

IMPLEMENTATION ANALYSIS OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME ACT 2011 - 2015



Project “Judicial Reform Monitoring” is supported by the European Union, through Delegation of European Union to Montenegro and the Kingdom of Netherlands.



Kingdom of the Netherlands



**IMPLEMENTATION ANALYSIS
OF THE RIGHT TO A TRIAL WITHIN
A REASONABLE TIME ACT
2011 - 2015**

Darka Kisjelica, lawyer

Human Rights Action
Podgorica
January 2017

IMPLEMENTATION ANALYSIS OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME ACT 2011- 2015

Publisher

Human Rights Action (HRA)
Ulica Slobode 74/II, 81 000 Podgorica, Montenegro
Tel/fax: +382 20 232 348, 232 358
hra@t-com.me
www.hraction.org

For the publisher

Tea Gorjanc-Prelević

Author

Darka Kisjelica

Editor

Tea Gorjanc-Prelević

Layout

Božidarka Sjekloća

Print

Mouse studio

Print run

300

Translation

Ana Tonić



Kingdom of the Netherlands

This publication is part of the project “Judicial Reform Monitoring” conducted by Human Rights Action (HRA) and Center for Monitoring and Research (CEMI), funded by the European Union and the Kingdom of Netherlands.

The content of this publication does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in the publication lies entirely with the authors.

Contents

1. FOREWORD	7
1.1 On the human right to a trial within a reasonable time, the Right to a Trial within a Reasonable Time Act and reasons for the analysis of its application.....	7
1.2 Conclusions and recommendations of the first analysis for the period 2008-2010	9
1.3 Analysis methodology for the period 2011-2015 and access to information	11
2. FREQUENCY OF THE USE OF A REQUEST TO EXPEDITE THE PROCEEDINGS AND CLAIM FOR JUST SATISFACTION	14
2.1 Number of requests for review and claims for just satisfaction in relation to the backlog of cases in the courts.....	14
2.2 Backlog of cases before the courts in Montenegro	16
2.3 Enforcement cases	18
3. REFUSING A REQUEST TO ACCELERATE THE PROCEEDINGS - REJECTING AND DISMISSING A REQUEST FOR REVIEW	20
3.1 Dismissed requests for review	20
3.2 Rejected requests for review	20
3.2.1 The number of rejected requests for review and appeals.....	21
3.2.2 Reasons for rejecting requests for review and appeals.....	22
4. ACCEPTING A REQUEST TO EXPEDITE THE PROCEEDINGS – NOTIFICATION TO THE PARTY AND GRANTING OF A REQUEST	32
4.1 Notification to the party - application of Article 17 of the Act	32
4.2 Granted requests for review - application of Article 18 of the Act	35
4.3 Impact of the decision to grant a request for review on evaluation of the performance of judges.....	38

5. CLAIM FOR JUST SATISFACTION	40
5.1 Frequency of lodging and adopting claims for just satisfaction	40
5.2 The amount of just satisfaction	41
5.3 Disputed reasons for denying just satisfaction and rejecting a claim	45
5.4 Claim for just satisfaction and acceleration of the proceedings	46
6. STATISTICAL REPORTS ON THE WORK OF COURTS	51
7. REPORTS OF THE MINISTRY OF JUSTICE	54
8. THE EXPERIENCE OF THE OMBUDSMAN	58
9. SUGGESTIONS FOR AMENDMENTS TO THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME ACT	60
10. THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME, MONTENEGRO AND THE EUROPEAN COURT OF HUMAN RIGHTS	62
10.1 General information	62
10.2 Position of the European Court of Human Rights on the general effectiveness of legal remedies based on incomplete data – Judgement in the case of Vukelić v. Montenegro of 2013	64
10.3 Decision in the case of Vučeljić v. Montenegro of 2016	68
11. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS	71
11.1 SUMMARY	71
11.2 CONCLUSIONS AND RECOMMENDATIONS	71

1. FOREWORD*

1.1 On the human right to a trial within a reasonable time, the Right to a Trial within a Reasonable Time Act and reasons for the analysis of its application

The right to a trial within a reasonable time is a component of the human right to a fair trial, as guaranteed by Art. 32 of the Constitution of Montenegro and international treaties on Human Rights, Art. 6 of the European Convention on Human Rights and Art. 14 of the International Covenant on Civil and Political Rights. Systematic respect for the right to a trial within a reasonable time suggests that the justice system is efficient², which is very important for the overall quality of administration of justice and confidence in the judicial power.

On the basis of the European Convention on Human Rights (“the Convention”), the state is obliged to organize its judicial system so that it can fulfil its demands, including guarantees of the right to a fair trial within a reasonable time.³ However, in the history of the European Court of Human Rights (“the Court”) the right to a fair trial was violated most often - a violation of this right had been found in 41% of judgments from 1958 to 2015 of which more than half (22 %) was due to unreasonably lengthy court proceedings. In relation to Montenegro, of 20 judgments in which the Court found violation of the Convention by the state of Montenegro through 2015, nine judgments (45%) related to the violation of the right to a trial within a reasonable time.⁴ In the last year, the Government of Montenegro has agreed to settlement before the Court in 9 cases for the breach of this right.⁵

* Tea Gorjanc-Prelević, LL.M., editor, Executive Director of Human Rights Action – HRA.

2 To evaluate efficiency, the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe uses specific indicators: Clearance Rate - which shows how the courts deal with the influx of cases, and the time needed for processing cases - Disposition time, the number of days required to complete the case (CEPEJ, *European Judicial Systems - Efficiency and Quality of Justice*, CEPEJ studies no. 23, 2016, p. 185).

3 Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms - obligation to respect human rights: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention." http://www.echr.coe.int/Documents/Convention_ENG.pdf

4 http://www.echr.coe.int/Documents/Stats_violation_1959_2015_EN.pdf(*Length of proceedings 5, Non enforcement 4*).

5 European Commission, Montenegro 2016 report, Brussels, 9 November 2016, p. 62.

The state must provide effective legal remedies for the protection of human rights, including the right to a trial within a reasonable time. After extensively dealing with the problem of violations of this right, the Court concluded that the best protection is provided by a combination of legal remedies - one to prevent and stop further infringement, and other to claim damages when a violation of the right has already occurred.⁶

In 2007 Montenegro enacted the Right to a Trial within a Reasonable Time Act Official Gazette MNE, *Sl. list CG* 11/2007 of 13 December 2007, prescribing two remedies: a request to speed up the proceedings or request for review and a claim for just satisfaction⁷ for breach of the right to a trial within a reasonable time. Request for review - to be submitted to a court president - is a means to accelerate the proceedings and should prevent or stop violation of the right, while a claim filed with the Supreme Court ensures compensation of non-pecuniary damage when the breach already occurs. This Act entered into force on 27 December 2007 and not a single amendment has been introduced since. Meanwhile, the European Court of Human Rights concluded that both remedies provided under the Act are in principle effective, which means that they must be exhausted prior to addressing this court. However, the Court also pointed out that the assessment of the outcome of these remedies is observed in each case individually – legal remedy is “effective” in so far as it actually accelerates the adoption of a judicial decision.⁸

In March 2011 Human Rights Action (HRA) published the analysis of implementation of the Act during the first three years of its enactment (2008-2010), and now we are publishing the analysis of its application in the following five years (2011-2015). The aim is to establish the extent of application of legal means to protect the right to a trial within a reasonable time as well as whether in specific cases these remedies indeed helped accelerate the proceedings and ensure just compensation in case of violation of the rights in accordance with the Act and practice of the European Court of Human Rights.

The analysis was made as part of the project “Judicial Reform Monitoring”,

6 See judgments in cases *Scordino v. Italy*, 2006, § 182-187; *Grzinčić v. Slovenia*, 2007, § 94-96.

7 Referred to as ‘an action for fair redress’ by the European Court of Human Rights in its judgments in cases *Vukelić v. Montenegro and Vučeljić v. Montenegro*.

8 *Ibid*, § 184: The Court has on many occasions acknowledged that this type of remedy is “effective” in so far as it hastens the decision by the court concerned (see, among other authorities, *Bacchini v. Switzerland* (dec.), no. 62915/00, 21 June 2005; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; *Fehr and Lauterburg v. Switzerland* (dec.), nos. 708/02 and 1095/02, 21 June 2005; *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX; and *Holzinger* (no. 1), cited above, § 22).

conducted by HRA together with NGO Centre for Monitoring and Research (CeMI) in the period 2014-2017 with the support of the European Union and the Kingdom of the Netherlands.

1.2 Conclusions and recommendations of the first analysis for the period 2008-2010

In March 2011 Human Rights Action published the results of research “Implementation Analysis of the Law on the Protection of the Right to Trial within a Reasonable Time”⁹ for the period of 2008-2010. The conclusions of this analysis were as follows:

1. The remedies provided for by the Right to a Trial within a Reasonable Time Act - request to expedite the proceedings (request for review) and claim for just satisfaction for violations of the right to a trial within a reasonable time are underutilized, compared with the size of backlog before the courts in Montenegro;
2. Requests for review and appeals were rejected by the presidents of courts without adequate and comprehensive reasoning even in excessively lengthy proceedings;
3. Application of Art. 17 of the Act – Notification to the party that within a period not longer than four months a judge will take procedural steps - was not effective because in most situations involving such notification, the said legal provision was simply copied without stating the specific steps to be taken by the judge, while based on information received from lawyers who submitted the requests for review, in a half of these cases this time was spent without producing any results;
4. Application of Art. 18 of the Act - Admissibility of a request for review - was ineffective as only 19 were granted out of 181 requests for review lodged. In these cases the court president had formally ordered priority treatment of the case without setting a clear deadline or obligation of a judge to report on the measures taken and completion of the procedure, as prescribed by the said Article;
5. The a claim for just satisfaction for violation of the right to a trial within a reasonable time has not been an effective remedy for two reasons:

⁹ Human Rights Action (HRA), Podgorica, March 2011: <http://www.hraction.org/wp-content/uploads/HRA-Analiza-primjene-zakona-o-zastiti-prava-na-sudjenje-ENG.pdf>.

- a) misinterpretation of the conditions for bringing an action by the Supreme Court, according to which the proceedings had to be finally resolved for the redress to be awarded, and
- b) in relation to the duration of the proceedings, failure to ensure that granting of redress would lead to the desired effect of expediting the proceedings.

In relation to the Right to Trial within a Reasonable Time Act, the following amendments were suggested:

- 1) extending of an 8-day deadline set for appeals provided for by Art. 24, para 1 to 15 days,
- 2) specifying the conditions for bringing a claim for just satisfaction, in order to ensure a change of practice of the Supreme Court criticized in the conclusion under 5a,
- 3) removing the ceiling of €5,000 with regard to the amount of redress, and
- 4) prescribing mandatory urgent action in cases in which the Supreme Court upholds the claim for just satisfaction and finds a violation of the right to a trial within a reasonable time, to ensure that the claim lead to acceleration of the proceedings.

Proposed amendments to the Act were not adopted; however, in the meantime the second proposal became redundant, as the Supreme Court has improved its practice in accordance with the recommendation.

This new research on the application of the Right to a Trial within a Reasonable Time Act in the period 2011-2015 shows that the practice of the presidents of courts in acting on legal remedies provided for by this Act has changed only to some extent, as well as that a claim for just satisfaction still has no effect on acceleration of proceedings. This is discussed in more detail below.

1.3 Analysis methodology for the period 2011-2015 and access to information

The new analysis deals with the implementation of the Right to a Trial within a Reasonable Time Act during the period 2011-2015.

For the purpose of this analysis, upon a request the courts in Montenegro provided information on all cases in which requests for review had been filed, as well as appeals against the decisions rejecting requests for review and claims for just satisfaction. Proceedings before the misdemeanour courts are not the subject of this research, as they became part of the judicial system only in mid-2016.¹⁰

Most courts submitted both the requests for review and decisions on requests and appeals against decisions rejecting the requests. Decisions that have been uploaded to the website of the courts www.sudovi.me were copied from the site, while others were mostly delivered on the basis of a request for free access to information.

The Basic Court in Podgorica and High Court in Podgorica submitted their decisions on requests for review and appeals only following a decision of the Agency for the Protection of Personal Data and Free Access to Information upon the appeals procedure initiated by HRA against the decisions of the presidents of these courts to reject our requests for access to these decisions. Over an eight-month long wait on the Agency's decision in these cases has also significantly impeded the research.¹¹

Subsequently, on 1 November 2016, we requested information from basic courts in Bar, Berane, Bijelo Polje, Cetinje, Danilovgrad, Herceg-Novi, Kolašin, Kotor, Nikšić, Plav, Podgorica and Ulcinj on the time period of decision-making in cases where requests for review had been granted formally or *de facto* when the presidents of courts acted in accordance with Art. 17 and 18 of the Act, in order to assess the effect of these remedies in terms of practical acceleration of proceedings until their completion.

¹⁰ The Courts Act (Official Gazette MNE, 11/2015 of 12 March 2015, in force since 20 March 2015) – misdemeanour judges were elected according to the Courts Act Article 82 on 1 June 2016.

¹¹ The Agency was obliged to act on complaint within a 15 day deadline according to the law. This deadline was breached in this case as much as 13 times. For more information please consult the case study prepared by HRA on 12 September 2016: <http://www.hracion.org/wp-content/uploads/Studija-slucaja.pdf> (in Montenegrin).

Podgorica Basic Court did not provide the information requested¹², which, bearing in mind that the president of this court had acted in the majority of cases in line with the said articles, led to a smaller sample analysed - only slightly more than one-third, i.e. one-fourth of the total number of decisions taken on the basis of aforesaid articles.¹³

The analysis also takes into account annual reports on the work of courts,¹⁴ reports of the Ministry of Justice on the implementation of the Right to a Trial within a Reasonable Time Act,¹⁵ as well as the opinions and annual reports of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman)¹⁶.

The report below contains:

- 5) Conclusions of the analysis of decisions of the presidents of courts pertaining to requests for review;
- 6) Conclusions of the analysis of the Supreme Court rulings on claims for just satisfaction, including analysis of amounts rewarded;
- 7) Assessment of the effect of the use of notifications to the party and decisions to grant requests for review on the basis of statistical indicators;¹⁷

12 Basic Court Podgorica, Su. V br. 5/16-26 of 17 November 2016, president of court Zoran Radović: "considering the fact that the response to the requested access to information would entail creation of new information, the court has denied the request in accordance with art. 29 para. 1, item 1 of the Free Access to Information Act".

13 On 2 December 2016 HRA filed a complaint against the decision of the President of Podgorica Basic Court to deny access to the requested information, but the Agency for the Protection of Personal Data and Free Access to Information did not decide on our complaint until this report went into print on 23 January 2017.

14 Annual report on the work of the Judicial Council and overall state of the judiciary in 2015, Judicial Council of Montenegro: <http://sudovi.me/podaci/sscg/dokumenta/3775.pdf>; Annual report 2014, Judicial Council of Montenegro: <http://sudovi.me/sscg/izvjestaj-o-radu/>; Annual report 2013, Judicial Council of Montenegro: <http://sudovi.me/podaci/sscg/dokumenta/1386.pdf>; Annual report 2012, Judicial Council of Montenegro: <http://sudovi.me/podaci/sscg/dokumenta/976.pdf>; Annual report 2011, Judicial Council of Montenegro: <http://sudovi.me/podaci/sscg/dokumenta/661.pdf>.

15 "The report on the implementation of the Law on the Protection of the Right to a trial within a reasonable time for period 15 May 2012 1 April 2014", Ministry of Justice, Directorate for the Judiciary, Podgorica, June 2014: <http://www.pravda.gov.me/biblioteka?query=izvje%C5%A1taj&sortDirection=desc&pagerIndex=3> (in Montenegrin) and "The report on the implementation of the Law on the Protection of the Right to a trial within a reasonable time for period 1 January – 31 December 2015", Podgorica, 2016: <http://www.pravda.gov.me/biblioteka?query=izvje%u0161taj&sortDirection=des> (in Montenegrin).

16 Annual report 2015 and opinion with the recommendation, available at: www.ombudsman.co.me (in Montenegrin).

17 In accordance with the method applied by the European Court of Human Rights in the judgment *Vukelić v. Montenegro*, 2013, p. 67-72.

- 8) Proposals to improve judicial practice in the application of the Right to a Trial within a Reasonable Time Act;
- 9) Proposals to amend the Act and organize a special debate on the need for amendments to the Act;
- 10) Information suggesting irregularity of statistical reports in relation to the decisions on requests for review, as well as the fact that the European Court of Human Rights had not considered relevant data on the use of requests for review in Montenegro when deciding on the effectiveness of such requests in 2013 case of Vukelić v. Montenegro;
- 11) Appendix containing an overview of individual cases on requests for review, so that a reader can draw their own conclusion pertaining to the application of the Right to a Trial within a Reasonable Time Act before Montenegrin courts.

2. FREQUENCY OF THE USE OF A REQUEST TO EXPEDITE THE PROCEEDINGS AND CLAIM FOR JUST SATISFACTION

2.1 Number of requests for review and claims for just satisfaction in relation to the backlog of cases in the courts

Remedies provided for by the Right to a Trial within a Reasonable Time Act - request to expedite the proceedings or request for review and claim for just satisfaction for violations of the right to a trial within a reasonable time - were used much more frequently during the period 2011-2015 as compared to the first three years of implementation of the Act, but still very little compared to the backlog of cases in courts in Montenegro.

In the first three years of implementation of the Right to a Trial within a Reasonable Time Act (2008-2010), on average 60 requests for review and 11 claims for just satisfaction were filed annually. In the next five years (2011-2015) an average of 191 requests for review and 45 claims for just satisfaction were filed on an annual basis, which means that **over the past five years the average number of requests for review has increased three times per annum, and the number of claims for just satisfaction four times**, in relation to the first three years of implementation of the Act.

However, despite the increase, the number of filed requests for review and claims for just satisfaction in relation to the backlog of cases¹⁸ before the Montenegrin courts leads to a conclusion that these remedies are still fairly underused.

¹⁸ The term "backlog" refers to all the pending cases that date from the year preceding the year for which the annual report on the work of courts was drafted and in previous years and is taken from the annual reports on the work of the courts for the year 2011: <http://sudovi.me/podaci/sscg/dokumenta/661.pdf>, p. 46 and further on, the year 2012: <http://sudovi.me/podaci/sscg/dokumenta/976.pdf>, p. 55 and further on, and the year 2013: <http://sudovi.me/podaci/sscg/dokumenta/1386.pdf>, p. 55 etc.

Numbers of pending and backlog cases 2008-2010 and number of filed requests for review and claims

Annual reports on the work of courts	Total number of pending cases on 31 December	Number of backlog cases from the last year and earlier years	No. of filed requests for review	No. of filed claims for just satisfaction
2008 ¹⁹	48.242	18.091	33	7
2009 ²⁰	40.766	10.645	70	12
2010 ²¹	38.666	12.463	78	14

Numbers of pending cases and backlog cases 2011-2015 and number of filed requests for review and claims

Annual reports on the work of courts	Total number of pending cases on 31 December	Number of cases pending from the last year and earlier years	No. of filed requests for review	No. of filed claims for just satisfaction
2011 ²²	37.932	11.551	115	25
2012 ²³	35.546	10.474	205	67
2013 ²⁴	37.125	10.845	196	45
2014 ²⁵	35.697	9.487 (3.192 ²⁶)	221	53
2015 ²⁷	33.414	8.052 (2.437 ²⁸)	219	35

In the period 2011-2015, the number of cases in backlog (older than 1 year) was on average 10,081 annually; when this figure is compared to the average number of requests for review (191) and claims for just satisfaction filed in a year (45), we find that in the said period requests for review were submitted in only 1.9% of cases in backlog, and a claim for

19 Annual report 2008, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/44.pdf>), p. 34.

20 Annual report 2009, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/42.pdf>), p. 67.

21 Annual report 2010, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/40.pdf>), p. 40.

22 Annual report 2011, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/661.pdf>), p. 46.

23 Annual report 2012, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/976.pdf>), p. 55.

24 Annual report 2013, Judicial Council of Montenegro (<http://sudovi.me/podaci/sscg/dokumenta/1386.pdf>), p. 55.

25 Annual report 2014, Judicial Council of Montenegro (<http://sudovi.me/sscg/izvjestaj-o-radu/>), p. 48.

26 Methodology of the Annual report on the work of courts changed in 2014, and ever since as „old cases“ are represented cases older than three years, see Annual report 2014, p. 49.

27 Annual report 2015, Judicial Council (<http://sudovi.me/podaci/sscg/dokumenta/3775.pdf>), p. 31.

28 Ibid, p. 33.

just satisfaction in 0.4% of such cases.

In the period 2014-2015 the number of old²⁹ cases - a category that was introduced in that period and relates to pending cases older than 3 years - amounted to 2,814 cases on average per year. Comparing that number to the average annual number of requests for review and claims for just satisfaction, **in the past two years in cases that last longer than three years (old cases), a request for review was filed in 7% and a claim for just satisfaction in 1.5% of such cases.** Although it does not mean that in every case older than three years there has been an unjustified delay in the proceedings, for which a request for acceleration is filed, the fact that such request was submitted in only 7% of old cases, i.e. only in every fifteenth case older than three years, suggests that these remedies are still underutilized.³⁰

2.2 Backlog of cases before the courts in Montenegro

In recent years, there is a tendency of decrease in the total backlog of cases in all courts annually. According to the report on the work of courts, at the end of 2015 a quarter of cases from 2011 and previous years remained unresolved (2,437 in total).

During 2009, there has been a significant reduction in the backlog of cases from the year before and previous years by resolving a total of 7,446 cases (of 18,091 cases, according to the annual report on the work of courts in 2008, the number dropped to 10,645, according to the 2009 report).

However, after that, the trend of resolving backlog cases became negative - the number of such cases in 2009 increased from 10,645 to 12,463 in 2010. In the following year a slight decline was recorded in the number of cases in backlog to 11,551, and then another one in 2012 - to 10,474. In 2013, the number of these cases rose once again to 10,845. In 2014, the backlog was

²⁹ The term 'old cases' refers to cases older than 3 years and more as compared to the year for which the annual report on the work of courts is drafted; Report for 2014 <http://sudovi.me/sscg/izvjestaj-oradu/>, p. 49; while the term 'backlog' remains for the total number of cases in the year preceding the year for which the annual report on the work of courts was drafted and the previous years; Report for 2015, the Judicial Council <http://sudovi.me/podaci/sscg/dokumenta/3775.pdf>, p.32 (according to this report at the end of 2015 - 7250 cases remained unsolved from 2014 and previous years, given by TB indicator (total backlog) envisaged under CEPEJ guidelines). "Old", *ibid*, p. 33.

³⁰ It was also noted that the citizens address the Protector of Human Rights and Freedoms (Ombudsman) with regard to the length of proceedings, without having tried to use the remedies to accelerate the procedure stipulated by the Right to a Trial within a Reasonable Time Act (for details, see p. 11) .

reduced to 9,487³¹, and then even more in 2015 - to 8,052³² cases.

Since 2014, the methodology used in annual reports on the work of courts has changed - in addition to backlog cases older than one year (e.g. cases pending at the beginning of the reporting period on 1 January 2014 for the 2014 report, so cases from 2013 and previous years), which are presented in the tables given for CEPEJ indicators³³, in separate tables cases older than three years are presented as well, as "old cases". Thus, in the 2014 report the number of pending "old cases" refers to cases from 2010 and previous years, and in the 2015 report - pending cases from 2011 and previous years.

Table with the backlog by year

Year	No. of backlog cases (older than 1 year)
2008	18.091
2009	10.645
2010	12.463
2011	11.551 (from 2010 and earlier years)
2012	10.474 (from 2011 and earlier years)
2013	10.845
2014	9.487
2015	8.052

Year	No. of old cases (older than 3 years)
2014	3.192 (from 2010 and earlier years)
2015	2.437 (from 2011 and earlier years)

Based on the data from annual reports on the work of courts, the number of cases from 2010 and previous years dropped from 11,551 - according to the 2011 report, to 3,192 as per the report for 2014, which means that **in four years 8,352 cases or over two-thirds (72.4%) of old cases were resolved**. On the other hand, this also means that after four years there is still a backlog of 27.6%, or slightly less than a third of pending cases from 2010 and previous years. In the following year 2015, the number of old cases from 2011 and previous years was reduced from 10,474 - according

³¹ Report for 2014, p. 48.

³² Report for 2015, p. 32.

³³ CTR-case turnover ratio; DT-disposition time; ER-efficiency rate;TB-total backlog; CR-clearance rate.

to the 2012 report - to 2,437 cases, indicating that **24.3% or one-fourth of old cases from 2011 and previous years, which were mentioned in the report for the year 2012, still remain unresolved.**

In the Report on Montenegro for 2016 the European Commission specified that even though the courts are managing to cope with the influx of cases, the overall length of proceedings remain a cause for concern. Enforcement of civil and administrative decisions remains problematic, despite the introduction of the bailiff system in 2014 as the backlog of the old enforcement cases is still considerable.³⁴ The European Commission also noted that “no consistent data on clearance rate (i.e. ratio of solved cases to new cases filed) and the total number of pending cases at the end of the year is available for 2015. The reported figures suggest that there has been no significant change in performance of the courts in comparison to both 2014 and 2013. The total number of cases older than three years pending before all courts has fallen further, to 2,437 at the end of 2015 (2014: 3,192). In 2015, the disposition time, i.e. the average time from filing the case to a decision, was 162 days for first-instance proceedings in civil cases and 138 days for commercial cases (2014: 237 days for civil cases and 203 days for commercial cases). Despite this improvement, Montenegro needs to continue to work on increasing the efficiency of the judiciary, monitoring backlogs and reducing the number of cases pending.”³⁵

2.3 Enforcement cases

The Report of the European Commission has highlighted the problem of enforcement cases.³⁶ Despite a noticeable reduction in the number of enforcement cases from 162,826 at the end of 2014 to 119, 346 at the end of 2015, the backlog of enforcement cases is still considerable. The Basic Court in Podgorica - court most affected by this problem, started implementing specific measures to increase the pace of backlog reduction. A system monitoring the recovery rate, costs and duration of enforcement proceedings carried out by bailiffs at central level is in the process of being set up. Enforcement of civil and administrative decisions remains problematic.³⁷

34 European Commission, Montenegro 2016 report, Brussels, 9 November 2016, pages 14 and 15.

35 *Ibid*, p. 56.

36 *Ibid*, p. 14-15.

37 *Ibid*.

In terms of enforcement cases initiated by the court, the decision whether to propose to assign the case to a bailiff or continue the procedure with the court is left to the discretion of the party.³⁸ If a party insists that the case be assigned to a bailiff, such case is labelled by the court as finalized.³⁹ Therefore, the question is **how many of the 43,480 cases, which are considered to be resolved according to the 2014 and 2015 reports on the work of courts (162,826 and 119,346 respectively), were resolved by reassignment to bailiffs - while they are still pending, only now before a bailiff, and how many of the total number of resolved cases were indeed resolved by courts (for cases that remained under the courts' jurisdiction).**

The Chamber of Bailiffs published on their website www.javni-izvrsitelji.me Summary Report on the Work of Bailiffs⁴⁰ for 2015 with the total number of pending cases (76,419), number of solved (26,351) and backlog (50,068) cases, the cost of bailiffs work and ratio of paid and outstanding claims (28.68%) and the same data with respect to each bailiff individually.⁴¹ The report does not contain information on cases with regard to the year of filing of the initial act, or the number of cases referred to bailiffs by the courts (including these data in the report is optional under the Bailiffs Act). The Ministry of Justice has been entrusted with supervision over the legality of work of the Chamber of Bailiffs.⁴²

We propose that the Ministry of Justice ensure collection of accurate statistical data to track the fate of each enforcement case and show exactly how many cases were resolved by the courts, how many by bailiffs and in what time frame.

³⁸ Enforcement and Securing of Claims Act, art. 293 (Zakon o izvršenju i obezbjeđenju), *Official Gazette MNE* 36/11, 28/14 and 20/15: "The court shall act, in accordance with this Law, in cases where a public bailiff has competency to do so, until the commencement of work of public bailiffs to be appointed in accordance with separate law.

After commencement of the work of public bailiffs, the cases referred to in paragraph 1 of this Article, at the proposal of the judgment creditor, shall be assigned to a public bailiff for further action, in accordance with this Act.

³⁹ As the court is no longer in charge the cases are "discharged" in the courts' registries. See, for example, the Ministry of Justice's Report on the implementation of the Protection of Right to Reasonable Time Act, for the period of 1/1/2015-12/31/2015, p. 8, "Basic Court Kotor", p. 2: "From delivery of the case file to the public bailiff for further action the court is no longer monitoring the case on the request for review. Also, report of the Basic Court in Bijelo Polje, 3 November 2016, point 7: "The case I.273/12 closed in 29 October 2014 delivered to the public bailiff on the proposal of the enforcement creditor".

⁴⁰ Public Bailiffs Act (*Official Gazette of MNE*, 61/11), art. 72.

⁴¹ Annual report on the work of public bailiffs for 2015: <http://www.javni-izvrsitelji.me/images/izvjestaj-2015.pdf> (in Montenegrin).

⁴² Public Bailiffs Act, art. 73, para. 1.

3. REFUSING A REQUEST TO ACCELERATE THE PROCEEDINGS - REJECTING AND DISMISSING A REQUEST FOR REVIEW

Rejection and dismissal of a request for review represents a negative decision for the party in relation to their request to expedite the procedure. Such decisions were made in a total of 702 cases or 73.5% of the total submitted requests (956) in the reporting period 2011-2015.

3.1 Dismissed requests for review

Of the 702 decisions to refuse a request to accelerate the proceedings (requests for review), in 195 cases the request was dismissed on procedural grounds, which means that one-fifth of the total number of submitted requests were dismissed on this basis. These reasons usually include filing of a request for review in cases that ended in a final decision, re-filing of a request for review prior to the expiration of a 6-month deadline from the filing of the earlier one, filing of a request in procedures on extraordinary legal remedies or by persons who by law cannot seek acceleration of the proceedings.

3.2 Rejected requests for review

In the period 2011-2015 half of the total requests for review filed were rejected. Only 9% of appeals against the decision to reject the request were adopted. In 10% of cases the presidents of courts unjustifiably rejected requests for review and appeals in procedures that were very lengthy, at times even over thirty years long, acting contrary to the criteria set out in Art. 4 of the Act and practice of the European Court of Human Rights.

The Right to a Trial within a Reasonable Time Act prescribes in Art. 14: "The president of the court shall reject a request for review when s/ he considers that it is manifestly ill-founded" and in Art. 16: "When the president of the court, upon completion of the procedure, determines

that the court did not violate the right to a trial within a reasonable time, s/he shall adopt a decision to reject a request for review as unfounded.”

3.2.1 The number of rejected requests for review and appeals

In the period 2008-2010, 181 requests for review were submitted, of which 73 were rejected (40.3%), 19 granted (10.5%); in 76 cases (42%) the party was notified that the proceedings would be accelerated on the basis of Art. 17, and the remainder (13 or 6.3%) was dismissed due to procedural flaws or withdrawn (resolved otherwise).⁴³

In the period 2011-2015, of 956 requests for review lodged, 507 were rejected (53%), 104⁴⁴ granted (10.9%). The remaining 150 (15.69%) were resolved by delivering notification to the party that the proceedings would be accelerated on the basis of Art. 17. The rest (195 or 20.4%) were dismissed due to procedural flaws or withdrawn.

So, in percentage terms, as compared to the first three years of implementation of the Act, the number of rejected requests increased by 13% and in the observed period every other request was rejected.

No. of requests for review 2011-2015 and the outcome of proceedings

Year	Adopted Requests	Rejected requests	Information provided under Art. 17	Information under Art. 18	Dismissed or decided in another way	TOTAL
2011	0	66	27	7	12	115 ⁴⁵
2012	6	124	28	8	39	205
2013	10	108	0	0	78 ⁴⁶	196
2014	45	93	46	5	32	221
2015	22	116	47	1	34 ⁴⁷	219
TOTAL	83	507	150	21	195	956

⁴³ Analysis of the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time, HRA, March 2011: <http://www.hracion.org/wp-content/uploads/HRA-Analiza-primjene-zakona-o-zastiti-prava-na-sudjenje-ENG.pdf>.

⁴⁴ Adopted requests are in columns “adopted requests” and „the notice under Art. 18“(as per Article 18 adopts the request for review and gives the deadline in which the judge must take certain measures and notify the President of the Court). In the annual reports on the work of the courts this two functions of the same Article are separate, but together make a group of adopted requirements.

In the period 2008-2010, only 8 appeals were lodged against 73 decisions rejecting a request for review, i.e. only in 11% of cases. Of these 8 appeals one was adopted (12.5%), 6 were rejected (75%), and one dismissed (12.5%).

In the period 2011-2015, 241 (47.5%) appeals were lodged against 507 decisions rejecting a request for review, of which as many as 219 were rejected (91%).⁴⁸

Compared to the first three years of implementation of the Act, there has been a significant increase of 36.5% in the number of appeals against decisions to reject a request for review, as well as a very small percentage of adopted appeals (9%).

Number of appeals lodged and the outcome

Year	No. of appeals lodged	Rejected appeals	Adopted appeals
2011	20	17	2
2012	64	60 ⁴⁹	4
2013	39	29	10
2014	76	73	3
2015	42	40	2
TOTAL	241	219	21

3.2.2 Reasons for rejecting requests for review and appeals

Of the 507 rejected requests for review, 205⁵⁰ (40.4%) were rejected as manifestly unfounded pursuant to Art. 14 of the Act, while 302 (59.6%) were rejected because it has not been established that the Court violated

⁴⁵ A total of 80, of which 17 unresolved.

⁴⁶ A total of 36 requests for review, of which 21 unresolved.

⁴⁷ For years 2014 and 2015 data are presented on the basis of material collected in this study, while the annual reports on the work of courts for these years do not include separate statistics on dealing with appeals.

⁴⁸ For years 2014 and 2015 data are presented on the basis of material collected in this study, while the annual reports on the work of courts for these years do not include separate statistics on dealing with appeals.

⁴⁹ One more case resolved in another way is added.

⁵⁰ In 2011 in 9 cases, 2012 in 112 cases, 2013 in 60 cases, 2014 in 12 cases and in 2015 in 12 cases.

the right to a trial within a reasonable time under Art. 16 of the Right to a Trial within a Reasonable Time Act.

As regards the quality of reasoning for the decision on a request for review or decision on an appeal, there has been some improvement as compared to the previous period (2008-2010), when the reasoning for these decisions only copied the text of the law, without providing an overview of judge's actions in the case⁵¹. Decisions adopted in the past five years included as a rule a detailed description of actions of a judge, listing chronologically all steps taken in the procedure whose acceleration had been sought.

Requests for review were rejected as manifestly ill-founded pursuant to Art. 14 of the Act, as follows from the reviewed case law, in cases that have just been initiated, as well as in those in which the procedure was completed, i.e. a final decision adopted. In this type of decisions (205) there were no controversial elements observed in the reasoning provided for decisions to reject a request.

Pursuant to Art. 16 of the Act, request for review may be rejected as unfounded if filed in a case "in which it has been established after the procedure was completed that the court did not violate the right to a trial within a reasonable time". Therefore, it is necessary to examine actions of the court in the case as a whole, and not just recently, e.g. in relation to the work of a judge currently handling the case.

There is no doubt that the majority of decisions to reject a request for review pursuant to Art. 16 were made based on sound reasoning: because the case objectively was at the beginning or a decision has just been adopted or there were objective obstacles to faster handling or there was no undue delay for other reasons, so there was no breach of the party's right to a trial within a reasonable time. Based on the material analysed it can be concluded that of 302 requests for review, which were rejected on the basis of Art. 16, 214 or 71% were justifiably rejected.

There is also a number of decisions rejecting a request for review that legal professionals may have different views about *vis-à-vis* their justification. There are 38 (12%) such decisions.

⁵¹ See "Implementation analysis of the Law on the protection of the Right to Trial within a Reasonable Time", Human Rights Action, 2011, p. 7 and 8.

However, in 50 decisions rejecting a request for review (17% requests rejected under Art. 16, or 10% of the total number of requests rejected)⁵², requests for review were in our opinion clearly unjustifiably rejected, contrary to the criteria of Art. 4 of the Act⁵³ and standards of the European Court of Human Rights practice. Court presidents are required to apply this practice also pursuant to Art. 2 of the Act.⁵⁴ Only in 1/5 cases (10) such actions were remedied in the appeals procedure.

Despite the described enormous length of proceedings, over thirty years for example, the established illegal inaction of the court⁵⁵, multiple

52 Such cases are listed below, in footnotes 60-70 (22 cases). Here are the others: Basic Court in Bar Su. 1/13 employment from 2010 was not adjudicated for over three years, Su. 5/13 enforcement procedure from 2007, Su. 1/14 enforcement procedure from 2007, Basic Court in Berane Su. 1/14 expropriation from 2008, Basic Court in Bijelo Polje Su. 2/14 labour dispute from 2010, Basic Court in Cetinje Su. 12/12 payment from the deposit lasting 2 years, Basic Court in Herceg-Novi Su 82/11 payment of wages from employment from 2003, Su. 9/2012 marital property was not adjudicated since 2007, Su. 10/14 compensation for war captivity, case was not completed in a part regarding damages for mental anguish from 2000, Basic Court in Kolašin Su. 12/12 enforcement case, no adjudication for two years, while the judicial administration claims it does not exist, Su. 3/13 civil proceedings conducted since 2002, Basic Court in Kotor Su. 31/12 enforcement case lasting since 2000, Su. 123/12 case regarding family relations from 2006, adjudicated once, as of 2010 again at the first instance, Su 91/13 enforcement case from 2006, Su. 139/15 case regarding property rights from 1999, adjudicated once, was interrupted for six years, Basic Court in Nikšić Su. 1/12 case from 2002, Basic Court in Podgorica Su. 23/12 to determine the rent on behalf of lost support in the case from 1998, Su. 30/12 to execute an interim measure from 2011, Su. 39/12 case regarding the execution of a decision of child support from 2010, still not adjudicated, Su. 56/12 in the case for deletion of mortgage that started in 2004, Su. 16/13 damages for physical injuries caused by traffic accident started in 2009, Su. 20/14 case regarding non-pecuniary damages from 2012 in which preliminary hearing has not yet been held, Su. 46/14 case from 2006, procedure continued in relation to the applicant, and request for review was rejected because the court did not consider that the applicant had the party legitimacy in the proceedings, Su. 50/14 pension claim lasts 3 years and 6 months, first instance decision was not adopted, Su. 6/15 enforcement case from 2006 not completed, Su. 27/15 earnings claim from 2010, repealed once (2013), Su. 37/15 enforcement case from 2006, Su. 38/15 case regarding employment from 2010, repealed once (2013); (28 cases).

53 "In deciding on legal remedies pursuant to Article 3 of this Act, the following shall be taken into account:

- complexity of the case in factual and legal sense;
- conduct of the applicant;
- conduct of the court and of other state authorities, local self-government authorities, public services and other holders of public office;
- the best interest of the applicant."

Art. 4 of the Right to a Trial Within a Reasonable Time Act, op.cit, "Criteria".

54 "The length of a reasonable time shall be determined in accordance with the practice of the European Court of Human Rights" (Art. 2).

55 This refers to the postponing of the court session and executing judgment in considerably longer period of time than prescribed by law, which should be considered in the context of the scale "behavior of Court", on the basis of Art. 4 of the Act. In relation to the deadlines, the Law on Civil Procedure (*Official Gazette of MNE* 22/2004 28/2005, *Official Gazette of MNE* 47/2015) stipulates in Art. 295 st. 2: "The main hearing will be held no later than 60 days from the date of the preliminary hearing." Art. 319, paragraphs 1 and 2: "The main hearing can not be postponed for an indefinite period. The main hearing can not be postponed for a period longer than 30 days, except in cases of Art.222 (when some evidence will not be able to be carried out within a reasonable time, then the court must determine the deadline by which they will await the performance of that evidence or if the proof performed abroad), and Art.

terminations and other delays allowed for by the judicial system, it was nevertheless decided that a request for review or an appeal had been unfounded, because the parties proposed new evidence, the judge was busy with other cases, etc., all of which are the reasons that do not justify lengthy proceedings in the opinion of the European Court of Human Rights. In this regard, we recall the views of the European Court of Human Rights in similar cases: that the judicial proceedings lasting 30 years is a "denial of justice"⁵⁶; that multiple revoking of decisions may in itself indicate serious shortcomings in the judicial system⁵⁷; and that it is the court's obligation to control the proceedings and decide which evidence are to be presented.⁵⁸

For example, requests for review were also rejected in cases dating back to the 80s and 90s of the twentieth century, or the cases that lasted ten years or more, or those that lasted 4-5 years, but were of urgent nature.

329, paragraph 2 (when the court referred for mediation, then the deadline to reach an agreement is 60 days). Article 340, paragraphs 2 and 3: The court will deliver a judgment no later than 30 days after the conclusion of the trial. As the time of the judgment refers to the day when the judgment is made in writing. If the judge exceeds the terms of p. 2 of this Article he is obliged to inform the court president of the reasons for exceedance in written form; The Criminal Procedure Code (*Official Gazette of MNE* 57/2009, 49/2010.47/2014.58/2015): Art.304 p.2 The president of the Chamber will determine the main hearing not later than two months after the confirmation of indictment, Article 311: "The president of the Chamber may postpone the day of the trial no longer than 15 days by order of important reasons, the motion of the parties and defense attorney or ex officio", Article 378: "The published verdict must be made in writing and dispatched within one month after publication and in complicated matters and as an exception, within two months".

56 See judgment *Stakic v. Montenegro*, 2012: "The controversial procedure was therefore within the jurisdiction of the Court *ratione temporis* for a period of more than eight years and six months and still was open in the first instance, and before that date has already passed twenty-four years. ... Although it may be accepted that some requirements for compensation are more complex than the other, the Court does not consider that this requirement of such complexity that this would not justify this big length of the proceedings. Neither the fact that the disputed procedure does not require a priority or emergency action justifies procedural delay of so many lengths which can even be considered also as *de facto* denial of justice" (p. 47 and 48).

57 "The Court recalls that a re-review of the case after remitted the case back for retrial may show serious shortcomings in the judicial system of the State concerned", ECtHR judgment in the case *Bujković v. Montenegro*, 2015, paragraph 41:<http://sudovi.me/podaci/vrh/dokumenta/2155.pdf>.

58 "While it is true that the applicants contributed, to a certain extent, to the prolongation of the case, on the opinion of the Court the delay mainly happened due to the fact that the first instance court did not effectively control the proceedings. That court was the one who had the authority to decide how to conduct the proceedings, and particularly which evidence to take and how to appreciate the actions and omissions of the parties, bearing in mind all the procedural requirements guaranteed by Article 6 § 1 of the Convention", the judgment of the ECtHR *Uljar and others against Croatia*, paragraph 37 (taken from "The right to trial within a reasonable time," Tea Gorjanc-Prelević, Sarajevo 2009: <http://www.hracion.org/?pageid=178>; similar is the judgment *Popović v. Serbia* (same source), paragraph 34; and similar judgment *V.A.M. v. Serbia* (same source) paragraph 109.

Furthermore, requests for review were rejected in the cases initiated more than thirty years ago: in 1980⁵⁹ and 1982⁶⁰, more than twenty years ago - 1989⁶¹, 1993⁶² and 1995⁶³, more than ten years ago, in 1999⁶⁴, 2000⁶⁵, 2002⁶⁶, 2003⁶⁷, and more than 8 years ago in 2006⁶⁸ and 2007⁶⁹.

Illustrative example thereof is the Basic Court in Kotor, with a large number of lengthy cases⁷⁰, where over a five-year period of 118 requests for review only five were granted⁷¹. Requests for review were rejected in enforcement cases too - which are considered urgent by law - one of which was initiated in 1999 and had at that time already lasted for 13 years,⁷² while the other had lasted for 11 years⁷³, on the grounds that a number of procedural steps had to be taken and the Supreme Court's position awaited concerning the application of relevant articles of the law; in a labour dispute dated 2001, also an urgent case by law, which had at the time of lodging of a request lasted for 10 years⁷⁴, on the grounds that by filing multiple appeals and requests the parties had contributed to the length of proceedings; in a dispute concerning divorce, child custody and

59 Su. 36/11 Basic Court Bar.

60 Su. 3/12 Basic Court Berane.

61 Su. 7/14 Basic Court Herceg-Novi.

62 Su. 3/13 Basic Court Danilovgrad.

63 Su. 2/13 Basic Court Berane.

64 Su. 57/12 Basic Court Kotor.

65 Su. 11/12, Su. 3/14 and Su. 10/14 Basic Court Herceg-Novi.

66 Su. 124/15, Su. 132/15 OS Kotor, Su. 2/13 and Su. 3/13 Basic Court Kolašin and Su. 2/12 Basic Court Nikšić.

67 Su. 10/12 Basic Court Herceg-Novi.

68 Su. 17/12 Basic Court Herceg-Novi, Su. 132/12, Su. 177/12, Su. 130/15, Basic Court Kotor.

69 Su. 5/13 and Su. 1/14 Basic Court Kolašin, Su. 9/12 Basic Court Herceg-Novi, Su. 115/14 Basic Court Kotor, Su. 3/13 Basic Court Nikšić.

70 In the report on the work of Courts for 2011 (<http://sudovi.me/sscg/izvjestaj-o-radu/>) P. 38, the number of cases from 2010 and previous years in the Basic Court in Kotor was 1076, in the Report for 2012, P. 43, the number of cases from 2011 and older was 1154, in the report for 2013, the number of cases from 2012 and previous years was 1506, of which 55 cases from 2003 and previous years, while in the report for 2014 changed the term "old cases" so in that report "old cases" are those from 2010 and earlier years, as it was then 325, while in 2015 was 162 cases from 2011 and older, with 1002 as the subject of this court delegated other courts.

71 IV-2-Su. 44/14, IV-2-Su. 174/14, IV-2-Su. 215/14, IV-2-Su. 216/14, IV-2-Su. 217/14. Even these five requests, interestingly, are not recorded as adopted in the annual report on the work of courts in 2014 (see Annual Report on the work of courts in 2014, P. 46).

72 I. 246/10/01.

73 I. 63/10/00.

74 P. 273/11/01.

alimony, also urgent by law, which had lasted for 8 years at the time of lodging of a request for review, where the requests were filed by both parties⁷⁵; in a probate case which had lasted for 8 years at the time of filing of a request⁷⁶; in a case in which the first instance decision had not been adopted for seven years, arguing that “a lot of effort and work have been invested” in the case⁷⁷, etc. However, it should be noted that this court, which by law should have 15 judges and a court president, has been working since 2011 with fewer judges than the law requires, and in the past two years with as many as 8 judges less, so the court president decided on requests for review by taking into account the extraordinary burden on the court.⁷⁸

In several basic courts not a single decision was adopted in the past five years granting a request for review, although all these courts have considerable backlog of cases (in the Basic Court in Berane of 24 requests for review lodged not one has been granted, or of 20 requests lodged with the Basic Court in Bijelo Polje, 27 with the Cetinje Basic Court, 39 with the Basic Court in Herceg-Novi, 20 with the Nikšić Basic Court or 3 requests lodged with the Basic Court of Plav).⁷⁹

Basic Court in Berane rejected a request for review in the case for damages for injury sustained in a car accident which was initiated in 1982 because the decisions were “subject to appeal”⁸⁰. Also, Basic Court in Herceg-Novi rejected the request in the case for compensation of non-pecuniary damage from an accident, which at that moment had lasted for 9 years in the first instance⁸¹, because it was “a complex case with multiple expert witness testimonies”⁸². It should be noted at this point that the European Court of Human Rights has held that the interest of the applicant in cases of damages to victims of traffic accidents is particularly large and that these

75 P. 548/11/06.

76 O.252/09/07.

77 P. 717/07.

78 Information put forward by the President of the Basic Court in Kotor, Branko Vučković, at the hearing on the draft report on 16 December 2016.

79 Basic Court Berane in 2011 had 229 old cases, 61 cases in 2012, 146 in 2013, 15 in 2014, 7 in 2015 older than 3 years; Basic Court Bijelo Polje in 2011 had 275 old cases, 53 in 2012, 241 in 2013, 22 in 2014, and in 2015 had 21 cases older than 3 years; Basic Court Cetinje in 2011 had 398 old cases, 53 in 2012, 224 in 2013, 108 in 2014, and in 2015 57 cases older than 3 years; Basic Court Nikšić in 2011 had 459 old cases, 222 in 2012, 665 in 2013, 110 in 2014 and in 2015 had 72 cases older than 3 years; while the Basic Court Herceg-Novi in 2011 had 386 old cases, 246 in 2012, 487 in 2013, 158 in 2014, and in 2015 had 120 old cases.

80 P. 654/12.

81 Bio u procesu od 19.05.2009. do 02.03.2010 pa je zbog toga promjenio broj

82 The case was halted from 19/05/2009 to 2/3/2010 and therefore its number was changed.

cases should be addressed urgently.⁸³ In the case dated 1995 regarding housing allocation a request for review was rejected because the case “had its own dynamics” and had been quashed five times by a high court, but also upon a request for review⁸⁴. Basic Court in Herceg-Novi rejected a request for review in the case for the payment of wages initiated in 2003 because “the plaintiff contributed to the volume of the case of 1773 pages”⁸⁵; requests were also rejected in a debt-related case, where the claimant was 100 years old, which at the time of filing of a request had lasted for 12 years⁸⁶, in the case relating to division of property, which had at the time of filing of a request already lasted for 25 years (!) and in which a request for review had twice been rejected on the grounds that “the length of the proceedings has not been the fault of the court” (!?)⁸⁷ (request for review was rejected the first and then the second time after the first decision was overturned by the High Court; only after rejecting a request for the second time, the High Court reversed the decision and adopted a request for review in the third decision).

Unjustified rejection of requests for review and appeals may also be illustrated by the fact that **of a total of 113 upheld claims for just satisfaction before the Supreme Court, in 31 (27.43%) or more than 1/4 of the cases this court established a violation and awarded fair redress even though the presidents of courts had initially rejected both the request for review and the appeal.** There were two such cases in 2011⁸⁸, ten in 2012⁸⁹, in 2013⁹⁰ nine, seven in 2014⁹¹ and three cases in 2015⁹². This indicates that the courts’ presidents had unjustifiably rejected more than 1/4 of requests for review and appeals in the cases resolved before the Supreme Court, i.e. cases in which a claim for just satisfaction was filed with the Supreme Court. Claims were, however, filed in only 5.7% of cases in relation to the total number of cases in which a request for review had been submitted and rejected.

83 See e.g. judgment *Poje v. Croatia*, 9 March 2006, p. 3, paragraph 24 “special diligence is required in disputes relating to compensation for victims of road accidents”, <http://hudoc.echr.coe.int/eng?i=001-148966>.

84 P. 840/12.

85 P. 483/10-03.

86 P. 733/11-00.

87 Rs. 3/09-89.

88 Tpz. 6/11 and 14/11.

89 Tpz. 1/12, 2/12, 5/12, 8/12, 11/12, 12/12, 22/12, 35/12, 37/12, 39/12, 45/12, 46/12 and 48/12.

90 Tpz. 1/13, 3/13, 4/13, 8/13, 10/13, 15/13, 17/13, 24/13, 25/13, 26/13, 28/13, 40/13, 43/13.

91 Tpz. 4/14, 14/14, 15/14, 32/14, 36/14, 37/14, 41/14, 44/14.

92 Tpz. 1/15, 17/15 and 31/15.

During the discussion at the round table on the occasion of the draft of this report the opinions of Supreme Court judges from the Council acting on claims for just satisfaction were presented according to which the fact that the Supreme Court upheld a claim for just satisfaction and awarded compensation does not necessarily mean that the court president had erroneously rejected a request for review in the same case.

However, according to our understanding of both decisions, decision of the court's president to reject the request for review as well as the Supreme Court's judgment on the claim for just satisfaction are to establish existence or absence of breach of the right to a trial within a reasonable time in the same proceedings, and the existence of conflicting decisions is contradictory.

In cases of excessively lengthy proceedings, the presidents of courts - in our opinion - should not reject requests for review, but ensure that the proceedings be completed fast either by granting the request or notifying the party in cooperation with the judge on the basis of Art. 17 that the case would be completed within four months, or that within that period actions would be taken that lead to its completion.

Bearing in mind that in deciding on a request for review, on the basis of Art. 16, it is necessary to take into account handling of the case by the court as a whole, and not only recently, e.g. in relation to a judge currently in charge of the case, presidents of courts should take note of how long the procedure lasted in total, what was the period of inactivity that can be attributed to the court system, and in accordance with these findings grant the request and determine deadline for taking specific actions, as well as a deadline for the judge to notify them on actions taken, in accordance with Art. 18 of the Act.

If a judge who is at the moment in charge of the case does not delay the proceedings, but takes procedural steps within statutory deadlines and conducts the proceedings in accordance with the principle of concentration of evidence, the presidents of courts could, in the described excessively lengthy cases, following written communication with the judge, in terms of Art. 17 of the Right to a Trial within a Reasonable Time Act notify the party that the case would be completed within a period of 4 months or that within that period actions would be taken that lead to its completion.⁹³

⁹³ "If the judge notifies the president of the court in a written report of any other document that certain actions will be done and/or decision made no later than 4 months after the receipt of request for review, the president of the court shall notify the party thereof and thus finalize the procedure upon the request for review" (Art. 17 of the Right to a Trial within a Reasonable Time Act).

Court presidents point out that the very request for review has an impact on a judge to speed up the proceedings and that therefore it is not always necessary to grant the request in order to accelerate the procedure. However, granting of the request or a positive response of a court president in terms of Article 17 is very important for the party who submitted the request, particularly in unreasonably lengthy proceedings.

Bearing in mind that the Right to a Trial within a Reasonable Time Act obliges the court to protect human rights of the parties and prevent their violation, as well as that a positive outcome of the procedure upon a request for review in the proceedings lasting beyond a reasonable time limit certainly contributes to confidence in the work of courts, we believe that there is no justification for the reluctance to adopt requests for review in lengthy cases - where there are grounds, or failure to notify the party in line with Art. 17.

According to Art. 16 of the Act, presidents of courts may reject a request for review only if they determine that the court has not violated the right to a trial within a reasonable time, and due to such legal wording the above decisions to reject requests for review in unreasonably lengthy cases may appear particularly unfair to parties and contrary to the practice of the European Court of Human Rights. The said Court expressed the view that for the judicial system of the Member States the most effective solution is a remedy designed to expedite the proceedings in order to prevent it from becoming excessively long, while it also prevents a finding of successive violations in respect of the same set of proceedings.⁹⁴ This type of remedy is “effective” in so far as it hastens the decision by the court concerned.⁹⁵

94 Judgment *Scordino v. Italy*, paragraph 183: “The best solution in absolute terms is indisputably, as in many spheres, prevention. The Court observes that it has stated on many occasions that Article 6 § 1 imposes on the Contracting States the duty to organize their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Süßmann v. Germany*, 16 September 1996, § 55, Reports 1996-IV, and *Bottazzi*, cited above, § 22). Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach a posteriori, as does a compensatory remedy of the type provided for under Italian law for example.”

95 *Ibid*, paragraph 184: “The Court has on many occasions acknowledged that this type of remedy is “effective” in so far as it hastens the decision by the court concerned (see, among other authorities, *Bacchini v. Switzerland* (dec.), no. 62915/00, 21 June 2005; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; *Fehr and Lauterburg v. Switzerland* (dec.), nos. 708/02 and 1095/02, 21 June 2005; *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX; and *Holzinger* (no. 1), cited above, § 22).”

Therefore, in deciding on requests for review or requests to accelerate the proceedings it should especially be borne in mind that the European Court of Human Rights considers that these should serve as a means of prevention and acceleration in cases where undue delay has still not occurred, but circumstances indicate that it would, as well as in those cases where repeated delays should be prevented.

4. ACCEPTING A REQUEST TO EXPEDITE THE PROCEEDINGS – NOTIFICATION TO THE PARTY AND GRANTING OF A REQUEST

Notifying the party that the procedure would be accelerated in accordance with Art. 17 of the Right to a Trial within a Reasonable Time Act and granting of a request for review under Art. 18 of the Act represent positive decisions for the party that allow for acceleration of the proceedings. Such decisions were taken in 254 cases total, or 26.5% of the total number of submitted requests for review (956) in the reporting period 2011-2015.

In 150 cases (15.7%) the party received a notification, and in 104 (11%) a decision granting the request to speed up the procedure (request for review).

4.1 Notification to the party - application of Article 17 of the Act

Conclusion of proceedings upon a request for review by notifying the party that within four months a decision would be adopted, in accordance with Art. 17 of the Act, was recorded in relation to 15.7% of filed requests for review, and has been significantly less frequent than in the first three years of implementation of the Act. In 2/3 of the cases in the sample this did not contribute to acceleration of proceedings in due time.

The Right to a Trial within a Reasonable Time Act in Art. 17 provides:

“If a judge in a report or other written act notifies the court president that during the period, which may not be longer than four months from the receipt of the request for review, certain procedural steps would be taken, i.e. a decision made, the president of the court shall notify the party thereof and thus finalize the procedure upon the request for review.”

Of 956 requests for review lodged in the reporting period (2011-2015), in 150 cases (15.7%) the party was notified in keeping with Art. 17 of the Act. Deciding in this way was much less frequent than in the first three

years of implementation of the Act (2008-2010), when 76 requests for acceleration were resolved in this manner out of 181 submitted, or as much as 42%.

Neither the annual reports on the work of courts nor the report of the Ministry of Justice on the implementation of the Right to a Trial within a Reasonable Time Act in the period 15 May 2012 - 1 April 2014 contain information on the number of cases of the mentioned 150 in which actual steps had been taken in line with the notification to the party.

However, in the Report on the implementation of the Right to a Trial within a Reasonable Time Act for the period 1 January 2015 - 31 December 2015, the Ministry of Justice did report on the actions of courts taken in cases in which a notification in terms of Art. 17 of the Act had been delivered⁹⁶, which is in principle an important step towards transparent application of remedies for accelerating proceedings and understanding their effectiveness.

Following the example of the method employed by the European Court of Human Rights in its 2013 judgment in the case of *Vukelić v. Montenegro* when the Court considered whether a request for review had been an effective remedy in the domestic system, in order to assess the effectiveness of requests for review which were granted pursuant to Art. 17 of the Act, when a notification is delivered to the party asserting that a certain action would be taken or a decision made during a period not exceeding 4 months, or under Art. 18 of the Act in which case the court president requires that a judge take action within a period not exceeding 4 months, while keeping in mind that the aim of expediting the proceedings is to make a judicial decision as soon as possible at least before that court and finalize the case, we measured the time - within the available sample - from the date of delivering of a notification, i.e. adopting of a decision to grant a request for review, to the date of the court's decision. The obtained results have been divided into cases in which a decision was made in less than four months, within four months to a year, and within a period of over a year, and are expressed as percentage in relation to the number of cases that were available as a sample.⁹⁷

Before the Appellate, Administrative and high courts, in the reporting

⁹⁶ The report on the implementation of the Law on the Protection of the Rights to Trial within a Reasonable Time for the period 1 January – 31 December 2015: www.mp.gov.me.

⁹⁷ The method has been established on the model of the method used in the decision of the European Court of Human Rights in case *Vukelić v. Montenegro*, when assessing whether the request for review was an effective remedy in the domestic system (verdict *Vukelić v. Montenegro*, 2013, pp. 67-71).

period a notification was delivered to the parties in line with Art. 17 of the Act in 62 cases in total (the Appellate Court: 4 cases in 2014, the Administrative Court: 2 cases in 2011, 5 in 2014, 20 in 2015, the High Court in Bijelo Polje: 1 in 2011, 3 in 2012, 3 in 2014, the High Court in Podgorica: 7 in 2011, 17 cases in 2014).

With regard to the Administrative Court, the practice of acting on notification referred to in Art. 17 is transparent and a conclusion can be made that in cases where the parties had been notified that a decision would be made within a specified time period, as a rule, so it was⁹⁸. Apart from a few exceptions, the Administrative Court uploads all its decisions to website www.sudovi.me, thus, in order to check whether the Court has acted in accordance with the Court President's order under the decision or notification of the request for review, one can easily keep track of the date of the decision.

When a notification is delivered in cases before the Appellate Court and high courts stating that a decision would be made by a due date, and if decision-making does not include a hearing or presentation of evidence, these deadlines are generally complied with, judging by the date of decisions published on website www.sudovi.me for the previous years and report of the Ministry of Justice on the work of these courts in 2015.⁹⁹

Before basic courts and commercial courts/Commercial Court¹⁰⁰ in the period 2011-2015 there was a total of 88 cases in which the party was served with a notification pursuant to Art. 17 of the Right to a Trial within a Reasonable Time Act.

In order to determine whether a notification under Art. 17 of the Act has been observed, we obtained information from the basic courts and lawyers about the date of completion of proceedings before that court following the delivery of a notification to the party.

Of the 37 cases (42% of the sample) in which a request for review had been lodged with the aim of finalizing the case, rather than taking specific action, it was found that in 18 cases (48.6%), following the notification

98 More details for Administrative Court see below, p. 114-120.

99 The Report of the Ministry of Justice on implementation of the Law on the Protection of the Right to Trial within a Reasonable Time for period from 1 January 2015 to 31 December 2015. Podgorica, January 2016: <http://www.pravda.gov.me/biblioteka?query=lzvj%u0161taj&sortDirection=desc>, page 19 and 20 regarding the High Court and Administrative Court.

100 The Commercial Court Podgorica and Commercial Court Bijelo Polje had been transformed to Commercial Court of Montenegro since 2014.

to the party, the proceedings pending the adoption of a first instance decision or completion of an enforcement case lasted for another year to 4 years and 9 months.¹⁰¹ In seven cases proceedings lasted between 4 months and a year¹⁰², and in 12 cases proceedings lasted less than 4 months¹⁰³. At the moment of drafting of this report, 22 cases have been ended in a final decision, while 11 of them were still pending, one of them even from 1992 and one from 2006.¹⁰⁴

In conclusion, despite notifying the party that a decision would be made no later than four months of the receipt of a request for review, in relation to the examined sample **in almost half the cases (48.6%) the proceedings lasted for a minimum another year to maximum four years and nine months, and in 21.2% cases from four months to a year, indicating that in 2/3 cases before the basic courts this remedy was not effective in terms of expediting of proceedings within the legal deadline of no more than four months.**

4.2 Granted requests for review - application of Article 18 of the Act

In total, 11% of filed requests were adopted, almost as in the first three years of implementation of the Act. In 2/3 of cases from the sample analysed, the adoption of a request for review has not led to acceleration of the process within the legal deadline of 4 months. Only in every fifth decision granting a request for review the court's president specified a timeframe for taking action and ordered that feedback be provided about the action taken.

101 4 years and 9 months: P. 242/11/06 BC Kotor, 4 years: P. 620/11/93 BC Kotor, 3 years and 10 months: P. 662/11/07 BC Kotor, 3 years P. 1161/10/92 BC Bijelo Polje, 3 years and 7 months: O.332/10-99 BC Herceg Novi, 2 years: P591/11/02 Kotor, P. 965/10 Kotor, I.376/10/06 Kotor, I.273/12 Bijelo Polje, Rs.3/09-89(P. 330/16) BC Herceg-Novi, 1 year and 11 months P. 488/06 BC Bar, 1 year and 10 months: Rs.60/11 Bijelo Polje, 1 year and 9 months: I.53/2010 Cetinje, 1 year and 8 months: P. 325/09 Bijelo Polje, 1 year and 1 month, P. 106/12 Cetinje.

102 11 months: I.388/10 BC Kotor, P. 213/12 BC Bar, 10 months P. 72/09/05 BC Kotor P. 838/09 BC Bar, 9 months Iv. 1610/10 BC Danilovgrad, 6 months I.667/2008 BC Danilovgrad, and 5 months P. 78/12 BC Cetinje.

103 1 month P. 640/11-85 BC Herceg-Novi (lawyer Bulatović Batrić), P.125/15 BC Herceg-Novi, 2 months P.mal.9/12 OS Cetinje, P.319/14-85 BC Herceg-Novi, Gž.2380/14 BC Bijelo Polje (lawyer Radulović Veselin) 3 months BC Danilovgrad K.39/13 and BC Bijelo Polje I.2240/03, P.330/16 BC Herceg-Novi, P.306/13 BC Herceg-Novi (lawyer Šimrak Vukašin), 4 months P. 56/11 BC Bijelo Polje, 20 days I.254/12 Bijelo Polje, 3 days before submission of request for review Rs. 38/09 BC Bar.

104 P. 1161/10/92 BC Bijelo Polje and P. 242/11/06 BC Kotor.

According to Art. 18 of the Right to a Trial within a Reasonable Time Act:

“If the president of the court established that the court unreasonably delays to make a decision in the case, he/she shall make a decision specifying a deadline to take certain procedural actions, not longer than four months, as well as relevant deadline within which the judge must inform him/her of the action taken.

The president of the court may order the case to be resolved as a priority if the circumstances of the case or the urgency of the case require so.”

During the period 2011-2015, of the 956 requests for review 104 or 11% were granted. Compared to the first three years of implementation of the Act, there has been almost no increase in the adoption of requests for review, as the increase in percentage terms was less than 0.5%.

Of these, only in 21 cases (20% of granted requests) the president of the court set a deadline in a decision for a judge to take action, as well as a deadline for a judge to inform the president of the action taken. Thus, **only in every fifth decision granting a request for review the court president ordered a specific timeframe for taking action and providing feedback about the action taken.**

Decisions granting requests for review mainly contained template wording of Art. 18 of the Act “a request for review is granted and urgent resolution of the case ordered”.

This shows that the court presidents have rarely used the most important asset of the Right to a Trial within a Reasonable Time Act provided in Article 18 of the Act - imposing a time limit for an action or completion of the proceedings and requiring that judges provide feedback about the action taken.

Total of 104 requests for review have been adopted. In order to determine the effectiveness of this remedy, based on the reports of basic courts in Kotor, Bar and Kolašin, and upon examining the decisions of the Podgorica

Basic Court¹⁰⁵ uploaded to the website of this court (4)¹⁰⁶ and decision of the High Court in Podgorica concerning the Basic Court in Podgorica (11)¹⁰⁷ and the report of the Ombudsman¹⁰⁸, as well as the reports provided by lawyers, we found that **out of 29 cases in total (28% of the sample) where the court president adopted a decision granting a request for review and ordering that the proceedings be expedited¹⁰⁹, in 8 cases (27.57% of the sample) the proceedings lasted for another year to three years¹¹⁰ - counting from the decision on a request for review to decision before the court, between 4 months and a year in 12 cases (41.5%)¹¹¹, and up to 4 months in 9 cases (31.03%)¹¹².**

105 We addressed the Basic Court in Podgorica on 2 November 2016, with a request for free access to information seeking a report from the PRIS about 63 cases in which the request for review was adopted, information when that case ended before the court after the date of request adoption and whether the court decision is effective, and when, and whether extraordinary legal remedies were submitted and when (there are records of everything in the PRIS where it takes only few seconds to check for the answers). Our request was rejected with the Decision of Su V No.5 / 16-26 of 17 November 2016: "in the fact that the answer to the required access to information would entail compiling new information, the court pursuant to Art. 29 page 1 point 1 of the Law on free access to information rejected the request." Of the 63 cases, the Basic Court of Podgorica published on their website court decisions in only 4 of 63 cases. The dates of the adoption of other decisions that are presented in this report we have received through search of decisions of the High Court in Podgorica by using the number of cases. It is particularly unfortunate that our request for free access to information is refused because we could not get a report of 18 enforcement cases pending before the BC Podgorica, where the acceleration was ordered and some of them dating from 2000 and 2006 (decisions on enforcement cases by practice in courts are published in a very small number on the website of the court, for example. BC Podgorica on the website of the court has only 13 such decisions).

106 P. 734/11, P. 37/12, P. 2652/13 and P. 126/14.

107 High Court Podgorica – decisions: Gž.4312/12-09 for P.1157/09, Gž.186/13-09 for P.2248/09, Gž.1389/13 for P.5555/11, Gž.1679/13 for P.4884/11, Gž.5465/14 for P.1189/12, Gž.2213/15 for P.3240/12, Gž.4936/14 for P.5634/11, Gž.1266/16 for P.3252/12, Gž.3234/14 for P.1758/13, Gž.1244/15 for P.4524/13, Gž.5280/14f or P.2092/12, source www.sudovi.me.

108 See introduction K. 29/09.

109 Only in one case, the judge was explicitly given a deadline of 4 months for completion of the subject (P.1157/09); in two cases BC Podgorica was given a deadline of one month to decide on interim measures on which it was not decided for two and a half years (P.2248/09), and for the submission of the case in which eight months nothing was undertaken (P.1189/12). All other cases were old cases in which completion of the procedure was expected.

110 P.270/09 BC Bar ceded to BC Ulcinj 10 May 2016 (three years after the adoption of the request for review), I. 66/12 BC Kolašin (2014) and I.no.115/12 (2014)-postponed until 01-07.2017 at the request of the executive creditor, Rs.32/13 BC Bar 2 years and 5 months, P.769/11 BC 1 year and 2 months, 1 year: BC Kotor Rs.109/14/07, BC Podgorica P.3252/12 1 year and 11 months, P.2652/13 1 year and 8 months, P.3240/12 1 year and 4 months, P.1189/12 1 year and 9 months, P.2248/09 1 year and 1 month.

111 Lawyer Tijana Živković P.mal.99/14 Commercial Court; Lawyer Vojislav Đurišić P.1573/11 BC Podgorica; Lawyer Veselin Radulović P.5634/11 BC Podgorica; Lawyer Veselin Radulović P.164/11 BC Podgorica; Lawyer Vojislav Đurišić I.br. 792/96 BC Podgorica (lasts for 21 year); BC Podgorica: P.1157/09, P.743/11, P.5555/11, P.5634/11, P.4524/13, P.4884/11.

112 BC Kotor O.br.170/65, O.234/65 and Rs.br.153/11, BC Podgorica: P.1758/13, P.37/12, P.2092/12 and P.126/14.

It follows that **granting of a request for review and ordering of priority handling by the court president in 2/3 of the cases of the sample examined failed to result in acceleration of proceedings as provided by the Act.**

Podgorica Basic Court, which had the most such cases, refused to provide access to information on the time frame of completion of these cases. HRA will continue to fight in this case in an appeals procedure for the public's right to access to information, in order to analyse the effect of application of the Act.

The lawyers who participated in the research find that the granted requests for review have somewhat accelerated the proceedings, but some still believe that there is no purpose to lodging them, because lodging of requests, in terms of efficiency, only leads to scheduling of hearings, which usually lack effective taking of concrete actions,¹¹³ but also because the requests for review are at times rejected even though the conditions to grant them have been met¹¹⁴.

4.3 Impact of the decision to grant a request for review on evaluation of the performance of judges

In relation to the future implementation of the Right to a Trial within a Reasonable Time Act it should be noted that the adoption of a request for review may affect evaluation of the performance of judges, which could also have an impact on decision-making with regard to granting these requests.

In accordance with the Judicial Council and Judges Act¹¹⁵ and the Rules for evaluating judges¹¹⁶, a judge who in the evaluation period of 3 years has less than 15 granted requests for review will be assessed with "satisfactory" as per this indicator, thus, under the sub-criterion "quantity and quality of performance" s/he will still be able to achieve "excellent" evaluation score¹¹⁷. A judge with more than 15 granted requests for review during this period will be assessed according to this indicator with "unsatisfactory",

113 Lawyer Vukašin Šimrak.

114 Lawyer Milić Đorđe.

115 The Judicial Council and Judges Act, *Official Gazette of Montenegro* 11/15 and 28/15.

116 Rules for evaluating judges and court presidents, *Official Gazette of Montenegro* 11/15 of 9 December 2015.

117 Art. 13 in connection with Art. 16, para 1 of the Rules for evaluating judges and court presidents.

and under the sub-criterion “quantity and quality of performance” s/he will get “good” and “satisfactory” or “not satisfactory” rating, depending on the rating on other indicators.

So, if a judge acquires 15 granted requests for review, this can affect his/her final grade, opportunity for promotion and higher salary.¹¹⁸

We recommend that the decisions granting a request for review specify the time period in which there was an unjustified delay in the proceedings and if a new judge is not responsible for the adoption of the request in the case for previous unjustified delay, it should be ensured that the granting of a request for review does not reflect negatively on his/her evaluation.

118 Art. 97 of the Judicial Council and Judges Act.

5. CLAIM FOR JUST SATISFACTION

5.1 Frequency of lodging and adopting claims for just satisfaction

Claims for just satisfaction due to the breach of the right to a trial within a reasonable time are filed far more often than in the past. Half of claims filed in the last five years have been upheld. The criterion applied by the Supreme Court to determine the amount of fair redress is dubious. Claim for just satisfaction is not an effective remedy to expedite the proceedings, but it should be, particularly since the Supreme Court upheld claims lodged in more than 1/4 of the cases, even though the presidents of the courts had rejected requests to accelerate the proceedings (requests for review).

During the period of the first three years of application of the Right to a Trial within a Reasonable Time Act (2008-2010), 33 claims were filed for fair redress for the violation of the right to a trial within a reasonable time¹¹⁹ - an average of 11 claims per year. In the subsequent five-year period (2011-2015) 225 claims were lodged, an average of 45 per year, which indicates **an increase in the number of claims for just satisfaction filed, on average slightly more than 4 times in the past five years as compared to the initial three years of application of the Act.**

Report for 2008-2011

Year	No. of claims filed	No. of judgments adopting claims and awarding just compensation	No. of judgments rejecting claims	No. of decisions dismissing claims (procedural)	No. of cases decided in other way
2008	7			7	
2009	12	1		11	
2010	14	1	2	8	2
TOTAL	33	2	2	26	2

¹¹⁹ See Art. 31, 33, 34 of the Right to a Trial within a Reasonable Time Act, *op.cit.*

Report for 2011-2015

Year	No. of claims filed	No. of judgments adopting claims and awarding just compensation	No. of judgments rejecting claims	No. of decisions dismissing claims (procedural)	No. of cases decided in other way
2011	25	15	4	4	2
2012	67	29	15	20	2
2013	45	24	7	11	3
2014	53	27	5	21	2
2015	35	18	6	9	1
TOTAL	225	113	37	65	10

In the period 2008-2010, claims were upheld and compensation awarded in only two cases (6% of claims filed), and in the period 2011-2015 in 113 cases (50% of filed claims), which means that every second claim for just satisfaction has been upheld.

Following criticism at the expense of the Supreme Court published in HRA report in March 2011, as confirmed by the Constitutional Court in its decisions on constitutional appeals in 2013 and 2014¹²⁰, the Supreme Court changed its restrictive interpretation of Art. 33, para 3 of the Act, for which it had originally rejected all claims filed prior to the adoption of a final decision in the case.¹²¹ This has significantly influenced the increase in the number of claims upheld.

5.2 The amount of just satisfaction

Of the 113 adopted claims, in 33 cases (29%) a statutory minimum of € 300 was awarded, in 21 cases (18%) a compensation of € 500, € 1,000 compensation was awarded in 22 cases (19%), while the amounts of €

¹²⁰ Už-III no. 451/10 of 18 July 2013, regarding the case Tpz. 8/10. Už - III no. 490/10 of 25 March 2014 regarding the case Tpz. 12/10 and others.

¹²¹ In the earlier HRA report for 2008-2010 the practice of the Supreme Court had been criticized that made the 26 rejected lawsuits, 12 cases were dismissed because the proceedings have not been validly terminated before the lawsuit was rendered (Analysis of the Law on the Protection of the Right to trial within a reasonable time, Human Rights Action, 2011, p. 9-10). After that, in the period 2011-2015 the Supreme Court made its decisions in line with the European Court of Human Rights and the Law on the Protection of the Right to Trial within a Reasonable time, so that none such case had been registered.

3,500 and € 4,000 were awarded in 2 cases each (1.8%). The maximum statutory amount of compensation of € 5,000 was not awarded.

YEAR	AWARDED COMPENSATION	ADOPTED REQUESTS
2011	43.100€	13
2012	43.100€	27
2013	28.300€	23
2014	34.600€	27
2015	49.000€	18

Highest individual compensation of € 4,000 ever awarded was paid in two civil cases, while the highest amount awarded in criminal cases was € 3,500.

The first case (Tpz. 7/11), initiated in 1995, related to marital-property dispute and lasted for 15 years, 7 months and 20 days. The first instance verdict was quashed six times due to substantial violations of the civil procedure and failure of the first instance court to follow mandatory instructions of a high court, whereas this was not a factually and legally complex case; also, the plaintiff too contributed to delaying the procedure by failing to provide a translation of written documentation. In this case, the Supreme Court did not determine how long the proceedings had been unjustifiably delayed as in other cases, making it difficult to compare the criteria for the award of damages. It was established that unjustified inactivity had taken place on several occasion for the duration of five months, and once for a year and a half. After the case was repealed there was a large number of deferred hearings.

The second case (Tpz. 34/15) was a trial in a commercial dispute; the procedure in total lasted 10 years, 10 months and 12 days¹²² and was unduly delayed for 6 years, 2 months and 18 days.

In three cases concerning lengthy criminal proceedings, the highest amounts awarded were € 3,500, € 2,500 and € 2,000, although it is obvious that in these cases unjustified periods of inactivity of the court and the interest of injured parties (interest is considered great when procedures

¹²² From the date of accession of Montenegro to the ECHR on 3 April 2004.

are of a particularly serious nature - concerning human life or body)¹²³ were greater than that of the parties awarded € 4,000 compensation; thus, the criterion employed by the Supreme Court in assessing the amount of just satisfaction remains unclear. The Supreme Court of Montenegro should establish its own clear criteria for calculating the amount of damages, following the example of the European Court of Human Rights.

Similarly, in case Tpz. 4/13 conducted in connection with a criminal proceedings that lasted for 13 years, 5 months and 23 days, in which judges changed 7 times, a large number of hearings were delayed and several periods of inactivity (without specifying the length) noted - the longest of which lasted 1 year 3 months and 15 days, the amount of compensation awarded was € 2,000.

In Tpz. 23/14, which was conducted in connection with a criminal proceedings that lasted for 16 years, in which a total of 10 judges acted, with a one-year period of total inactivity, a compensation of € 2,500 was awarded and at the time of passing of the Supreme Court's judgment for fair redress the case was still pending before the court of first instance.

Compensation of € 3,500 was awarded in case Tpz. 28/13, conducted in connection with a criminal proceedings which lasted for 17 years and in which unjustified inaction of the court was established for a period of 7 years, 3 months and 22 days.

The minimum statutory compensation of € 300 was awarded in 33 cases, however, the facts of these cases vary¹²⁴, so it is always useful to determine the exact period of unjustified inactivity of a court in the proceedings, and with other elements such as conduct and interest of the injured party and complexity of the case, weigh the amount of compensation, as done by the European Court of Human Rights¹²⁵.

Decisions on claims for just satisfaction in principle contain a detailed explanation in terms of conduct of the courts during the proceedings as

123 The verdict *Apicella v Italy*, (Court First Section), the verdict of the Chamber from 10 November 2004. <http://hudoc.echr.coe.int/eng?i=001-67420> paragraph 26.

124 Tpz. 2/14 preliminary hearing had been scheduled just after 9 months and 18 days; Tpz. 4/14 preliminary hearing had been scheduled after one year, five months and three days, and in the following year only one hearing was held; Tpz. 6/14 preliminary hearing had been scheduled after 10 months, and another 5 months of inactivity; Tpz. 7/14 in the case of 2005, 11 hearings have been postponed due to the absence of the expert.

125 *Mijušković v. Montenegro, Bujković v. Montenegro, Boucke v. Montenegro*, etc.

well as the duration and justification of specified periods of inactivity. Although it is useful that in a number of decisions the reasoning follows the statutory criteria pertaining to the length of proceedings modelled on the European Court of Human Rights caselaw, there is no precise formula for determining the amount of compensation awarded by each of the criteria. It is also commendable that in certain decisions the exact time period of unjustified inaction in proceedings is determined mathematically, which represents a reliable basis for determining the amount of compensation for damage suffered due to the lengthy procedure. However, this practice has not been employed in all judgments, so **it remains unclear why in some cases a higher or lower amount of damages was awarded, or why the same amount (usually a € 300 minimum) was awarded in cases with different periods of inactivity of the courts.**

In the case of *Apicella v Italy*¹²⁶ the European Court of Human Rights introduced a formula for calculating non-pecuniary damages for the violation of the right to a trial within a reasonable time¹²⁷. The Court held that a sum varying between € 1,000 and 1,500 per year's duration of the proceedings (and not per year's delay) was a base figure for the relevant calculation; the outcome of domestic proceedings (whether the applicant loses, wins or ultimately reaches a friendly settlement) is immaterial to the non-pecuniary damage sustained on account of the length of the proceedings. The aggregate amount is to be increased by € 2,000 if the stakes involved in the dispute are considerable, such as in cases concerning labour law, civil status and capacity, pensions, or particularly serious proceedings relating to a person's health or life. The basic award will be reduced in accordance with the number of courts dealing with the case throughout the duration of the proceedings, the conduct of the applicant – particularly the number of months or years due to unjustified adjournments for which the applicant is responsible – what is at stake in the dispute – for example where the financial consequences are of little importance for the applicant – and on the basis of the standard of living in the country concerned. A reduction may also be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in his or her capacity as heir. The amount may also be reduced where the applicant has already obtained a finding of a violation in domestic proceedings and a sum of money by using a domestic remedy.

126 The verdict *Apicella v. Italy*, (Court First Section), the verdict of the Chamber from 10 November 2004. <http://hudoc.echr.coe.int/eng?i=001-67420> paragraph 26: "2. Criteria specific to non-pecuniary damage".

127 The Right to Trial within a Reasonable Time, the collection of selected judgments, Tea Gorjanc Prelević, <http://www.hrc.unsa.ba/zbirkapresuda/PDFS/zbirkapresuda.pdf>, Sarajevo 2009, p. 49, last paragraph.

Following the above example, the Supreme Court of Montenegro should present its own formula for calculating the amount of fair redress and thus establish legal certainty in this area.

5.3 Disputed reasons for denying just satisfaction and rejecting a claim

In two cases¹²⁸ the court established a violation, but did not award non-pecuniary damages (just satisfaction) on the grounds that the plaintiffs had contributed to the length of proceedings by failing to file a request for review earlier as a means to expedite the proceedings¹²⁹, i.e. to warn the court¹³⁰ that the case was forwarded on appeal by the court of first instance to the actually incompetent court, which resulted in a delay.

We believe that filing a request for review is not an obligation, but rather a right of the party; thus, the party cannot bear negative consequences because the request had not been filed earlier. On the other hand, it is a court's obligation to complete the proceedings in the shortest period possible.¹³¹ Also, the court sees to its own jurisdiction *ex officio*¹³², so the party cannot be held responsible for failing to advise the court earlier about its jurisdiction and initiate that the case be assigned to a competent court.

Claim was rejected in several cases because the heirs took over the proceedings, and the length of the proceedings led by their legal predecessors had not been included in the overall length of the procedure. The court based this approach on Art. 211, para 1 of the Obligations Act, which stipulates that a claim for non-pecuniary damages is passed to the heirs only if it has been recognized in a final decision or written agreement.¹³³

128 Tpz. 44/14 and Tpz. 22/15.

129 Tpz. 44/14.

130 Tpz. 22/15.

131 The Civil Procedure Act of Montenegro, Art. 11, para 1: "The court is obliged to strive to conduct proceedings without delay, within a reasonable time, with the least expenses and to prevent any abuse of the rights of parties in the procedure". Art. 284 - deadline of 30 days for holding preparatory hearing from the date of receiving of a response to a claim, Art. 295, para 2 - deadline of 60 days for scheduling the main hearing from the day of the preliminary hearing, etc.

132 Ibid, Art. 20.

133 Tpz. 9/13 in case of BC Kotor that lasts from 2000; Tpz. 39/13 executive case BC Bar that lasts from 2007.

In our opinion, the Obligations Act is not to be invoked in the procedure led on a claim for just satisfaction in line with the Right to a Trial within a Reasonable Time Act, because compensation awarded for an unreasonably lengthy procedure cannot be classified under the classic civil-property rights which fall under the authority of the Obligations Act. This is a right guaranteed to the parties before the court in line with the international obligation of Montenegro as a signatory of the European Convention on Human Rights and Fundamental Freedoms, and secured by a special law, which does not provide for the subsidiary application of the Obligations Act. Were it otherwise, the adoption of the Right to a Trial within a Reasonable Time Act would have been redundant, and such cases would be resolved by applying the provisions of the Obligations Act pertaining to non-pecuniary damage and compensation thereof. This position is also contrary to the caselaw of the European Court of Human Rights, which provides only for the possibility of reduction of basic compensation, not loss of the right to compensation, where the applicant has been only briefly involved in the proceedings, having continued them in his capacity as heir.¹³⁴

5.4 Claim for just satisfaction and acceleration of the proceedings

In the three cases presented below, a claim for just satisfaction due to violation of the right to a trial within a reasonable time was filed for the second time after a certain period, implying that the first time the decision to adopt a claim and award fair redress had not led to acceleration of the proceedings.

In cases Tpz. 1/11 and Tpz. 31/14 claims were filed for violation of the right to a trial within a reasonable time in cases before the Basic Court in Kotor P. 381/10/08 and I.br.101/07 (action and proposal for an interim measure). In the judgment in Tpz. 1/11 of 28 March 2011, twenty-five plaintiffs were awarded a compensation of € 1,000 each, a total of € 25,000. In judgment passed in Tpz. 31/14 on 29 September 2014, plaintiffs were again awarded compensation - € 300 each or € 6,900 in total, although the Supreme Court has found that in the period from 4 May 2011 - when the case file was returned to the first instance court after making the previous decision on the claim for just satisfaction - until the new claim was lodged, the High court in Podgorica delivered its decision on the claim for just satisfaction to the Basic Court in Kotor after 11 months and 4 days, and a repeal to the plaintiffs' attorney only after 1 year, 9 months and 1 day, and that the

¹³⁴ *Case Apicella v Italy*, p. 26, "A reduction may also be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in his or her capacity as heir."

double repeal had affected the length of the proceedings.

Actions in cases Tpz. 2/11 and Tpz. 34/12 were filed regarding the failure of the court to act in the enforcement case I.br.246/10/01 of the Kotor Basic Court, initiated on 18 February 1999. Claim for just satisfaction in Tpz. 2/11 was accepted and plaintiffs were awarded a compensation of € 1,000 each as per judgment of 30 May 2011, while in Tpz. 34/12 the claim was rejected in judgment of 4 July 2012 because the Supreme Court observed the period from 30 May 2011 to 14 June 2012 (as the day of filing of the second claim) and found no violation of the proceedings during that period.

Claims for just satisfaction in cases Tpz. 68/12 and Tpz. 9/14 were filed in the enforcement case I.1732/07 of the Basic Court in Podgorica. In the judgment Tpz. 68/12 of 27 December 2012 the plaintiff was awarded compensation of € 1,000, and in judgment Tpz. 9/14 dated 12 May 2014 the plaintiff was awarded € 300 more, although the court's inactivity was established as of 28 January 2013 onwards (the plaintiff contributed to the length of the proceedings of two months because he did not immediately pay the costs of the expertise).

Based on the cases described, it is safe to conclude that the claim for just satisfaction in itself has proved ineffective with regard to acceleration of proceedings. In specific cases, even after the adoption of judgments establishing a violation and awarding the compensation, the courts did not finalize the cases and the parties were forced to refile claims.

It should also be borne in mind that in more than 1/4 of the cases the Supreme Court found a violation of the right and awarded just satisfaction, despite the fact that the presidents of courts had initially rejected both the request for acceleration of proceedings and the appeal, as presented above. Hence, in such cases it would be particularly important to inform the trial court and order priority handling of the case.

In this respect, although Art. 39 of the Act (*Making the Ruling Public*) provides that in the event of a serious breach the Supreme Court may order, upon the party's request, that the ruling be published on the website of the court responsible for breach of the right to a trial within

a reasonable time¹³⁵, during the debate on the draft of this report it has been indicated that the publication was ordered only in one case and this decision was delivered to HRA by the Supreme Court, because it was not possible to find it on the Supreme Court website.¹³⁶ Request of the party that the ruling be published was rejected in three cases in which the court found a violation and awarded compensation, on the grounds that the court did not find a grave violation of the right to a trial within a reasonable time¹³⁷. All verdicts are normally published on the website of the Supreme Court. With that in mind, we proposed amendments to the Act to ensure that the judgment on the claim for just satisfaction lead to speeding up of the procedure.

Based on the reports of lawyers¹³⁸, we found that of 8 judgments of the Supreme Court in which a breach had been established and compensation awarded 4 judgments contributed to acceleration¹³⁹ of the procedures in relation to which they had been made, and 4 did not - one of these cases was finalized 4 years later¹⁴⁰, the second 2 years later¹⁴¹, while two cases were still pending at the end of December 2016¹⁴². The lawyers have suggested amendments to the Court Rules so as to include the provision laying down the obligation of a competent president of the court to keep records of cases in which a positive TPZ judgment had been rendered and once a month prepare a report on the progress of resolving these cases, to be published on the website www.sudovi.me. Additionally, the lawyers proposed that the Judicial Code of Ethics and disciplinary procedure include the provision under which further untimely acting by a judge in the proceedings in which a positive TPZ judgment had been adopted be regarded as negligence in the exercise of a judicial function.¹⁴³

135 "If the court finds a serious violation of the right to trial within a reasonable time may, upon request, in addition to monetary compensation, order the publication of the verdict. The court, which under Article 38 of this Law and paragraph 1, was found that unreasonably delay the procedure and decision, is obliged to publish the verdict on the website and to bear the costs of publication. The verdict referred to in paragraph 2 of this Article shall be publicly available on the website for a period of two months, after which it is archived or deleted at the request of a party, within 15 days from receipt of the request."

136 Uz-Tpz. 3/14 of 16 September 2014.

137 Tpz. 6/11 (2,000€), Tpz. 26/13 (1,000€) and Tpz. 19/15(2,000€).

138 Lawyer Samardžić Petar and Lawyer Milić Đorđije.

139 Lawyer Samardžić Petar Tpz. 10/11 and Tpz. 21/11 and Lawyer Milić Đorđe Tpz. 5/11 and Tpz. 46/12

140 Tpz. 18/11.

141 Tpz. 2/11.

142 Tpz. 15/11 and Tpz. 16/11.

143 For example, lawyer Petar Samardžić.

The above examples of cases where the judgments upholding the claim for just satisfaction were adopted twice, as well as experience of lawyers regarding a partially satisfactory effect of such judgments lead to the conclusion that **the judgment on fair redress has insufficient impact on acceleration of proceedings. Also, the European Court of Human Rights found that the claim for just satisfaction under Montenegrin law cannot be considered an effective remedy in respect of the length of proceedings.**¹⁴⁴

Although the European Court of Human Rights recommended a combination of two types of remedies: one that has been established in order to expedite the procedures and other that allows compensation for the delays already incurred¹⁴⁵, we see no reason that the claim for just satisfaction established as a remedy to provide compensation for lengthy proceedings, at the same time not be a means of speeding up the proceedings, where needed. First, acting on a claim for just satisfaction the Supreme Court assesses the duration of a court case in terms of its vast experience and authority, and if the Court finds that a procedure is too long, and it is still pending, this very fact must result in the acceleration and close completion of the case. Second, prior to filing a claim for just satisfaction, the party itself had made use of a request for review (in 1/4 cases an appeal too) and in addition to monetary compensation expects the completion of the proceedings. Third, the Act itself is designed in a manner that with little extra effort a claim for just satisfaction, in addition to being a means for ensuring fair compensation, can also be a means of expediting the proceedings.

At the round table on the occasion of the draft of this report, the Supreme Court judges and court presidents indicated that a judgment rendered establishing a violation of the right to a trial within a reasonable time (Tpz.) is filed with the basic case file, therefore, the trial judge is informed of such a judgment. This obligation is

144 "The Court has already expressed the view that the claim for just satisfaction can not speed up the process while the proceedings are still in progress, which is clearly the most important interest of the applicant, therefore the constitutional complaint can not be considered an effective legal remedy in respect of the length of the proceedings (in. Boucke, quoted earlier in the text of this verdict, pp. 75-79; see also *Stakić v. Montenegro*, no. 49320/07, no. 41, October 2, 2012). It seems that there is no reason for the Court to depart from that finding in this particular case." *Vukelić v. Montenegro*, 2013, p. 88; While in the decision on the case *Vučeljić v. Montenegro* in October 2016 the Court found that the complaint was an effective legal remedy, he had found it in relation to its use for the purpose of just satisfaction, not speeding up the procedure. See below for more details page 37.

145 "The Right to Trial within a Reasonable Time-collection of selected verdicts of the European Court of Human Rights in cases against Bosnia and Herzegovina, Croatia, Macedonia, Slovenia and Serbia", Tea Gorjanc- Prelević, Human Rights Centre of the University of Sarajevo, Sarajevo 2009, p. 47, www.hraction.org/publikacije.

not prescribed by the Court Rules or the Right to a Trial within a Reasonable Time Act, and we believe that it should be.

However, for a claim for just satisfaction to become an effective remedy also in terms of the length of proceedings, **we suggest that the Right to a Trial within a Reasonable Time Act stipulate the obligation of the Supreme Court to also issue an order to urgently finalize the trial - if it is still pending - together with its ruling upholding the claim for just satisfaction**, i.e. take all necessary steps within 3 months (see below suggested amendments to the Act). We also support a proposal by lawyer Samardžić to stipulate in the Rules that the court president keep records of all such cases and monitor their progress on a monthly basis.

As regards disciplinary responsibility of judges, the Judicial Council and Judges Act defines the failure of a judge to act in keeping with the decision on a request for review (Art. 108, para 3, item 5) as a serious disciplinary breach. This provision could also include the wording “or with the order under a judgment on fair redress”, while the Right to a Trial within a Reasonable Time Act should stipulate that in a verdict upholding a claim for just satisfaction, the Supreme Court is also required to order a judge to handle the proceedings at issue as a priority.

6. STATISTICAL REPORTS ON THE WORK OF COURTS

Statistical reporting in annual reports on the work of courts pertaining to requests for review and appeals was poor. The number of decisions submitted to HRA and manner of handling for specific courts deviate from statistical data from the annual reports on the work of courts.

As of 2012, the annual reports on the work of courts do not show individually a number of lodged requests for review, but only “The number of requests filed”, encompassing both the requests for review and appeals. Thus, only after deducting the number of cases in the column “Appeals against the decisions” from the number of cases under “The number of requests filed” one can mathematically obtain a number of filed requests for review for that year. As a consequence, with regard to decisions to reject or grant a request as per the criterion “Manner of resolving”, it is not possible to distinguish between those adopted upon requests for review and those adopted on appeals. This is particularly evident in the 2014 and 2015 reports on the work of courts, which no longer contain a separate table showing the manner of deciding on appeals (rejected, adopted) against decisions for the Supreme Court, the Appellate Court and high courts in Bijelo Polje and Podgorica. Bearing in mind that the judicial information system, the PRIS, contains all these data, there is no justification for not making the data available to the public in the annual reports on the work of courts.

Requests for review and decisions on requests for review, appeals and decisions on appeals that have been provided by the courts deviate in the number and manner of resolving for a specific court from statistical data contained in the annual reports on the work of courts.

Thus, for example, decisions delivered to HRA on the basis of requests for access to information indicate that the Kotor Basic Court granted 5 requests for review in 2014¹⁴⁶, while according to the 2014 Annual Report

¹⁴⁶ See above footnotes 56 and 57.

on the work of courts not a single request for review had been granted.¹⁴⁷

With regard to the Basic Court in Pljevlja, 2011-2015 statistical reports indicate that this court had decided on 2 requests for review, while the court president informed us in writing that not a single decision had been adopted on a request for review.¹⁴⁸ Data for Ulcinj Basic Court in the report also deviate from the submitted material (fewer cases were delivered as compared to information from the reports - discrepancies concern the manner of resolving because not a single request for review had been granted under Article 18, although the table indicated otherwise).

Based on the decisions that we received from the High Court in Podgorica, it appears that in 2012 this court did not decide on appeals in 32 cases¹⁴⁹, that in three cases it rejected the appeal, and reversed a decision in one case. However, the 2012 statistical report on the work of this court indicates that the appeal was rejected in 34 cases, a decision on a request for review quashed in 2 cases and a request for review granted in 2 cases, while one appeal was handled otherwise.

In 2013, the High Court in Podgorica did not adopt a decision in 21 cases on a request for review, or in 4 cases on an appeal, while the Annual Report on the work of courts noted that during this period 5 requests for review were rejected as well as 18 appeals, and that in 25 cases it was decided "otherwise"¹⁵⁰.

For 2014 the Podgorica High Court submitted only two cases, considered on appeal by the Supreme Court rather than by the said court¹⁵¹, while the data presented in the Annual Report indicate that in 2014 the High Court in Podgorica considered as many as 76 cases.

For the proper and accurate collection of statistics on cases in which legal remedies were filed to expedite the proceedings and reach completion, as well as on all cases in the judicial system, it is necessary to improve statistical reporting.

147 <http://sudovi.me/podaci/sscg/dokumenta/1992.pdf> (Annual report 2014, p.46).

148 Letter of the president of Basic Court in Pljevlja V Su. 112/16 of 6 September 2016.

149 The complete writings of first instance courts with the letters to a higher court to which cases are submitted for decision on the appeals are delivered, but there are no decisions on the appeals in those cases.

150 "In another way" - meaning a rejection for lack of competence or withdrawal of a request for review or appeal.

151 In the case of IV-2 Su 2/14 a decision was made on 30 January 2014, where control request was rejected as manifestly unfounded, as well as in the case IV 2 Su 4/13 from 5 February 2014.

Expert of the European Union within the EUROL (*Rule of Law*) project in a report from August 2016¹⁵² noted that the PRIS has become a huge burden for Montenegro and fulfilment of the Action Plan for Chapter 23 of negotiations with the EU¹⁵³. The resources that have been invested by local and foreign experts trying to find a way to produce comprehensive statistical reports on the functioning of the system were significant, but the results have always led to a single conclusion - that Montenegro should invest in a new, modern, uniform judicial information system (PRIS II)¹⁵⁴. **Of particular concern is a reference to current gaps in the computer data processing: “Montenegro had one of the best BI (business intelligence) tools available on the market in its hands, but was nonetheless unable to connect it to the PRIS database due to large undocumented changes that have been made over time.** The technologies used are too old to be able to adapt to modern tools.”¹⁵⁵ In the report for 2016 the European Commission expressed its doubts about the reliability of statistical data and pointed to the fact that the PRIS is not secured against misuse.¹⁵⁶

This also creates the problems that we have pointed out in this report, which will, hopefully, be resolved in the future by introducing PRIS II.

With respect to the incomplete data submitted by Montenegro to the European Court of Human Rights for the purpose of deciding on the effectiveness, in principle, of a request for review in the case of *Vukelić v. Montenegro*, see p. 36-37.

152 The report on the mission of the short-term expert EU support to the rule of law (EU ROL) Montenegro EuropeAid/ 134050/L/ACT /ME, Report drafted by Maja Grubišin, August 2016.

153 Ibid, p. 1 paragraph 6.

154 Ibid, p. 1 paragraph 7 and p. 2 paragraph 1.

155 Ibid, p. 2 paragraph 4.

156 Montenegro 2016 report, European Commission, op.cit, p. 14 and 56.

7. REPORTS OF THE MINISTRY OF JUSTICE

Reports of the Ministry of Justice of the Government of Montenegro have not yet been drafted so as to identify achievement of the purpose of the Right to a Trial within a Reasonable Time Act – effective acceleration of the proceedings and fair redress for the violation of rights. We suggest that the reports henceforward include statistical indicators on the case-handling time following the granting of requests for review and submission of a notification, in particular in terms of respecting the deadlines, which would be a reliable basis for assessing the effectiveness of these remedies.

Judicial Reform Strategy 2014-2018 envisages monitoring of implementation of the Right to a Trial within a Reasonable Time Act as one of the activities entrusted with the Ministry of Justice, while the indicator for measuring the success of implementation should be a report drafted by this Ministry.

The Report for the period from 15 May 2012 to 1 April 2014 specifies that during this period 479 requests for review were lodged, of which 26 were granted, 294 rejected, 4 dismissed, 45 were completed by delivering a notification in accordance with Art. 17 and 18 of the Act, while 40 requests remained unresolved. Of a total of 94 appeals lodged, 73 were rejected, 3 decisions were reversed, 2 quashed, 9 requests for review granted and 9 completed otherwise. A claim for just satisfaction was lodged 98 times - in 51 cases a violation was found and compensation awarded, 21 claims were rejected, 31 dismissed, 4 completed otherwise while 9 cases are still pending.

Furthermore, it was assessed that an increase in the number of filed requests for review had been due to a greater awareness of the parties of the opportunities provided by law¹⁵⁷, that it was important that the presidents of courts directly follow the implementation of measures under Art. 17 of the Act via PRIS, written reports of judges and direct insight into the files of the case¹⁵⁸, that in *Vukelić v. Montenegro* the European

157 The report on the implementation of the Law on the Protection of the Rights to Trial within a Reasonable Time for period 15 May 2012 – 1 April 2014, Ministry of Justice, Directorate for the Judiciary, Podgorica, June 2014, p.11, par.5.

158 *Ibid*, p. 11, par. 7.

Court of Human Rights explicitly established the effectiveness of remedies prescribed by the Right to a Trial within a Reasonable Time Act¹⁵⁹. The recommendations of the Report were as follows:

- continue monitoring of the implementation of the Right to a Trial within a Reasonable Time Act through drafting of annual reports on the application of the Act;
- continue the training of the presidents of courts and judges with regard to a more efficient application of laws and the ECtHR caselaw;
- consider the possibility of introducing a special extraordinary remedy for the reopening of proceedings in administrative disputes due to the decisions of the ECtHR;
- encourage the Bar Association to educate lawyers on the use of legal means for the protection of the right to a trial within a reasonable time;
- continue to further promote remedies provided by the Act.

Report of the Ministry of Justice for the period 15 May 2012 - 1 April 2014 is based on statistical data collected from the reports on the work of courts and individual reports of courts for a given period¹⁶⁰, without an insight into the cases, their handling or handling after the decision on a request for review or appeal, and thus does not fulfil the function of an indicator for measuring the success of application of the remedies provided for in the Right to a Trial within a Reasonable Time Act.

In the Report on the implementation of the Right to a Trial within a Reasonable Time Act for the period 1 January - 31 December 2015¹⁶¹ the Ministry of Justice has improved its methodology of reporting and moved closer to the requirement of the Judicial Reform Strategy 2014-2018 seeking that the report be an indicator for measuring the success of implementation of the Right to a Trial within a Reasonable Time Act.

The said Report contains information on:

159 Ibid, p. 13, par. 2.

160 The report on the implementation of the Law on the Protection of the Rights to Trial within a Reasonable Time for period 15 May 2012 – 1 April 2014, Ministry of Justice, Directorate for the Judiciary, Podgorica, June 2014, Introduction, par. 10.

161 The report on the implementation of the Law on the Protection of the Rights to Trial within a Reasonable Time for period 1 January – 31 December 2015, Ministry of Justice, Podgorica, January 2016 (<http://www.pravda.gov.me/biblioteka?query=lzvje%u0161taj&sortDirection=desc>)

- requests for review lodged in 2015 (211), the number of requests granted (21), rejected (99), dismissed (6), pending (18), and those in which a notification was delivered pursuant to Art. 17 (53);
- appeals against the decisions on requests for review (42), the number of rejected appeals (23), dismissed (1) quashed decisions (2), reversed decisions (5) and pending (11);
- claims for just satisfaction (35), upheld (17), rejected (6), dismissed (7), completed otherwise (1) and pending (4).

Unlike previous reports, the report for 2015 contains a special chapter entitled “Monitoring the fulfilment of measures from the decisions on requests for review or from both decisions on requests for review or from notifications under Art. 17 of the Act”. This chapter provides a description of procedures in cases after adopting a decision to grant a request for review or after delivering a notification in the basic courts in Bar, Berane, Bijelo Polje, Danilovgrad, Žabljak, Kolašin, Kotor, Nikšić, Plav, Pljevlja, Podgorica, Rožaje, Ulcinj, Herceg-Novi, Cetinje, the Commercial Court, Bijelo Polje and Podgorica high courts, the Administrative Court, the Appellate Court and the Supreme Court. However, the report does not specify registration numbers of the requests for review (*Su*) or registration numbers of cases in which the request were filed, rendering this part of the report non-transparent.

Apart from the statement in the report that “the use of a request for review as a remedy... proved effective¹⁶²”, the report does not contain synthesized statistical analysis of time frames in which the courts acted, based on the collected data. This makes it impossible to measure the impact of the application of these remedies and later compare the data. Also, there is no analysis of rejected requests for review.

Although good practice was indicated in the 2015 report, the Ministry of Justice is expected to include specific data in the future reports in support of their claims (that remedies prescribed by the Right to a Trial within a Reasonable Time Act are effective); this could be done by introducing statistics on the time of case-handling by courts following the granting of a request for review and delivery of a notification. The Court Rules in Art. 409, para 2 stipulate that an employee at the Ministry of Justice may inspect case files via PRIS (without the right to enter or change data),

162 The report on the implementation of the Law on the Protection of the Rights to Trial within a Reasonable Time for period 1 January – 31 December 2015, p. 22, paragraph 4.

thus, when drafting their next report, the Ministry could easily verify - by examining specific case files in PRIS - whether the court acted in line with the timeframes specified in decisions granting the requests for review or those specified in the notification under Art. 17 of the Act, as well as how much time has passed from granting of the request or delivering of a notification until the adoption of a decision before that instance. Only such data can represent a reliable basis for assessing the effectiveness of these remedies.

Training of lawyers on the application of the Right to a Trial within a Reasonable Time Act

Despite repeated recommendations in the report of Ministry of Justice for 2015, too, the Bar Association failed to organize any form of education on the use of remedies provided under the Right to a Trial within a Reasonable Time Act.

Based on the large number of rejected or dismissed requests for review as manifestly ill-founded, recommendations of the Ombudsman, discussion at the round table on the Draft of this report and examination of 20 requests for review (some of which were lodged in the proceedings that ended in a final decision, some were relodged before the expiry of 6 months of the submission of the previous one, some were lodged in the proceedings on extraordinary remedies, or by persons who by law cannot seek acceleration of the proceedings) and 10 claims for just satisfaction (some of which were filed outside the time period of 6 months after a final completion of the procedure, the others were filed without having used a request for review, or for pecuniary damages), we believe that there is indeed a need to educate lawyers on the use of means for the protection of the right to a trial within a reasonable time.

We recommend that the Bar Association provide training to lawyers on the application of the Right to a Trial within a Reasonable Time Act.

8. THE EXPERIENCE OF THE OMBUDSMAN

Pursuant to the opinion of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) on violations of the right to a trial within a reasonable time in individual cases, communicated to the courts together with the recommendations and available on the website of this state body, the parties decided to turn to the Ombudsman for unjustified delays in court proceedings as a rule in 8 of 9 cases available, rather than make use of legal means on the basis of the Right to a Trial within a Reasonable Time Act.

In five cases relating to child care and visitation schedule by the parent they do not live with, the Ombudsman found a violation of the right to a trial within a reasonable time and recommended that urgent action be taken by the courts.¹⁶³ In these cases the parties did not use remedies available to accelerate proceedings prior to addressing the Ombudsman. The courts mostly acted within a month of the recommendation of the Ombudsman.¹⁶⁴

However, in two cases the recommendations of the Ombudsman has not been followed. In the first case, K.254/06 of the High Court in Podgorica, regarding the death of 37 Roma people of 105 that boarded the boat “Miss Pat” in 1999, the recommendation was made back in 2009. The case has been pending for 17 years, and in January 2017 it was in re-trial at first instance. In the second case, the Pension and Disability Insurance Fund has not yet complied with final court decision P.29/08 of the Basic Court in Bijelo Polje from 2008.¹⁶⁵

163 In the case of the Basic Court (BC) Pljevlja P.329/13 decision 01-76/14 from 22 April 2014, in cases BC Podgorica P.5523/12 and Ip.146/14 decision 237/14 from 31 December 2014, P.3331/12 511/13 decision from 31 December 2014, the P.5310/14 decision 215/15 from 7 October 2015, BC Plav I.92/14 decision 01-16/15 from 15 January 2015. This kind of cases, concerning children's rights, requires a special emergency treatment on the basis of the European Court of Human rights (see, for example, the judgment *Mijušković v. Montenegro*, 2010).

164 The outcome of the procedure on the recommendation sometimes is clearly stated in Ombudsman's report, stating the number of cases, and sometimes not, so cannot say for certain whether the courts meet all the recommendations in a timely manner. In the Ombudsman's report for 2015 it is stated that Basic Court in Podgorica has not submitted a notification of the completion of cases within one month in one case, as required in the opinion from 7 October 2015 (Report on the work for 2015, p. 46).

165 Comments by the Ombudsman on the Draft report submitted to Human Rights Action, 26 December 2016.

The Ombudsman also recommended urgent resolution in one criminal case, where a request for review had previously been granted, but the case was not completed up to a decision of the Ombudsman, which followed six and a half months after granting of the request for review.¹⁶⁶ According to the annual report of the Ombudsman, his recommendation was applied and the case finalized within 30 days.¹⁶⁷

The Ombudsman considers that the Right to a Trial within a Reasonable Time Act provides for effective remedies to protect the right to a trial within a reasonable time, but finds that these remedies are not used by a sufficient number of parties, noting also that the parties that made use of a request for review in particular had little success.¹⁶⁸

He recommended that legal remedies envisaged by the Act be further promoted, and encouraged education both in the judiciary and among lawyers on the application of these remedies.¹⁶⁹

166 BC Podgorica K.29/09. Ombudsman's opinion number: 180/12, from 27 November 2012.

167 Report on the work of Ombudsman for 2012, p. 42, available at: http://www.ombudsman.co.me/docs/Final_izvjestaj_za_2013_310320131450.pdf (in Montenegrin).

168 Comments by the Ombudsman on the Draft report submitted to Human Rights Action, 26 December 2016.

169 *Ibid.*

9. SUGGESTIONS FOR AMENDMENTS TO THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME ACT

At the debate on the Draft of this report, the Supreme Court judges and court presidents expressed their opinion that the Right to a Trial within a Reasonable Time Act, which has not been amended since its entry into force on 21 December 2007, needs to be amended, because in practice they face problems in terms of its implementation; therefore, we propose a special discussion to that end.

We propose two amendments to the Act:

1. Amendment to Art. 34, para 2, relating to the amount of compensation by removing the limit of compensation set at € 5,000.

Should the Supreme Court establish its own formula for calculating the amount of compensation for fair redress, setting the upper limit may be unfair to the parties whose proceedings are very lengthy. The Right to a Trial within a Reasonable Time Act is the only act in the legal system of Montenegro limiting the possible amount of compensation, it appears, in order to protect the state budget from the possibly absolutely justified claims for redress of citizens whose proceedings before the courts have taken up a third or half of their lifetime due to the unjustified failure of the state to better organize the work of courts.

2. Introduction of a new Art. 40a to the Act - Mandatory urgent handling

Proposed Art. 40a - *Mandatory urgent handling*

“When the Supreme Court finds a breach of the right to a trial within a reasonable time in the case that is still pending, it shall order in its judgment priority handling in this case and deliver the judgment to the court found to have led an unreasonably lengthy procedure.

If the procedure referred to in para 1 above is still pending before the court of second instance at the time of passing of the Supreme Court’s

judgment, the judgment shall also be delivered to the second instance court and the case will be specially labelled as a priority.

Acting judge or panel of judges of the competent court of second instance and president of the court before which the case is pending shall take all necessary measures to ensure that the procedure in the case at issue be urgently completed, not later than four months from the receipt of the judgment of the Supreme Court.

If the case is returned to a lower instance court, it shall still be treated as a priority.”

The aim of amending the Act is to ensure that a claim for just satisfaction also lead to acceleration of proceedings. The report describes the cases in which plaintiffs filed a claim two times in a single case, because even after being adopted, the claim did not help effectively speed up the proceedings. Suggested amendments would prevent occurrences such as alternately bringing claims for just satisfaction in the same case for violation of the right to a trial within a reasonable time, while being particularly useful in situations where the Supreme Court’s position differs from that of the presidents of courts who had rejected requests for review, i.e. refused to take steps to expedite the proceedings. The report previously explains that Art. 39, *Making the Ruling Public*, is not sufficient to affect the speed of proceedings and has not been applied in practice (see p. 27).

10. THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME, MONTENEGRO AND THE EUROPEAN COURT OF HUMAN RIGHTS

10.1 General information

Montenegro has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (hereinafter "the Convention") within the state union of Serbia and Montenegro in December 2003¹⁷⁰. The European Court of Human Rights (ECtHR) is competent for Montenegro as of 3 March 2004, when the instruments of ratification were handed over to the Council of Europe¹⁷¹.

The status of the State Party to the Convention imposes an obligation on Montenegro to organize the judicial system in such a way so that its courts are able to meet each requirement set forth by the provisions of the Convention¹⁷². One of these obligations is the obligation under Article 6 § 1 of the Convention, that the cases before the courts and other state bodies conducted in relation to the civil rights and obligations and criminal charges be consider without delay, within a reasonable time.

In 2015 there were a total of 171 applications against Montenegro before the European Court of Human Rights¹⁷³, which is 4.2 times less than in March 2011, when 730 applications were filed with this court against Montenegro.¹⁷⁴

170 Law on ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms amended in accordance with the accompanying protocol (*Official Gazette Serbia and Montenegro* - International Treaties, no. 9/2003 of 26 December 2003).

171 *Bijelić v. Montenegro and Serbia*, 2009, paragraph 9.

172 Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms - Obligation to respect human rights - "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (http://www.echr.coe.int/Documents/Convention_SRP.pdf).

173 http://www.echr.coe.int/Documents/Stats_analysis_2015_EN.pdf, p.43.

174 Source: www.echr.coe.int/Reports-Statistic-Analysis, p.43

According to published data (*Overview 1958-2015*), in the period from 1958 through 2015 the highest number of judgments adopted in which the ECtHR found a violation of the Convention was due to the violation of Article 6 of the Convention. This was the case in 41% of the judgments. Of these, 17.63% related to the fairness of a trial, and 22.13% to damage caused by the length of proceedings¹⁷⁵.

In the cases against Montenegro, since the beginning of implementation of the Convention in our country through 2015, the Court issued 22 judgments. In 20 judgments the ECtHR found at least one violation of the rights guaranteed by the European Convention on Human Rights. Of these, 9 or 45% of judgments are related to the violation of the right to a trial within a reasonable time (4 of which are related to the enforcement of a judgment)¹⁷⁶. In the most recent year, the Government of Montenegro agreed to the settlement in 9 cases concerning a violation of this right.¹⁷⁷

On the occasion of application no. 63520/12, *Šuković v. Montenegro*, regarding the case P.163/09-98¹⁷⁸ before the Kolašin Basic Court, the Government of Montenegro concluded before the ECtHR a friendly settlement with the applicant on the payment of compensation in the amount € 3,600, where the applicant had made use of all the remedies provided under the Right to a Trial within a Reasonable Time Act and was rejected before all instances (request for review Su. 5/12 filed with the Basic Court in Kolašin, appeal Su IV-2 13/12 with the High Court in Bijelo Polje and claim for just satisfaction Tpz. 19/12 with the Supreme Court). Similar observations were made in the settlements in other cases, however, remedies to accelerate the proceedings were used in the period 2008-2010 and are therefore not subject to this analysis.¹⁷⁹

Only on 4 September 2013, five years into the application of the Act, in the judgment *Vukelić v. Montenegro* no. 58259/09 of 4 June 2013 the European Court of Human Rights noted that the request for review was an effective domestic remedy in respect of the length of proceedings, i.e. that before addressing the ECtHR the applicants should exhaust this

¹⁷⁵ http://www.echr.coe.int/Documents/Overview_19592015_EN.pdf, p. 6

¹⁷⁶ http://www.echr.coe.int/Documents/Stats_violation_1959_2015_EN.pdf (*Length of proceedings 5, Non enforcement 4*).

¹⁷⁷ European Commission, Montenegro 2016 report, Brussels, 9. November 2016, p. 62.

¹⁷⁸ First Instance judgment rendered in 2004 and second in 2009.

¹⁷⁹ Source: Minić Budimir, former lawyer from Kolašin, Applications 64764/13, 50417/07, 38584/10.

remedy. The fact that this decision was made on the basis of incomplete information submitted to this court is further elaborated below.

In the decision *Vučeljić v. Montenegro*, in October 2016 the ECtHR further concluded that, in addition to a request for review, it is necessary to make use of a claim for just satisfaction as well as a constitutional appeal prior to addressing this international court, i.e. that these remedies, too, are effective in terms of speeding up the proceedings or fair redress.

10.2 Position of the European Court of Human Rights on the general effectiveness of legal remedies based on incomplete data – Judgement in the case of *Vukelić v. Montenegro* of 4 June 2013¹⁸⁰

The application was filed due to excessive length of the enforcement procedure for the collection of debt by selling real estate, which started before the Basic Court in Bar in 1997 and was still pending on 4 June 2013 at the time of the decision. ECtHR accepted the application in question and obliged the Government of Montenegro to ensure that within three months the enforcement procedure be carried out and pay the applicant damages in the amount € 3,600.

The ECtHR did not consider that the applicant in the case of *Vukelić v. Montenegro* was obliged to submit a request for review because the application had been lodged long before a satisfactory legal practice was established in terms of handling of requests for review¹⁸¹. The Court took the same position earlier in the case of *Boucke v. Montenegro* and *Stakić v. Montenegro* (49320/07, § 41), and reiterated it in the cases *Mijanović v. Montenegro* (19580/06 of 17 September 2013) and *Bujković v. Montenegro* (40080/08 of 10 March 2015),¹⁸² explaining in the last two judgments that although therein the Court referred to the previously passed judgment in *Vukelić v. Montenegro*, considering that the applications were filed in 2006 and 2008, long before the judgment *Vukelić v. Montenegro* became final, making use of a request for review could not have been required from the applicants.

The judgment is particularly important because the ECtHR concluded that: “in view of the considerable development of the relevant domestic case-law on this issue, a request for review must, in principle

180 Judgment *Vukelić v. Montenegro*, 2014.

181 Example of the author.

182 Available at: www.echr.coe.int.

... be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Montenegro after the date when this judgment becomes final.”

This assessment of the effectiveness of a request for review is based on the analysis undertaken by the ECtHR:

“In particular, in nearly all the cases in which the relevant domestic courts specified a time-limit for undertaking certain procedural activities, these activities were indeed undertaken and in most cases in a timely manner (see paragraph 68 above). It also appears that most of the requests for review that were dismissed as unfounded were correctly dismissed as such (see paragraph 69 above).¹⁸³ ... While there are some cases in which the outcome of the request for review is rather unclear (see paragraph 70 above), the Court considers that ... a request for review must, in principle ... be considered an effective domestic remedy.”

The ECtHR came to these conclusions based on the data submitted to this court by Montenegro¹⁸⁴:

“67. Between 21 December 2007, which is when the Right to a Trial within a Reasonable Time Act entered into force, and 3 September 2012, the courts in Montenegro considered more than 121 requests for review. The Court of First Instance in Cetinje submitted the data only for the period between 1 May 2011 and 15 May 2012, and the Court of First Instance in Žabljak for the period between January 2011 and June 2012. Also, the Court of First Instance in Danilovgrad and the Court of First Instance in Kolašin did not provide the exact number of the requests for review that had been dealt with by these two courts. All the other courts dealt with 121 requests for review in total.”

However, the information that “all the other courts dealt with 121 requests for review in total” is contrary to the statistical data of the courts for that period, according to which there were twice as many (241) requests for review in the said period (up to 31 December 2011).

¹⁸³ *Ibid*, paragraphs 84-85.

¹⁸⁴ Judgment *Vukelić v. Montenegro*, para. 7.

Namely, in the period 2008-2010 the courts decided on 181 requests for review, and in 2011 on 115¹⁸⁵ such requests, which is 296 requests for review in total, without even counting the year 2012, although the Court sought information on requests for review submitted by 3 September 2012, and in that year 205 requests were filed. When the number of all the requests filed from 2007 to 2012 in the courts that the ECtHR did not consider: Cetinje¹⁸⁶, Danilovgrad¹⁸⁷, Kolašin¹⁸⁸ and Žabljak¹⁸⁹ - a total of 55 requests for review in this period - is deducted from this reduced number of 296 requests, **we are left with the number of 241 requests for review, which is double the number considered by the ECtHR.**

Therefore, based on the information received the European Court of Human Rights concluded as follows:

“68. In forty-six cases the courts issued notifications specifying the concrete actions that would be undertaken in each case within four months with a view of expediting the proceedings (see paragraph 62 above). In thirty cases of these forty-six the relevant actions were undertaken within the set time-limit (a main hearing concluded, a decision or a judgment rendered etc.). In fourteen cases the relevant actions were undertaken within periods ranging between 4 months and 12 months. In two cases the relevant action specified in the notification would not appear to have been undertaken even after a period of 12 months.”

However, according to the research conducted by HRA for the period 2008-2010, the data paint a different picture. Notification under Article 17 of the Act was delivered in 76 cases. Of these 76 cases, our sample included 18 cases (24%)¹⁹⁰. In half of them (9 cases), a period of 4 months has passed without results.¹⁹¹

In 2011, a notification was sent in 27 cases. Of these, statistics is available

185 For 2011 and earlier, there were separately statistics for the requests for review and complaints which greatly facilitated the monitoring of solving and data analysis.

186 Requests for review BC Cetinje 2008-2010: 5 requests and 2011-2012: 11 requests, total 16.

187 Requests for review BC Danilovgrad 2008-2010: 1 request and 2011-2012: 1 request, total 2.

188 Requests for review Kolašin 2008-2010 – 13 requests and 2011-2012 – 22 requests, total 35.

189 Requests for review Žabljak 2008-2010 – 2 requests and 2011-2012 - 0 request, total 2.

190 Analysis of the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time, Human Rights Action, Podgorica, March 2011, p. 68.

191 Analysis of the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time, Human Rights Action, Podgorica, March 2011, p. 8 under 3.

for 17 cases or 62.96% (3 cases with the Bar Basic Court¹⁹², 3 cases with the Basic Court in Bijelo Polje¹⁹³, 1 case with the Basic Court in Herceg-Novi¹⁹⁴, 8 cases with the Kotor Basic Court¹⁹⁵ and 2 cases with the Administrative Court). Of these 17 cases, in 9 (52.94% of the sample) the procedure lasted for another year to 4 years and 9 months¹⁹⁶, in 4 cases (23.52%) between four months and one year¹⁹⁷, while in 4 cases (23.52%) the procedure was completed in less than 4 months.¹⁹⁸

In the period 2008-2010 total of 19 requests for review were granted, and in 2011 - 7 requests. We do not have the statistics for the period 2008-2010, apart from a remark that due to the lack of a set deadline the cases had not been handled in order of priority¹⁹⁹. In 2011 a notification was obtained in 4 of the 7 cases (1 in the Bar Basic Court, 3 in the Basic Court in Podgorica), or 57.14%. In that year, 2 cases (50% of the sample) lasted for over a year²⁰⁰, and 2 (50%) between 4 months and a year²⁰¹.

While the ECtHR found that 65% of cases (30 of 46) had been handled within a deadline and 35% of cases (16 of 46) out of time, according to the HRA findings, of a total of 39 (18+17+4) cases for which statistics were available, 13 cases (33.33%) were handled within a deadline, while in 26 (9+9+4+4) cases (66.66%) the procedure lasted longer than 4 months, of which 11 (9+2) cases or 28.2% even longer than a year. **This indicates that the practice presented to the European Court of Human Rights shows that granted requests for review were 32% more effective than they most probably were.**

With regard to rejecting requests for review, the Court had the following information:

192 P.213/11, P.488/06 and RS.38/09.

193 P.325/09, Rs.br. 60/2011, P.56/2011.

194 O.332/10-99.

195 P.550/02, P.72/09-05, P.242/11-06, P.620/11/93, P.662/11-07, P.965/10/10, I.br. 388/10 i l. 376/10/09.

196 4 year and 9 months P.242/11-06, 4 year P.620/11/93, 3 years and 10 months, P.662/11/07, 2 years P.550/02, P. 965/10/10 and I.376/10/09 all in BC Kotor, 3 years and 7 months O.332/10-99 BC Herceg-Novi, 1 year and 11 months P. 488/06 BC Bar, 1 year and 10 months Rs.60/11 BC Bijelo Polje, 1 year and 8 months P. 325/2009 BC Bijelo Polje.

197 11 months 213/11 BC Bar and I.br.388/10 BC Kotor, 10 months P.72/09-05 BC Kotor.

198 4 months P. 56/2011 BC Bijelo Polje, 3 days Rs 38/09 BC Bar and 2 cases of the Administrative Court (see in Appendix, Administrative Court).

199 Source as under 137, p. 8 under 4 at the end.

200 BC Bar P. 769/11 1 year and 2 months and BC Podgorica p.2248/09 1 year and 1 month.

201 BC Podgorica P.734/11 8 months and P.1157/09 7 months.

“69. In thirty-three cases the requests for review were dismissed²⁰² as unfounded. In twenty-one cases of these thirty-three the relevant domestic proceedings would appear to have been pending before the first-instance courts between 5 months, and 1 year and nine months at most. In one case the relevant civil proceedings in respect of which the request for review was dismissed as unfounded had already been pending for at least 4 years and 5 months before a first-instance court. In eleven cases it is unclear how long the relevant domestic proceedings had lasted.”

According to the findings of HRA, in the period 2008-2010 the courts rejected 73 requests for review, 66 such requests in 2011, a total of 139 rejected requests, not counting 2012 during which a total of 183 requests were rejected. From 2008 to 2011 a total of 15 requests were dismissed, and in 2012 - 7 requests for review. **The number of requests rejected appears to be four times higher as compared to the number presented to the European Court of Human Rights.**

This all points to an inexplicable discrepancy between the data made available to the ECtHR and data from the previous and current HRA reports, whereas our reports with regard to the number of requests for review decided in the course of a year and the method of their completion, regardless of the observations set forth in terms of the reliability of these statistics (which are unrelated to 2011 and prior years) - rely on the annual reports on the work of courts published each year by the Judicial Council.

The European Court of Human Rights in the same judgment reiterated the conclusion by Human Rights Action from 2011 that a claim for just satisfaction “is not capable of expediting proceedings while they are still pending, which is clearly the applicant’s main concern”, and that “a constitutional appeal cannot be considered an effective domestic remedy in respect of length of proceedings”²⁰³.

10.3 Decision in the case of *Vučeljić v. Montenegro* of 18 October 2016

In its decision in the case of *Vučeljić v. Montenegro*²⁰⁴, in October 2016 the European Court of Human Rights held that the applicant had not exhausted all domestic remedies because he had failed to use a request

202 Refers on the rejected requests for review.

203 *Vukelić v. Montenegro*, 2013, para. 88.

204 Decision *Vučeljić v. Montenegro*, 18 October 2016, <http://hudoc.echr.coe.int/eng?001-169022>.

for review in terms of expediting the procedure of enforcing of a final judicial decision, so the application was dismissed.

An important point made by the ECtHR in this decision is that the applicant had to make use not only of a request for review, but also lodge a claim for just satisfaction²⁰⁵ with the Supreme Court and a constitutional appeal with the Constitutional Court in terms of protection due to the lengthy proceedings.

The decision states as follows:

“As regards a claim for just satisfaction, the Court has previously held that as long as the proceedings were still ongoing and the request for review was not yet considered an effective remedy, the claim for just satisfaction could not be considered capable of expediting proceedings (see, for example, *Mijušković v. Montenegro*, no. 49337/07, § 72, 21 September 2010, and *Boucke v. Montenegro*, no. 26945/06, § 72, 21 February 2012). However, it proved capable of providing adequate compensation for a violation of the right to a trial within a reasonable time (see, *mutatis mutandis*, *Bulatović v. Montenegro*, no. 67320/10, §§ 17-22 and § 151, 22 July 2014). The Court therefore considers it an effective domestic remedy.²⁰⁶”

In the case of *Bulatović v. Montenegro*²⁰⁷, as the applicant received compensation of € 2,000 from the Supreme Court due to a lengthy criminal proceedings, the Court held that the applicant had lost his victim status, i.e. that the compensation was sufficient in the case in question.

Thus, the ECtHR considers a claim for just satisfaction to be an effective remedy in respect of just compensation, but not yet an effective means to accelerate the proceedings.

However, it should be noted that the ECtHR will in the future in each case evaluate whether the remedies provided by the Right to a Trial within a

²⁰⁵ Ibid, paragraph 30 of the decision.

²⁰⁶ „30. As regards an claim for just satisfaction, the Court has previously held that as long as the proceedings were still ongoing and the request for review was not yet considered an effective remedy, the claim for just satisfaction could not be considered capable of expediting proceedings (see, for example, *Mijušković v. Montenegro*, no. 49337/07, § 72, 21 September 2010, and *Boucke v. Montenegro*, no. 26945/06, § 72, 21 February 2012). However, it proved capable of providing adequate compensation for a violation of the right to a trial within a reasonable time (see, *mutatis mutandis*, *Bulatović v. Montenegro*, no. 67320/10, §§ 17-22 and § 151, 22 July 2014). The Court therefore considers it an effective domestic remedy.”

²⁰⁷ Judgment *Bulatović v. Montenegro* p.22 and 151, <http://hudoc.echr.coe.int/eng?i=001-145705>.

Reasonable Time Act are sufficient and effective bearing in mind primarily the conduct of the courts in relation to these remedies. In this sense, in the judgment *Vukelić v. Montenegro* the Court recalls that the only remedies which the Convention requires to be exhausted are those which relate to the breaches alleged and at the same time are available and sufficient; the existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It falls to the respondent State to establish that these various conditions are met.²⁰⁸

Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement²⁰⁹.

The fact remains that the citizens of Montenegro and other persons who have the right and the intention to appeal to the European Court of Human Rights for the lengthy proceedings led before the Montenegrin courts, must, as domestic remedies, use both the request for review to expedite the proceedings and claim for just satisfaction in terms of damages due to the lengthy procedure, and since recently a constitutional appeal too.

On the other hand, given the findings in this report that in 48.6% of cases of the sample the procedure lasted from 1 year to 4 years and 7 months after delivering a notification that the procedure would be completed or action taken within 4 months, and in 27.6% of the sample the procedure lasted over a year after a request for review had been granted, it is up to the courts to improve the judicial practice of complying with requests for review and claims for just satisfaction so that these remedies be truly sufficient and effective and enable the protection of a human right to a trial within a reasonable time before the ordinary courts in Montenegro.

208 *Vukelić v. Montenegro*, p. 80.

209 *Vukelić v. Montenegro*, p. 81.

11. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

11.1 SUMMARY

Legal remedies for the protection of the right to a trial within a reasonable time - request to expedite the proceedings (request for review) and claim for just satisfaction for the breach of the right to a trial within a reasonable time, introduced at the end of 2007, are used much more often than in the first few years of application, but still relatively little compared to the total number of backlog cases in Montenegrin courts. In the period 2011-2015 the presidents of courts granted only every fourth request to expedite the proceedings, while the Supreme Court upheld every other claim. In more than a quarter of cases, in which the Supreme Court found a violation of the right to a trial within a reasonable time, requests to accelerate the proceedings had previously been rejected by final decision. The research conducted on representative samples shows that in, 2/3 of the cases, granting of a request for review did not lead to acceleration of the procedure within the statutory deadline of 4 months. This requires that presidents of courts who act on those requests review their practice. In the practice of the Supreme Court there is no clear criterion for determining the amount of just satisfaction (non-pecuniary damages), as applied by the European Court of Human Rights. It has not been ensured that a judgment adopting the claim and establishing a violation of the right leads to an urgent conclusion of the proceedings.

11.2 CONCLUSIONS AND RECOMMENDATIONS

- Two remedies provided under the Right to a Trial within a Reasonable Time Act - request to expedite the proceedings, i.e. request for review and claim for just satisfaction for breach of the right to a trial within a reasonable time - were used on average three or four times more in the period 2011-2015 as compared to the first three years of implementation of the Act (2008-2010), but remain underused in relation to the existing backlog of cases in the courts. Even though there is a noticeable trend of reducing the backlog of cases before the courts in Montenegro, at the end of 2015 a quarter of cases from 2011 and previous years remained unresolved (2,437), while a

request for review was lodged in only 7% of those cases, and a claim for just satisfaction in 1.5% of cases (*Chapters II.1 and II.2*).

- Only a quarter of requests to expedite the proceedings were adopted either by granting the request or notifying the party that the proceedings would be accelerated, while 3/4 were rejected or dismissed (half were rejected and 1/5 dismissed on procedural grounds). In more than 1/4 of cases in which the Supreme Court found a violation of the right to a trial within a reasonable time, a request for review had previously been rejected in a final decision (*Chapters III, IV and V.4*).
- In 10% of cases (50) in relation to the overall number of rejected requests, the presidents of courts clearly unjustifiably rejected requests for review and appeals lodged in very lengthy proceedings, some even over thirty years long, acting thus contrary to the criteria set out in Art. 4 of the Act and the practice of the European Court of Human Rights. Only a fifth of those decisions were overturned. ***It is advisable to introduce the presidents of courts to the European Court of Human Rights practice vis-à-vis protection of the right to a trial within a reasonable time (Chapter III.2.2).***
- Completion of the proceedings upon a request for review by notifying the party that within four months a decision would be made or procedural steps taken was much rarer than in the past. During 2008-2010 period, as much as 42% of cases were completed in such a manner, and from 2011 to 2015 only 15.7% of cases. ***We believe that notification to the party, in cooperation with the judge, should be used much more frequently (Chapter IV.1).***
- In 2/3 of the sample analysed²¹⁰ notification to the party did not lead to acceleration of the procedure within the statutory deadline (*Chapter IV.1*).
- In the reporting period only 11% of the requests for review were granted. In 2/3 of the sample²¹¹ a decision to grant a request for review did not result in acceleration of the proceedings within the prescribed deadline (*Chapter IV.2*).
- Only in one in five decisions granting the request, the presidents of courts ordered a judge to take action within a specific timeframe and provide feedback thereafter. ***Presidents of courts should regularly make use of this very important authority for effective acceleration of the proceedings (Chapter IV.2). When the procedure as a whole is unduly delayed, presidents of courts should strive to ensure that it***

²¹⁰ The sample consisted of 42% of cases completed in this manner.

²¹¹ The sample consisted of 28% of cases completed in this manner.

be quickly completed by granting a request for review or notifying the party in cooperation with a judge that the case would be completed within four months, or that during that period actions would be taken that lead to its completion (Chapter III.2.2). If a new judge holds no responsibility for granting of a request for review in the case due to previous unjustified delay, it should be ensured that granting of such request does not reflect negatively on his/her evaluation (Chapter IV.3).

- Statistical reporting in annual reports of the Judicial Council on the work of some courts with regard to requests for review and appeals for individual courts differs from the actual situation in the cases submitted by those courts (*Chapter VI*).
- Claims for just satisfaction for violations of the right to a trial within a reasonable time were lodged and also adopted more frequently than before. In the observed period (2011-2015) the number of claims has increased four times compared to the first few years of application of the Act, while the Supreme Court granted every other claim (*Chapter V.1*).
- The maximum amount of just satisfaction awarded was € 4,000 in two civil cases, and in criminal cases € 3,500, while the maximum amount of € 5,000 has not been awarded since the beginning of implementation of the Act. The criterion used by the Supreme Court to establish the amount of just satisfaction is unclear. ***Following the example of the European Court of Human Rights, the Supreme Court should adopt a formula for determining the amount of fair compensation. We believe that the limit pertaining to the amount of just satisfaction should be deleted from the Act (Chapters V.2 and IX).***
- A claim for just satisfaction is not an effective remedy for the purpose of accelerating the proceedings, however, it should be ensured that it is, particularly because in 1/3 of the cases the Supreme Court found a violation of the right to a trial within a reasonable time in legal cases in which a request to accelerate the procedure had previously been rejected, and in some cases claims were filed two times in the same case. ***We propose that the Act provide for the compulsory delivery of the Supreme Court's ruling upholding the claim to a judge handling the case in respect of which the claim was adopted, as well as to a president of the court before which the case is pending, together with an order to immediately finalize the procedure, i.e. to take necessary action within three months, so that the claim, i.e. the ruling upholding the claim could lead to acceleration of the procedure (Chapters V.4 and IX).***
- Reports of the Ministry of Justice of the Government of Montenegro have not yet been drafted in a manner so as to weigh the achievement

of the purpose of the Right to a Trial within a Reasonable Time Act in relation to the effective acceleration of judicial proceedings. **We suggest that the reports also include statistical indicators about the timeframe of handling by the courts following the granting of a request for review and delivery of the notification, particularly with regard to observing legal deadlines**, which would be a reliable basis for assessing the effectiveness of these remedies (*Chapter VII*).

- **We support recommendations provided by the Ministry of Justice and the Ombudsman to organize training for lawyers on the application of remedies for the protection of the right to a trial within a reasonable time** (*Chapter VII*).
- The European Court of Human Rights has held that the means to protect the right to a trial within a reasonable time in Montenegro are generally effective, i.e. that the citizens must use them before lodging an application with the ECtHR. Although we have come to an alarming discovery that the ECtHR has taken such a stance on the basis of incomplete information received from Montenegro, we believe that it is not disputable that a request for review and claim for just satisfaction should be used prior to addressing the Constitutional Court of Montenegro and the ECtHR. However, in the opinion of the ECtHR as well, the effectiveness of each of these remedies is assessed in each individual case, and the report indicates - based on representative sample - that granting of a request for review in as many as 2/3 of the cases failed to lead to the expected acceleration of the procedure within the legal deadline of 4 months (*Chapter X*).

We hope that the adoption of these recommendations will lead to effective protection of the right to a trial within a reasonable time in each individual case in Montenegro.