The Report explicitly indicates that the issue of the **effectiveness of remedies for the length of proceedings before administrative bodies and the Constitutional Court remains open**, since there is still no explicit position of the European Court with regard to the existence, or effectiveness of remedies before administrative bodies and before the Constitutional Court, given that the proceedings before the European Court are pending against Montenegro for alleged violations of the right to a trial within a reasonable time in these proceedings.[52] In addition, the Ombudsman of Montenegro also recommended that "The Constitutional Court of Montenegro should consider the possibility of finding adequate measures to prevent the excessive length of proceedings on constitutional complaints and to initiate constitutional dialogue with relevant institutions of the system in order to improve the national system of protection of human rights and fundamental freedoms."[53]

[51] Ibid, p. 151-153
[52] *Annual Report on the Work of the Representative of Montenegro before the European Court of Human Rights for 2018*, Podgorica, 18 april 2019, p. 8-9, http://www.gov.me/biblioteka/izvjestaji
[53] Ibid, p. 69.

Trial within a reasonable time - the legal and institutional framework of Montenegro

Constitution of Montenegro[54] (hereinafter: The Constitution) proclaims equality of all before the law, in Article 19. Article 32 of the Constitution stipulates that "everyone has the right to a fair and public trial **within a reasonable time** before an independent and impartial court established by law." In this way, the right to a trial within a reasonable time was directly introduced into the Constitution. This constitutional provision was based on Article 6 § 1 of the European Convention, but it is broader by definition, because it does not contain any restrictions/ determinations as to the type of the court proceeding.

According to Article 9 of the Constitution, the confirmed and promulgated international treaties and generally accepted rules of international law are a part of Montenegro's legal system. They have supremacy over domestic legislation and are directly applicable if they conflict with domestic legislation. Although Article 9 does not specify the relationship between the Constitution and the Convention, in accordance with the case law of the European Court of Human Rights, there is no doubt that in the case of divergence between them, the Convention should have supremacy.

The Constitution also guarantees the right to a legal remedy against a judgement deciding on one's right, or legally based interest, as well as the right to legal assistance within the overall protection of human rights and freedoms (Article 20)[55]. The Constitution also provides a special mechanism for the protection of constitutionally guaranteed rights – the constitutional appeal. Article 149 of the Constitution stipulates that the Constitutional Court shall decide "on a constitutional appeal for violation of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective legal remedies".

The Constitutional appeal can be filed by any person or legal entity, organization, group of persons and other forms of organization that do not have the status of a legal entity, if they believe that their human rights or freedoms, guaranteed by the Constitution have been violated by an **individual act, action or inaction** of a state body, state administration body, bodies of local municipalities, local administration, legal entity or other entity exercising public authority. The Constitutional appeal is filed after exhaustion of all effective legal remedies (ordinary and extraordinary legal remedies and other special remedies, which may lead to the amendment of an individual act in favour of the complainant, i.e. to the termination, correction or termination of an action, or termination of failure to act by a state body, body of local self-government, or any other entity exercising public authority). The Constitutional appeal may be filed even earlier if the complainant proves that the remedy to which he is entitled to in a particular case is not, or would not be effective.[56]

When the Constitutional Court finds that the repealed individual act violated the human right or freedom guaranteed by the Constitution, it will adopt the Constitutional appeal and annul the act, in whole or in part, and return the case for retrial to the authority that issued the repealed act. In cases where the violation was committed by an act or failure to act by a competent authority, with the decision to adopt the Constitutional appeal, the Constitutional Court will prohibit taking any further action, or it will order taking other appropriate measures to rectify the already existing or eliminate future harmful consequences of the identified violation of human rights or freedoms guaranteed by the Constitution (Article 76 of the Law on the Constitutional Court of Montenegro).The right to a trial within a reasonable time is regulated by organizational regulations of the judiciary, as well as procedural laws, explicitly as the right to a trial within a reasonable time or in the form of provisions relating to **urgency,** or **special urgency of the proceeding**.

[54]"Official Gazette of Montenegro", no. 1/2007 and 38/2013 – Amendments I-XVI.

[55]An effective remedy involves not only the ability to file a remedy against a decision deciding a right or a legitimate interest, but also the ability of a party to exercise the right to a trial within a reasonable time, in accordance with Art. 6 para. 1 ECHR. According to the case-law of the European Court of Justice, effectiveness implies, first and foremost, the existence of such a remedy that an executive decision should be subject to independent review in an adversarial proceeding, before an authority which has the power to review the factual basis of its decision-making in order to strike a balance between the public interest and rights of the individual. See Bijelic v. Serbia and Montenegro, Judgement of 28 April 2009, para. 76 and Parizov v. Former Yugoslav Republic of Macedonia, Judgment of 7 February 2008, para. 46.

[56]The Law on The Constitutional Court of Montenegro ("Official Gazette of Montenegro", no. 11/15 from 12 March 2015), which came into force on 20 March 2015, (art. 66).

Civil Procedure Act[57] contains a clear provision that is related to a reasonable time. Article 11, paragraph 1 prescribes the duty of the court to strive to conduct the proceeding "**without delay, within a reasonable time**, at the lowest possible cost and to prevent any abuse of the rights belonging to the parties in the proceeding. " If the participants of the proceeding abuse the rights recognized by this Act, the court may impose a monetary fine, punishment or other measures provided by Act (Article 11, paragraph 2). The Act also defines time limits for resolving cases, i.e. instructive time limits for actions by the court and parties, which did not exist in the earlier civil legislature of Montenegro[58]. Thus, the parties are limited in terms of the period during which they may propose new facts and recommend new evidence in the proceedings (Article 303). According to Article 295, paragraph 1 of the Act, the main hearing shall, as a rule, be held no later than 60 days from the date of the preparatory hearing. Article 319, paragraph 2 states that the main hearing can't be postponed indefinitely, nor for a period longer than 30 days, except in certain cases prescribed by law.[59] According to Article 340, paragraph 2 of the Act, the court will deliver a judgment, 30 days after the conclusion of the main trial, at the latest. The Act also contains provisions on the urgency of dealing with certain procedures, such as labour disputes.[60]

Criminal Procedure Code[61], in Article 15 prescribes **the right to a trial without delay**. Although the term "reasonable time" is not used in this article, the substance of this right corresponds with the definition of the right to a trial within a reasonable time, which is that the accused has the right to be brought to trial and to be tried as soon as possible, without delay, and that the court is obligated to conduct the proceeding without delay and to prevent any abuse of rights by the parties of the proceeding. The general obligation under this article is specified through other provisions which prescribe: court's power to punish participants in proceeding whose actions are aimed at delaying the proceeding; the deadline for the investigation to be completed; the deadline for scheduling the main trial; the deadline for drafting the judgment after its announcement; the deadline for the court to decide upon the appeal, etc. Article 174 prescribes the urgency of handling detention cases and the obligation of all the bodies involved in the proceedings to act promptly if the defendant is in detention.

Administrative Procedure Act[62] in Article 10 stipulates that administrative proceeding must be conducted **without delay** and with as little expense as possible, but so that all the facts and circumstances relevant to the successful and complete exercise and protection of the rights and legal interests of the parties, or other participants in the procedure are properly and fully established. The Act stipulates in many of its provisions that certain procedural steps will be taken **without delay** and in accordance with the principle of urgency. Article 55 of the Act prescribes the appointment of a temporary representative to the party if the urgent resolution of a particular administrative matter so requires, and (for example, if the procedurally incapacitated party has no legal representative, or if the interest of the party or the protection of the life and health, or property of greater value requires immediate action etc.). Article 124 prescribes the immediate enforcement of the decision within the time limit for the appeal, even after the appeal has been filed, if it is an emergency measure, or if the delayed execution would cause irreparable damage to the opposing party or to a person with a legal interest.

Law on Courts[63] stipulates that everyone has the right to a fair trial within a reasonable time, and, in his/her legal matter to be tried by a judge determined by a random assignment of cases, regardless of the parties and the nature of the legal matter (Article 5).

Court Rules of Procedure[64] provides a more detailed way of conducting court affairs, based on the annual work plan drawn up for each calendar year, in accordance with the work program submitted by the president of the court during his/her candidacy for the president of that court and based on the report of the work of the court. When reviewing the annual report, it is

[57]Official Gazette of the Republic of Montenegro", no. 022/04 of 02.04.2004, 028/05 of 05.05.2005, 076/06 of 12.12.2006, "Official Gazette of Montenegro", no. 073/10 of 10.12.2010, 047/15 of 18.08.2015, 048/15 of 21.08.2015, 051/17 of 03.08.2017, 075/17 of 09.11.2017, 062/18 of 21.09.2018, 034/19 of 21.06.2019, 042/19 of 26.07.2019.

[58]Art. 107, para. 1 of the Law, states that if the deadlines aren't regulated by the law, they're determined by the court, on a case-by-case basis.

[59]Among other things, if the court finds that the dispute could be successfully resolved through mediation, it will refer the parties to mediation, but the court will schedule a hearing if the parties do not resolve the dispute through mediation, after a 60-day deadline (Art. 329, para. 1 and 2).

[60]Article 434 of the Act states that in labour disputes initiated by the employee, the main hearing must be held within 30 days from the day of the preliminary hearing, and that proceedings before the first instance court must be completed within six months from the day the lawsuit was filed.

[61]Official Gazette of Montenegro", no. 059/09 of 18.08.2009, 049/10 of 13.08.2010, 047/14 of 07.11.2014, 002/15 of 16.01.2015, 035/15 of 07.07.2015, 058/15 of 09.10.2015, 028/18 of 27.04.2018.

[62]Official Gazette of Montenegro", no. br. 56/2014 of 24.12.2014, 20/2015 of 24.04.2015, 40/2016 of 30.06.2016, 37/2017 14.06.2017.

[63]"Official Gazette of Montenegro", no. 11/2015.

[64]"Official Gazette of Montenegro", no. 65/2016 of 12 October 2016, (in effect since 20 October 2016), http://sudovi.me/podaci/sppg/dokumenta/6794.pdf

determined that if the number of unresolved cases in the court is higher than the three-month inflow, the work plan shall also include a **program for dealing with the backlog**. For older cases (cases older than 3 years), an additional red colour is put on, indicating that this is a case that should be given priority in solving (Article 148, paragraph 5).

Keeping the records of filed remedies prescribed by the specified law is specified in accordance with Court Rules of Procedure, in a manner that all just satisfaction claims are recorder in the case register for just satisfaction claims ("JSC" of local "Tpz"), held by the Supreme Court, while cases regarding requests for expedited proceedings (control request) are kept by the courts in the "Su" register in the control requests group. Annual reports on the work of courts also contain information on all filed remedies (control requests, appeals, just satisfaction claims).

Judicial Council and Judges Act[65] regulates the manner of election and termination of office of members of the Judicial Council, the organization and manner of work of the Judicial Council, the procedure for the election of judges and lay judges, rights and duties, the manner of determining the termination of judicial office, disciplinary responsibility and dismissal of judges and lay judges, and other issues to be decided by the Judicial Council.

According to this Act, on 9 December 2015, the Judicial Council issued **The Rules for the assessment of judges and court presidents**[66], which closely regulate the procedure and the criteria for evaluation of court judges and presidents. Among other things, Article 10 stipulates that: a judge who has completed 80% or less cases compared to Average benchmarks, without providing a justified reason – is to be considered as non-satisfactory, and judge who has completed more than 80% of cases, according to Average benchmarks, satisfies the necessary criteria. Article 11 stipulates that a judge who has had 30% or more of his/her decisions annulled in relation to the total number of cases in which the decision was rendered in the same period – doesn't satisfy. The judge who had less than 30% of decisions annulled in relation to the total number of cases in which the decision was made in the same period – satisfies.[67] The Rules stipulate that a judge who has less than 15 approved control requests during a 3-year evaluation period will be rated "Satisfactory" according to this indicator.

The Judicial Council, on 30 November 2016 adopted the **Methodology of Indicative Benchmarks for Determining the Required Number of Judges and an Even workload among Judges**, which serves as the basis for establishing the indicative benchmarks for determining the necessary number of judges required for the prompt and quality work of courts in Montenegro.

The Law on Notaries[68] regulates the affairs of notaries, the organization of the notary service, and the conditions and manner of performing the notary function in Montenegro. In addition to notarial affairs, which include drafting notarial acts and deposit receipt, the public notary may also perform other tasks entrusted by the court. The total number of notaries prescribed by the Regulation on number of public notaries and their official seats in Montenegro is 65 (one public notary is appointed for every 15,000 citizens in a municipality). To date, 52 public notaries have been appointed in Montenegro in the territory of 15 municipalities (Bar, Berane, Bijelo Polje, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Nikšić, Pljevlja, Podgorica, Rožaje, Tivat and Ulcinj).

The competence of public bailiffs is determined by the **Law on Enforcement and Securing (of claims)**[69], which stipulates that a public bailiff is authorized to decide in cases of enforcement and securing of claims, except in cases where the legal authorization lies within the court. The public bailiff determines and enforces the execution based on the executive document of the court, or the authority whose headquarters are within the area for which the public bailiff is appointed. So far, 31 public bailiffs have been appointed out of 32 for the territory of Montenegro.

[65] "Official Gazette of Montenegro", no. 11/2015, 28/2015 and 42/2018.
[66] "Official Gazette of Montenegro", no. 11/15 of 09/12/2015.
[67] Following the decision of the Council on the Regular Judicial Appraisal in 2018, the procedure for the evaluation of 41 judges of the Basic Courts was carried out: *Annual Report on the Work of the Judicial Council and the overall state of the judiciary for 2018*, p. 12, http: //sudovi.me/podaci/sscg/dokumenta/10526.pdf
[68] "Official Gazette of Montenegro", no. 55/2016 and 84/2018.
[69] "Official Gazette of Montenegro", no. 36/2011, 28/2014, 20/2015, 22/2017, 76/2017 – Constitutional Court decision and 25/2019.

Review of strategic documents

Judicial Reform Strategy 2019 - 2022[70] which was adopted in September this year identifies five key strategic objectives underlying the reform of the judicial system of Montenegro. Those objectives are: strengthening the independence, impartiality and accountability of the judiciary, strengthening the efficiency of the judiciary, the development of Montenegrin judiciary within the European judiciary, strengthening the accessibility of justice, as well as transparency and public confidence in the judiciary; and further development of the Ministry of Justice, the Judicial and Prosecutorial Training Centre, the lawyer practice (bar), notaries, bailiffs and court experts. Within the strategic objective of strengthening the efficiency of judiciary, one of the goals is **reducing the backlog**.[71]

Action plan for implementation of the Judicial Reform Strategy 2019 – 2020 prescribes reducing backlogs by 5% by the end of 2020, and 8% by the end of the period of implementation of the Strategy. In relation to the second indicator, the expected value is that at the end of 2020 and 2022 respectively, control request and the just satisfaction claims will continue to be an effective remedy according to the case-law of the European Court.[72] Action Plan prescribes the activities for the implementation of the Strategy in this area: 2.4.1 Statistical monitoring of the backlog of cases within the PRIS (Judicial Information System), 2.4.2 Development of a plan for clearing backlogs in all courts; 2.4.3 Monitoring of the implementation of the Protection of the Right to a Trial Within a Reasonable Time Act through the Annual Reporting of Courts, which corresponds with activities of the previous Judicial Reform Strategy 2014 - 2018.[73]

Action Plan for Chapter 23 also provides a set of measures related to the protection of the right to a fair trial and the right to a trial within a reasonable time, in particular through monitoring of the implementation of the Protection of the Right to a Trial Within a Reasonable Time Act and taking measures to resolve case backlog and to improve judicial statistics.[74]

Protection of the Right to a Trial within a Reasonable Time Act[75]

The Act consists of 45 articles divided into five sections: I General Provisions, II Control Request, III Just Satisfaction, IV Provision of Funds for Payment of Financial compensation and Material Damage, and V Transitional and Final Provisions.

The first section deals with the general provisions which prescribe the subject matter and purpose of the law; regulate the right of action of persons for initiating protection proceeding; prescribe remedies to protect the right to a trial within a reasonable time and benchmarks for assessing the fulfilment of the conditions for protection (which are equivalent to the criteria used by the European Court).[76]

The second section of the Act contains provisions concerning the control request, the manner of its submission to the court before which the proceeding is conducted, the manner of reaching decisions, the obligation of the judge of the case to state the reasons behind the length of the proceeding and why the case has not been completed, obligation of the Court President to inform the party that certain procedural activities will be completed, or the final

[70] http://www.pravda.gov.me/biblioteka/strategije

[71] Two performance indicators are anticipated for this strategic sub-objective: Performance Indicator 1: Improved court efficiency by reducing backlogs, 2: Respect for the right to a trial within a reasonable time. The indicators defined in this way are not sufficiently precise, which can make it difficult to measure and monitor the effects of the implementation of the Strategy in this particular area. In addition, reducing the percentage of this type of case is only one indication that the funds provided for by the Act are effectively being implemented, bearing in mind that reducing the number of old cases does not depend solely on the application of the Protection of the Right to a Trial Within a Reasonable Time Act.

[72] Action plan for implementation of the Judiciary Reform Strategy 2019-2020, The Government of Montenegro, Podgorica, September 2019, p. 13.

[73] In addition to the Judicial Reform Strategy, which is an "umbrella" strategic document in this area, it is important to mention the ICT Strategy for Justice (ICT Strategy) 2016-2020 , as well as the Human Resources Management and Development Strategy in judicial institutions 2016-2018, with accompanying action plans defining operational measures and activities.

[74] Action Plan for Chapter 23 - Justice and Fundamental Rights, Government of Montenegro, Podgorica, 19 February 2015, p. 164, https://www.eu.me/mn/23

[75] Official Gazette of Montenegro, no. 11/07, of 13 December 2007.

[76] Article 4: "In deciding on the remedies referred to in Article 3 of this Act, particular account shall be taken of: the factual and legal complexity of the case; the conduct of the applicant; the conduct of the court and other bodies, local self-government bodies, public services and other holders of public authority and the interest of the applicant."

decision will be reached within 4 months of receiving the control request, and provisions concerning the taking cases away from a judge who failed to take measures specified in the decision, based on the control request or notification, the deadline within which the president of the court must reach a decision, restrictions related to a new petition for a control request and the right of appeal to be decided by the higher court.

The third section of the Act is reserved for just satisfaction and regulates remedies for just satisfaction issues related to the right of action, the range of financial compensations that can be awarded in cases of identified violation of the right to a trial within a reasonable time, the manner of reaching decisions, as well as the deadline in which the Supreme Court is required to render its decision.

The fourth section deals with the provision of funds for payment of financial compensation and pecuniary damage, while the last, fifth section contains transitional and final provisions regulating the issue of implementation and the Act's entry into force.

Parties to civil, criminal and administrative proceedings have the right to this type of protection, provided that the proceedings relate to the protection of their rights within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as to the third party in civil proceeding. This circle of persons with the right of action is **narrowly defined** in relation to some regulations in the region.[77] Similar interpretations are contained in the decisions of the Constitutional Court of Montenegro.[78]

Control request

The control request is filed if the party considers that the court delays the proceedings without justification and is submitted to the court where the case is adjudicated.[79] The decision on control request is made by the President of the court[80], within 60 days of receipt of the request, at the latest (Article 20 of the Protection of the Right to a Trial within a Reasonable Time Act). [81]

The Act prescribes a special reason for disqualifying the president of the court or a judge: if, in the exercise of his judicial function, the judge presides or has presided in the case related to the control request. If the president of the court cannot preside for the same reasons, the president of the higher court shall decide on the control request. If the President of the Supreme Court is unable to preside because he has tried the case, a panel of three judges of the Supreme Court decides on the control request (Article 11).

In deciding on the request, the Court considers all the criteria relating to the complexity of both the factual and legal issues and the nature of the proceeding, the parties' conduct, respect for procedural deadlines and eventual urgency. The Act leaves the possibility of evaluating other criteria as well, which can be inferred from the formulation that the said criteria will be particularly "considered" (Article 4). Priority is given to labour disputes, disputes over damages with a fatal consequence, especially if the party responsible for the damage is the state, i.e. public enterprise, detention cases, family disputes.

When the President of the court determines that the proceeding and adjudication in the case are unjustifiably delayed, he will set a time limit for taking certain procedural actions, which cannot exceed four months, as well as a time limit for the judge to inform him/her of the

[77]The Law on Courts ("Official Gazette", no. 28/13, 33/15, 82/15, 82/16, 67/18) in Croatia recognized the right to initiate proceedings as "a party to a court proceeding who considers that the competent court has not decided within a reasonable time on its right or obligation or on the suspicion or charge of a criminal offense..." (Art. 27, para. 1), https://www.zakon.hr/z/122/Zakon-o-sudovima

[78]See Decision of the Constitutional Court of Montenegro Už - III no. 736/14, of 18 November 2015.

[79]The Act doesn't contain an explicit regulation regarding the form of the control request, it only regulates its compulsory content. The Act prescribes the possibility of revising the control request within 8 days of request for revision, except in cases when the request was filed by a qualified representative (lawyer or person who passed the bar exam), in which case the president of the court will dismiss the request as untidy (article 13).

[80]Article 10, para. 2 of the Act: In courts with more than 10 judges, it is possible select another judge besides the president, to decide on control requests. This can be done in an annual schedule.

[81]In the process of deciding on remedies for the protection of the right to a trial within a reasonable time, the court is obligated to act promptly (Article 5), otherwise it would also find itself in breach of the standard of reasonable time.

action he/she has taken. The President of the court may order the case to be made a priority, if the circumstances or the urgent nature of the case so require. In case that the judge doesn't take the measures determined by the decision on the control request, as well as in other cases of non-compliance with the Act, the President of the court may take the assigned case away from that judge in accordance with the special act.[82]

The Appeal

In a case that the President of the court rejects or discards the control request, or fails to provide the party with a decision or notification within a specified time limit, or if he has not delivered the decision within 60 days (Article 24), the party has the right to file an appeal to be decided by the president of the higher court. The decision of the President of the Supreme Court and the Supreme Court panel issued upon the control request, cannot be subject to an appeal.

The party may file an appeal within eight days from the receipt of the decision, or upon the expiration of the deadline for submission of the decision or notification. The appeal is filed to the higher court; the deadline for deciding is 60 days from the date of its submission. President of the higher court can dismiss the appeal as untimely, or as filed by an unauthorized person, he can reject the appeal as groundless and confirm the decision of the president of the lower instance court or, he can alter the decision of the President of the lower instance court if he finds that the appeal is unfounded or if the complaint was filed because the president of the lower instance court did not reach a decision on the control request within 60 days (Articles 26 -30).

Just Satisfaction Claim

In addition to the request for expediting the proceeding, the Protection of the Right to a Trial within a Reasonable Time Act, as a remedy, provides a just satisfaction claim, which is decided by the Supreme Court of Montenegro. According to the provision in the Article 33 of this Act, the just satisfaction can be filed within six months from the date when the final judgement was received, and the Supreme Court is required to make a decision on the just satisfaction claim no later than four months from the date when the claim was filed.

The claim is filed to the Supreme Court, which decides on it in a panel of three judges and is bound to reach a decision no later than four months from the day the claim was filed. When a court finds a grave violation of the right to a trial within a reasonable time, it can, in addition to financial compensation, order the publication of the judgment at the request of the party. The judgment must be made available to the public on the website for a period of two months, which after it shall be archived or deleted at the request of the party, within 15 days of submission of the request. The condition for filing a just satisfaction claim is that the party has previously filed a control request with the competent court, but the right to this claim has also been granted to a party who was "objectively" unable to file a control claim (article 33, paragraphs 1 and 2 of the Act).

In addition to financial compensation for non-material damages caused by the violation of the right to a trial within a reasonable time, just satisfaction can also be achieved by publishing a judgment rendered on just a satisfaction claim, which determines that the party's right to a trial within a reasonable time has been violated. This is possible because the wording of the Act contains an "and/or" conjunction (Article 31), allowing the cumulating of those two types of just satisfaction.

[83]The Act prescribes creating a statement, or a written report of the presiding judge or the president of the panel, on the length of the proceedings, or the reasons for not completing the proceedings, within 15 days, with regards to the criteria of the Act for determining whether a violation of the right to a trial within a reasonable time has occurred. In the report, the judge may inform the President that he/she will take the necessary steps, i.e. reach a decision and within what time limit, which cannot exceed four months from the receipt of the control request, of which the President will inform the applicant, thus ending the procedure on the control request (Article 15-17). If the President of the court determines that the proceedings and delays therein are unnecessarily delayed, he will set a time limit for taking certain procedural actions, which cannot exceed four months, and may order the priority resolution of the case if the circumstances of the case or the urgent nature of the case so require (Article 18).

Implementation of the Protection of the Right to a Trial within a Reasonable Time Act (2007 - 2018)

During the period since the implementation of the Act, until 2018, a total of 346 control requests and 69 just satisfaction claims have been filed.

The number of control requests in 2018 was 346 in total, 336 were resolved, while 10 remained unresolved.[83] In the reporting period, the Supreme Court of Montenegro received 6 control requests, of which one was adopted, three were declined, one was rejected, and one was unresolved. Two control requests related to cases of the Supreme Court of Montenegro were filed, one request for reopening of proceeding, and three control requests related to cases of the High Court in Podgorica (according to the Art. 11 of the Protection of the Right to a Trial Within a Reasonable Time Act as the president of the High Court in Podgorica and the president of the Court of Appeal of Montenegro could not decide in those cases, because they had already took actions in cases in which a control request was filed). In the reporting period, there were a total of 7 appeals against the decisions of lower instance courts.

Number of just satisfaction claims in 2018 was 69, of which 63 were resolved. Upon the completion of proceedings initiated with the just satisfaction claims, in which the violation of the right to a trial within a reasonable time was determined, a total of € 41,500.00 was awarded in respect of non-material damage.[84]

Table 2: Data on control requests - Review by the courts, year 2018[85]

The court	Filed	Resolved	On court cases	Rejected	Declined	Solved some other way	Adopted	Notification Art. 17	Notification Art. 18	Unresolved
Supreme Court	17	17	6	1	9	0	1	8	3	0
Administrative Court	97	89	0	0	10	0	0	79	0	8
Court of Appeal	7	7	4	0	2	4	1	0	0	0
Commercial Court	12	12	12	0	3	0	0	8	0	0
High Court Podgorica	28	28	22	0	22	6	0	0	0	0
High Court Bijelo Polje	2	2	2	0	1	0	0	1	0	0
Basic Court Bar	6	6	6	2	2	0	0	0	2	0
Basic Court Berane	12	11	11	1	9	0	0	0	0	1
Basic Court Bijelo Polje	22	22	22	0	0	7	0	15	0	0
Basic Court Cetinje	7	7	7	0	3	0	0	3	0	0
Basic Court Danilovgrad	6	6	6	0	0	0	0	4	0	0
Basic Court Herceg Novi	18	18	18	1	12	0	0	5	0	0

[83] *Annual Report on the Work of the Judicial Council and the overall state of the judiciary for 2018* , p. 23 -25, http://sudovi.me/podaci/sscg/dokumenta/10526.pdf
[84] Ibid, pp.30-33.
[85] The number of withdrawn requests is not shown in the table

Tabela 2: Podaci o kontrolnim zahtjevima - pregled po sudovima za 2018. god.

Sud	Filed	Resolved	On court cases	Rejected	Declined	Solved some other way	Adopted	Notification Art. 17	Notification Art. 18	Unresolved
Basic Court Kolašin	4	4	0	0	3	0	1	0	0	0
Basic Court Kotor	18	18	18	0	11	0	0	3	0	0
Basic Court Nikšić	7	7	7	0	3	1	0	1	0	0
Basic Court Plav	0	0	0	0	0	0	0	0	0	0
Basic Court Pljevlja	2	2	2	0	2	0	0	0	0	0
Basic Court Podgorica	71	71	71	3	50	1	14	0	1	1
Basic Court Rožaje	0	0	0	0	0	0	0	0	0	0
Basic Court Ulcinj	10	9	10	0	0	0	14	0	1	11
Basic Court Žabljak	0	0	0	0	0	0	0	0	0	0

Table 3: Annual comparison for 2008; 2013 and 2018

	2008	2013	2018
Number of filed requests	33	196	346
Adopted	3	10	20
Rejected	1	6	6
Declined	13	108	150
Resolved some other way	1	78	23
Notification Art. 17	16	_	120

In order to conduct the activities foreseen in the Action Plan, the Ministry of Justice has so far produced five reports about the implementation of the Protection of the Right to a Trial within a Reasonable Time Act. The first report covered the period from the day this Act came into force until May 5, 2012. The second report concerned the period from May 15, 2012 – April 1, 2014. The third report related to the period from January 1, 2015 – December 31, 2015. The fourth report referred to the period January 1, 2016 – December 31, 2016. The fifth report on the implementation of the Protection of the Right to a Trial within a Reasonable Time Act includes data for the period from January 1, 2017 – December 31, 2017.

The reports of the Ministry of Justice are based on statistics gathered from the work reports of the courts in general and work reports of the courts individually for a given period, without insights into the cases. Since 2015, reports contain a special section *"Monitoring the fulfilment of measures prescribed in the decisions upon the control requests, or in the notification upon the control request according to the Article 17 of the Act"*, which provides an overview of the courts' practice, but not a synthesized statistical

analysis of the deadlines for the courts' action,[86] as well as clear information about the actions of the courts after the decision upon the control request or appeal. The report also contains a section entitled *"Assessment of the situation"*, but it is more a summary of the above statistics, based on the records of the courts concerning the filed legal remedies, in accordance with the Rules of Procedure of the Courts, and less the analysis of the content of the decisions themselves, i.e. assessing the effectiveness of legal remedies for the protection of the right to a trial within a reasonable time.

Tabela 4: Kontrolni zahtjevi[87]

Year	Number of filed requests	Number of declined requests	Number of adopted requests	The number of rejected, unresolved and requests resolved on the other way	Notification according the Art. 17
2008	33	13	3	1	16
2009	70	35	6	6	23
2010	78	25	10	6	37
2011	115	66	0	12	27
2012	205	124	6	39	28
2013	196	108	10	78	-
2014	221	93	45	32	46
2015	219	116	22	35	47
2016	249	130	22	67	34
2017	354	156	8	115	75
2018	346	150	20	149	23
TOTAL	2086	1019	169	540	356

Table 5: Just satisfaction claims[88]

Year	Number of filed claims	Number of declined claims	Number of adopted claims	Number of rejected claims	Number of claims terminated some other way
2008	7	-	-	7	-
2009	12	-	1 (djelimično)	11	
2010	14	2	2 (djelimično)	8	2
2011	25	4	15	4	2
2012	67	15	29	20	2
2013	45	7	24	11	3
2014	53	5	27	21	2
2015	35	6	18	9	1
2016	54	8	23	16	1
2017	54	9	29	11	2
2018	69	12	28	11	12
TOTAL	435	68	196	129	27

[86] See Report on the Implementation of the Judicial Reform Strategy 2014 – 2018, Human Rights Action/CeMI, Podgorica, April 2017, p. 132 -139, http://cemi.org.me/wp-content/uploads/2017/04/Izvje%C5%A1taj-o-realizaciji-Strategije-reforme-pravosu%C4%91a-2014-2018-HRA-i-CeMI.pdf

[87] The number of withdrawn requests was not calculated.

[88] Work Report for 2018, Supreme Court of Montenegro, Podgorica, February 2019, p. 52-53, http://sudovi.me/podaci/vrhs/dokumenta/10886.pdf

Table 7: Relation between the number of pending cases and filed control requests, and just satisfaction claims

Year	Total number of unresolved cases	Number of filed control requests	Number of just satisfaction claims (in process)
2008	48.242	33	7
2009	40.766	70	12
2010	38.666	78	14
2011	37.932	115	25
2012	35.546	205	67
2013	37.125	196	45
2014	35.697	221	53
2015	33.414	219	35
2016	32.313	249	54
2017	40.780	354	54
2018	38.971	346	69

Reports of the Protector of Human Rights and Freedoms of Montenegro

The **Annual Work Report of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) for 2008**,[89] stated that majority of complaints filed to this institution were related to delays of proceedings before the Basic and High courts in Montenegro, especially before the High Court in Podgorica. It is further stated that the Ombudsman inspected the specific cases of the High Court in Podgorica, and in 10 cases it determined the violations of the rights to a fair trial within a reasonable time and sent a recommendation to the court.[90]

In 2008, there were a total of 541 complaints, of which 430 were received in 2008 and 111 were transferred from 2007. After the review procedure, 276 cases have been solved, out of which in 112 cases (40.58%) Ombudsman determined that there was no violation of rights. Out of the total number of complaints received in 2008, 180 related to the work of the courts, as well as 45 more that were transferred from the previous year and 162 were resolved (p. 29 of the Report). 126 complaints related to delays in the court proceedings and 7 to the lack of execution of court decisions. There were no complaints due to the obvious abuse of procedural powers.

The Ombudsman noted that the largest number of violations of the right to a trial within a reasonable time is caused by reasons of a subjective nature, and that is one of the key reasons for this non-compliance of statutory deadlines for taking procedural actions in criminal, civil and enforcement procedures (p .35 of Report). The Ombudsman then warned that courts mainly provide statements with almost the same content concerning any complaint, referring to information on when they received the case upon the appeal, the notice that the case is given to a judge and had not been finished as the judge gives priority to cases from earlier years (the same answer is given for the case in which the proceeding lasted for two years and for cases lasting more than eight years). Therefore, the Ombudsman considered that work reports of courts must contain information concerning the total length of court proceedings, in order to review the work of the courts and to take appropriate measures to address backlogs from earlier years.

[89]The Ombudsman was institutionalized to establish the rule of law, and to protect human rights and freedoms guaranteed by the Constitution, law, ratified international treaties and generally accepted rules of international law, and to have powers over the work of the courts, in cases of, inter alia, delays in court proceedings and non-enforcement of court decisions .
[90]*Annual Report on the Work of the Protector of Human Rights and Freedoms for 2008*, Podgorica, March 2009, p.33 and 34, https://www.ombudsman.co.me/Reports_of the Protector.html

The Ombudsman also noted that litigation in divorce cases, as well as enforcement procedures for maintaining personal contacts and collecting financial claims for child support last much longer than a reasonable time, although these are cases considered by law to be urgent, resulting in a violation of the right to a trial within a reasonable time, but also the rights under the Convention on the Rights of the Child.

According to **Ombudsman's Annual Report for 2013**,[92] a total of 611 complaints were received, of which 82 complaints related to the work of courts (in 2008, 430 complaints were received, of which 180 or 41.86% were related to courts), 71 of them due to a violation of the right to a trial within a reasonable time.

In the **Ombudsman's Annual Report for 2018**,[93] it is stated that the Ombudsperson Institution received 889 complaints in that year (916 in total, including 27 complaints filed in 2017), of which 885 (96, 62%) were resolved. At the conclusion of the review procedure, 588 cases were completed, or 66.44% of the total of 885 complaints in which the proceedings were closed. Out of this number, in 169 cases (19.09%), no violation was found (p. 47). Of the aforementioned number of cases, 147 cases[94] concerned the work and conduct of courts (the number of complaints received is almost 50% higher than in 2017). Most complaints were related to civil, executive and bankruptcy proceedings, to a lesser extent criminal and administrative proceedings. The complainants were usually made about the length of court proceedings and non-execution of court decisions.[95]

Legal views of the Supreme Court of Montenegro

In relation to Article 37, paragraph 2, in conjunction with Art. 2 para.2 of the Protection of the Right to a Trial within a Reasonable Time Act, the Supreme Court took the legal view that the **judicial protection of the right to a trial within a reasonable time cannot be applied when deciding on the proposal for the reopening of the civil proceedings that are concluded by the final judgment, referring to the view of the European Court of Human Rights in the judgments** *Rudan v. Croatia* (application no. 5943/99) and *Kresimir Pticar v. Croatia* (application 24088/07).[96] Also, the Supreme Court in its decision Tpz. br.7/18 from 09/02/2018 assessed that a **just satisfaction claim, filed by a lawyer is not in order, if filed without the submission of final decision upon the control request together with the claim**, and if upon the control request has not been decided yet, then an evidence that the control request had been filed.[97]

There has been a violation of the right to a trial within a reasonable time if the **court kept the case files unreasonably long after it declared incompetent for deciding** and if the procedure of restoring the files and submitting them to the parties, after a fire in the Basic Court in Podgorica, lasted too long (*judgment of the Supreme Court of Montenegro, Tpz.br. 28/18, July 3, 2018*).

In assessing whether a party's right to a fair trial was respected, as enshrined in Article 6 of the European Convention on Human Rights, the procedure needs to be evaluated as a whole (judgment of the Supreme Court of Montenegro, Tpz.br. 17/18, May 16, 2018). Thus, exceeding the statutory time limits, which are expressed in the number of days and their sum, cannot lead to a violation of the right to a trial within a reasonable time, because it requires one or more longer periods (e.g. several months in a continuous manner), or unjustified inactivity of the court or other state body, whose failure to comply with the court's request affects the prolongation of the court procedure.

[91] *Annual Report on the Work of the Protector of Human Rights and Freedoms for 2008*, Podgorica, March 2008, p. 76.9394I.
[92] *Annual Report on the Work of the Protector of Human Rights and Freedoms for 2013*, Podgorica, March 2014, p. 33 and 34.
[93] ttps://www.ombudsman.co.me/docs/1554124685_final - annual - report - 2018.pdf , March 2019.
[94] 141 complaints were received and 6 were transferred from 2017. The complaints concerned the work of the Constitutional Court (9) and Supreme Court of Montenegro (4), Higher Court in Bijelo Polje (6), Higher Court in Podgorica (12), Commercial Court of Montenegro (14), Administrative Court of Montenegro seven (7), Misdemeanor Court Podgorica (2) , The High Misdemeanor Court of Montenegro (2), the Misdemeanor Court in Bijelo Polje (1), the Misdemeanor Court in Bijelo Polje - Zabljak Division (1) and the Basic Courts (83).
[95] https://www.ombudsman.co.me/docs/1554124685_final - annual - report - 2018.pdf , p. 77.
[96] Bulletin of the Supreme Court of Montenegro (2018), October 2018, Decision of the Supreme Court of Montenegro, Tpz.br. 5/18 of 09/02/2018. on dismissal as an inadmissible just satisfaction claim, p. 416, https://sudovi.me/podaci/vrhs/dokumenta/8980.pdf

Monitor's observations

CEMI and CEDEM monitors, hired for monitoring trials in Montenegrin courts during the period from 22 February 2018 - 1 November 2019, saw off 453 main hearings and 228 criminal cases in a majority of courts in Montenegro.

The lack of space in the courts was often the reason for the inability of monitors to attend the trials, but also the reason for the postponement of the trial, in cases where it was not possible to secure an available courtroom. For example, in one case, when this problem was resolved by scheduling the next hearing in the office, the public was immediately informed that they would not be able to attend the hearing.

Also, the trials were postponed due to the lack of cooperation between the police and the delivery service, as it was quite common, and the judges pointed out to this problem - they issue an order to bring the defendant or witness, but the police do not act upon the order and do not inform the court of the reasons for the inconsistency. Also, there have been cases where the delivery service returned a court's call indicating "not available at the address provided" if it did not find the party from the first attempt. What monitors particularly pointed out was the postponement of the hearing due to the absence of expert witnesses (without legitimate reasons) and the postponement of the trial upon the request of the expert witness several times or not returning the case files on time. In these situations, the court's response was lacking.

Table 8: Overview of delays of main hearings during the reporting period

Total number of main hearings observed	Number of adjourned main hearings
453	204
100%	45%

Table 9: Overview of the reasons for the delay during the reporting period

Reasons for postponement of the main hearing	Number of postponed main hearings
Defendant's absence	34
Absence of witnesses	20
Absence of attorney	5
Absence of state prosecutor	5
Absence of judge	11
Police failure to comply with court orders	5
Absence of expert witness	10
Obtaining evidence	8
Incomplete composition of the panel / absence of an individual judge	18
Upon the request of a party in the proceeding	14
Observers were not told the reason for delaying the hearing	10
For other process reasons	23
Total number of delayed main hearings	204

During the reporting period, monitors also noticed a disparity in the number of cases between the Basic courts at the national level when it comes to criminal matters. For this reason, the number of monitors' visits to provisionally "smaller" courts was more modest compared to the number of cases monitored in Podgorica. The majority of cases monitored were cases of the High Court in Podgorica (71) and the Basic Court in Podgorica (67), but monitors followed a smaller number of hearings in the Basic Court in Cetinje (8), Bar (1), Nikšić (2), and Danilovgrad (1).

CONCLUSIONS AND RECOMMENDATIONS

Respecting the right to an efficient trial within a reasonable time is of a crucial importance for the efficiency of the work of courts and public confidence in the judiciary, keeping in mind that having a judgment in a reasonable time contributes to general legal security.

In Montenegro, **the preventive and compensatory model of protection of the right to a trial within a reasonable time is applied**, which, in addition to legal instruments of expediting proceedings, provides for the right to compensation for incurred damages due to an unreasonable length of the proceeding.[98] Based on the available statistics on the use of the control request and the just satisfaction claim, it can be concluded that the Protection of the Right to a Trial within a Reasonable Time Act is being applied continuously.

Namely, during the period from 2008 - 2018, a total of **2086 control requests were filed**, of which 1019 were declined, 540 were rejected and **169 were adopted**. A notification in accordance with the Art. 17 of the Protection of the Right to a Trial within a Reasonable Time Act was issued in 356 cases. From the above data and their comparison, it can be concluded that the number of control requests recorded a constant growth on an annual basis and compared to the first year of implementation of the Law, the number of requests increased more than 10 times. However, **the number of requests accepted is still low** and ranges at an average of about 10% of the total number of requests filed annually. **The largest number of requests are filed before the Basic Court in Podgorica, while there are courts (in Žabljak, Plav and Rožaje) that have not received any control requests in 2018. A very small number of control requests filed with the High courts** in Podgorica and Bijelo Polje are indicative, given their actual and territorial jurisdiction and the number of cases they have.

In the observed period, 435 just satisfaction claims were filed, of which 68 were declined, 129 were rejected, 27 were terminated on another manner and **196 were accepted**. Success in disputes upon the just satisfaction claims in 2018 amounted to 44.4%, which shows that courts increasingly recognize the importance of protecting the right to a trial within a reasonable time. However, for the total observed time period, only about **30% of just satisfaction were** accepted.

In order to resolve the problems of old cases, on annual basis, the courts have adopted a Plan and Program for resolving old cases, with the particular emphasis on the priority in resolving "the red-wrapped case". Also, for the same purpose, a mechanism for the voluntary referral of judges who are less burdened to courts with a number of backlog cases has been applied. Since 2014, public bailiffs have started their work, which has resulted in a decrease in the amount of enforcement cases to courts and an increase in the efficiency of resolving this type of cases compared to the previous period.[99]

This has resulted in a decrease in the total backlog of cases per year in the work of all courts. The fact is that an increased number of cases are being resolved in an ever-shorter time, and therefore the number of backlogged old cases is decreasing. However, the efficiency rate has been in decline during 2015 and 2016, despite the introduction of notaries in 2011 and public bailiffs in 2014. According to the Report of Judicial Council

[98]Slavoljub Carić, T*he Right to a Trial within a Reasonable Time, Belgrade*, 2008, op. cit, p. 42-52.
[99]Since 2014, the courts have changed the way in which information on backlogs is presented, in addition to the backlog of cases over one year old, which are shown in the tables given for the CEPEJ indicators for a given reporting period, special tables also show cases over three years old.

in 2018, about 38,971 cases from 2018 and previous years remained unresolved.[100] The report indicates that **there are still cases that have not been resolved, although they started 10 years ago**, of which **2807 cases started during the period from 2009 to 2015, as well as 541 cases that started before 2009**.[101]

Looking at the statistics related to the number of pending cases at courts, it can be observed that their number is in **high disproportion to the number of control requests and just satisfaction claims** and many times is lower than the total number of backlog cases. From this it can be concluded that **still a small number of parties use legal remedies to protect their right to a trial within a reasonable time**. It is necessary to analyse the reasons for the limited application of these mechanisms and to increase the awareness of the general public and parties in the proceedings about using these legal mechanisms.

It is noticeable that **a certain number of citizens continue to refer directly to the Protector of Human Rights and Freedoms of Montenegro**, without using the means provided by the Protection of the Right to a Trial within a Reasonable Time Act. Complaints related to the work of the court, in particular **the excessive length of the proceeding** still occupies an important place in the general structure of complaints which are filed to this institution. The Ombudsman specifically pointed out the problems in exercising this right in f**amily-related proceedings** (divorce proceedings), and **in the proceedings for determining and executing a temporary measure of the establishment of a child's personal relations with the parent**, even though cases concerning the protection and interests of the rights of a child are a matter of priority and urgency.

The results of the trial monitoring used in the preparation of this thematic report indicate certain problems affecting the trial within a reasonable time, such **as lack of space at courts, procedural non-discipline of the parties, and problems with improper delivery of court files/documents**. Additional factors related to the length of criminal proceedings include frequent amendments to the criminal legislation; frequent changes of the acting judge; (non)joining of parties in criminal charges and procedures; changes in parties' legal representatives; the impossibility of securing the presence of defendants and witnesses; indirect delays caused by connections between criminal and civil proceedings. **The absence of an expert witness, i.e. the failure to submit the requested findings and opinions within set deadlines, as well as the preparation of additional findings and opinions on parties' objections** additionally affect the length of proceedings. It seems that some courts **face difficulties in applying the statutory mechanisms to prevent abuse of the rights** of parties in the procedure, in an effort to find a balance between protecting the rights of defendants and victims and the need for ensuring an effective criminal justice.

Montenegro has not yet created the preconditions for the full implementation of the CEPEJ guidelines, as stated in the European Commission's Report for Montenegro 2019. A system of reliable statistics based on which it will be possible to accurately measure the efficiency of courts is yet to be established through the new Judicial Information System, which is expected to become operational in 2020.

Reports of the Ministry of Justice of the Government of Montenegro haven't yet been designed to provide an overview of actual achievements and whether the purpose of the Protection of the Right to a Trial within a Reasonable Time Act - effectively expediting procedures and providing just satisfaction for violations of parties' rights, has been achieved. Reports **do not include a synthesized statistical analysis of the deadlines for courts' actions, based on collected data**. This disadvantage makes it difficult to

[100]The number of cases (older than 1 year) in the first year of application of the Protection of the Right to a Trial Within a Reasonable Time Act was 18,091, while the number of cases older than 3 years in 2015 was 2,437.
[101]Court Work Report for 2018, p. 33.

measure the performance in the use of these measures and to subsequently compare data.[102] **The lack of clear performance indicators** to be used to monitor and evaluate the situation in this area is also present in the Action Plan for the Implementation of the Judicial Reform Strategy 2019 – 2022.

An important indicator of the situation in this area represents **a number of judgments of the European Court in relation of Montenegro**, of which **almost half refers to the violation of the right to trial within a reasonable time** and the related issues of effectiveness of legal remedies to accelerate proceedings and just satisfaction. Although in its judgments, the European Court has found that both of these remedies were effective (control request since September 4, 2013,[103] and the just satisfaction claim since October 18, 2016),[104] **the matter of effectiveness of the remedies for the length of proceedings before administrative authorities and the Constitutional Court of Montenegro remains open**, as stated in the last Annual Report of the Representative of Montenegro before the European Court of Human Rights.

Recommendations:

- Analyse the handling of control requests at the level of each court and define recommendations for overcoming the observed deficiencies in the implementation of the Law in each court individually (e.g. by initiating changes to the annual work schedule, taking legal views and opinions, etc.).
- Consider the possibility of amending the Protection of the Right to a Trial within a Reasonable Time Act, so as to allow the right to judicial protection due to the violation of the right to trial within a reasonable time in proceedings before the misdemeanour courts that are the part of the regular court system since 2015.
- Develop appropriate forms for practical implementation of the Law, especially in the segment related to prescribing the form of a control request and a just satisfaction claim (Slovenian model), in order to facilitate the use of these legal remedies for citizens.
- Analyse reasons why a certain share of citizens refers directly to the Ombudsman, before they exercise remedies provided by the Law on the right to a trial within a reasonable time, and in this regard take appropriate actions to raise citizens' awareness.
- Improve statistical reporting about the work of courts and create conditions for full implementation of CEPEJ guidelines and standards to enable better monitoring of cases where control requests have been filed, to measure their effectiveness through fully trusted judicial statistics.
- Supplement the Reports of the Ministry of Justice of the Government of Montenegro with statistical indicators and data on the time period in which courts act after the adoption of the control request, in order to contribute to a better assessment of the effectiveness of these remedies in practice.
- Reduce unnecessary delays in court proceedings and consistently apply available legal mechanisms to prevent abuse by entities that knowingly influence the delay in court proceedings. Delay hearings only in such cases where the law expressly provides for, while respecting the instructive deadlines for the implementation of procedural actions in the procedure.

[102] See Supra note 87, p. 39.
[103] Vukelic v. Montenegro, Application no. 5 25, Judgment of 4 June 2013, para. 85.
[104] Vuceljic v. Montenegro, Application no. 59129/15, decision of 18 October 2016, para. 30.

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