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IMPLEMENTATION ANALYSIS OF THE LAW ON THE PROTECTION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

NGO Human Rights Action

**Podgorica
March 2011**



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FOREWORD

Given the importance of the right to trial within a reasonable time in achieving justice in general, on 1 December 2010 the Human Rights Action (HRA) started the project "Analysis of the three-year implementation of the Law on the Protection of the Right to Trial within a Reasonable Time", in terms of assessing effectiveness of legal remedies provided by it.

The project was supported by the British Embassy in Montenegro and on this occasion we wish to express our gratitude for their confidence.

As the European Commission on 9 November 2010 criticized the inefficient use of the Law on the Protection of the Right to Trial within a Reasonable Time in its Analytical Report with the Opinion on Montenegro's application for membership of the EU, HRA proposed to the Government in January 2011 to include analysis of the three-year implementation of the Law in its Action Plan on Implementation of the EC's recommendations.

In mid-February 2011, the measure "Development of Implementation Analysis of the Law on the Protection of the Right to Trial within a Reasonable Time with appropriate recommendations" was included in the Government Action Plan, with the Ministry of Justice, the Judiciary and NGOs responsible for its implementation.

At the time of adoption of the measure, HRA was already working on the Analysis, and in cooperation with the Ministry of Justice and the courts continued to obtain the necessary documentation from the courts. Thanks to joint efforts, the analysis encompassed cases according to requests for review, all claims submitted to the Supreme Court based on the Law on the Protection of the Right to Trial within a Reasonable Time and judgments rendered upon them. Only the Basic Court in Podgorica refused to provide access to the cases according to requests for review, which is why HRA had initiated administrative proceedings, still in progress in May 2011.*

* The decision of the Minister of Justice to confirm this decision of the Basic Court in Podgorica, in spite of the established cooperation on this project, was surprising to us. Copies of all requests, decisions and claim in this administrative action are available upon request at the Human Rights Action (hra@t-com.me).

At the end of March 2011, in cooperation with the Ministry of Justice, HRA organized an expert discussion on the completed Analysis with the participation of courts' presidents, Supreme Court judges - members of the panel acting upon claims for just satisfaction based on the Law on the Protection of the Right to Trial within a Reasonable Time, lawyers, Representative of Montenegro before the European Court of Human Rights, representative of the Protector of Human Rights and Freedoms in Montenegro, representatives of the Ministry of Justice and Human Rights Action. The Analysis that is before you contains their contribution as well.

The Analysis of the Law on the Protection of the Right to Trial within a Reasonable Time, from the beginning of its implementation in late December 2007 until 1 January 2011, has been developed by Darka Kisjelica, lawyer and former judge of the Basic Court in Herceg-Novi, with the assistance of Mirjana Gajovic, legal officer of HRA.

We hope that the conclusions and recommendations contained in this analysis will help all relevant law enforcement bodies to improve their actions and make sure that all instruments prescribed by the law are really effective, as well as that the citizens and their representatives will increasingly use these instruments and thereby improve practice in this area of human rights.

Please note that on the HRA webpage one may find the book "The right to trial within a reasonable time - a collection of judgments of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and Serbia", as well as the verdicts in the cases Garžičić and Živaljević, where the European Court of Human Rights assessed the protection of the right to trial within a reasonable time in Montenegro.

Tea Gorjanc-Prelević, LL.M.,
Executive Director of the Human Rights Action

CONCLUSIONS

1. The remedies provided for by the Law on the Protection of the Right to Trial within a Reasonable Time¹ (request to expedite the proceedings, or 'request for review' and the claim for just satisfaction) are underutilized, compared with the size of backlog before the courts in Montenegro.

In the three years of its implementation (2008-2010) a total of 181 requests for review and 33 claims for just satisfaction were lodged. According to the Annual Report on Courts for 2010, national courts have a backlog of 12,463 unsolved cases (from 2009 and before), of which 2019 are from 2006 and before, 1,000 are from 2007, 2,184 are from 2008, and 7171 from 2009².

The European Court of Human Rights (ECtHR) has received 730 applications against Montenegro, of which around one third (or 240) is assumed to be on the violation of the right to trial within a reasonable time³. Comparing the number of unsolved cases and the number of applications before the European Court⁴ with the number of requests for review (181) and claims (33) lodged with the Supreme Court leads one to conclude that the Law on the Protection of the Right to Trial within a Reasonable Time is underutilized.

2. Requests for review and appeals are rejected without adequate and full reasoning being provided by chief justices even in excessively lengthy proceedings (e.g. those dating back to 1985).

The majority of decisions do not provide any argumentation as to why applicants' requests are not granted. Instead, the relevant legal provisions

1 Law on the Protection of the Right to Trial within a Reasonable Time (*Official Gazette of Montenegro, No. 11/07*)

2 Annual Report 2009, p. 95. Annual Report on Courts 2010, p. 36 (note: The Annual Report on Courts was analysed at Judicial Council session of 9 May 2011 and posted on Judicial Council website on 30 March 2011, the date when this Analysis was launched: www.sudskisavjet.gov.me)

3 See page 16, *Right to Trial within a Reasonable Time*, subparagraphs 2 and 3.

4 One must bear in mind that the Law on the Protection of the Right to Trial within a Reasonable Time does not provide for the national authorities to have jurisdiction over the applications submitted to the court in Strasbourg before the Law came into effect. It is assumed that the number of such applications is significant.

are simply copied without giving consideration to the particular circumstances of the case. If the applicant is persistent and files an appeal, the decision on appeal most often does not include any reasoning either but only states that no violations of the proceedings have been found and that the first instance decision was correct and lawful.

3. Application of Article 17 (Notification to the applicant) is ineffective.

Article 17 sets forth the following: “If a judge notifies the chief justice in his report or other submissions that within a term of maximum 4 months of the receipt of request for review certain procedural measures will be taken, or a decision delivered, the chief justice shall notify the applicant thereof and thus finalise the procedure following the request for review.” In 76 out of a total of 181 requests for review lodged chief justices notified the applicants that the judge had informed them in writing that within a term not longer than four months after the receipt of the request for review procedural steps would be taken or a decision delivered. In most situations involving such notification, the said legal provision was simply copied without stating the specific steps that the judge will take with regard to the proceedings in question. Based on information received from lawyers, in a half of these cases this term was spent without producing results.⁵

4. Application of Article 18 (Admissibility of application) is ineffective.

Article 18 sets forth the following: ”When a chief justice finds that the proceedings and the decision are unreasonably delayed, the chief justice shall issue a decision setting a term of maximum four months within which certain procedural steps must be taken, as well as a term within which the judge must report on the measures taken. The chief

⁵ This information has been collected in interviews with lawyers (of whom many have lodged several requests for review) and two applicants who have lodged requests for review and received notifications. (Taking particularly into account the position of the chief justice of the Basic Court in Podgorica not to allow access to cases established following the filing of the requests for review (Su-register) for reasons of protection of privacy, it was literally impossible to gain access to the files of cases for which expedited proceedings were requested (P-register, Ki-register, K-register, Rs-register, R-register), which is why the information was asked of the applicants and their representatives. See page 41.

justice may order that the case concerned be given priority where the circumstances of the case or urgent nature of the case so require.” *Out of 181 requests for review lodged only 19 were granted.* There are cases where the chief justice grants the request for review and orders priority treatment of the case but fails to set a clear deadline, and, as a result, the case is not given priority. Chief justices do not set specific terms within which judges must take concrete measures but only refer to a provision setting a four-month term. In none of the cases did the chief justice set a term within which the judge was to report on the measures taken.

5. Just compensation claim is not an effective remedy.

From 2008 to late 2010, a total of 33 claims were lodged with the Supreme Court, of which 3 were granted, 2 rejected, and as many as 26 dismissed, while 2 were disposed of in some other way (e.g. referred to a court of competent jurisdiction)⁶

Article 33(3) sets forth that „the claim referred to in paras. 1 and 2 of this article shall be lodged with the Supreme Court *within maximum 6 months of the receipt of the final decision* given in proceedings from Art. 2 of this law, while in enforcement proceedings the term is 6 months of the receipt of the final decision on the request for review.“ The Supreme Court case law on the application of this article has not been uniform, which comes as a surprise given that the same panel decided these cases. In 12 out of 26 cases, the claims were dismissed because the proceedings were still pending at the time the claims were lodged. Such a position may not be justified by either linguistic or restrictive interpretation of the law, particularly given the fact that ECtHR does not impose any such

6 From 2002 to 2011, Croatia’s Constitutional Court issued a total of 1880 decisions on constitutional appeals over violation of the right to trial within a reasonable time. By way of comparison, out of 1880 Constitutional Court decisions, in 1837 cases the court found for the applicant, found a violation, ordered the term within which the court of competent jurisdiction must render a decision and award damages to the claimant. The claim was rejected in only 28 and dismissed in 15 cases on points of procedure. The Supreme Court of Croatia started issuing decisions on claims for just compensation in 2006. Out of 125 cases in that year, 76 claims were upheld, while 45 were rejected, dismissed or remitted on points of procedure (since 29 December 2005, when the Law on Courts was adopted, the Constitutional Court of Croatia has not had first instance jurisdiction over the right to trial within a reasonable time but the Supreme Court. The Supreme Court judgments are still subject to constitutional appeals lodged with the Constitutional Court.

limitation but establishes violations and awards damages in proceedings that at the time of judgment were still pending before national courts.⁷ In 2 out of total of 3 cases in which the Supreme Court upheld the claims for just compensation, the court's position was that the proceedings need not be finally resolved for the just satisfaction to be awarded. However, since this new position was taken in 2010 in the case Tpz 10/10, it is not clear why in spite of that the Supreme Court maintained the same position, i.e. rejected again the claims filed in proceedings still pending at the time of their submission. Such a conduct leads to legal uncertainty and provokes a loss of public confidence in judiciary. The law's wording is absolutely clear - claims may be lodged throughout the length of the proceedings. The Supreme Court's interpretation rendered the protection of the right to trial within a reasonable time illusory.

It is also noted that the court **indicated that a delay in the proceedings was caused by applicant's conduct, namely the fact that the applicant lodged a claim for just satisfaction** while the case files were still with the Supreme Court (Tpz 11/09), which was allegedly why the judgement could not be delivered. This position is in violation of the constitutionally guaranteed right to a remedy, as well as to trial within a reasonable time. We maintain that filing a remedy for the exercise of any right, of a human right in particular, must in no way be interpreted to the detriment of the party filing such remedy.⁸

In addition, **the fact that the Supreme Court upheld the claim for just satisfaction does not necessarily lead to the desired effect of expediting the proceedings.** Of the three upheld claims, two were concerning the cases that were still pending at the time the judgement was rendered. Of the two cases, one eventually ended shortly after the Supreme Court judgement was taken (Tpz 10/10), while the second one (Tpz 5/10) has not seen any progress to this date, ten months following the judgement.

Also noted is the Supreme Court's view that the claimant ought to have lodged his claim on a Saturday for the claim to be considered lodged

7 As a rule, such cases were gross violations of rights. One example is the 2007 judgment *V.A.M. v. Serbia* with the client being awarded damages amounting to €15,000.

8 We suggest that serious consideration be given to obtaining certified copies from and on account of the court trying the case for the purpose of the Supreme Court proceedings taken on the remedy in question.

within the set term of 6 months of the receipt of the final judgment. We are of the opinion that such interpretation causes legal uncertainty for the following reasons: courts' work on Saturdays is not a matter of fact, such practice is introduced and abandoned periodically, with cases where not all of the court services, such as the archives department where mail is received, would work, or where not the full work hours are worked. At this moment (March 2011) courts do not operate on a last Saturday in a month, which clients may have learned lately only if they happened to find the door to a Montenegrin court shut. Since Saturday may not be considered a regular work day for a court, the above position of the Supreme Court is in violation of the Rules on calculation of deadlines under the Civil Procedure Code or Administrative Procedure Code, namely: „Where the last day of the deadline falls on a holiday or a Sunday, or another day when the court does not work, the deadline shall expire upon expiry of the next work day“.⁹

6. Since the courts found a violation of the right to trial within a reasonable time only rarely, the additional mechanisms providing sanctions for a judge or other person¹⁰ whose conduct violated the right to trial within a reasonable time: by the Law on the Protection of the Right to Trial within a Reasonable Time **were not implemented**¹¹: not a single disciplinary procedure was initiated by a chief justice against a judge in Montenegro over violation of the right to trial within a reasonable time, nor has a case been referred to another judge (Art. 19)¹², nor has any of the chief justices initiated disciplinary proceedings against a person exercising public authority in a body whose failure to act had caused the delay (Art. 22), while the Protector of Property and Legal Interests of Montenegro has not lodged a single compensation claim against a judge or another public authority figure or a body for the fact that Montenegro, under Supreme Court decisions, is bound to pay compensation for a violation

9 Art. 108(4), Civil Procedure Code and Art. 91(2) Administrative Procedure Code.

10 Law on the Protection of the Right to Trial within a Reasonable Time, Art. 22

11 Law on Judicial Council, Art. 50, Law on the Protection of the Right to Trial within a Reasonable Time, Arts. 19, 22, 42.

12 The data refer to the courts that allowed access to the cases following requests for review, namely all save for the Basic Court in Podgorica. At the seminar of 30 March 2011 the chief justice of the Basic Court in Podgorica stated that in one case he had removed a judge from a case. However we were not able to establish that for fact.

of the right to trial within a reasonable time (Art. 42-regress claim). A number of judges have changed in three cases where the Supreme Court awarded compensation for violation of right to trial within a reasonable time, so the judges in charge of these cases now should not be held liable for delay in proceedings of their predecessors. However, in terms of disciplinary responsibility, their efficiency during the period of time upon receiving the case file could have been reviewed, particularly because of their awareness that the process had already taken too long.

Regarding the case *Mijušković v. Montenegro*, where Montenegro is to pay compensation of 10,000 € for non-compliance with the decision on delivery of the Basic Court in Kotor, and during which the party did file control request which resulted in notification of Art. 17, no person (judge or other competent authority) bore disciplinary or other consequences

SUGGESTIONS FOR AMENDMENTS TO THE LAW ON THE PROTECTION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

To improve the effectiveness of remedies provided for by the Law on the Protection of the Right to Trial within a Reasonable Time, the following amendments are suggested:

1) change of deadline set for appeals provided for by Art. 24(1):

„If a chief justice dismisses or rejects the request for review or if, following the request for review, the chief justice fails to serve on the party within 60 days the decision or notification under Art. 17 of this law, the party may file an appeal within eight days of the receipt of the decision or the expiry of the deadline for the service of the decision or notification.“

We suggest that the deadline of 8 days be extended to 15 days, to be applied in cases when the chief justice fails to respond to the party within 60 days.

Reasoning:

Setting a deadline for appeal to run from the last day of the deadline the chief justice missed is not in the spirit of our legal order. Appeals should be allowed for as long as the chief justice decides the request for review, just like it is applied to appeals or complaints over silence of administration (see, for example, Art. 241 in relation to Art. 212(2) of the Administrative Procedure Code and Art. 18 of the Constitutional Court Act).

On the other hand, the preclusive term of 8 days for appeals compared to a 60-day deadline for chief justices is an unreasonably strict provision, particularly given that the intention of this law is to assist parties whose proceedings are unreasonably lengthy.¹³ It is suggested therefore that this deadline be replaced by a regular 15-day deadline for appeals.

¹³ See also Tea Gorjanc-Prelevic - “Guarantees of the right to a fair trial in Montenegro”, ZPF, UN Conference on human rights in Montenegro, 2008

2) amendment of Articles 33(3) and 35(2) which read:

“The claim referred to in paras. 1 and 2 of this article shall be lodged with the Supreme Court within maximum 6 months of the receipt of the final decision delivered in proceedings from Art. 2 of this law, while in enforcement proceedings the deadline is 6 months from the receipt of the final decision on the request for review.” (Art. 33(3))

“The claimant shall file his claim together with the final decision on the request for review or the notification referred to in Art. 17 of this law, or a proof of his prior filings of request for review to a court of competent jurisdiction.” (Art. 35(2))

The following wording is suggested for Art. 33(3):

„The claim may **always be lodged throughout the length of the court proceedings referred to in Art. 2 within maximum 6 months of the receipt of final decision**, while in enforcement proceedings the term is 6 months from the receipt of the **decision on the request for review, or the decision on appeal against the decision on the request for review or the decision on appeal for failure to deliver a decision**“,

and for Art. 35(2):

„The claimant shall file together with his claim the decision on the request for review or the notification referred to in Art. 17 of this law, or a proof of his prior filings of request for review to a court of competent jurisdiction.“

Reasoning:

In spite of the fact and the conclusion that the law is clearly worded, the Supreme Court case law described under conclusion 5 leads us to suggest that the possibility of filing a claim for just satisfaction throughout the length of proceedings before a final decision is reached should be emphasized further by adding the words „at all times throughout the length of court proceedings referred to in Art. 2“.

The second amendment is suggested to remove the condition that the proceedings on request for review must have been finally resolved for a claim to be lodged. Requests for review and claims have different purposes. A request for review is meant to warn the court that it should

expedite the proceedings on a case which is unreasonably delayed, while a claim is meant to establish an already existent violation of a right and ensure satisfaction for such a violation. It is not fair to force a party whose right has already been violated into a three instance procedure on request for review, appeal, and claim for that party to be awarded compensation for a violation that the party has suffered for a long time. Such a strict legal provision is not found in Slovenian law either, where the condition for filing a claim for just satisfaction is the filing of an appeal following the request to expedite the proceedings, rather than a final decision on the request. In Macedonia, Serbia, Croatia, and Bosnia and Herzegovina, too, the requests to expedite the proceedings and claims for damages are decided at the same time.¹⁴

3) *It is also suggested that Art. 34(2) on the amount of damages be amended by removing the ceiling of €5,000.*

Reasoning:

The case law of the European Court of Human Rights in Strasbourg indicates that this court awards damages much above €5,000 in cases from this region.¹⁵

4) *Adding new Article 40 a - Mandatory urgent action:*

“When the court finds a violation of the right to trial within a reasonable time, it shall submit the judgment to a court which was found to have unduly lengthened the proceeding.

If the proceeding is still ongoing at the time the judgment is rendered, the judgment will also be delivered to a court before which the case is being processed and the case will be specially marked as a priority.¹⁶

14 “*Right to Trial within a Reasonable Time - a selection of judgments of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, and Serbia*”, T. Gorjanc-Prelević, Centre for Human Rights of the University of Sarajevo, Sarajevo 2009, p. 47 (also available on Human Rights Action web site <http://www.hrc.unsa.ba/zbirkapresuda>)

15 Ibid, p. 51

16 Rules may prescribe the label “SUPREME COURT: Violation of a reasonable time” which would be on the cover of the case.

The trial judge and court president shall take all actions to urgently complete the proceedings at this stage, within a period not longer than 4 months from the date of receipt of the Supreme Court judgment.

President of the competent second instance court and the court council, in charge of that case, until finalization of the proceeding shall have the same obligation from paragraph 3 above.”

Reasoning:

In judgments *Mijušković v. Montenegro*¹⁷ and *Živaljević v. Montenegro*¹⁸ the European Court of Human Rights noted that Article 31 of the Act (Forms of just satisfaction) does not provide for acceleration of the proceeding that is still ongoing, even if the Supreme Court adopts the claim and finds a violation of the right to trial within a reasonable time. The case Tpz 5/10, in which in spite of damages awarded, one year later there is still no progress, proves that the awarded damages or disclosure of the verdict, by themselves, do not lead to acceleration of proceedings, which have lasted for too long. Therefore, we propose the amendment, which would provide for mandatory urgent action in cases in which the Supreme Court found a violation of the right.

17 See paragraph 72 of the Judgment.

18 See paragraph 67 of the Judgment.

RIGHT TO TRIAL WITHIN A REASONABLE TIME AND THE EUROPEAN COURT OF HUMAN RIGHTS

1. Montenegro ratified the Convention on the Protection of Fundamental Rights and Freedoms of the Council of Europe („the Convention“) as a member of the State Union of Serbia and Montenegro in December 2003¹⁹. With respect to the Council of Europe and the European Court of Human Rights, the Convention became binding for Montenegro on 3 March 2004 when its ratification instruments were deposited with the Council of Europe.²⁰ The status of a contracting party carries with it an obligation to fulfil all the requirements laid down by the Convention provisions. One of these requirements is the requirement under Article 6(1) of the Convention that the proceedings instituted before the courts and other state authorities on civil rights and duties and criminal charges be considered without undue delay, within reasonable time.²¹

2. 31% of judgments handed down by the European Court of Human Rights in Strasbourg in 2010 that found a violation of the Convention were related to the violation of the right to trial within a reasonable time.²²

A total of 730 applications from Montenegro are now pending before the European Court of Human Rights.²³ Although we do not have information available on the number of applications concerning the violation of the right to trial within a reasonable time, based on the statistics of other European states and the fact that the Law on the Protection of the Right to Trial within a Reasonable Time entered into

19 Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended in accordance with its Protocols, *Official Gazette of Serbia and Montenegro - International Agreements*, No. 9/2003 dated 26 December 2003.

20 The final position on this was made by the European Court of Human Rights in its judgment in *Bijelic v Montenegro and Serbia*, 2009, para. 69.

21 Art.6(1) reads as follows: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ...”

22 *Statistical information, 2010 Annual statistics, Table of violations*, www.echr.coe.int.

23 Source: www.echr.coe.int Report-Statistics-Analysis-p.43 and the information from Montenegro’s agent before the European Court of Human Rights on the number of applications until 14 March 2011.

force as late as on 21 December 2007²⁴, we assume that most applications lodged were over a violation of this right. As for a total of 34 cases communicated to the Government until 14 March 2011 for its response, 9 were on failure to enforce final court judgments, while 13 (38%) were cases of applicants complaining about the undue delays of other court proceedings.²⁵

4. The Law on the Protection of the Right to Trial within a Reasonable Time does not regulate the issue of jurisdiction of national authorities over the injured parties who lodged applications against Montenegro to the European Court of Human Rights over the violation of the right to trial within a reasonable time before the Law took effect unlike the Slovenian law. Therefore, the Strasbourg Court thus far has not instructed these applicants to try and exhaust legal remedies provided for by the new Law.²⁶

*Applications against Montenegro before the European Court of Human Rights*²⁷

2008	156
2009	269
2010	305
TOTAL	730

5. The statistics shows that the number of applications against Montenegro doubled from 2008 to 2010 (not including the number of applications dismissed as manifestly unfounded). It is for this very

²⁴ Law on the Protection of the Right to Trial within a Reasonable Time, *Official Gazette of MNE*, No. 11/07, 13 December 2007.

²⁵ Source: Zoran Pažin, Montenegro’s Agent before the European Court of Human Rights, 14 March 2011

²⁶ For detailed information on the case of Slovenia see “*Right to Trial within a Reasonable Time - a selection of judgments of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, and Serbia*”, T. Gorjanc-Prelević, Centre for Human Rights of the University of Sarajevo, Sarajevo 2009, pp. 45-46 (also available on Human Rights Action web site <http://www.hrc.unsa.ba/zbirkapresuda>)

²⁷ See footnote 21.

reason why it is insisted that each contracting state should act within its own legal system to prescribe and develop in practice a legal mechanism for the protection of the right to trial within a reasonable time to grant dissatisfied parties the right to seek and obtain protection primarily within the internal legal order. If dissatisfied, these parties may then turn to the court of last resort. The legal remedy established in the national legal order and designed to ensure proceedings do not become excessively lengthy is the most effective solution.²⁸

6. A combination is recommended of the two types of legal remedies: the one established to expedite the proceedings and the other, to allow compensation for the delays already established²⁹. Such remedies should in principle be able to prevent a continuation of violation of the right to trial without unreasonable delays and offer adequate compensation for any violation that has already occurred.

28 *Kudla v Poland*, 2000, Application No. 30210/96, Paras. 157-159.

29 “*Right to Trial within a Reasonable Time - a selection of judgments of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, and Serbia*”, T. Gorjanc-Prelević, Centre for Human Rights of the University of Sarajevo, Sarajevo 2009, p. 47 (also available on Human Rights Action web site <http://www.hrc.unsa.ba/zbirkapresuda>)

LAW ON THE PROTECTION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

1. In order to provide the legal remedies that would speed up the proceedings and allow award of compensation for unreasonably lengthy proceedings in the country the Law on the Protection of the Right to Trial within a Reasonable Time was passed (Official Gazette of Montenegro, No. 11/07, 13/12/2007) and entered into force on 21 December 2007.

7. The law has the following five chapters:

- I General provisions
- II Request for review
- III Just satisfaction
- IV Provision of funds for the payment of monetary damages and compensation for pecuniary damage
- V Transitional and final provisions

3. Following the need to expedite court proceedings (including the judicial control of the administration)³⁰ and grant the award of damages for their unreasonable length, the Law provides for two legal remedies: the request to expedite the proceedings, or 'request for review', which is lodged with chief justices, and the claim for just satisfaction, which is lodged with the Supreme Court of Montenegro.

4. The Law lays down that the right to court protection and the reasonable length shall be defined on the basis of ECHR's case law³¹. The criteria for decisions on legal remedies as set in Article 4 of the Law have also been established on the basis of ECHR's case law so that reasonableness of the length of proceedings is assessed having regard to:

- a) Complexity of the case from the point of view of its facts and legal issues concerned;
- b) The applicant's conduct;

30 Art. 2(1) of the Law

31 Art. 2 (2) of the Law

- c) The conduct of the court and other state authorities, local government authorities, public service agencies and other persons exercising public authority;
- d) The applicant's interest at stake³².

The proceedings instituted to decide these legal issues are priority cases and are exempt from court fees. There are provisions on the accountability of judges and chief justices for their failing to act in the manner and within deadlines as set by this law.

5. Its transitional and final provisions lay down that the law shall also apply to the court proceedings dating to 3 March 2004 and later when Montenegro, as the then member of the State Union of Serbia and Montenegro, acceded to the European Convention, before the Law entered into force on 21 December 2007.³³ The decision making procedure on the legal remedy for the violation of the right to trial within a reasonable time includes the determination of the violations occurring after 3 March 2004.³⁴ It is laid down that the court when determining the violation of the right will also take into account the length of court proceedings before 3 March 2004.g.³⁵, which is a principle accepted from ECHR's case law concerning the principle of temporal³⁶ compatibility with the Convention³⁷ when assessing the reasonableness of the length of proceedings.

However, the Law fails to envisage what happens with the proceedings following the applications lodged with the ECHR before the Law entered into force, namely whether the applicants must discontinue their proceedings before the ECHR, use the legal remedies provided for by the Law after it entered into force, and only then resume their proceedings before the ECHR, or not.

32 Art. 4 of the Law

33 Art. 4 (1) of the Law

34 Art. 44 (2) of the Law

35 Art. 44 (3) of the Law

36 *Ratione temporis*

37 See *Kaić et al. v Croatia*, Para 14, "Right to Trial within a Reasonable Time - a selection of judgments of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, and Serbia", T. Gorjanc-Prelević, Centre for Human Rights of the University of Sarajevo, Sarajevo 2009, p. 148 (also available on Human Rights Action web site <http://www.hrc.unsa.ba/zbirkapresuda>)

Request for review

1. The request for review is a legal remedy lodged by an applicant who feels the court is unnecessarily delaying the proceedings and decision making on the case (Art. 9). The request is decided by the chief justice or another judge so assigned on the basis of the case assignment schedule in courts having more than 10 judges (Art. 10). Where the chief justice happens to be the judge officiating in the case in relation to which the request for review is lodged, the request shall be decided by the chief justice of the immediately superior court; and where that judge is the chief justice of the Supreme Court, the request shall be decided by a panel of three Supreme Court judges (Art. 11).

2. The request for review shall be decided in a substantiated decision (Art. 12). An incomplete request shall be dismissed, with only the applicant who is a lay person being given the opportunity to put the request in order by a deadline, while an incomplete request drafted by a lawyer shall be automatically dismissed (Art.13). A manifestly unfounded request shall be rejected (Art. 14).

3. Unless the request for review is dismissed or rejected as manifestly unfounded, the chief justice of the court shall request to receive a written report on the length of proceedings and the reasons for which the proceedings have not been finalised. The report shall be drafted in accordance with the requirements from Art. 4 and contain the opinion on the deadline by which the case can be resolved (Art. 15).

4. Following the above, the chief justice of the court may:

- Reject the request for review as unfounded if he finds no violation of the right to trial within a reasonable time (Art. 16),
- Notify the applicant that the judge informed him that the procedural steps would be taken and the decision delivered within maximum four months of the date of receipt of the request for review (Art. 17),
- Give a ruling setting a maximum four-month deadline by which certain steps must be taken as well as a deadline by which the judge must inform him of the steps taken or order that the case be handled as priority, depending on the level of emergency (Art. 18).

5. If the judge fails to take the steps laid down in the ruling on the request for review or the notification, the chief justice may withdraw the case assigned, in accordance with law (Art. 19).

6. The chief justice shall give a ruling on the request for review within maximum 60 days (Art. 20).

7. Applicants may not file a new request for review on the same case before expiry of the deadline set in the notification, or the ruling by the chief justice, and where the request for review is rejected as unfounded, the new request may be lodged only after expiry of 6 months following the receipt of the ruling. Custody cases or cases concerning security measures are exempted from this restriction (Art.23).

Appeal

1. In the event the request for review is rejected, the dissatisfied applicant may file an appeal with an immediately superior court over the fact that the chief justice of the lower court dismissed or rejected the request for review or that he failed to give a ruling within 60 days. (Art. 24). Whatever the reason for the appeal, it must be lodged within 8 days of the receipt of decision or of the expiry of the deadline for the issuance of ruling on the request for review or notification. The appeal is not allowed against decisions given by the chief justice of the Supreme Court or a panel of the Supreme Court.

2. The chief justice of the immediately superior court shall give a decision within 60 days of the date of receipt of the files. He may dismiss the appeal as untimely or having been lodged by a person not duly authorized; reject it as unfounded and uphold the ruling of the chief justice of the lower court or overturn the ruling of the chief justice of the lower court where he finds that the appeal is unfounded, or if the appeal was lodged because the chief justice failed to give a decision on the request for review within 60 days, he may give a ruling on the request for review (Articles 26-30).

Claim for just satisfaction

1. Just satisfaction for a violation of the right to trial within a reasonable time may be exercised by the award of damages for the harm done and/

or the publication of the judgment stating that the claimant's right to trial within a reasonable time has been violated (Art. 31).

2. The claim may be lodged by the applicant who has previously lodged the request for review to the court of competent jurisdiction or the applicant who for objective reasons has not been in the position to file a request for review (Art. 33). The right to just satisfaction may not be exercised by a state authority, local government authority, public service agencies or other persons having public authority and acting as parties to court proceedings (Art. 32).

3. The claim may be lodged within 6 months of the date of receipt of the final decision, while in the enforcement procedure the deadline is 6 months from the date of receipt of the final decision on the request for review (Art. 33(3)).

4. Monetary compensation awarded for non-pecuniary damage caused by a violation of the right to trial within a reasonable time is limited to an amount between €300 and €5,000, and is assessed on the basis of the criteria laid down in Art. 4 of the Law (Art. 34).

5. The decision on just satisfaction is given by the Supreme Court panel of three judges who must have received the files from the court handling the case within 3 days. The claim together with case files is submitted to the Protector of Property Rights of Montenegro who shall submit to the Supreme Court its opinion within 8 days of the receipt of the claim and case files. The Supreme Court shall give a decision on the claim within maximum 4 months (Art. 36).

6. The Supreme Court may dismiss the claim as untimely or inadmissible (if submitted by a person not duly authorized or submitted without previous request for review having been lodged, or where there were no circumstances objectively preventing that). The Court shall approve the claim where the final decision has found that the request for review was founded or that the notification has been sent to the applicant. The Supreme Court shall also approve the claim when the request for review was rejected where it finds that objective reasons prevented the applicant from submitting the request for review. The claim shall be rejected where the court finds no violation of the right to trial within a reasonable time (Art. 37).

7. The Supreme Court may only give a judgment finding a violation of the right to trial within a reasonable time and, upon request of the applicant, order publication of the judgment, without awarding the applicant pecuniary damages when so justified by the circumstances of the case and applicant's conduct (Art. 38).

8. The Supreme Court may in addition to the pecuniary damages awarded issue a decision, upon request of the applicant, to order publication of the judgment (Art.39(1)). Judgments are published on the internet page of the court which is found to have unnecessarily delayed the proceedings and which will bear the cost of publication. The judgment must be available on the internet page for two months, following which it is either sent to the files or, at applicant's request, deleted within 15 days of the date of receipt of the request for deletion (Art. 39).

Assessment of the Law on the Protection of the Right to Trial within a Reasonable Time by the European Court of Human Rights in its judgment *Mijušković v Montenegro* of 21 September 2010

1. In this case the applicant complained of the belated enforcement of a final custody judgment under which her former husband was under the duty to surrender the children to her to raise, care for and educate. The enforcement procedure lasted for 3 years and 7 months following the date the final judgment was rendered, and the ECHR held that the judgment had been enforced within less than 3 months of the date the Government was given notice of the application by the ECHR.

2. During the proceedings the Government reiterated that the applicant had not exhausted all effective domestic legal remedies and that she had failed to file an appeal following the request for review and the claim for just satisfaction under the Law on the Protection of the Right to Trial within a Reasonable Time.

3. The ECHR found that the national court had made use in this case of the notification under Art. 17 of the Law informing the applicant that the respondent would be fined without delay but that it was not possible to say when and how the enforcement procedure in question would be finalised. Under Art. 17 of the Law, once such a notification has been delivered, the applicant's request for review is considered to have been resolved. The ECHR found that since the applicant had been duly served

the notification she had no legal right to file an appeal, with the effect that the appeal may not be considered a legal remedy at the applicant's disposal.³⁸

4. The Court further notes that even if it were assumed that the applicant could have received compensation for delays in the proceedings and publication of judgment, all this could not have resulted in speeding up the enforcement concerned for as long as the proceedings are not finalised. The final enforcement of the impugned judgment was the result of the fact that the court had sent a communication to the Government on the case rather than the result of any domestic legal remedy.

Assessment of the Law on the Protection of the Right to Trial within a Reasonable Time by the European Court of Human Rights in its judgment *Živaljević v. Montenegro* No. 17229/04, 8 March 2011

1. The reason why the application was lodged was excessive length of the administrative proceedings over expropriation of immovable property. They were instituted on 29 October 1996 and were still pending at the time the ECHR gave its decision on 8 March 2011.

2. The Government of Montenegro remarked in the proceedings that the applicants had not made use of the legal remedies provided for by the Law on the Protection of the Right to Trial within a Reasonable Time, and that the application should be dismissed for failure to exhaust domestic legal remedies.

3. The ECHR noted that the Law had been implemented for three years and that most requests lodged under the Law were solved by notification that certain measures shall be taken within the set terms.³⁹ However, the Government failed to provide evidence that such measures had indeed been taken within the set time limits, and that such activities had succeeded in expediting the proceedings or leading to their finalisation. In addition, the Law does not include transitional provisions on its application to the applications against Montenegro that at the time of Law's passage were already pending before the ECHR⁴⁰.

38 Judgment *Mijušković v. Montenegro*, p. 71.

39 Judgment *Živaljević v. Montenegro*, p. 63.

40 Ibid, p. 64.

4. The Court further noted that given that the applicants' case had at the time the Law was enacted already lasted for 11 years and 1 month and that the Government had failed to prove the effectiveness of remedies provided by that Law, it is considered that it would be unreasonable to require of the applicants to try this avenue of redress (Para. 65). The Court may in future cases reconsider its view if the Government demonstrates the efficacy of domestic remedies (Para. 66).

CASE LAW OF MONTENEGRO'S COURTS

General overview

a) Request for review

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	33	13	3	1	16
2009.	70	35	6	6	23
2010.	78	25	10	6	37
Total	181	73	19	13	76

b) Claim for just satisfaction

Lodged in	Lodged total	Upheld	Rejected	Dismissed	Disposed of in some other manner
2008.	7			7	
2009.	12	1 (partly)		11	
2010.	14	2 (partly)	2	8	2
Total	33	3	2	26	2

Overview by individual courts

Basic Court in Herceg Novi

Lodged in	Lodged total	Rejected	Granted	Dismissed ³⁷	Notification under Art. 17
2008.	5	5			
2009.	4	4			
2010.	3	1			2
Total	12	10			2

1. For reason of undue delays in cases handled by the Basic Court in Herceg Novi, five requests for review were lodged in 2008⁴². All the requests were rejected by the chief justice of the High Court. Of this number, three were the requests lodged because the Basic Court chief justice failed to act in enforcement cases for two years or failed to render a decision on interim measures for a period exceeding 3 years.

2. The chief justice of Podgorica High Court rejected all three requests with the reasoning that within the time period from the receipt of request for review until the date a ruling on them was rendered, decisions were delivered in the cases with regard to which the party lodged a request for expedited procedure.

3. Of the remaining two requests for review, one was lodged for failure to schedule a preparatory hearing in the time period from filing of action on 5 March 2007 until 10 October 2008 when the request was lodged. The request for review was rejected since the party concerned failed to submit the correct address of one of the respondents. The second request for review was lodged in non-contentious proceedings initiated by a claim lodged on 30 August 1982. The request for review was rejected because the proceedings in the case were discontinued over the preliminary issue.

4. In 2008 there were no appeals against decisions on requests for review.

41 The category of dismissed claims includes those dismissed, withdrawn, and unresolved.

42 VI Su 76/08(281/08.), VI Su74/08(282/08), VI Su 75/08(283/08),VI Su 113/08, VI Su 126/08.

5. Four requests for review were lodged with the Basic Court in Herceg Novi in 2009.⁴³ All the requests were rejected as unfounded.

6. Two requests were lodged by the applicant who was not represented by a qualified representative, one in a case that ended by a court settlement, and the other which that started on 5 March 2007 and at the time when the request was lodged on 11 September 2009 was in appeal proceedings before the High Court in Podgorica.

7. Of the two other requests, one was lodged on 15 September 2009 over enforcement that started by the enforcement decision rendered on 23 March 2009. It was followed by a notification that the decision was within the competence of the chief justice of High Court in Podgorica since the chief justice of the Basic Court acted in the case. The second request was also lodged in non-contentious proceedings initiated by the motion dated 30 August 1982. This request was also rejected by the chief justice. An appeal was lodged against the ruling and was also rejected by the chief justice of the High court - because the case was suspended pending the decision in another case.⁴⁴

8. In 2010, 3 requests for review were lodged with the Basic Court in Herceg-Novi.⁴⁵

9. The first one was lodged by an applicant without an authorized representative over a case that started on 9 January 2003 in which first instance decision was upheld on 8 October 2009, slightly under a year before the time the request was lodged. The issue of cost of proceedings remained unsolved which was eventually resolved by the decision of the first instance court dated 7 July 2010 (one month after the request for review was lodged).

10. The second one was lodged in a case which was initiated in 2000 with the first instance judgment on the merits not having been delivered by the time the request was lodged (there were several repeated decisions on the lack of jurisdiction that were set aside). The chief justice responded by a notification that the judge would finalise the proceedings within 4 months of the date of receipt of the request for review.

43 VI Su 92/09, VI Su 95/09, VI Su 122/09 VI Su 124/09.

44 In this case one claim was just satisfaction was lodged with the Supreme Court and it is one of a total of 3 claims that the Supreme Court granted.

45 VI Su 52/10, VI Su 68/10 and VI Su 88/10.

11. The last of the requests has been lodged in a case pending ever since 2000 where the applicant was notified by the chief justice that the proceedings would most probably be finalised in a hearing scheduled over the following 4 months.

Basic Court in Play

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1		1		
2010.					
Total	1		1		

1. From 21 December 2007 until 31 December 2010 only one request for review was lodged with this court, in an enforcement case initiated on 14 April 1993⁴⁶ This request was granted and the enforcement ordered within 4 months. The request was decided by the chief justice of the High Court in Bijelo Polje.

Basic Court in Bar

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1	1			
2010.	2	1			1
Total	3	2			1

1. From 21 December 2007 until 31 December 2010 three requests for review were lodged with the Basic Court in Bar.⁴⁷

2. The first request was rejected in a case that was initiated by a claim with the motion to order an interim measure dated 29 May 2009. The request for review was lodged six months later, on 10 December 2009 because

⁴⁶ Su. 91/09.

⁴⁷ VII Su 42/09, VI Su 1/10 and VI Su 20/10.

the court (after several requests for expedited treatment) was unable to either ensure procedural prerequisites for a hearing to be held or render a decision on an interim measure. The request for review was rejected because the claimant's authorised representative had failed to submit in due time the certified translations of the documentation in support of the claim, because the address of the primary respondent was incomplete, and because of the complexity of the case involving four respondents, among whom were both legal and physical persons, some residing in Germany at the time, at an address not known to the claimant.

3. The second request for review was lodged over lengthy civil proceedings in which a decision was rendered to discontinue the proceedings until the Real Estate Administration decided the preliminary issue. The motion for expedited proceedings was rejected as unfounded since under the Rules of Procedure the case discontinued over the preliminary issue decision was considered a resolved case, with the chief justice not having authority to order another state authority to render a decision on the case pending before that authority.

4. The third request was lodged by an applicant who was not represented by a qualified representative and the party was informed that the judge handling the case stated that certain procedural measures would be taken and the decision rendered within the following four months.

Basic Court in Danilovgrad

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.					
2010.	1				1
Total	1				

1. Ever since the Law on the Protection of the Right to Trial within a Reasonable Time became effective, one request for review has been lodged with the Basic Court in Danilovgrad.⁴⁸ This request was lodged

⁴⁸ Su 278/10.

on 4 November 2010 over failure to enforce the decision I.br.10/09 dated 3 February 2009 on the surrender of the children to the intermediary carer. The request for review was handled by the chief justice of the High Court since the chief justice of the Basic Court in Danilovgrad had acted in the enforcement case and stated that the enforcement case had been finalised on 13 November 2010 by surrender of the children to the intermediary carer within the court premises.

Basic Court in Ulcinj

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	4				4
2009.					
2010.	1				1
Total	5				5

1. From 21 December 2007 until 31 December 2010, five requests for review were lodged with this court: four in 2008 and one in 2010.⁴⁹

2. The first request was lodged on 7 April 2008 over failure to enforce the proposed decision on the division of property lodged on 14 November 2007. It was decided by notifying the authorised representative that the „judge had taken certain measures in order to allow the parties to exercise the rights they are entitled to lawfully and in as short a time as possible.“

3. The second one was lodged on 29 April 2008 in a case initiated by a claim of 29 July 1993 (the appeal proceedings before the High Court took over 10 years) over exclusion from inheritance, which discontinued the inheritance proceedings initiated in 1991. The chief justice responded to the request by saying that the judge within a time period significantly shorter than 4 months of the date of receipt had informed the chief justice that immediately following the receipt of findings and the opinion of the forensic surveying expert he would take certain procedural steps.

⁴⁹ Su VI 11/2008, Su VI 15/2008, Su VI21/2008, Su VI 22/2008, SuVI 32/2010.

4. In the request for review lodged on 30 June 2008, the applicant complained about unreasonable length of enforcement proceedings which were initiated on 5 July 2004 but were unsuccessful in spite of several attempts, and delayed over civil engineering forensic analysis from one tourist season to another. The alleged intention was to allow the debtor to use the immovable property concerned as long as possible. The response received to this request for review was that: „...the proceedings on the request for review are considered finalised because the judge, within a time period significantly shorter than four months as of the date of receipt of the request, had taken certain measures in order to allow the parties to exercise the rights they are entitled to lawfully and in as short a time as possible.“

5. The fourth request was lodged on 2 July 2008 over unreasonable length of inheritance proceedings initiated in 2004. The response to the request was that: „..the proceedings following the request for review were considered finalised because the judge, within a time period significantly shorter than four months as of the date of receipt of the request, had taken certain measures in order to allow the parties to exercise the rights they are entitled to lawfully and in as short a time as possible.“

6. The only request in 2010 was lodged on 13 September in an enforcement case, which was initiated by a petition submitted on 30 January 2010. The response to this request was that the decision had been delivered on 28 September 2010 to the company with which the debtor was employed and that following the appeal the case files were forwarded to the High Court in Podgorica.

Basic Court in Berane

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.					
2010.	1	1			
Total	1	1			

1. In the time period covered by this analysis, one request for review was lodged with the Basic Court in Berane and was rejected as unfounded.⁵⁰

2. The proceedings that gave rise to the request for review were initiated in 1985. The case involved non-pecuniary damages and request for life support due to consequences of a road accident and was initiated against a domestic insurance company with a seat registered in Bosnia and Herzegovina. No measures were taken in this case in the period from 13 March 1992 to 5 January 2006, nor has the first instance judgment partly upholding the claim been delivered to the party whose seat was in Bosnia and Herzegovina. The High Court in Bijelo Polje upheld the judgment, while the Supreme Court remitted the reviewed case to the first instance court. The major problem in the case was obtaining insurance policies for the vehicles used by the parties involved in the road accident. The policies were normally preserved for 10 years and 23 years had lapsed since the time of the accident. Since the Supreme Court decision on review included an order to obtain the insurance policy for the vehicle with the number plates concerned dating back to 1985, the chief justice of the court in Berane found the request for review in these proceedings unfounded. The appeal against the decision on the request for review has never been lodged..

Basic Court in Bijelo Polje

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	1				1
2009.	3	2		1	
2010.	2	2			
Total	6	4		1	1

1. Ever since the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time started six requests for review have been lodged with the Basic Court in Bijelo Polje⁵¹.

⁵⁰ Su 253/10

⁵¹ Su 296/08, Su 62/09, Su 62/09, Su 1588/09, Su 1284/10, Su 1336/10

2. Of this number, one request for review dating back to 2008 and concerning an enforcement case was resolved by a notification to the party that the judge would take all the measures provided for by the law within a term set by law; three were lodged in 2009, of which two were rejected because the claimant had not submitted the correct address of the respondent, while the third request was dismissed over the absence of the power of attorney and withdrawal of the application. In the same year, an appeal was lodged against the decision on the request for review and was dismissed as untimely.

3. In 2010, two request for review were lodged and were rejected. One of them was rejected since it was lodged in proceedings following judgment that had become final 7 years before with the party being notified that the case files were kept for 5 years after which they were deleted making it impossible to provide the party with any information on the case. The second request for review was pending appeal proceedings before the Supreme Court at the time the request for access was submitted for the purpose of this analysis, which made it impossible to establish the reasonableness of the length of proceedings.

Basic Court in Žabljak

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1				1
2010.	1			1	
Total	2			1	1

1. Two requests for review were lodged with the Basic Court in Žabljak in the period under review.⁵²

2. Both concern the same case and were lodged by the same authorised representative of the respondent in the case. The case involved civil proceedings that were initiated by a claim dated 9 September 2008. The request for review includes the respondent's account of some other

⁵² The first request for review is not registered under a separate number but is linked to the proceedings P.148/08 and the second one is registered under Su. 93/10.

procedural and substantive issues concerning representation, identity of parties and their representatives, their citizenship and civil proceedings themselves, which may not be the subject of requests for review.

3. The first request for review lodged on 3 November 2009 was resolved by a notification within the meaning of Art. 17 of the Law - namely that it would be resolved within maximum 4 months.

4. The second request for review was lodged on 13 February 2010 and also concerned other impugned issues from the civil proceedings rather than the length of proceedings and was found inadmissible.

Basic Court in Kotor

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	3	3			
2009.	11	3	1	1	6
2010.	20	2	9	1	8
Total	34	8	10	2	14

1. During the period under examination, three requests for review were lodged with the Basic Court in Kotor in 2008.⁵³

2. The first request for review was lodged in a criminal case in relation to an extraordinary legal remedy - petition to review the lawfulness of a final decision and it was found that the judge in charge of the case sent the request and the case within 7 days to the Supreme Court of Montenegro for further proceedings. The request for review was rejected.

3. The second request for review was lodged in an investigative case in which the petition to initiate investigation was dismissed in 2007, so the request for review has been rejected as manifestly unfounded.

4. The third request for review was also lodged in an investigative case in which investigation had been running for more than 3 years. After the chief justice found that the investigation had been terminated and

⁵³ VIII Su 492/08, VIII Su 494/08 and VIII Su 1286/08

the case submitted to the Prosecutor's Office the same day when the request for review was lodged, the request was rejected as manifestly unfounded.

5. A total of 11 requests for review were lodged in 2009.⁵⁴

6. The first, involving three civil matters, was finalised by a notification of the chief justice of the judge's report indicating that civil law measures would be undertaken: in one case, preliminary hearing was scheduled at an interval of less than 2 months from the date of filing the request for review; in the second, hearing was terminated in the same interval with concrete specification of the date and the measures that the judges stated that they should take, while in the third case it was stated that the action had been dismissed and that the parties had not appealed that ruling.

7. The second request for review, lodged on 28 February 2009 referred to an enforcement procedure based on a final writ of execution of 22/06/2006 for handing over minor children to their mother. In this case the writ of execution ordered execution by imposing a fine of €500 if the debtor failed to hand over children to their mother, which the debtor had failed to do and the punishment against him was not executed. With reference to this request for review, chief justice informed the attorney that he had issued the order to execute ex officio the fine against the debtor without delay.⁵⁵

8. The third request for review was lodged in civil proceedings initiated in 2005. In relation to this request, chief justice informed the party's attorney that the office of the judge previously in charge of the case had ended, and that the election procedure of a new judge was underway.

9. The same was done in relation to the fourth request for review that was lodged in civil proceedings initiated in 2004.

10. The fifth request for review was lodged in an enforcement case which was initiated in 2003. The request was rejected as manifestly unfounded,

54 VIII Su 80/09, VIII Su 208/09, VIII Su 327/09, VIII Su 358/09, VIII Su 651/09, VIII Su 661/09, VIII Su 796/09, VIII Su 1001/09, VIII Su 1047/09, VIII Su 1159/09, VIII Su 1376/09

55 A decision on the present case was rendered by the European Court of Human Rights in its judgment *Mijušković v. Montenegro*, 2010.

because the enforcement procedure was ended by delivering a writ of execution to the Central Bank of Montenegro.

11. The next request for review was lodged in an enforcement case initiated on 13 June 2005 in which the applicant was served a notification of the chief justice that within a period not longer than four months after receiving the request for review the judge would take procedural measures: establishing the value of and valuation of listed movable articles, issuing a decision on establishing its value and scheduling a public sale of articles to settle the financial claim of the creditor.

12. The seventh request for review was lodged due to excessive length of the civil proceedings which were initiated on 10 October 2007, and which has been pending as of December 2007 in the court in Kotor. In this case, a hearing had not been scheduled for more than one year and six months while an interim measure issued in favour of the opposing party had been in force during that period. The request was resolved by a notification that the preliminary hearing was scheduled for 22 October 2010.

13. The eighth request for review was lodged in a criminal case based on a personal action in which the hearing was postponed indefinitely on 27 August 2009, 3 months before partial absolute statute of limitations because the case was unassigned. This request for review proceedings were finalised by a notification to the claimant that the main hearing was scheduled twenty days after filing the request for review.

14. The ninth request for review was withdrawn after the attorney having received summons for a hearing following an annulment decision in a civil matter.

15. The tenth request for review was lodged in a criminal case based on a personal action and rejected as manifestly unfounded because the judgment was made in writing and presented to the parties within a term shorter than 30 days from the date of the last hearing.

16. The eleventh request for review was upheld and the judge was ordered to give priority to the proceedings conducted for non-pecuniary damages for serious bodily injury incurred in a road accident. The civil proceedings were initiated by means of a claim dated 25 March 2003. In

this case three first instance judgments were rendered, all of which were overruled by the High Court in Podgorica and five medical forensic examinations were made. The attorneys of parties did not appeal the decisions on the requests for review.

17. In 2010 twenty requests for review were lodged with this Court.⁵⁶

18. The first request was upheld in civil proceedings initiated by 78 claimants. In this case, a preliminary hearing was not scheduled even after 7 months from lodging a labour dispute for the payment of bonuses and other labour-related income. The judge was ordered that the case concerned be given priority.

19. The second request for review was lodged in a case in which action including a motion to impose an interim measure as a separate request was lodged in 2006 and is still in the preliminary hearing stage. The request was upheld and the judge in charge of the case was ordered that the case concerned be given priority and to render an urgent decision on the motion for an interim measure.

20. The third request for review was lodged in a probate case of the testator who died in 1991; probate proceedings were initiated in 1999 and until the filing of the request for review on 17 May of 2010 it had not been finalized. The request for review was upheld and the judge was ordered that the case concerned be given priority.

21. The fourth request for review was lodged in proceedings initiated by bringing an action on 17 July 2008, and the preliminary hearing has not been held yet (the case was previously interrupted by the death of the parties), nor has any procedural measure been taken since the return of the case files from the High Court. The request for review was upheld and the judge was ordered that the legal matter concerned be given priority.

22. The fifth request for review was lodged in civil proceedings initiated by the claim dated 27 May 1994 for non-pecuniary and pecuniary

⁵⁶ VIII Su 83/10, VIII Su 263/10, VIII Su 512/10, VIII Su 602/10, VIII Su 668/10, VIII Su 669/10, VIII Su 725/10, VIII Su 775/10, VIII Su 785/10, VIII Su 870/10, VIII Su 905/10, VIII Su 1040/10, VIII Su 1118/10, VIII Su 1231/10, VIII Su 1251/10, VIII Su 1277/10, VIII Su 1278/10, VIII Su 1311/10, VIII Su 1312/10, VIII Su 1335/10, VIII Su 1357/10.

damages, so the request for review was upheld and the judge in charge of the case was ordered that the case concerned be given priority - as so required by the circumstances of the case.⁵⁷

23. The sixth request for review was lodged in a case initiated by the claim dated 10 September 2001. The request was upheld and the judge was ordered that the case concerned be given priority - as so required by the circumstances of the case.

24. The seventh request for review was lodged in civil proceedings initiated by the claim dated 27 August 2001, it was upheld and the judge was ordered that this legal matter be given priority.

25. The eighth request for review was lodged in a civil matter initiated by the claim dated 17 August 2000, it was upheld and the judge was ordered that this legal matter be given priority.

26. The ninth request for review was lodged in civil proceedings based on a counterclaim, which was lodged on 27 August 2005 in the case that had been pending since 2002. The chief justice upheld the request for review and ordered that this civil procedure be given priority.

27. The tenth request for review was lodged in an enforcement case on ground of an authentic document that was initiated on 25 November 2009 and a decision on which had not been rendered until the filing of the request on 20 July 2010. Once omissions in the service of a power of attorney for representation had been eliminated, the chief justice informed the creditor's attorney that the judge would take certain procedural measures in the case within one month, and that the case would be finalized no later than 4 months from the receipt of the request for review.

28. The eleventh request for review was lodged in an enforcement case, which was initiated in 2001 and refers to forced sale of immovable property in an enforcement procedure. In relation to the request for review, the chief justice informed the creditor's attorney that certain procedural measures would be completed within the statutory term (scheduling of the second real estate sale immediately after rendering a

⁵⁷ In this case the Supreme Court awarded just satisfaction to three claimants of 1,000 € each

decision on judgment creditor's complaint); thus, the request is deemed to have been acted upon.

29. The twelfth request for review requested an expedited procedure in the procedure for securing of receivables, so in relation to the request, the chief justice informed the party that the judge rendered a decision on the requested interim measure 17 days after filing the request for review.

30. The next request for review was lodged in the case initiated on 8 August 1994 which has been delayed because of forensic experts' failure to act and their absence from hearings or failing to deliver written evidence and opinions. The chief justice informed the party that the judge in charge of the case submitted a report saying he would conclude the hearing and draw up the judgment within one month and 13 days from the date of filing the request for review.

31. The fourteenth request for review was found inadmissible in the case for setting the support of minor children because the representative did not have a proper power of attorney for representation in this legal matter.

32. The fifteenth request for review was lodged in a case initiated in 1997. Two discontinued civil proceedings initiated in 1994 and 1996 respectively depend on that request; the cases are related to the grounds for acquiring the ownership right, they are very complicated from a factual and legal point of view and involve multiple parties. The chief justice rejected the request to expedite the procedure. The first judgment of the first instance court was passed as late as in 2006. A number of judges (4) in charge of the case have changed since the previous judges' offices ended so the cases have been allocated to newly appointed judges. The case was appealed before the High Court for two years and 10 months, and in 2008 it was remanded to the court of first instance. In the opinion of the chief justice, the judge in charge of the case handles the case in a timely manner and therefore the request for review was rejected. The applicant appealed the chief justice's decision on the request for review stating that he continues to believe that his right to trial within a reasonable time has been violated, particularly given the first hearing after quashing and remanding the case by the High

Court was scheduled only after 23 months and 11 days had expired, rather than within one month. However, High Court in Podgorica has rejected the applicant's appeal with the reasoning that the chief justice has "completely and correctly determined all the facts and has not made any substantive violation of the provisions of the Law on the Protection of the Right to a Trial within a Reasonable Time."

33. The sixteenth request for review was lodged in a case in which action was lodged on 29 December 2009 and in which a judgment was passed a year after filing the action, and one week after filing the request for review.

34. The seventeenth request for review was lodged in investigative proceedings in relation to which the chief justice informed the applicant that the investigative judge stated in the report that he would invest maximum efforts to complete the investigation within four months from the receipt of request for review.

35. The eighteenth request for review was lodged in an enforcement case involving the sale of real estate that was opened in 2005. The applicant was informed that the enforcement judge would act within the timeframes stipulated by the Law on Enforcement Procedure, thus the request for review is deemed to have been acted upon.

36. The nineteenth request for review was lodged in the case dating back to 2010 because the main hearing was postponed by 3 months instead within the statutory term of 30 days. The notification sent to the party by the chief justice stated that the judge in charge of the case had been warned to respect the statutory terms when taking civil measures. The applicant lodged an appeal against this notification which had been found inadmissible because an appeal may be lodged only against a decision on the request for review (or in case of failure to issue a decision or notification within 60 days) but not against the notification referred to in Art. 17 of the Law.

37. The twentieth request for review was lodged in a non-contentious case one day before the conclusion of the case hearing, so the chief justice delivered the notification to the party within the meaning of Art. 17 of the Law.

Basic Court in Cetinje

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	1			1	
2009.	2			2	
2010.	2			1	1
Total	5			4	1

1. Five requests for review were lodged with the Basic Court in Cetinje in the period starting from the beginning of enforcement of the Law on the Protection of the Right to Trial within a Reasonable Time.⁵⁸

2. One was lodged in 2008 and involved an order to the party to complete the request for review by identifying the case that the request concerns (although the party wrote down the number of the case in the upper right corner). The request for review was lodged in the civil proceedings initiated in 1997; the outcome of the review proceedings - i.e., whether it has been finalised or not, remains unknown.

3. The next request for review was lodged on 9 June 2009 in relation to a case initiated in 2007. The chief justice has failed to render a decision and the party lodged an appeal with the High Court. The appeal in question was lodged with the High Court together with the chief justice's opinion. No decision has been rendered either on the second request for review dated 2009 which was lodged on 18 December 2009 (the only decision given concerns the motion for the judge to be recused from trial).

4. The first request for review in 2010 was lodged in the case concerning the request for opening of the court deposit and initiated in 2007. The request was withdrawn by the attorney who had lodged it, which was certified by a written note on the brief itself.

5. In relation to the second request for review lodged on 2 February 2010, the party was informed that the chief justice cannot act upon the request for review in relation to the civil proceedings initiated on 9 October 2009 for trespassing/easement since the office of the judge to whom the case was assigned had ended, and the election procedure for a new judge was underway.

⁵⁸ Su 582/08, Su 343/09, Su 666/09, Su 37/10, Su 206/10.

Basic Court in Kolašin

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	1	1			
2009.					
2010.	12	7		4	1
Total	13	8		4	1

1. One request for review⁵⁹ was lodged with the Basic Court in Kolašin in 2008 in the case which began in 2001 and had been discontinued for 8 years before filing of the request for review. The request for review was lodged together with a motion to continue proceedings, but was rejected with the reasoning that apparently there were no grounds to proceed. An appeal was lodged against this decision with the chief justice of High Court in Bijelo Polje, which was rejected as unfounded with the same reasoning already set out by the court of first instance in its decision on the request for review⁶⁰.

2. Twelve requests for review were lodged in 2010⁶¹.

3. The first relates to enforcement in the case which began on 12 October 2009; based on this request, the chief justice sent a notification that the judge in charge of the case was appointed only on 31 December 2009 which was why she could not have taken actions in the case earlier. The notification also indicates that she would schedule a visit to the site with forensic experts by the end of March 2010 in order to make a list of and do the assessment of movables of the judgment debtor, and that all legal measures leading to the finalisation of the proceedings would be completed by the enforcement judge within a period not longer than 6 months.

4. There is a group of four more requests for review, all lodged by the same lawyer, but concerning separate enforcement cases, all registered under

⁵⁹ Su. 407/08.

⁶⁰ High Court in Bijelo Polje, case Su 1813/08.

⁶¹ Su 29/10, Su 250/10, Su 250/10-1, Su 250/10-2, Su 250/10-3, Su 259/10, Su 260/10, Su 272/10, Su 273/10, Su 289/10, Su321/10, Su 324/10.

the same number, but disposed of differently. Decisions on all requests were rendered by means of rulings of the same date - 15 November 2010. Three were dismissed as lodged by a person not duly authorized, as the applicant's lawyer had no power of attorney or a substitute power of attorney granted by the previous lawyer, but only a decision issued by the President of the Bar Association to confirm that the office of the previous lawyer had been taken over by the current attorney. The fourth request was rejected because the proceedings had been completed.

5. The sixth request for review was lodged in a case in which a final decision had been given, upon a motion to reopen proceedings, which was lodged with the court in 2009. This request for review was rejected because the decision on reopening of the proceedings depended on access to the files of a criminal case pending before the High Court in Bijelo Polje, also awaiting the decision on the motion to reopen proceedings in that criminal matter.

6. The seventh request for review was lodged in civil proceedings that began on 14 February 2001. In reopened proceedings a second interim judgment was passed on 2 June 2003 which has been confirmed by the High Court and which arrived to the Basic Court in Kolašin on 16 February 2007. The request for review was rejected because the judge did not know that the interim judgment in question had arrived on 16 February 2007 to the court until the moment the claimant lodged a brief on 15 January 2010 requesting that the proceedings be continued.⁶²

7. The next two requests for review were lodged in cases in which claims were brought in 2010 because preliminary hearing was scheduled ten months after receiving the claim and several months after receiving the response to the action respectively. Both were rejected as unfounded.

8. The next request for review was lodged in a non-contentious case that had been finalized and has therefore been rejected as unfounded. The penultimate request for review was dismissed due to lack of power of attorney, and the last was rejected as unfounded because the enforcement case was discontinued and all actions already undertaken were repealed. It is interesting that all requests for review were lodged by the same lawyer.

⁶² An interim judgment does not finalize the case (the case is not entered into the register as a closed one) and after being received from a higher instance it is continued *ex officio*.

Basic Court in Nikšić

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1	1			
2010.	2				2
Total	3	1			2

1. Proceedings in relation to three requests for review were conducted before the Basic Court in Nikšić.

2. The first one was lodged in an enforcement case for surrender of a child which was enforced by another competent court in whose territory the child was residing at the time.

2. The second request was lodged in a civil matter for annulling a decision on cessation of employment. The party was notified that the procedure would be conducted and a decision rendered within a period not longer than four months.

3. The third request for review was lodged in the case P.811/08 initiated by a claim dated 03/05/2007. The party has received a notification within the meaning of Art. 17 of the Law.

Basic Court in Podgorica⁶³

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	13	3	3		7
2009.	16	8	7	1	3
2010.	16	7	4		8
Total	45	18	8	1	18

⁶³ The Basic Court in Podgorica handled 45 requests for review. The chief justice of this court rejected the request lodged by the Human Rights Action for access to the cases following the request for review for reason of protection of clients' privacy and provided us with statistics instead. The Human Rights Action lodged an appeal against this decision to the Ministry of Justice stating that the protection of privacy could be ensured in some other way, for example, by obliterating the clients' names, which would then allow us to have access to the files. Unfortunately, in spite of its support to this project the Ministry of Justice rejected the appeal lodged by the Human Rights Action and upheld the position of the Basic Court chief justice. The Human Rights Action initiated administrative proceedings against the decision of the Ministry of Justice.

The Basic Court in Podgorica provided the Human Rights Action with full statistics, but refused to allow access to cases opened in relation to requests for review; therefore a description of these cases is not included in this overview.

Commercial Court in Bijelo Polje

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1				1
2010.					
Total	1				1

1. From 21 December 2007 to 31 December 2010, one request for review was lodged with the Commercial Court in Bijelo Polje, on 6 July 2009 in a case initiated by a claim including a motion to impose an interim measure lodged with the court on 11 August 2006. A total of 14 hearings were held in this case, a lot of them without any procedural measures being taken. The party was notified within the meaning of Art. 17 of the Law that the case would be finalized within a term not longer than 4 months.

Commercial Court in Podgorica

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1				1
2010.					
Total	1				1

1. During the period under review, the Commercial Court in Podgorica rendered decisions on three proceedings in relation to requests to expedite the procedure in 2010.⁶⁴

⁶⁴ Su 536/10, Su 776/10, Su 1039/10.

2. The first was lodged over a one year delay in an enforcement case. The party was notified that the case had been finalized.

3. The second one was lodged in bankruptcy proceedings on account of which the party was notified that a decision on the bankruptcy trustee’s complaint against the party’s registration of claims had been rendered and sent 18 days after the filing of the request for review.

4. The third request for review was lodged in an enforcement case in bankruptcy proceedings initiated back in 2008. The party was notified that an enforcement order had been delivered to the bankruptcy debtor and that the bankruptcy trustee had submitted his opinion thereon on 26 October 2010.

High Court in Bijelo Polje

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1		1		
2010.	2	1		1	
Total	3	1	1	1	

1. Not a single request to expedite the proceedings has been lodged with the High Court in Bijelo Polje. The court rendered a decision on an appeal lodged by a party against the failure of the chief justice of the Basic Court in Plav to act upon the request for review. The request was upheld as well founded in an enforcement procedure pending ever since 1993.⁶⁵ The court also rendered decisions on two other appeals⁶⁶: the first lodged against the notification referred to in Article 17 of the Law, which was dismissed by the court, and the second, lodged against the decision turning down the request for review, which was rejected by the Court as unfounded.

⁶⁵ Su 91/09.

⁶⁶ Su 538/08 and Su 1813/08.

High Court in Podgorica

Requests for review

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.	5	1			4
2009.	11	2			9
2010.	4				4
Total	20	3			17

Appeals

Lodged in	Lodged total	Rejected	Upheld	Dismissed	Notification under Art. 17
2008.					
2009.					
2010.	5				
Total	5	5			

1. During the period covered by this review, 20 requests for review and five appeals against the decisions rejecting requests for review given by chief justices of first instance courts were lodged with the High Court in Podgorica.

2. Five requests for review were lodged in 2008.⁶⁷

3. The first, lodged on 1 February 2008 by the defendant's defence lawyer, referred to criminal proceedings pending for attempted murder based on an indictment dated 19 February 2004 in which the accused person had been in custody ever since 23 October 2003. During the proceedings, one first-instance judgment was given on 27 October 2006, which was overruled by the decision of the Appellate Court of Montenegro of 10 September 2007 (after a bit less than 11 months). The new main hearing was scheduled for 10 March 2008. The request for review was rejected as manifestly unfounded because the accused person had requested recusal of the presiding judge on 27 November 2007.

⁶⁷ VI Su 60/08, Vi Su 320/08, VI Su 428/08, VI Su 488/08, VI Su 548/08.

4. The second request for review was lodged in appeal proceedings in an enforcement case in which the applicant was notified that a decision had been rendered on appeal and the case submitted to the court of first instance.

5. The third request for review was lodged on 25 September 2008 in appeal proceedings in a civil matter. The party was informed that the second instance decision was rendered on 27 October 2008 and the case was submitted to the court of first instance on 24 October 2008.

6. The next request for review was lodged on 28 October 2008 in the case where the appellate proceedings before the court in question had been running for more than 18 months. The party was notified that a decision had been rendered on appeal and the case returned to the court of first instance on 7 November 2008.

7. The last request to expedite the procedure in 2008 was lodged on 2 December 2008, also in appeal proceedings in a civil case. The party was notified that a decision had been rendered on appeal on 13 November 2008 and the case sent to the court of first instance on 26 November 2008.

8. There were eleven lodged requests to expedite the procedure⁶⁸ in 2009.

9. The first request was lodged on 15 January 2009 in appeal proceedings initiated on 28 March 2007. The decision on the request for review was not rendered by the chief justice of the High Court; it is due to his failure to act upon the appeal that the chief justice of the Supreme Court rendered a decision. She rejected the request as manifestly unfounded upon determining that a decision was rendered on appeal on 27 January 2009 and case files submitted to the court of first instance on 23 February 2009.

10. The second request was lodged on 26 January 2009 in appeal proceedings in a case initiated on 8 April 2008 (on appeal). The party was notified that the case files with the decision on the appeal of 27 February 2009 were submitted to the court of first instance on 13 March 2009.

68 VI Su 8/09, VI Su14/09, VI Su 31/09, VI Su 74/09, VI Su 79/09, VI Su 93/09, VI Su 94/09, VI Su 121/09, VI Su 132/09, VI Su 266/09, VI Su 291/09.

11. The third request was lodged on 12 February 2009 in proceedings concerning employment rights; the appeal proceedings had been pending for two years already and the case itself is five years old. The party was informed that a decision was rendered on appeal on 13 February 2009 and case files were submitted to the court of first instance on 2 March 2009.

12. The fourth request was lodged on 30 March 2009 in the proceedings on appeal lodged with the court on 18 March 2008 with the court not rendering a decision for over a year. The party was informed that a decision had been rendered on appeal which was submitted to the court of first instance on 9 March 2009.

13. The fifth request to expedite the procedure was lodged on 6 April 2009 in civil proceedings pending ever since 2002. The proceedings had been abolished once, and the appeal was lodged on 5 June 2008. The party was notified that this case would be given priority.

14. The sixth request was lodged on 15 April 2009 in the case initiated on 2 December 2005 by an private action at law and conducted before the High Court based on an appeal dated 5 August 2008. The party was notified that work on the case would be initiated immediately, and that a decision would be available in 15 days.

15. The seventh request for review which was lodged on 16 April 2009 relates to appeal proceedings in a case initiated in 2004 whereas the appeal was lodged on 27 October 2008. The party was informed on 6 May 2009 that work on the case would start no later than in September of that year.

16. The eighth request for review was lodged on 5 May 2009 in appeal proceedings in a case that was opened on 21 February 2002. The party was informed that a decision was passed on 5 May 2009, and that it would be made in writing within the statutory term.

17. The ninth request for review applies to the enforcement case of a court of first instance handled by the chief justice of that court. The request for review was rejected because the party failed to submit in time a substitute power of attorney for another attorney.

18. The tenth request for review was lodged on 5 October 2009 in a case initiated in 2002 for damages for serious bodily injury. An appeal was lodged on 10 February 2009. The applicant was informed that a decision was passed on 1 October 2009 and that the case was remanded to the court of first instance on 8 October 2009.

19. The eleventh request for review was lodged on 20 October 2009 in relation to a labour dispute initiated in 2008. The party was informed that a decision had been drawn up and the case submitted to the court of first instance on 10 November 2009.

20. Nine⁶⁹ cases, more specifically, 4 requests for review and five appeals against decisions on requests to expedite the procedure were lodged in 2010.

21. The first case relates to the appeal against the decision turning down the request to expedite the procedure of the court of first instance in a non-contentious case, initiated in 1982. The appeal was rejected as unfounded because the proceedings had been discontinued.⁷⁰

22. The second relates to the appeal against the decision of the court of first instance which rejected the request to expedite the procedure, once again in a case that had been discontinued due to proceedings before the Real-Estate Administration - the appeal was rejected.

23. The third request for review was lodged due to lengthy appeal proceedings. The party has been informed that the second instance decision was passed and that a written copy of the judgment would be developed and delivered to the first instance court by the deadline.

24. The fourth request was lodged on 22 March 2010 in a case initiated in 2000, in which the claimant is 97 years old. The chief justice informed the party that the decision had been sent on 22/04/2010.

25. The fifth case relates to the appeal against the first instance court's decision turning down the request to expedite the procedure that has been pending for 13 years. The appeal was rejected because the case had been discontinued.

69 VI Su 21/10, VI Su 57/10, VI Su 132/10, VI Su 149/10, VI Su 214/10, Su224/10, VI Su 277/10, VI Su 289/10, VI Su 308/10.

70 The Supreme Court awarded just satisfaction in this case Tpz 5/10.

26. The sixth request refers to an appeal lodged in 2010 in the case pending ever since 2005. The party was notified that a decision was rendered on 10 September 2010 and that a copy of the judgment would be made within the statutory term.

27. The seventh request was lodged on 4 November 2010 in proceedings involving a U.S. citizen of Montenegrin origin that has been running since 1998. The chief justice of the High Court responded by a letter dated 1 February 2011 that the case files were remanded together with the decision to the basic court on 25 January 2011.

28. The next case is a decision on the appeal against the decision of the court of first instance which rejected the request to expedite the procedure; that appeal was rejected because the enforcement had in the meantime been conducted.

29. The last case in 2010 also refers to a decision on the appeal against the decision turning down the request for review, in a case initiated in 1997. The appeal was rejected.

Appellate Court

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	1				1
2010.	1				1
Total	2				2

1. Two requests for review have been lodged thus far ever since the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time started.⁷¹

2. The first was lodged on 4 May 2009 requesting appeal proceedings against the judgment of the Commercial Court dated 7 December 2007 to be expedited. Therefore, the party was informed that the second instance decision on appeal was rendered on 28 April 2009 and that the

71 Su VI 25/09 and Su VI 20/10.

decision would be developed soon and submitted to the Commercial Court.

3. The second request for review was lodged on 4 June 2010 in appeal proceedings against the decision in the case of bankruptcy, in which second-instance decision has not been passed for nine months. In this case, the party was also informed that the decision on appeal by the Appellate Court had been rendered and the case sent to the Commercial Court for further proceedings.

Administrative Court

Lodged in	Lodged total	Rejected	Granted	Dismissed	Notification under Art. 17
2008.					
2009.	17	14		1	2
2010.	7	2			5
Total	24	16		1	7

1. The first request was returned to the Judicial Council because it did not relate to proceedings before the Administrative Court.

2. The second request concerned the case Su. V. 219/08 in which the party was informed that the decision would be rendered within 4 months, and since that term expired without success, the party pressed that the case be finalized - it was responded that the court had repeatedly requested to be sent the case files by the respondent authority and that the authority had not complied with the request.

3. The next request for review was lodged on 30 October 2009 in the case that was opened on 26 June 2009 before the Administrative Court in the restitution process, which is urgent due to a threat that the assets to be restituted could be sold. The party was notified that the court would render a decision within a period not exceeding four months.

4. There is a class of fourteen additional requests for review lodged by non-governmental organizations in proceedings on actions against decisions refusing access to information. The requests for review were lodged in an effort to expedite the decision making procedure in the

Administrative Court. All the requests were rejected with the reasoning that the right of access to information does not pertain to civil rights and obligations and cannot be considered to fall within the scope of the rights referred to in Article 2 of the Law on the Protection of the Right to Trial within a Reasonable Time. An appeal was lodged with the Supreme Court in six of the fourteen procedures against the decision turning down the requests. All the procedures had the appeals rejected.

5. The last request for review before the Administrative Court in 2009 was lodged on 18 December 2009 in proceedings instituted due to the silence of administration by an action dated 9 January 2008. The request was disposed of by informing the party that a decision would be rendered within a term not exceeding 4 months.

6. The first request in 2010 was lodged on 24 February 2010 in the proceedings initiated on 2 September 2009 in which the party was informed that a decision would be rendered within a term not longer than 4 months.

7. The same party submitted the next request for review; the procedure based on that request was also finalized by service of a notification pursuant to Art. 17 of the Law.

8. The third request for review was lodged on 24 March 2010 due to failure to act upon the request for enforcement of judgment dated 1 July 2009. So, the party was informed that the court would render a decision within a period not longer than 4 months.

9. The next request for review was lodged on 7 September 2010 in the case which was initiated due to non-enforcement of judgment on 2 July 2009, and the party was served a notification within the meaning of Art. 17.

10. The next request for review proceedings initiated by the same party was handled in the same manner.

11. The party sought administrative procedure to be expedited in the sixth request for review in which action was lodged on 20 March 2009, whereas the judgment turning down the action was passed on 13 November 2009, so the request was rejected as unfounded.

12. The seventh request for review was lodged by the claimant in a case that ended by a final decision, a procedure in which the request for extraordinary review of a court decision before the Supreme Court was also rejected. The request for review was rejected “as unfounded.” The applicant appealed this decision; the appeal was upheld, the decision was overturned and the request for review was rejected as “manifestly unfounded”.

Supreme Court

The Supreme Court renders decisions on claims for just satisfaction pursuant to the Law on the Protection of the Right to Trial within a Reasonable Time.⁷²

Claims for just satisfaction

Lodged in	Claims lodged	Claims upheld	Claims rejected	Claims dismissed	Disposed in some other way ⁶⁹
2008.	7			7	
2009.	12	1 (partly)		11	
2010.	14	2 (partly)	2	8	2
Total	33	3	2	26	2

1. In 2008, the Supreme Court dismissed all of the seven claims that have been lodged that year.⁷⁴

2. In the case Tpz 2/08 a claim for just satisfaction was lodged due to delays in criminal proceedings launched on 29 March 2005 following a private action and was finalized by a decision of the High Court dated 26 February 2008 dismissing the charges due to absolute statute

⁷² The Supreme Court also renders decisions on requests for review lodged in proceedings conducted before that court, however, there were no such requests.

⁷³ Disposed of in some other way: referred to a court of proper jurisdiction, wrongly entered into the register and the like.

⁷⁴ Tpz 2/08, Tpz 4/08, Tpz 5/08, Tpz 7/08, Tpz 8/08, Tpz 10/08, Tpz 11/08.

of limitations. The claim was dismissed because the claimant had not previously submitted a request for review to expedite the procedure within the meaning of Art.33 (1) of the Law on the Protection of the Right to Trial within a Reasonable Time.

3. In the case Tpz 4/08, the party that was not represented by a qualified attorney, sought just satisfaction in relation to two civil proceedings. One was initiated in 1991 and at the time the claim was lodged was pending appeal proceedings for the third time before the High Court in Podgorica from 26 May 2006. The second one has been pending ever since 31 January 2007. A final decision on the impugned claims has not been rendered in these cases, nor has the party exhausted the procedure of filing requests to expedite the procedure before filing the claim for just satisfaction. The Supreme Court dismissed the claim finding that, pursuant to Art. 33, paras. 1 and 2 and Art. 35 of the Law, a claim may be lodged only after the proceedings referred to in Art. 2 and the request for review were finally resolved (requests for review were lodged simultaneously with the corrected claim for just satisfaction).

4. In the case Tpz 5/08 a claim was lodged in the proceedings pending from 2001 following an action lodged for non-pecuniary damages for tarnishing dignity and reputation. The second instance judgment, which partly upheld the claimant's appeal, was submitted to the claimant on 12 October 2007. This decision was final and ended the case. The claim for just satisfaction was lodged on 14 April 2008 and dismissed because it was not lodged on Saturday, namely on 12 April 2008, the expiry date of the 6 month term within which, in the opinion of the Supreme Court, the claim was to be lodged.⁷⁵

5. In the case Tpz 7/08, the claim was dismissed because it was lodged on 23 May 2008, in relation to treatment of a case ended by a final decision dated 23 October 2007, therefore, a month after the expiry of

⁷⁵ The decision Tpz 5/08 states that "Saturday, 12 April 2008, is a working day at the court", which is questionable since it is a matter of the court's internal decision to work on Saturdays, when they are often closed for work with clients or, for example, do not have their archives open to receive mail. In addition, at the moment the courts are closed on a last Saturday in a month, which one may learn only if one goes to the court to find the door closed. There is no publicly available decision on the work of courts on Saturdays, which would be a way to ensure legal certainty, since work on Saturdays is occasionally introduced, and occasionally cancelled in courts.

the 6 month period from the date the final decision was given in the proceedings in which it was lodged.

6. In the case Tpz 8/08 claimants lodged a claim for violation of the right to “effective legal remedy”. It may be concluded from the claim lodged by the attorney that the claimants complained because they lodged a request on 16 January 2008 to expedite the procedure in the enforcement case but did not receive any notification within 60 days, so they lodged a claim to the chief justice in charge of the case at the High Court. However, according to their allegations, the data on receipt of the claim were forged in the court to falsely indicate that the appeal had not been lodged in a timely manner. The Supreme Court dismissed this claim because the claimants had lodged an action for damages for violation of the right to an effective legal remedy, and such basis is not regulated by the Law on the Protection of the Right to Trial within a Reasonable Time.

7. The claim was dismissed in the case Tpz 10/08 because the party failed to lodge an appeal due to the chief justice of first instance court’s failure to act upon the request for review.

8. The party lodged an action in the case Tpz 11/08 for violation of the right to trial within a reasonable time in a case initiated in 1992. On 07/04/2008 the claimant lodged a request for review to the High Court before which the appeal proceedings were still pending. The chief justice did not render a decision thereon, and the claimant lodged an appeal with the Supreme Court on 10 June 2008. The decision thereon has not been rendered either. An action for damages was lodged to the Supreme Court on 29 August 2008. The action was dismissed because the request had been lodged in the proceedings for which final decision had not been given yet, under Art. 33(3) of the Law, and because a decision on appeal had not been rendered by the Supreme Court. The qualification made was that a final decision had not yet been given on the review proceedings.

9. In 2009, a total of 13 proceedings for just satisfaction were instituted before the Supreme Court for a violation of the right to trial within a reasonable time⁷⁶. Of this number, one claim was partly upheld, one was remitted to the basic court, while other claims were dismissed.

⁷⁶ Tpz 1/09, Tpz 2/09, Tpz 3/09 Tpz 4/09, Tpz 5/09, Tpz 6/09, Tpz 7/09 Tpz 8/09, Tpz 9/09, Tpz 11/09, Tpz 12/09 and Tpz 13/09.

10. In the case Tpz 1/09 the injured parties lodged a claim due to lengthy criminal proceedings for murder. The proceedings have been running since 7 April 2004 and despite the fact that they received a notification within the meaning of Art. 17 of the Law that the procedure would be completed by 19 December 2008, it has never happened and the proceedings were still pending at the time the claim was lodged. This claim was dismissed because just satisfaction was sought in relation to the proceedings in which a final decision had not been given yet.

11. In the case Tpz 2/09 the party sought just satisfaction because of delays in the proceedings before the Administrative Court initiated on 29 November 2006 to protect employment rights. The claim was dismissed because it was lodged in relation to the proceedings in which a final decision had not yet been given since the government authority's act had previously been annulled by the judgment of the Administrative Court and the case was remitted for repeated proceedings, which means that the Administrative Court judgment has not become final. In that judgment the court quoted the Law on General Administrative Procedure and the Law on Civil Procedure in relation to the concept of the finality of decision. It states that "in an administrative dispute, the party acquires the right to court protection due to a violation of the right to trial within a reasonable time only after the administrative act which is the object of an administrative dispute becomes final" - that is, only after an administrative dispute ends with a final decision.

12. In the case Tpz 3/09 the claim was referred to the Basic Court in Podgorica because the claim sought pecuniary damages for a violation of the right to trial within a reasonable time, within the meaning of Art.43 of the Law.

13. The claim in the case Tpz 4/09 was lodged by claimants in relation to the proceedings initiated in 1987 in which the enforcement procedure has been running since 1998, with a number of supporting actions with the aim to prevent enforcement and the claimants' recovery of outstanding debts. This claim was dismissed because the claimants had failed to exhaust the previous judicial protection measure - they have not lodged a request for review.

14. In the proceedings Tpz 5/09 the claim for just satisfaction was lodged in relation to an employment-related action (which, by law, must be given priority). It has been pending since 2000 and the party has been waiting to be served a written copy of the first instance judgment for one year and seven months. The court partly upheld the claim and awarded the claimant the sum of €1,000 for non-pecuniary damages. It was explained that the amount of damages was determined in consideration of the fact that it took eight years, nine months and 11 days to render the final decision in the labour dispute. The court found that the claimant had also contributed to the delay, due to the fact that after five years of proceedings the claimant reversed the claim, which called for new evidence to be presented.

15. In the case Tpz 6/09 the claim was lodged by the claimant against the Judicial Council for not having responded to the complaint. The claim was found inadmissible because the proceedings following the complaint lodged with the Judicial Council can not be considered to fall within the scope of the rights referred to in Art. 2(1) of the Law on the Protection of the Right to Trial within a Reasonable Time, which enjoy protection under the provisions of the Law.

16. The claim in the case Tpz 7/09 was lodged over lengthy proceedings a civil matter for damages following the death of a close person, which was initiated on 17 July 1989. The claim was dismissed with the reasoning that it was untimely, because the final decision was given on 1 February 2008, whereas the claim was lodged with the Supreme Court on 12 May 2009.

17. In the case Tpz 8/09 the claim was lodged by claimants whose case has been running since 1999. The Supreme Court dismissed the claim because it was lodged in relation to a civil case for which a final decision had not been given yet.

18. The claim in the case Tpz 9/09 was lodged in relation to the criminal proceedings conducted from 1997 to 2005 when absolute statute of limitations occurred, of which the High Court in Podgorica rendered a second-instance decision on 17 February 2005. The Supreme Court dismissed the claim because the decision in this case became final in 2005 whereas the claim for just satisfaction may be lodged 6 months after the decision becomes final.

19. The claim in the case Tpz 11/09 was lodged in a civil matter that has been running since 1999. The parties have duly exhausted the request for review proceedings. The request for review, which was lodged with the chief justice of the Basic Court on 4 December 2008 was dismissed, but it was upheld by the High Court which informed the parties that a decision can be rendered in the next four months, which has not happened. This claim was also dismissed because it was lodged in relation to the proceedings that were still pending. It is interesting that the court was of the opinion that the party caused the delay because of the claim lodged with the court, and the judgment reportedly could not have been rendered because the case files had been submitted to the Supreme Court. The court objected that the claimants already lodged a claim on 14 May 2009, since the four month period referred to in the notification of the chief justice within which to deliver a written copy of the judgment allegedly began to run on 24 April 2009 when the chief justice sent its notification to claimants, and not from the date of receipt of the request for review, as laid down in Article 17 of the Law.

20. In the case Tpz 12/09 the claim was lodged over delays in a labour dispute launched on 14 April 2004 and ended with a final decision on 17 May 2006. The claim was dismissed because it was lodged 6 months after the decision became final.

21. In the case Tpz 13/09 the claimant made a claim for just satisfaction because the criminal proceedings initiated by a private action became time barred since following the date of its receipt the court of first instance waited for eight months before it scheduled the main hearing. The court served the parties with a copy of judgment 7 months after the date of the last hearing, failed to serve the claimant's attorney with the High Court decision repealing the previous decision, failed to schedule a single hearing for over 18 months from the receipt of case files from the High Court, nor carried out any procedural measures for more than a year. The case was in appeal proceedings before the High Court for over a year. Absolute statute of limitations took effect on 16 June 2008. The claim was dismissed with the reasoning that the claimant was obliged to institute proceedings in which to file a request for review in order to expedite the procedure.

22. A total of 13 claims for just satisfaction were lodged in 2010 to the Supreme Court.⁷⁷

23. The claim was lodged in a case formed in 2007 following the motion for investigation lodged by the injured party taking the role of the claimant. The claim was dismissed because a final decision had not yet been given in the case.

24. In the second claim the claimant lodged for just satisfaction over lengthy proceedings of the enforcement procedure launched in 2005. In this case it took the High Court one year, ten months and 15 days to decide on appeal, finally rendering the final decision on 15 May 2009, which ended the proceedings. The request for review was not lodged during the proceedings but after receiving the decision and was rejected on 22 September 2009. The decision of 23 December 2009 rejected the appeal lodged against the first-instance decision on the request to expedite the procedure, and the claim for just satisfaction was found inadmissible because the request for review was lodged in a case which was still pending.

25. The case Tpz 3/10 was stricken out of the register since it has been entered by mistake.⁷⁸

26. In the case Tpz 4/10 the claim for just satisfaction was rejected. This is a criminal case in which the defendant has been in custody throughout the length of the proceedings, namely five years, 11 months and 3 days. The claimant was arrested on 23 October 2003. The investigative proceedings were completed in a month and 5 days. The indictment was raised on 22 December 2003 against the claimant for attempted murder and against 4 other persons for involvement in a fight and illicit possession of weapons. The first hearing was scheduled for 30 January 2004. After that, the court

77 Tpz 1/10, Tpz 2/10, Tpz 3/10, Tpz 4/10, Tpz 5/10, Tpz 6/10, Tpz 7/10, Tpz 8/10, Tpz 9/12-, Tpz 10/10, Tpz 11/10, Tpz 12/10, Tpz 13/10.

78 It is a case of a claim for just satisfaction for violation of the right to trial within a reasonable time, which was lodged with the Basic Court in Ulcinj in 2006 which referred the case to the Supreme Court In accordance with the Law on the Protection of the Right to Trial within a Reasonable Time. It was ordered to enter the case in the register as a closed one since the court found that it had rendered a decision on the request by the same parties in 2009 (a decision on either dismissal on grounds of *res iudicata* or on turning down the request was not rendered either).

stated that the hearings were held in continuity and that numerous pieces of evidence were presented at the hearings. The court finds that the forensic examination to establish the claimant's mental health contributed to a five-month delay in the proceedings (from 3 November 2005 until March 2006). The last hearing was held on 25 October 2006, and the judgment was delivered on 27 October 2006, but it took the court around 6 months to draft it and serve on the parties (up until April 2007). The parties have lodged appeals; the second instance court gave decisions on them in 5 months, overruled the judgment and remitted the case back for retrial. The case files reached the court of first instance on 11 October 2007, and the hearing was scheduled as late as 2 months later, on 7 December 2007. Nine main hearings were held during the retrial which ended a year later, on 22 December 2008. The judgment was handed down on 15 January 2009, but it was made in writing only four months later, in April 2009. The second instance court rendered decisions on appeals on 24 September 2009. While rejecting the claim, the Supreme Court found that, although the case lasted that long, there were no unnecessary delays or significant periods of the court's inactivity for which government authorities were responsible, and that given the factual complexity of the case, the trial was conducted within a reasonable time.

27. In the case Tpz 5/10 the Supreme Court partly upheld the claim, and awarded four applicants the amount of € 500 respectively by way of non-pecuniary damages for violation of the right to trial within a reasonable time. It is a non-contentious case instituted on 30 August 1982, which has been discontinued due to incomplete probate proceedings of the respondent that started in 1999. The court found that probate proceedings launched in 1999 must be handled more efficiently. Contrary to previous case law, in this case the Supreme Court adopted a position that "although damages are in principle awarded only after a final decision has been given in the proceedings, the particular circumstances of the case and the length of proceedings of over 28 years require that the claimants be awarded damages." (At the time of writing this report - March 2011, probate proceedings from 1999 have not yet been completed, the first instance decision was set aside twice by the High Court and the case was handed over to another judge. This leads one to conclude that the judgment delivery did not have any effect on expediting the procedure).

28. In the case Tpz. 6/10 the claim for just satisfaction was lodged over unreasonably long proceedings initiated on 13 December 2005 by the Basic Public Prosecutor's petition for initiating investigation and ended by a judgment acquitting the accused person on 24 March 2010. The Supreme Court rejected this claim for just satisfaction because investigation was completed in 1 year, 3 months and 18 days, while the criminal proceedings have been pending for two years and three months. The judgment was handed down on 19 March 2009, drawn up in writing on 31 July 2009, and the second instance court proceedings ended on 24 March 2010 - after 7 months. The total length of the proceedings was four years, three months and eleven days. The Supreme Court found that three main hearings were delayed for a period shorter than a month, and that it was a complex case because it concerned a serious offense against office.

29. The claim registered under Tpz 7/10 was lodged by a party that stated that he had already been in custody for nine years without a final court decision. The party also indicated two number codes of criminal cases and the fact that he addressed the Supreme Court with a request for review on 14 January 2010. The Supreme Court has not yet rendered a decision on this claim.

30. As for the case Tpz 8/10, that began with a claim for just satisfaction dated 4 August 2010, the parties were seeking damages due to excessive length of proceedings in which action was brought on 17 August 2000 for purpose of establishing the right of ownership. It was pointed out that the procedure had been running for ten years, and that the chief justice, in his decision on the request for review, ordered that this case be given priority. The Supreme Court dismissed the claim because a final decision had not yet been given in the case, because there were no conditions to adjudicate on the dispute since the party had passed away, so the procedure had to be discontinued (although the party passed away in 2010 - decision on discontinuation of P.634/09 on 1 March 2010). It is further stated that the hearing in this case was scheduled for 9 September 2010, and then postponed for 26 October 2010; that the case of this claim for just satisfaction was submitted to the Supreme Court and therefore no conditions were in place for deciding on the dispute in the period from 9 September 2010 to 27 September 2010 because the claimants lodged this claim.

31. The case Tpz 9/10 was initiated by a class action lodged by a total of 26 claimants who had submitted a motion for an interim measure back on 16 May 2006, and had lodged a claim on 28 July 2006 to the court to protect their rights of ownership over more than 55.000m² of immovable property. In their claim they stated that they had sustained substantial financial damage due to unreasonable lengthy decision making procedures. As a result, their property was sold in the meantime to a third party and construction began on the immovable property in question. A preliminary hearing in the case of the claim has not been scheduled yet. Three claimants have died. As for the motion for an interim measure, the Basic Court rendered three decisions which were not in favour of the claimants and those decisions were quashed three times so that there is still no final decision on the motion for an interim measure. The Supreme Court dismissed the claim by reference to Art. 33, para. 3, which was interpreted in such a manner that just satisfaction may be awarded only in cases where a final decision has already been given.

32. The case Tpz 10/10 was opened by a claim for just satisfaction lodged by claimants who initiated civil proceedings for non-pecuniary damage following the death of a close person on 27 May 1994. The claim for just satisfaction was granted by the Supreme Court which imposed an obligation on the state to pay the claimants €1,000 each, arguing that two years, five months and seven days had passed from the receipt of the annulment decision to the scheduling of the main hearing, and that the hearing after that had been postponed and the next one scheduled only after expiration of two years, three months and 17 days. *In this case, the Supreme Court changed its earlier interpretation of Article 33, paragraph 3: "... Art. 33 para. 3 of the Law on the Protection of the Right to Trial within a Reasonable Time stipulates that the claim is to be lodged within maximum 6 months of the receipt of the final decision ... this provision means that the claim lodged after the term in question is to be dismissed in accordance with Article 37 para. 2, but it does not mean that before a final decision is rendered it cannot be established whether there was a violation of the right to trial within a reasonable time or not ...".*

The case Tpz 11/10 was initiated by a claim lodged by the claimant who instituted civil proceedings on 10 September 2001 that were still pending at the time the claim for just satisfaction was lodged. *Contrary to the new position, taken in the previous case, the Supreme Court dismissed this claim too by applying its earlier interpretation of Art.33 para. 3 of the Law.* The court stated that: "... in accordance with the provision of Art. 33, para. 3 of the Law on the Protection of the Right to Trial within a Reasonable Time, the claim for just satisfaction shall be lodged with the Supreme Court not later than six months of the receipt of the final decision. In this particular case, in the case before the Basic Court in Kotor P.1198/09/01, the decision is not final, so the claim in question had to be dismissed." In this procedure too, the Supreme Court finds the claimants also responsible for failure to act in the proceedings because they lodged this claim with the Supreme Court where the case was pending from 3 September 2010 to 27 September 2010.

The case Tpz 12/10 was initiated by a claim for unreasonably lengthy administrative proceedings and administrative dispute. This claim was also dismissed by applying Art. 33 para. 3 of the Law because the Supreme Court confirmed its earlier position that a final decision must have already been given in the proceedings over which the claim for just satisfaction is lodged.

The claim in the case Tpz 13/10 was lodged on 29 November 2010. Given that a final decision in the case in relation to which a claim for just satisfaction has been lodged was served on the claimants' attorney on 20 May 2010, the term of 6 months expired on 20 November 2010, and the claim was dismissed as untimely.

In the case Tpz 14/10 the claimant lodged for just satisfaction over unreasonably lengthy criminal proceedings initiated on 17 November 1999, when a road accident took place. The proceedings before the court of first instance were finalized for the second time with a judgment dated April 2007, followed by the proceedings before the High Court, which were finalized with a judgment dated 13 November 2009. The claim was dismissed because the claimant failed to file a request for review with a court of second instance during the proceedings.

Dismissed claims for just satisfaction

Claims lodged in	Dismissed claims	For failure to exhaust legal remedies	Over untimely claims (exceeding the term of 6 months from the date of final decision)	Due to high Court's position that just satisfaction may be sought only after final decision was given (Art.33, para.3)	Disposed of in some other way
2008.	7	2	2	2	
2009.	11	2	3	5	
2010.	8	2	1	5	2
Total	26	6	6	12	2

Claims for just satisfaction were upheld partly in cases of three lodged claims, more specifically in the first case in 2009 and in the other two in 2010. The amount of awarded damages is € 500 for four persons respectively and € 1,000 for three persons respectively.

Lawyers experience

1. In order to complement the information on the enforcement of the Law on the Protection of the Right to Trial within a Reasonable Time, we have requested to hear the experiences of lawyers in Montenegro in using the legal instruments provided for by the Law. Although a questionnaire with two questions on the use of the request for review and the claim was sent to all lawyers through the Bar Association, the responses were received from nine of them.⁷⁹

2. All nine lawyers have used at least one of the instruments provided for by the Law, but all of them are of the opinion that the request for review is not effective, that the claim for just satisfaction is without sense and that the amount of damages provided for by law is too low.

They described their experience as follows:

- the legal remedies in question did not produce effects in two enforcement cases one of which has been pending for 10, and the other for 6 years, even though in both procedures the reason for such a long and unreasonable length was allegedly malpractice and lack of professionalism on the part of the court;
- some of the basic court chief justices are not familiar with either the case law of the European Court or European standards, or they deliberately ignore them, which is why the decisions rejecting the claim do not ordinarily contain an assessment of any of the claimant's allegations;
- the decisions made in relation to requests for review and in relation to appeals against these decisions do not contain a valid reasoning of why they are rejected, but only state that these legal remedies were utilized on no grounds;
- chief justices serve notifications indicating when the case would be finalized (Art.17), but this term is exceeded;
- the claim for just satisfaction did not produce satisfactory results in the proceedings in which for one whole year not a single

⁷⁹ The Human Rights Action is grateful to the following lawyers: Radojica Lazović, Nikola Bošković, Petar Samardžić, Ana Stanković Mugoša, Velija Murić, Vasilije Knežević, Veselin Radulović, Andjelko Milošević and Dalibor Kavarić, for finding time to participate in this project.

investigative action was taken, with the proceedings lasting for five years, three panels were changed, so that the proceedings always had to begin from scratch, the claim was rejected despite the fact that in the same proceedings a notification was received concerning the request for review stating that the case would be finalized by a certain date, and the term in question was significantly exceeded;

- the Supreme Court rejected the claim for damages in an enforcement procedure, which had been running for more than 4 years;
- measures towards expedited proceedings are inefficient, while filing of a claim and proving its merits is an unnecessary burden which ultimately yields no results;
- the Supreme Court finds that a claim may be lodged within 6 months of the date when a final judgment was given, which is a wrong conclusion because the claim may be lodged within maximum 6 months of the date the final judgment was given - which means it can be lodged earlier.

Lawyers who lodged requests for review and whose requests received a response under Articles 17 and 18 indicating that the procedure would be finalized or that measures would be taken within a term not exceeding 4 months were contacted in order to verify whether the proceedings have truly been finalized or expedited within this term.

Out of 16 lawyers and two applicants who lodged a request for review, which makes a total of 18 applicants⁸⁰ who were served a chief justice's notification under Art.17 stating that measures would be taken in the case within 4 months or that the procedure would be finalized nine said they either had not received a notification or that the terms referred to in it were not respected, while nine said that the terms referred to in the notification or decision were respected, and although some cases were not finalized within 4 months, they were finalized shortly after the expiry of that period.

80 Lawyers: Batrić Bulatović, Milan Vojinović, Mustafa Čapuni, Danilo Kovačević, Radoica Lazović, Tamara Durutović, Andjelko Milošević, Jovan Pejović, Rifat Feratović, Djordjije Milić, Milan Radulović, Petar Samardžić, Branka Vuksanović, Slobodan Čizmović, Stojan Radošević, Veselin Radulović and the applicants: Mijušković Dušan and Veselin Uskoković.

Recommendations of the Ministry of Justice of Montenegro for the improvement of the Law on the Protection of the Right to Trial within a Reasonable Time (30 March 2011)

The Law on the Protection of the Right to Trial within a Reasonable Time is consistent with international standards in this field and as a legal text provides adequate remedies to protect the right to trial within a reasonable time. However, its enforcement indicates certain shortcomings and inconsistent implementation.

We believe that hereafter full attention should be paid to overcoming the perceived problems in the implementation of this Act and to this end adopt the following recommendations:

- Continue ongoing training of courts presidents in accordance with the specific training Program on the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time.
- Organize continuing training for judges with regard to quality of law enforcement.
- Organize training for lawyers so as to file more requests for review and claims for just satisfaction.
- Organize additional trainings on the jurisprudence of the European Court of Human Rights concerning the protection of the right to trial within a reasonable time.
- Analyze courts actions on requests for review at the level of each court (within the judges session of all judges and departments' sessions) with recommendations for overcoming deficiencies in the implementation of the Law to the effectiveness of remedies (initiating changes to annual work schedule, taking legal positions and opinions and taking principal legal positions and opinions).
- Prepare appropriate forms for practical implementation of the Law, especially in the part related to the content of requests for review, judges' reports, notices to parties, rulings and other decisions.
- Prepare a brochure for the purpose of informing citizens about the possibilities of using legal means to protect the right to trial within a reasonable time.

- Prepare booklets and other informational materials that include details on how to address courts in respect of submission of requests for review and claims for just satisfaction and make them available to the parties.

