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ANALYSIS OF THE APPLICATION OF THE LAW

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

(2017 – 2022)

Funded by the European Union

Ministarstvo javne uprave

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On the front page: a photograph of the play
"Waiting for Godot", director Otomar Krejca, Avignon festival, 1978.

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INTRODUCTION

So far, the Human Rights Action has published two analyses of the application of the Law on the Protection of the Right to a Trial within a Reasonable Time: for the period 2008-2010[1] and for the period 2011-2015.[2] Covering the six-year period from 2017 to the end of 2022, this report represents a continuation of the same research.

In the meantime, state authorities and other organisations also published their research. The Ministry of Justice of Montenegro published the Report on the Implementation of the Law on the Protection of the Right to a Trial within a Reasonable Time for the year 2017.[3] In 2018, in cooperation with the Office of the Representative of Montenegro before the European Court of Human Rights and the AIRE Centre,[4] the Supreme Court of Montenegro published the Analysis of Judgments of the European Court of Human Rights Related to Montenegro. In 2019, the Centre for Monitoring and Research (CeMI) published the report entitled "Protection of the Right to a Trial within a Reasonable Time - Analysis of National Legislation and Case-law",[5] which covered the period 2008-2018. The same year, within the framework of Horizontal Facility for Western Balkan and Turkey, Council of Europe expert Sanja Otočan prepared the "Analysis of the current legal framework and case-law in respect of effective remedies for the protection of the right to a trial within a reasonable time in administrative procedures and administrative disputes".[6] In 2020, the Civic Alliance published the report entitled "Administrative Judiciary in Montenegro - Reasonable Deadlines and the Enforcement of Judgments of the Administrative Court".[7]

1 Analysis of the application of the Law on the Protection of the Right to Trial within a Reasonable Time for the period 2008-2010, NGO Human Rights Action, Podgorica, March 2011, available at: https://www.hraction.org/2012/02/24/analiza-primjene-zakona-o-zastiti-prava-na-sudenje-u-razumnom-roku/

2 Analysis of the application of the Law on the Protection of the Right to Trial within a Reasonable Time for the period 2011-2015, NGO Human Rights Action, Podgorica, January 2017, available at: https://www.hraction.org/2017/02/15/analiza-primjene-zakona-o-zastiti-prava-na-sudenje-u-razumnom-roku-za-period-2011-2015-godine/

3 Analysis of the application of the Law on the Protection of the Right to Trial within a Reasonable Time for the period 1 January - 31 December 2017, Ministry of Justice, Directorate for the Organisation of Justice, Criminal Legislation and Supervision, Podgorica, February 2018, available at: https://www.gov.me/dokumenta/06206739-6d4b-455b-8251-a06db0058d86

4 Analysis of the judgments of the European Court of Human Rights related to Montenegro, Supreme Court of Montenegro, Office of the Representative of Montenegro, November 2018, available at: https://sudovi.me/static/vrhs/doc/11233.pdf

5 Protection of the Right to Trial within a Reasonable Time - Analysis of National Legislation and Practice, CeMI, October 2019, available at: https://cemi.org.me/wp-content/uploads/2020/01/Pravo-na-sudjenje-u-razumnom-roku.pdf

6 Analysis of the current legal framework and case-law in respect of effective remedies for the protection of the right to a trial withih a reasonable time in administrative procedures and administrative disputes, Sonja Otočan, Horizontal facility for Western Balkan and Turkey, EU COE, Podgorica 2019, available at: https://rm.coe.int/analysis-legal-framework-fill-eng/168094c4ad)

7 Administrative judiciary in Montenegro, Reasonable Deadlines and the Enforcement of Judgments of the Administrative Court, Civic Alliance, December 2020: https://gamn.org/wp-content/uploads/2020/12/GA-Analiza-Upravno-sudstvo.pdf

As all the above-mentioned reports and analyses pointed to the problems encountered in the application of the Law on the Protection of the Right to a Trial within a Reasonable Time, we thought it expedient to continue the research in 2023, with the aim of correcting the observed irregularities and continuously informing the public about all the aspects of the application of legal means prescribed by that Law, especially having in mind the fact that, since 2018, the Ministry of Justice of Montenegro no longer publishes reports on that topic.

Also, in this analysis we will especially deal with the issue of lengthy administrative procedures, and offer proposals for speeding them up since this problem has not yet been solved.

The aim of the research was to establish the extent to which legal means available for the protection of the right to a trial within a reasonable time are used and whether they are effective, whether they lead to a real acceleration and the completion of proceedings within a reasonable time, and, in particular, whether they are effective in administrative-judicial proceedings and what else can be done to speed up these proceedings since they have the biggest backlogs.

CONCLUSIONS AND RECOMMENDATIONS FROM PREVIOUS ANALYSES

The following was observed in the last analysis, which the Human Rights Action published in 2016:[8]

a) That the legal means provided for by the Law on the Protection of the Right to a Trial within a Reasonable Time (the request for speeding up the proceedings, i.e. the control request and the claim for just satisfaction) were used relatively infrequently considering the number of backlog cases pending before the courts;

b) That court presidents have continued to reject control requests and appeals without grounds in a significant number of cases, even in proceedings that had lasted beyond any allowed time limit;

c) That the application of Article 17 (notification to the party) was not fully effective;

d) That the application of Article 18 (justification of the request) was not effective;

e) That statistical reporting on control requests and appeals in the annual reports on the work of the courts was not adequate, and

f) That the claim for just satisfaction was not effective in speeding up the proceedings.

Based on the above, we are providing the following *recommendations*:

1. Make it possible for court presidents to familiarise themselves with the practice of the

8 D. Kisjelica, Analysis of the application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the period 2011-2015, Human Rights Action, Podgorica, January 2017, available at: https://www.hraction.org/2017/02/15/analiza-primjene-zakona-o-zastiti-prava-na-sudenje-u-razumnom-roku-za-period-2011-2015-godine/

European Court of Human Rights concerning the protection of the right to a trial held within a reasonable time;

2. Notification to the party (Article 17 of the Law) should be used much more often, in cooperation with the judge;

3. When approving a control request, court presidents should regularly order that action be taken within a specific deadline and that the party be notified of the action taken;

4. Following the example of the European Court of Human Rights, the Supreme Court should adopt a formula for determining the amount of just compensation, while the Law should be amended to delete the limit on said amount;

5. To monitor compliance with deadlines, the reports of the Ministry of Justice on the application of the Law on the Protection of the Right to a Trial within a Reasonable Time should be supplemented with statistical indicators of the time of action taken after the approval of the control request and the delivery of notice;

6. Organise training for attorneys on the application of measures for the protection of the right to a trial held within a reasonable time.

In addition to the same or similar recommendations, the above-listed analyses of other non-governmental organisations and state authorities also contain recommendations to prepare appropriate forms for the control request and the claim for just satisfaction (following the example of Slovenia) so as to make it easier for citizens to use these legal means; to analyse the reasons why some citizens are turning directly to the Ombudsman before using the legal means provided for by the Law on the Protection of the Right to a Trial within a Reasonable Time, and undertake appropriate activities in the field of raising citizens' awareness; to reduce unnecessary delays in court proceedings and consistently apply available legal mechanisms to prevent abuses by subjects who knowingly influence the delay of court proceedings; to make sure that hearings are postponed only in those cases where the law expressly provides for it, and to respect the instructional deadlines for the implementation of procedural actions in the proceedings.[9]

As regards administrative proceedings and administrative disputes, it was recommended to introduce monitoring of the work of public bodies in order to determine whether they are acting in accordance with legal obligations related to compliance with deadlines for making decisions in administrative proceedings and the obligation to enforce judgments of the Administrative Court; to keep appropriate records in the form of one-year reports on the enforcement of judgments of the Administrative Court and prescribe sanctions for the heads of authorities/public bodies for non-compliance with said obligation. It was also recommended that the number of judges of the Administrative Court be adapted to the number of newly received cases, to expand the range of disputes that can be handled by advisers, or that a system of preliminary proceedings before the administrative bodies be introduced as an additional control prior to the beginning of the administrative court supervision.[10]

In their analysis, the Supreme Court and the Office of the Representative before the European Court of Human Rights recommended that, in order to reduce the number

9 *Protection of the Right to Trial within a Reasonable Time - Analysis of National Legislation and Practice,* CeMI, op.cit, p. 35

10 Analysis of the current legal framework and case-law in respect of effective remedies for the protection of the right to a trial withih a reasonable time in administrative procedures and administrative disputes, Sonja Otočan, op.cit, pp. 175-176 , as well as *Administrative judiciary in Montenegro, Reasonable Deadlines and Enforcement of Judgments of the Administrative Court*, GA, *op.cit*, p. 32

of petitions before the European Court due to a possible violation of Article 6(1) of the Convention, additional efforts be made to improve the efficiency of court proceedings, particularly to improve the efficiency of the administrative procedure and administrative dispute, especially in the direction of meritorious decision-making in these procedures, and that the Human Resources Administration, when conducting training, devote special attention to the continuous education of authorised officials who conduct administrative proceedings and pass administrative acts on the topic of the right to a trial held within a reasonable time.[11]

METHODOLOGY USED TO ANALYSE THE APPLICATION OF THE LAW ON THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE PERIOD OF TIME FROM 2017 TO THE END OF 2022, AND ACCESS TO INFORMATION

All the courts in Montenegro were requested to submit cases that involved control requests and appeals against decisions on control requests. The annual reports on the work of the Judicial Council and the state of the judiciary show the statistics for regular and misdemeanour courts separately,[12] except in the part that refers to the spending of budget funds, so in terms of statistical analysis of the number of cases, submitted control requests and claims, this report is based on data for regular courts. Based on data obtained from misdemeanour courts in Budva, Podgorica and Bijelo Polje and the annual reports on the work of the courts, misdemeanour courts were devoted a separate chapter.

The Basic Courts in Bar, Bijelo Polje, Cetinje, Danilovgrad, Herceg Novi, Kotor, Nikšić, Plav, Pljevlja and Rožaje, the High Court in Bijelo Polje and the Administrative Court of Montenegro submitted decisions and appeals on control requests for the requested period. The Basic Court in Podgorica, the Appellate Court and the Supreme Court of Montenegro instructed us to search their websites for decisions on control requests and decisions made on appeals against decisions on control requests.

Verification of the effectiveness of the control requests approved under Article 18 of the Law on Protection of the Right to a Trial within a Reasonable Time and the notification under Article 17 of the Law was carried out by: (a) looking at the dates of decisions or the dates of scheduled hearings in those cases on the court's website, if the numbers of cases for which acceleration was requested in the submitted control requests were not anonymised, and (b) by special requests for insight into the status of the cases in which the control request was approved, which were submitted to the basic courts of Bar, Berane, Cetinje, Herceg Novi, Nikšić and Podgorica and the High Court in Podgorica.

11 Analysis of Judgments of the European Court of Human Rights related to Montenegro*, op.cit*, p. 115

12 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, Judicial Council, March 2023, part III, Overview of the work of misdemeanor courts, pp. 71-90, as well as in all earlier annual reports, available at: https://sudovi.me/static//sdsv/doc/GODISNJI_IZVJESTAJ_O_RADU_2022.-Finalno_(1).pdf

We used the Judicial Council's Reports on the Work of the Courts and the State of the Judiciary for the years 2017, 2018, 2019, 2020, 2021 and 2022, which were published on their website.

Regarding the work of administrative bodies, we used the Reports for the year 2022 of the Ministry of Justice, the Ministry of the Interior, the Ministry of Public Administration, the Ministry of Ecology, Spatial Planning and Urbanism and the Report for 2021 and 2022 of the Complaints Commission of the Government of Montenegro (which were all published on the website of the Government of Montenegro), and the Annual Report for 2021 of the Chief Administrator of the Municipality of Budva for 2019, the Report of the Chief Administrator of the Municipality of Gusinje 2019-2022, the Report of the Chief Administrator of the Municipality of Cetinje for 2020 and the Report of the Chief Administrator of the Municipality of Bijelo Polje for 2020 (which were published on the websites of said municipalities).
The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) was requested to submit cases in which complaints were filed in the period from 2017-2022 due to the long duration of the proceedings, and we received Opinions concerning 48 cases. We then requested the opinion about acting on the Ombudsman's recommendations in 23 cases that were related to administrative procedures and in which a violation of the right to a decision within a reasonable time was established.

Decisions of the Constitutional Court that were made on constitutional appeals in cases against decisions of the Supreme Court made on claims for just satisfaction (Tpz) were downloaded in the period 2017-2022 from the website of that Court.

Annual reports of the European Commission were downloaded from the website of the Delegation of the European Commission in Montenegro, while translations of decisions of the European Court of Human Rights were downloaded from the website of the Supreme Court of Montenegro and the Constitutional Court of Montenegro.

1.

PROMPTNESS OF THE COURTS IN THE PERIOD 2017-2022

1.1. Number of Unresolved Cases

The category of "unresolved cases" includes all cases that remained unresolved at the end of the reporting period.[13] Cases in which more than three years have passed since the initiation are considered "old cases". They have priority treatment and a red case file cover.[14]

Annual report on the work of courts	Total number of unresolved cases	Total number of unresolved old cases
2017[15]	40,780	3,206
2018[16]	38,971	3,081
2019[17]	38,190	2,912
2020[18]	34,425	3,036
2021[19]	37,963	3,794
2022[20]	51,539	4,890

13 Court Rules of Procedure, "Official Gazette of Montenegro", nos. 65/2016 and 19/2019, Article 47

14 *Ibid,* Article 148, paragraphs 4 and 5

15 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, p. 38, available at: https://sudovi.me/static/sdsv/doc/7800.pdf

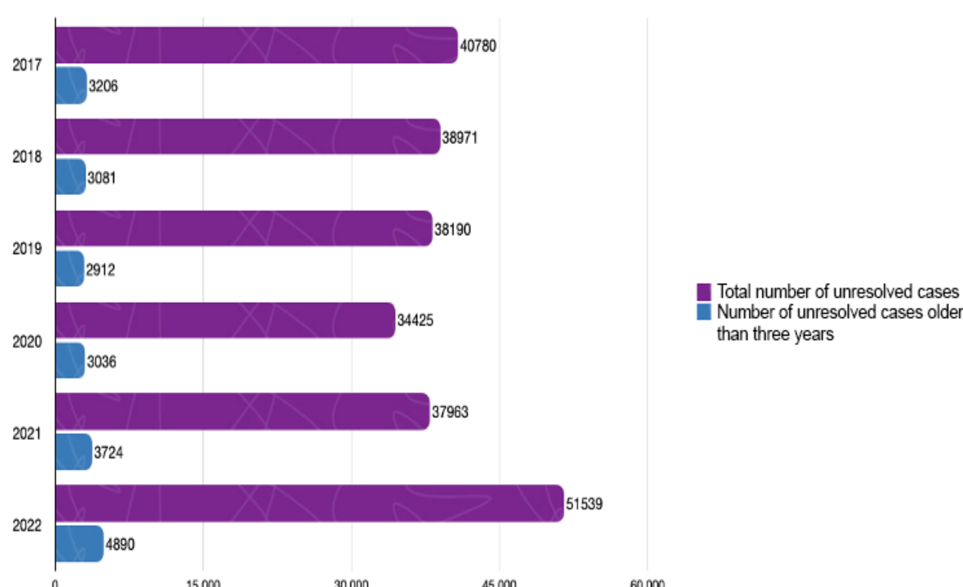
16 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, p. 34, available at: https://sudovi.me/static/sdsv/doc/10526.pdf

17 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019, p. 34, available at: https://sudovi.me/static/sdsv/doc/FINAL_-Godisnji_izvjestaj_2019.-stampa.pdf

18 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, p. 34, available at: https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2020.godinu.pdf

19 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, p. 39, available at: https://sudovi.me/static//sdsv/doc/Izvjestaj_o_radu_2021.pdf

20 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, p. 39, available at: https://sudovi.me/static//sdsv/doc/IZVJESTAJ_O_RADU_ZA_2022._Sudski_savjet.pdf



Number of unresolved cases, 2017-2022

The average number of unresolved cases at the annual level in the period 2017-2022 was 40,311. That number constantly decreased - from 40,780 in 2017 to 34,425 in 2020, only to increase to 37,963 cases in 2021 and then to as many as 51,539 in 2022, which means that there was an increase of 13,576 cases (35.7 %) compared to the previous year.

On an annual level, the average number of unresolved cases at the time of the previous analysis (for the period 2011-2015) was 35,942 cases, and in the last six years - 40,311, which means that there was an **average annual increase of 4,369 or 12.2%. A marked increase in the number of unresolved cases occurred in 2022, when the number of such cases increased by 27% compared to the six-year average.**

1.2. Inflow of new cases

Year	Inflow of new cases
2017	101.644[21]
2018	98.786[22]
2019	92.984[23]
2020	80.723[24]
2021	84.143[25]
2022	92.918[26]

21 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, *op.cit*, p. 38

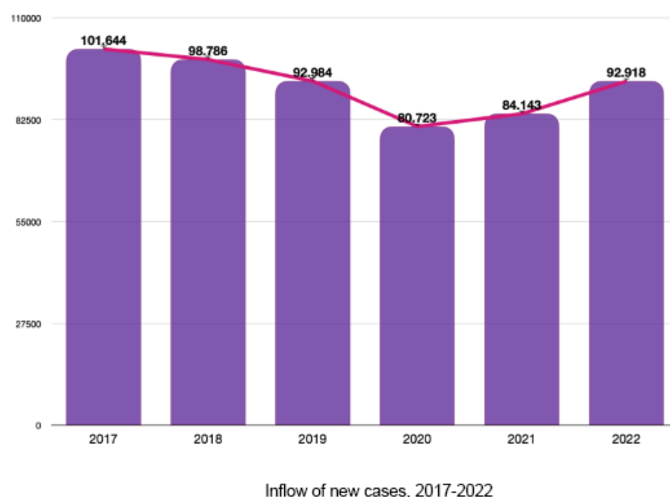
22 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, *op.cit*, p. 34

23 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019., *op.cit*, p. 34

24 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, *op.cit*, p. 34

25 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, *op.cit*, p. 34

26 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, *op.cit*, p. 39



Inflow of new cases, 2017-2022

The inflow of new cases has been declining since 2017, reaching a minimum in 2020 and then starting to rise again. In 2022, it remained at the level of 2019 (92,918 cases).

The average annual inflow of cases in the period 2011-2015 was 103,476, and in the period 2017-2022 - 91,866 cases, which means that in the last six years, on average, **11% fewer cases were received per year than before.**

In 2022, the inflow of cases was 10% compared to the year before, while compared to the average annual inflow in the period 2017-2022 it increased by only 1%. Therefore, the disproportionate increase in the number of unresolved cases (35.7%) compared to the previous year, that is, the increase of 27% compared to the six-year average, was not the consequence of the increased inflow of cases.

1.3. Number of Backlog Cases (TB Indicator)

The total number of backlog cases (TB) or the *total backlog* indicator,[27] represents the difference between the total number of unresolved cases at the beginning of the period and the number of backlog cases (older than 1 year) resolved in the same period.

27 CEPEJ Guidelines on Judicial Statistics, European Commission for the Efficiency of Justice (CEPEJ), adopted by CEPEJ at the 12th plenary meeting, Strasbourg, 10-11 December 2008, Appendix I, item 5 Analytical data and indicators, paragraph 2 item 5, *Ukupni zaostaci* (UZ indicator) or in English: TB (total backlog), which designation was used in the annual reports of the Judicial Council.

Year	Unresolved cases, as on 1 January	Resolved backlog cases, as on 31 December	The difference (TB indicator)
2017[28]	32.305	24.621	7.684
2018[29]	40.781	30.477	10.304
2019[30]	38.972	27.840	11.132
2020[31]	38.190	26.423	11.767
2021[32]	34.425	22.550	11.875
2022[33]	37.963	23.325	14.638

Growth in the number of unresoved cases older than three years

The average number of backlog cases in the observed period was 11,233, while the average number of the same cases in the period 2011-2015 was 10,081, **which represents an increase of 11.4%.**

Within the framework of "Operational objective 4: Improving the efficiency of the work of courts", the Action Plan for the implementation of the Justice Reform Strategy 2019-

28 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, *op.cit*, p. 39

29 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, *op.cit*, p. 35

30 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019, *op.cit*, p. 35

31 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, *op.cit*, p. 35

32 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, *op.cit*, p. 40

33 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, *op.cit*, p. 40

2020[34] envisaged a 5% reduction in the number of backlog cases by the end of 2020, i.e. by 8% by the end of 2022. The difference of 10,304 between the number of resolved and unresolved backlog cases at the end of 2018 (TB indicator) was taken as the "initial value" for achieving said goal. However, instead of a 5%, reduction, the number of backlog cases in 2020 increased (to 11,767, i.e. by 14%) compared to the so-called initial value, and 20.2% compared to the set goal (5% fewer cases, i.e. 9,789). **However, in 2022, instead of a reduction of 8%, there was an increase in the number of backlog cases by as much as 42% compared to the so-called initial value, and all of 54.43% in relation to the set goal.**

The Action Plan for the implementation of the Justice Reform Strategy 2021-2022[35] envisaged a decrease of 5% compared to the initial value of 10,304 cases in 2022 because the result after the second year (2020) was an increase, not a decrease, in the backlog of cases. However, from the data contained in the Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2022 it follows that, **in relation to the set goal, the number of backlog cases (14,368) actually increased by 49.5%.**

The goal envisaged in the Action Plans for the implementation of the Justice Reform Strategy 2018-2020 has not been achieved and one can note a serious deterioration in the resolution of backlog cases.

1.4. Number of Unresolved Cases Older than Three Years

Year	Number of unresolved old cases
2017[36]	3.206
2018[37]	3.081
2019[38]	2.912
2020[39]	3.036
2021[40]	3.794
2022[41]	4.890

34 Action Plan for the Implementation of the Judicial Reform Strategy 2019-2020 (for the period 2019-2020), Ministry of Justice, p. 13, available at: https://www.gov.me/dokumenta/85adec6c-ee79-45e9-a9ec-7a00f23d6d2f

35 Action Plan for the Implementation of the Judicial Reform Strategy 2021-2022, Ministey of Justice and Human and Minority Rights, Podgorica, December 2021, p. 18, available at: https://rm.coe.int/hf6-ap-implementation-judiciary-reform-cnr/1680a55239

36 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, *op.cit.* p. 37

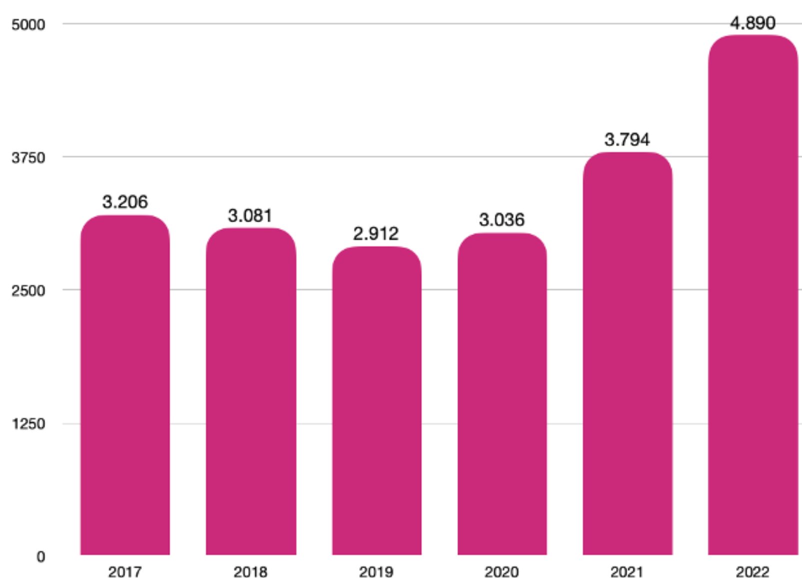
37 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, *op.cit.* p. 33

38 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019, *op.cit.* p. 33

39 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, *op.cit.* p. 33

40 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, *op.cit.* p. 38

41 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, *op.cit.* p. 38



Growth in the number of unresolved cases older than three years

In the period 2017-2022, the number of unresolved old cases (those older than three years, the so-called red-cover cases) was on average 3,486 per year. For the sake of comparison, in the previous period, 2011-2015, the average number of unresolved cases older than three years was 2,814,[42] which means that the number of such cases has been **increasing at the average annual rate of 23.8%. The increase in the number of old cases was most pronounced in 2022, compared to the 2017-2022 average, amounting to as much as 40%.**[43]

1.5. Changes in the Number of Judges

The number of judges in the courts in Montenegro is determined by the Decision on the number of judges in the courts, which the Judicial Council passes based on the framework standards of work prescribed by the Ministry responsible for justice, at the proposal of the Council.[44] According to that Decision,[45] the total number of judges in the period 2017-2022 (excluding misdemeanour courts) should have been 267 in 2017, and 269 in the years that followed.

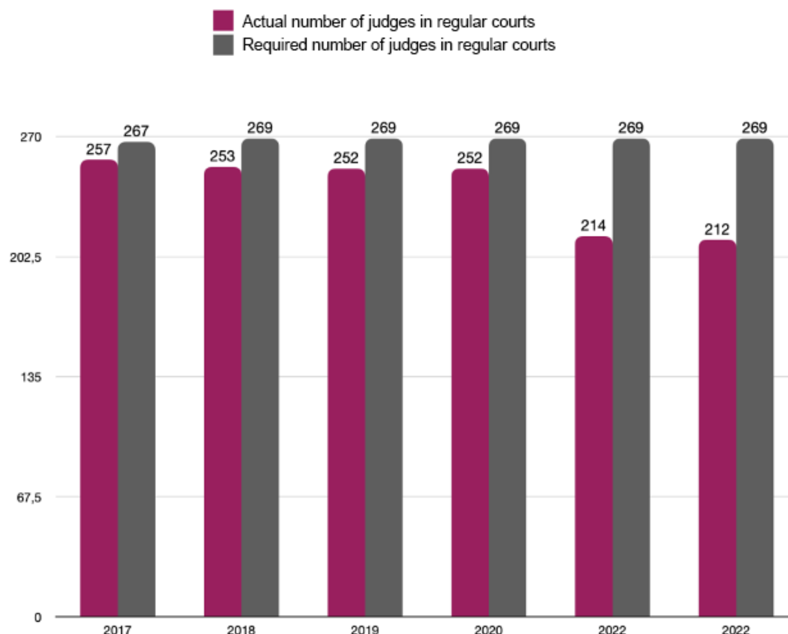
42 Analysis of the Application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the period 2011-2015, HRA and CeMI, January 2017, p. 17

43 The Basic Court in Herceg Novi (485), the Basic Court in Kotor (575), the Basic Court in Nikšić (275) and the Basic Court in Podgorica (523) have the largest number of unresolved old cases, while the situation is the worst in the Basic Court in Herceg Novi, where - according to the Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022 - each judge has 97.4 unresolved old cases, and in the Basic Court of Kotor, where each judge has 44.23 such cases, op.cit, p. 46

44 Law on Courts, "Official Gazette of Montenegro", nos. 11/2015 and 76/2020, Articles 29, 77 and 78

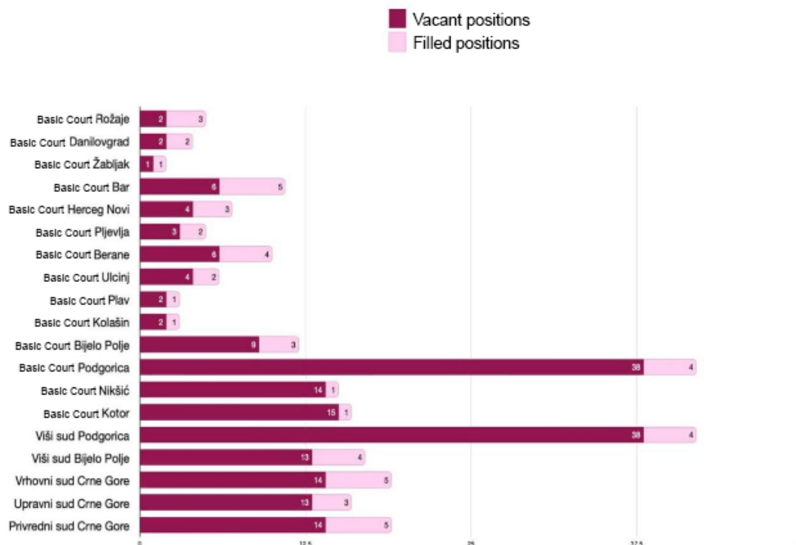
45 Decision on the number of judges in the courts, "Official Gazette of Montenegro", nos. 25/2015, 62/2015, 47/2016, 83/2016, 79/2018 and 52/2023

However, the total number of judges of regular courts has fallen from 257 in 2017 to 212 in 2022, which represents a 17% reduction.[46] The number of judges in 2022 is lower by a little over a fifth (21%) than the number provided for in the Decision.



Ratio between the number of active and envisaged judges of regular courts, 2017-2022

Of the 21 courts of general jurisdiction, only two are working at full capacity, while 19 are not. The number of judges missing in these courts ranges from one to five, while the judicial occupancy in individual courts ranges from 40% (e.g. the Basic Court in Rožaje) to 93.7% (e.g. the Basic Court in Kotor).



Overview of number of vacant positions in 14 basic courts in Montenegro

46 The data on the number of judges were taken from the tables contained in the annual reports of the Judicial Council referring to the age and gender structure of judges (and do not include misdemeanour courts): Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, op.cit, p. 9; Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, op.cit, p.13; Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019, op.cit, p. 14; Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, op.cit, p. 14; Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, op.cit, p. 17; Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, op.cit, p. 17.

The sudden drop in the number of judges has certainly caused a disruption in the promptness of courts of general jurisdiction in Montenegro in recent years, especially in 2022. However, we should not lose sight of the fact that Montenegro is still at the top of Europe in terms of the number of judges compared to the number of inhabitants, significantly deviating from the European average.[47]

1.6. Decline of Other Promptness Indicators

The annual reports on the work of the Judicial Council and the state of the judiciary in Montenegrin show indicators and standards for the work of courts according to the Guidelines on Judicial Statistics of the European Commission for the Efficiency of Justice (CEPEJ).[48] The CR (Clearance Rate) indicator[49] (rate/degree of promptness) is the ratio between the new cases and the cases completed during a certain period, in percentage points. The ER (Efficiency Rate) indicator[50] (rate/degree of efficiency) is the ratio between the number of employees in the court during one year and the number of resolved cases in that court at the end of the year.

By comparing the annual reports on the work of the courts for the period 2017-2022, we can see that the promptness rate (CR indicator) has moved up from 89.92% in 2017 and 98.90% in 2018 to 99.27% in 2019 and 103.08% in 2020, to fall to 95.67% in 2021, while in 2022 it fell more than 10% compared to the previous year (to 84.76%). In the six observed years, the average CR indicator was 95.26%, while the average CR indicator for the period 2011-2015 was 98.96%. It is therefore obvious that the **promptness rate has dropped by 3.7%.**

It is also noticeable that the efficiency rate (ER indicator), which was 78.23% in 2017, 84.22% in 2018, 79.70% in 2019 and 70.39% in 2020, has decreased to 61.30% in 2021 and remained approximately the same in 2022, that is, 61.24%, which is an average of 72.51%, representing a **decrease of 9.4%** compared with the average percentage for the period 2014-2015.[51]

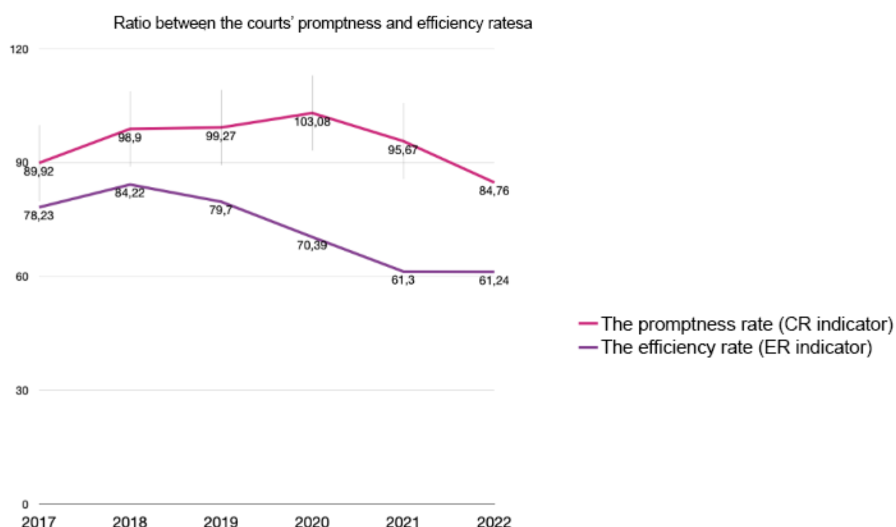
47 Montenegro is still the second in Europe in terms of the number of judges in relation to the number of inhabitants, immediately after Monaco. The average number of judges in the member states of the Council of Europe is 22.2 per 100,000 inhabitants, while in Montenegro, according to the Report on the evaluation of the European Commission for the Efficiency of Justice (for 2022, based on data from 2020), there were 49.8 (this number is now obviously smaller), CEPEJ Evaluation Report, European judicial systems, 2022 Evaluation cycle (2020 data), Report on the Evaluation of the European Commission for the Efficiency of Justice, European judicial systems (for the year 2022, based on data from 2020), p. 48, available at: https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279

48 Guidelines on Judicial Statistics of the European Commission for the Efficiency of Justice (CEPEJ), Strasbourg, 10-11 December 2008, available at: https://rm.coe.int/commission-europeenne-pour-l-efficacite-de-la-justice-cepej-evropska-k/1680747561

49 *Ibid,* p. 9

50 *Ibid,* p. 9

51 The overview of the number of cases older than three years (the so-called "red cover" cases) in the annual reports on the work of the courts has only been presented since 2014.



It can be concluded that, simultaneously with the 12% increase in the total number of unresolved cases – where 11.42% are unresolved backlog cases and 23% are unresolved old cases - the promptness rate (CR indicator) has dropped by 3.7%, and that the efficiency rate (ER indicator) has dropped by 9.4%. Although the inflow of cases in the period 2017-2022 was 11% lower than in the previous period, the approximate 20% of unfilled judges' positions, especially in 2021 and 2022, contributed to the decline of all promptness indicators.

The drop in the promptness rate (the CR indicator) and the efficiency rate (ER indicator) should be analysed in detail. The promptness rate is the ratio between the number of new and resolved cases, the value of which has decreased despite the fact that the number of new cases (inflow) has fallen by 11%, while the efficiency rate (ER indicator) is the ratio between the total number of employees in the courts and the number of resolved cases, which has fallen by 9.4%. The decrease in the number of judges by about a fifth of the prescribed number (57, according to the report for 2022) in relation to the total number of employees in the courts (1,153)[52] represents a decrease of 5%, which shows that the efficiency rate should not have deteriorated as much as it did.

1.7. Impact of the COVID-19 Epidemic and the Attorneys' Strike on the Work of the Courts

Based on the Order declaring the epidemic of the infectious disease COVID-19,[53] a special working regime was introduced in the courts from 16 March to 25 May 2020. It lasted only two and a half months.

On 16 March 2020, the Supreme Court published the decision "Judicial measures to prevent the spread of the COVID-19" disease.[54] It later extended its effect and presidents

52 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, *op.cit*, p. 34 (the total number of judges, advisors and administrative staff in misdemeanour courts has been subtracted from the total number of persons belonging to those categories).

53 "Official Gazette of Montenegro" no. 24/20 of 26 March 2020

54 Su. 102/20

of individual courts made decisions on protective measures, each for their own court. In accordance with those decisions, courts only acted in cases of an urgent nature, i.e. cases defined by law as those that could not be delayed.[55] Hearings in proceedings that were not of an urgent nature were postponed if they had been scheduled, and new ones were not scheduled at all. Advisors and interns performed their tasks outside the court, preparing draft decisions at home and delivering them by e-mail to the judges they worked for. Parties were no longer received in court offices, and letters were received and delivered exclusively through the Post of Montenegro or by electronic mail. Deliberations were held at online chamber sessions in courts where this was possible and necessary, such as in the Administrative Court. After the normalisation of the situation after 25 May 2020, this mode of operation was introduced again only sporadically, e.g. in the Basic Court in Herceg Novi from 9 to 23 November 2020, due to the widespread illness of employees.

The "Order to take temporary measures to prevent the introduction of the new Coronavirus into the country and to suppress and prevent its transmission"[56] was passed as well, envisaging the suspension of the work of educational institutions and simultaneously allowing parents (guardian, foster parent, adoptive parent) of children under the age of 11 to go on paid leave. It remained in effect until 8 July 2020.[57]

The following was stated in the Report on the Work of the Courts and the State of the Judiciary for 2020: "Although the work of the Montenegrin judiciary as a whole, as well as that of the Judicial Council, was largely limited due to the pandemic caused by the Coronavirus, all activities were still carried out within the set deadlines, and the statistical data show that the courts achieved a good result."[58]

The second significant interruption in the work of the courts - which lasted almost as long as the previous one, caused by the pandemic - came after the Decision on the general suspension of the provision of legal aid by the Bar Association of Montenegro. It was issued by the Management Board of the Bar Association on 20 May 2021 under the number 383/21, as a reaction to the Government's decision to fiscalise the legal profession. Attorneys went on strike on 24 May 2021. This decision remained in effect until 30 July 2021, after which date the situation went back to normal again. The stike caused the postponement of an enormous number of hearings, trials and other decisions that required the presence of qualified defence attorneys.

The following was stated in the Annual Report on the Work of the Judicial Council and the State of the judiciary for 2021: "As in the previous period, during the reporting year the work of the Montenegrin judiciary as a whole, as well as that of the Judicial Council, was limited by the pandemic caused by Covid-19, but also by the attorneys' strike which lasted several months. It was especially the courts that experienced many delays in work, due to the decision of the Bar Association to suspend provision of legal aid, which caused the postponement of a large number of scheduled hearings."

However, in the Reports on the Work of the Courts and the State of the Judiciary for the years 2020 and 2021, neither of these two interruptions in the work of the courts - due to Covid-19,

55 Cases of an urgent nature include: detention cases, criminal cases against minors, criminal cases of domestic violence, labour disputes, alimony and child support disputes, trespassing disputes, child custody disputes, disputes involving bills of exchange, cheques and the land registry, cases formed based on proposals for the provision of evidence, cases involving the issuance, changes to and removal of temporary measures, and the so-called old cases.

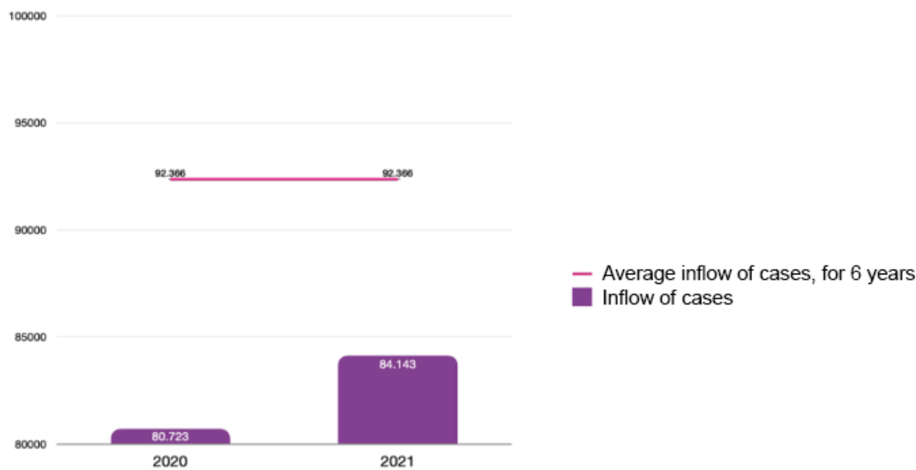
56 "Official Gazette of Montenegro" no. 14/20 of 10 April 2020

57 *Ibid,* Article 1, paragraph 6

58 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, *op.cit,* p. 7

lasting two months and 10 days, and due to the attorneys' strike, lasting two months and six days - was dealt with in detail as the cause of the increased number of backlog and unresolved cases, or as the cause of the increased number of control requests and claims for just satisfaction.

It can be noted that in 2020, during the declared Covid-19 epidemic, the number of received cases was at the absolute lowest (80,723), while in 2021, which was marked by the attorneys' strike, it was only slightly higher (84,143), which means that the inflow of cases in those two years was below the six-year average (92,366) by 12% and 8.9%, respectively.



The suspension of the work caused by the epidemic of COVID-19 and the attorneys' strike did not have a visible effect on the deterioration of the promptness of the courts' work; on the contrary, the number of new cases (inflow) decreased in those two years.

The promptness of the courts significantly deteriorated in the period 2017-2022. At the same time when the inflow of cases decreased by 11%, the total number of unresolved cases increased by 12%, the number of unresolved backlog cases increased by 11.42%, unresolved old cases increased by 23.8%, the promptness rate (CR indicator) fell by 3.7% and the efficiency rate (ER indicator) fell by 9.4% compared to the period 2011-2015. The judiciary failed to achieve the goal of reducing the number of backlog cases envisaged in the Action Plan for the Implementation of the Judicial Reform Strategy as, instead of being reduced, the number of such cases in fact increased by 49.5% compared to the set goal. The unfilled judges' positions (approximately 21%) contributed to the deterioration of promptness especially in 2021 and 2022; however, other indicators (inflow, CR and ER indicators) show that poorer management of human resources and court cases than before also contributed to the decline in promptness.

2.
LEGAL REMEDIES PROVIDED BY THE LAW ON THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME AND THEIR APPLICATION

2.1. Legal Remedies – The Control Request and the Claim for Just Satisfaction

The Law on the Protection of the Right to a Trial within a Reasonable Time,[59] which was enacted in 2007 and has not been amended to date, prescribes two legal remedies: a request for acceleration of the proceedings (the control request) and a claim for just satisfaction due to the violation of the right to a trial held within a reasonable time.

2.1.1. The Control Request

The **control request**, which is submitted to the court president, is a means of speeding up the proceedings that serves to prevent or stop the violation of the right to a trial within a reasonable time. The court president can dismiss the control request as incomplete or irregular[60] or reject it as obviously unfounded.[61] If s/he does not do one of the two, s/he will ask the judge for a written report on the duration of the proceedings and the reasons why they were not completed, to be accompanied by a statement about the time needed to complete the case.[62] After that, the court president can reject the control request as unfounded if s/he determines that the right to a trial within a reasonable time has not been violated,[63] inform the party that the judge has informed him/her [the court president] that procedural actions will be taken, i.e. that a decision will be made within a period that cannot exceed four months from the receipt of the control request[64] (notification under Article 17), or s/he can determine, in a decision, a deadline for taking certain actions, which cannot be longer than four months, oblige the judge to inform him/her about the action taken, or order priority resolution of the case depending on the urgency (approval under Article 18).[65]

59 "Official Gazette of Montenegro", no. 11/07 of 13 December 2007

60 *Ibid*, Article 13

61 *Ibid*, Article 14

62 *Ibid*, Article 15

63 *Ibid*, Article 16

64 *Ibid*, Article 17

65 *Ibid*, Article 18

In case of rejection of the control request, the party has the right to appeal directly to the president of the immediately higher court, who is obliged to make a decision within 60 days from the date of receipt of the control request, i.e. appeal. If the control request is approved, it cannot be submitted again in the same case until the expiry of the deadline set forth in terms of Articles 17 and 18 of the Law; if it is rejected, it cannot be submitted again before the expiry of six months from the day of receipt of the decision.[66]

2.1.2. The Claim for Just Satisfaction

A **claim for just satisfaction**[67] is filed for compensation of damages caused by the violation of the right to a trial within a reasonable time, which can be achieved by paying out a certain amount of money and/or publishing the judgment stating that the party's right to a trial within a reasonable time had been violated. The claim may be filed by the party that had previously submitted a request for the acceleration of proceedings, i.e. a control request, no later than six months from the date of receipt of the legally binding decision (which ended the proceeding in question).[68] The amount of damages is limited to no less than EUR 300 and no more than EUR 5,000, and a chamber of three judges of the Supreme Court is obliged to decide on just compensation within four months from the moment of filing the claim.[69]

The court can dismiss the claim as untimely or unacceptable (filed by an unauthorised person or filed without preveiously submitting a control request), or approve it if a legally binding decision has established the validity of the control request or the party has recevied a notification. It will reject the claim if it establishes that the right to a trial within a reasonable time has not been violated.[70] The Supreme Court can establish, by judgment, only a violation of the right to a trial within a reasonable time and, at the request of the party, order that the judgment be published, without awarding the party any monetary compensation when all the circumstances of the case and the behaviour of the party justify this.[71] Also, at the request of the party, it can order the publication of the judgment in addition to awarding compensation.[72]

In our earlier analyses, in order to improve the protection of the right to a trial within a reasonable time, we had proposed to amend the Law on the Protection of the Right to a Trial within a Reasonable Time so that it prescribes - given that judgments based on claims for just satisfaction do not have an accelerating effect - the obligation to deliver the judgments to the acting judge and the court president, together with an order to end the proceedings urgently within three months.[73] We also proposed to abolish the limit on the amount of compensation prescribed by the Law.[74] However, those proposals were not accepted and the shortcomings observed at that time are still present today.

66 *Ibid*, Article 23

67 *Ibid*, Article 31

68 *Ibid*, Article 33

69 *Ibid*, Article 36

70 *Ibid*. Article 37

71 *Ibid*. Article 38

72 *Ibid*. Article 39, paragraph1

73 Analysis of the Application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the period 2011-2015, *op.cit*, p. 72

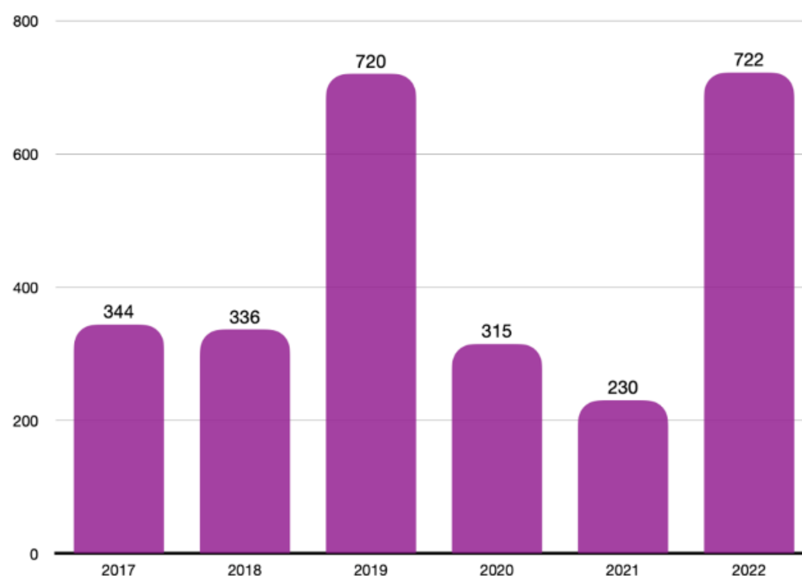
74 Analysis of the Application of the Law on the Protection of the Right to a Trial within a Reasonable Time for the period 2008-2010, *op.cit*, p.15

2.2. Number of Control Requests and Claims for Just Satisfaction in the Period 2017-2022

2.2.1. Increase in the Number of Control Requests

Based on the data comparison, it can be concluded that the number of submitted control requests has increased 2.3 times (on average) in the last six years compared to the period 2011-2015.

The average number of control requests submitted per year in the period 2017-2022 (2,667) was 444, while in the period 2011-2015 it was 191.



Number of submitted control requests, 2017-2022

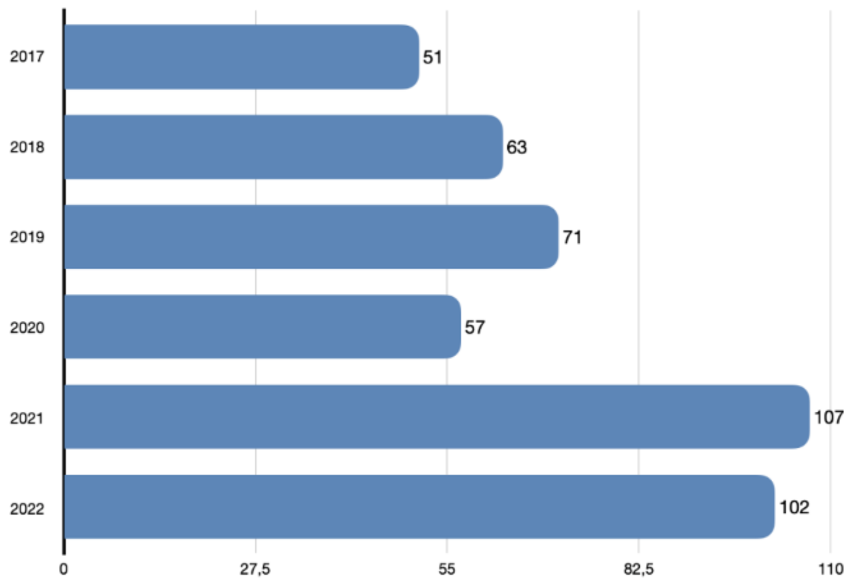
The growth in the number of submitted control requests was gradual, and the two big jumps - in 2019 (720) and 2022 (722) – actually refer to the large number of control requests that were submitted to the Administrative Court (518 in 2019, and 408 in 2022).

Taking into account the annual average number of unresolved cases (40,311), old cases (3,486) and control requests (444), a control request was submitted once in every 90 unresolved cases, that is, in every eighth old case (the so-called "red cover case").

We can conclude that **requests for the acceleration of proceedings are now being submitted almost twice more frequently than before.** However, requests for speeding up the proceedings are submitted only in every eighth case older than three years, which means that we can expect further growth in the frequency of their use.

2.2.2. Increase in the Number of Claims for Just Satisfaction

An average of 75 claims for just satisfaction were filed annually during the period 2017-2022, so there is an increase of 66% compared to the period 2011-2015, when the average number was 45. The increase of 107 and 102 claims, respectively, was particularly obvious in 2021 and 2022, representing an increase of 42% and 36% compared to the annual average for the period 2017-2022.



Number of claims for just satisfaction, 2017-2022

Taking into account the annual average of old cases (3,486) and the number of claims for just satisfaction (75), a claim for just satisfaction was filed in every 46th case older than three years, or in 2.1% of such cases.

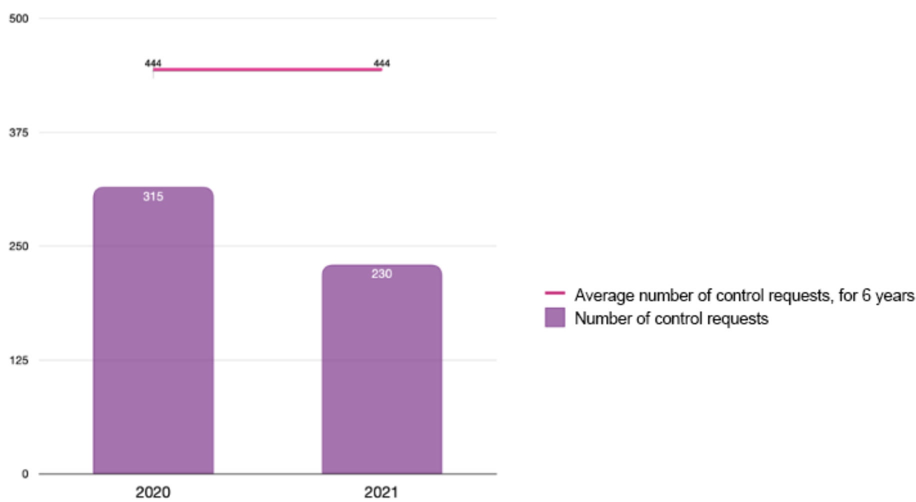
As for the period 2011-2015, it was established that a claim for just satisfaction was filed in 1.5% of cases older than three years, so in the current period we can note a 0.6% increase in the frequency of filing this type of claim, which is still a very small percentage.

2.2.3. Number of Control Requests and Claims for Just Satisfaction in the Years of Court Downtime - COVID 19/Attorneys' Strike

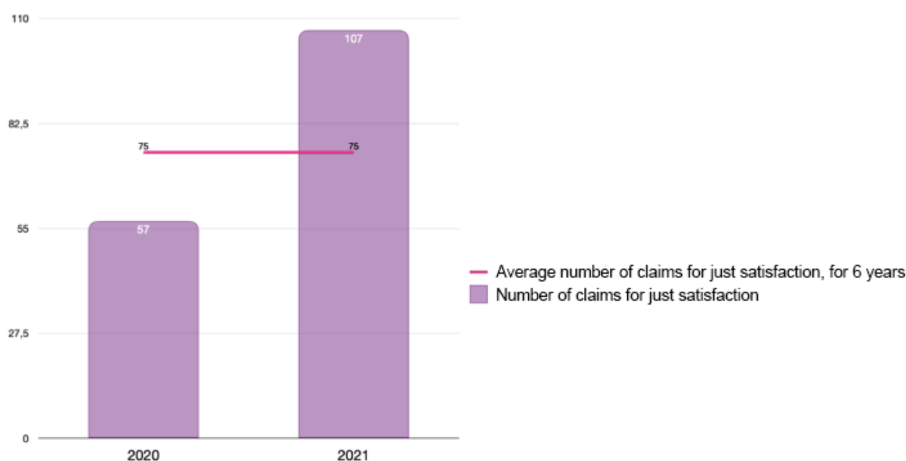
In 2020, when the courts stopped working properly due to the COVID-19 epidemic, the number of submitted control requests was 315, while in 2021, when the work of the courts experienced diffculaties due to the strike of attorneys, it was 230. Respectively, this is 29% and 48% less compared to the six-year average (444).

During the inspection of decisions on requests to accelerate court proceedings ("control requests"), it was noted that only four notifications and 15 rejections mentioned the postponement and delay in cases caused by the Coronavirus pandemic.

In several cases, the parties were informed that the delay was caused by the Supreme Court's measures to suppress the epidemic, by the fact that the judge had contracted the virus, or that the longer duration of the proceedings was the result of the special working regime caused by the pandemic, which has led to breaking deadlines when scheduling hearings. In the decisions on control requests, the parties were also informed that the delay occurred because the judge was on paid leave, that the hearing in the criminal case had to be held in an elementary school hall due to compliance with the measures (distance) but the defendants did not appear so there was a delay, or that the trial was postponed due to the illness (Covid 19) of the attorney. The attorneys' strike was mentioned as the reason for the delay in two cases. However, it is interesting that neither the pandemic nor the attorneys' strike were the exclusive or predominant reasons for the rejection of control requests.



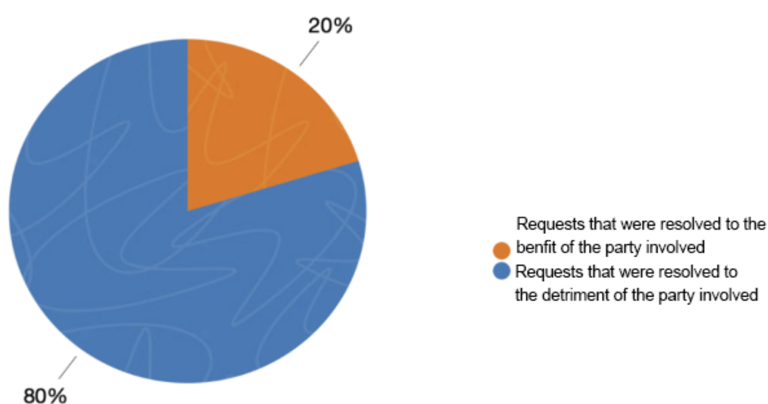
In 2020 (the year of COVID-19), the number of claims for just satisfaction (57) was 24% lower than the average (75); however, this was not the case in 2021 (107), when citizens filed 42% more claims than the average annual level.



3.
METHOD OF DECIDING ON LEGAL REMEDIES USED FOR SPEEDING UP THE PROCEDURE

3.1. Decisions on Control Requests

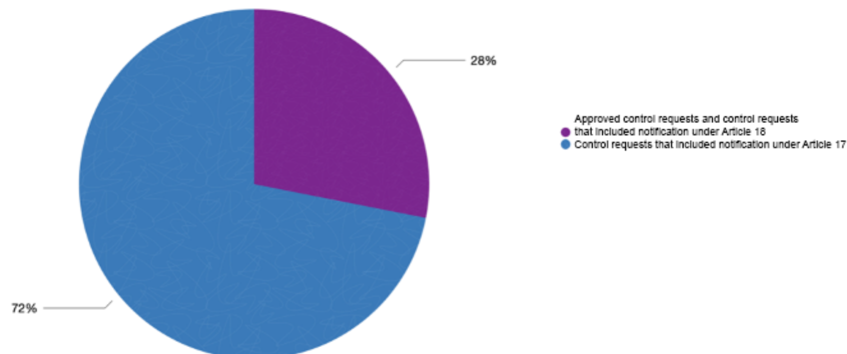
Year of submission of the control request	Approved requests	Rejected requests	Notification under Article 17	Notification under Article 18	Requests that were dismissed, withdrawn and resolved in another way	TOTAL
2017	8	156	75	22	83	344
2018	20	150	120	3	43	336
2019	17	617	50	7	29	720
2020	35	206	35	2	37	315
2021	18	141	45	0	26	230
2022	15	575	64	5	63	722
UKUPNO	113	1.845	389	39	281	2.667



Overview of actions taken upon control requests, 2017-2022

3.1.1. Approving a Request for the Acceleration of Proceedings - Approving the Control Request (Article 18 of the Law) and Notifying the Party (Article 17 of the Law)

Out of a total of 2,667 submitted control requests, 152 were approved (approved under Article 18 of the Law),[75] while in 389 cases the party received a notification (under Article 17 of the Law),[76] which amounts to a total of 541 cases. This means that, out of the total number of control requests, *20.28% were resolved to the benefit of the party involved*.



Overview of decisions on control requests that were resolved to the benefit of the party involved

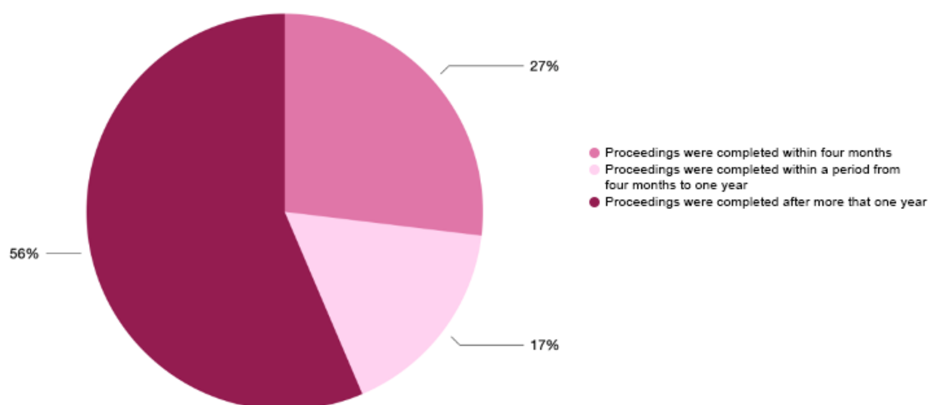
3.1.1.1. Approval of the Control Request (Article 18) and its Effectiveness

As for the courts, (except for the Administrative Court and the misdemeanour courts), we inspected 78 decisions upon approved control requests and those for which we obtained notification of the duration of the procedure.

The number of 78 cases represents 51% of the total number of 152 cases in which the court approved a control request and/or ordered priority treatment. Based on information received from the courts, it was determined that, in these cases, the proceedings before that court instance ended within four months in 21 cases (26.9%). In 13 cases (16.7%) the proceedings lasted from four months to one year, while in 44 cases (56.4%) they lasted one year or longer. Among the cases that lasted more than one year despite the approval of the control request, there was one that lasted 6 more years after the approval, four that lasted three more years, and several cases that have now been pending for more than two. When these cases are added to the four control requests that were approved by the Administrative Court, based on which decisions all cases were concluded within four months, then the total of 82 cases (now a sample of 54%) shows that in 25 cases the action or decision was taken within the deadline, which implies that the percentage of effectiveness of this remedy is 30 %.

75 Law on the Protection of the Right to a Trial within a Reasonable Time ("Official Gazette of Montenegro" 11/07), Article 18: When the court president establishes that the proceedings and decision-making in the case are unreasonably delayed, s/he shall determine the deadline for taking certain procedural actions, which cannot be longer than four months, as well as the appropriate time period during which the judge must inform him/her about the action taken. The court president may order a priority resolution of the case if the circumstances of the case or the urgent nature of the case so require.

76 *Ibid*, Article 17: If the judge informs the court president, in a report or other written act, that certain procedural actions will be performed, i.e. that a decision will be made within a time period which cannot be longer than four months from the receipt of the control request, the court president shall inform the party thereof and complete the procedure concerning the control request in this way.



Overview of actions taken in cases in which the control request was approved and priority treatment ordered

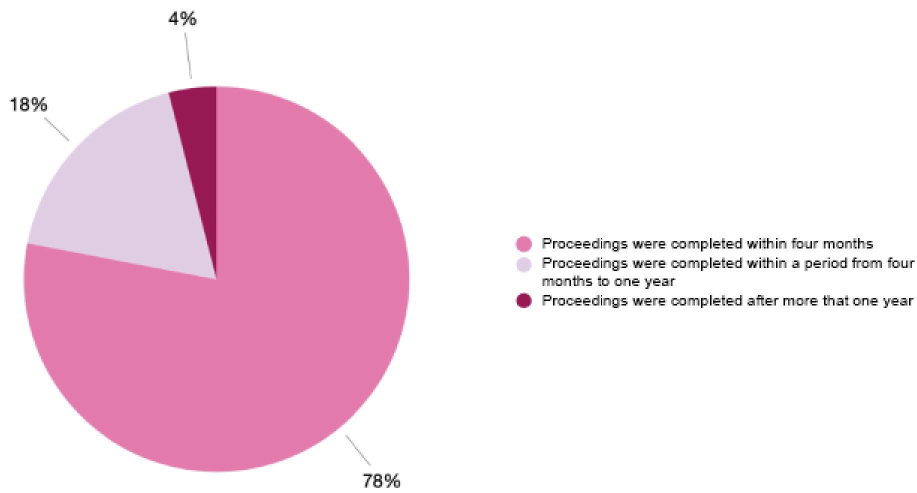
The degree of effectiveness of this remedy has not increased compared to the period 2011-2015, but has rather remained the same. Therefore, in 70%, or more than 2/3 of cases, this remedy did not lead to the acceleration and completion of proceedings within four months.

3.1.1.2. Notification to the Party (Article 17) and its Effectiveness

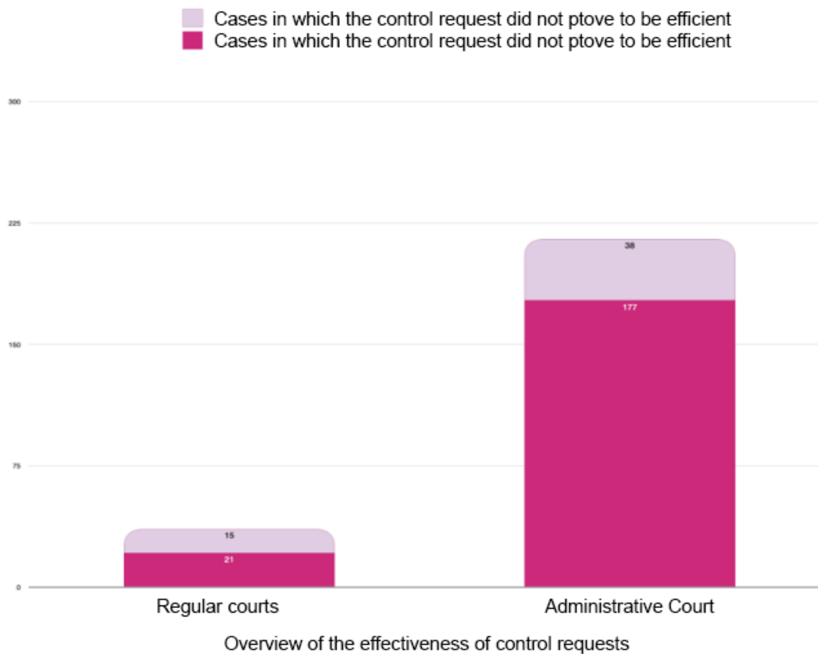
The total number of control requests that were resolved by notification (with the exception of the Administrative Court and misdemeanour courts) is 174. Of these, we inspected 36 cases, i.e. a sample of 20%. Based on the collected notices from the courts and by looking at the data published on the Internet, we made a comparison between the time of submission of the control request and the completion of the case or the performance of the action. Based on this, it was established that in 21 cases[77] the action was taken within four months (58%), in 9 cases the proceedings lasted from four months to a year (25%), while in 6 cases the proceedings continued for more than a year (16%).[78] Based on the given sample, we can conclude that the effectiveness of this remedy was 58%. However, to the above we should add the cases of the Administrative Court in which the party was notified regarding his/her control request. There were a total of 215 such cases. The sample thus reads: 215 + 36 = 251 cases, i.e. 64.5%. Before the other courts, the decision was made or action taken efficiently in 21 cases, within four months, while before the Administrative Court this was the case in 177 cases, which is a total of 196 cases in which this remedy proved to be effective (78%). In the remaining 38 cases, the proceedings before the Administrative Court lasted for four months to a year, so the total number of cases in which the proceedings lasted that long after the notification under Article 17 is 47. There were no such cases that lasted more than a year before the Administrative Court.

77 Basic Court in Herceg Novi, P no. 19/17, P no. 330/16, P no. 414/13, P no. 25/17 (action), P no. 146/14-10, P no. 308/14 (action), P no. 131/14 (action), P no. 465/15, P no. 224/17, Ip. no. 90/17, O. no. 266/16 (action), O. no. 25/18 (action); Basic Court in Nikšić, P. no. 1350/13, P. no. 245/15, P. no. 1042/14, P. no. 2525/19, P. no. 883/19, Basic Court in Cetinje, P. no. 612/15, P. no. 611/17, P no. 263/16, P. no. 113/21

78 Basic Court in Herceg Novi, P. no. 33/14, P. no. 465/15, Basic Court in Nikšić, P. no. 1205/15 (13 months), P. no. 2353/18 (14 months), P. no. 389/20 (two years), Basic Court in Cetinje, P. no. 497/18



Overview of acting in cases in which the control request was resolved by notification



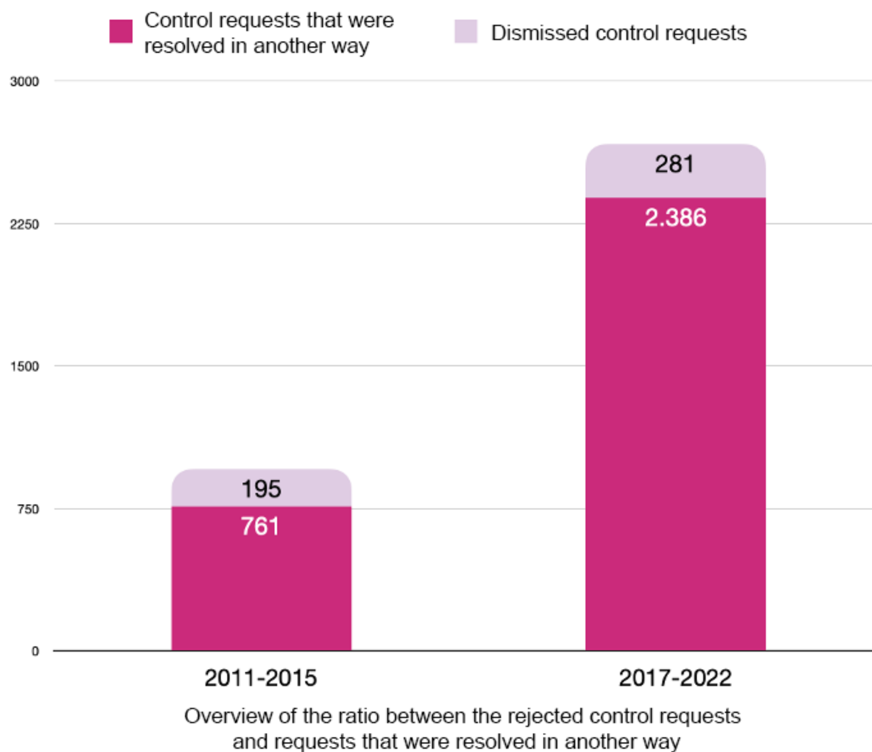
Overview of the effectiveness of control requests

The notification under Article 17 of the Law was effective in a high percentage of cases - 78%, or almost 4/5 of them, mostly thanks to the success it achieved before the Administrative Court.

3.1.2. Non-approval of the Request for the Acceleration of Proceedings - Dismissal and Rejection of the Control Request

3.1.2.1. Dismissal of Control Requests

Out of a total of 2,667 control requests that were submitted in the last 6 years, 281[79] or 10% were dismissed, which is twice fewer than in the period 2011-2015, when there were 20% such cases.[80]



Overview of the ratio between the rejected control requests and requests that were resolved in another way

Control requests were dismissed because they were submitted by an unauthorised person, due to the absence of the addresses of the parties, because the procedure was initiated for the second time within a period of less than 6 months, because they were submitted in cases that were already being handled by public enforcement agents, and when the essence of the request did not refer to speeding up the proceedings but to completely different issues.[81]

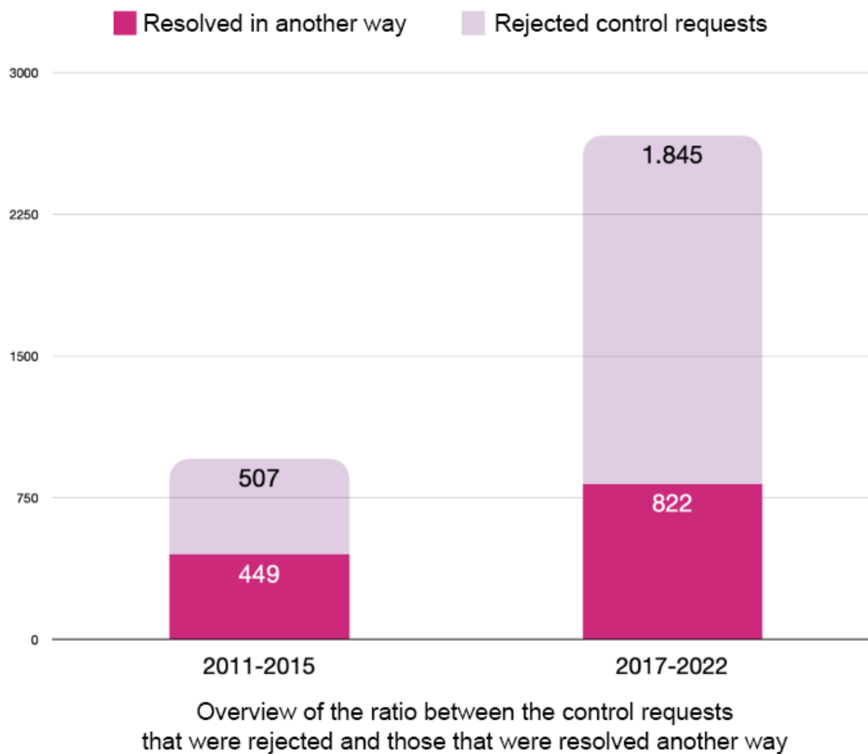
79 This number also includes withdrawn control requests, as well as those that were resolved "in another way".

80 Analysis of the Application of the Law on the Protection of the Right to a Trial within a Reasonable Time 2011-2015, HRA and CeMI, January 2017, p. 21

81 The control request was dismissed because it was submitted by an unauthorised person in two cases, by the Basic Court in Bar and the Basic Court in Herceg Novi. In two cases, the control request was rejected because it was submitted for the second time in the same case without the passage of the 6-month period prescribed by the Law (Article 23, paragraph 2). In two cases, the president of the first-instance court dismissed the appeals of the trial judges against the decision approving the request for the acceleration of the proceedings in which they were the acting judges. In several cases, control requests were dismissed (and sometimes rejeced) because they were submitted in enforcement cases that were being handled by public enforcement agents. In one case, the control request was dismissed because it related to the refund of the court fee and not to the acceleration of the proceeding (which had been completed).

3.1.2.2. Rejection of Control Requests

A total of 1,845 control requests (69%) were rejected in the period 2017-2021, which was a significant increase compared to the period 2011-2015, when there were 50% of such cases.



Overview of the ratio between the control requests that were rejected and those that were resolved another way

This number also includes decisions that rejected control requests in the cases where the decision in the main case had already been made at the time of the decision on the control request. These are the cases when, after the date of submission of the control request, the main case is concluded by a decision of that court instance within 60 days (Article 20 of the Law) - which is how long the court president has to decide on the control request - so the applicant loses the status of the injured party by the day of the adoption of the decision on the control request. There were a total of 184 such cases,[82] or almost 10% of the total recorded rejected control requests. **Consequently, this information could indicate that the submission of a control request, in and of itself, has achieved the effect of speeding up the proceedings in such cases.**

In the remaining 59% of the cases, control requests were rejected because court presidents found that they involved complex cases with multiple parties, multiple expert reports, or delivery that had to be made abroad, or the dispute had a foreign element – which is when they believed that the court had undertaken all the actions so the hearings were scheduled continuously; if the court had to decide on a procedural issue; if the applicant him/herself agreed to the postponement, or influenced the delay, or failed to pay the costs of the expert report, or the applicant did not submit proper powers of attorney for the parties; if the delay occurred due to the resolution of "pilot" cases; if the dispute was initiated less than a year ago, or the dispute was decided on the merits and the court still had to decide on the costs of the proceedings. In several cases, the longer duration of the proceedings was justified

82 Before the Basic Court in Bar - 13, before the Basic Court in Berane - 6, before the Basic Court in Herceg Novi 3, - the Basic Court in Kotor - 4, the Basic Court in Nikšić - 7, the Basic Court in Plav and the Basic Court in Pljevlja - one each. There were 149 such cases before the Administrative Court.

by compliance with the measures against the Coronavirus epidemic and the judge going on sick leave to care for children under the age of 11, among other things.[83]

In an earlier analysis, for the period 2011-2015,[84] it was stated that the courts unjustifiably rejected control requests and appeals in about 10% of cases in which the trial lasted a very long time, sometimes even for more than 30 years. The courts have now **improved their practice** in this regard, so if the president of the first instance court were to reject a control request in a long-lasting case, such a decision would as a rule be changed by the president of the higher court, approving the control request with an order for priority treatment. For example, in the cases of the Basic Court of Kotor Su. 76/18, which lasted five years, Su. 87/18, which lasted six years, Su. 48/19, which lasted four years, and Su. 191/19, which lasted 11 years, the High Court in Podgorica changed the first-instance decisions that rejected the control requests and ordered priority treatment. In the case of the Basic Court in Berane Su. 3/19, where the party submitted a request to speed up the procedure for issuing the finality [legal validity] clause, and where the first-instance court made the issuance of that clause conditional on the payment of a court fee and rejected the control request, the High Court in Bijelo Polje changed the decision and ordered that the clause be issued within three days because the payment of the court fee must not be a condition for issuing a certificate of legal validity.

The Administrative Court of Montenegro rejected control requests with the explanation (apart from the above-mentioned cases, when the decision on the merits was made at the time of the decision on the control request) that the period was not that long, that actions had been taken, and in cases that were not "civil disputes" - within the meaning provided by the European Court of Human Rights. This will be discussed in greater detail in Chapter 8, which refers to the Administrative Court.

83 Basic Court in Bar, Su. 8/20, OS BP Su. 6/21 and Su. 2/22, Basic Court in Kotor, Su. 144/20, Basic Court in Nikšić, Su. 4/20 and Su. 2/21

84 Analysis of the Application of the Law on the Protection of the Right to a Trial within a Reasonable Time 2011-2015, *op.cit,* p. 21, Analysis of the Application of the Law on the Protection of the Right to Trial within a Reasonable Time 2011-2015, *op.cit*, p. 21.

4.
CLAIMS FOR JUST SATISFACTION

Year of submission of the claim	Violation established and compensation ordered	Requests rejected	Claim dismissed based on Article 37, paragraph 2 in conjunction with Article 33, paragraph 3[85]	Claim dismissed based on Article 37, paragraph 2 in conjunction with Article 33, paragraph 1[86]	Claim dismissed because it was submitted contrary to Article 2, paragraph 1[87]		Resolved in another way	TOTAL
2017	29	9	5	6			2	51
2018	28	12	4	6	1		12	63
2019	34	7	10	10	3		7	71
2020	22	16	2	5			12	57
2021	64	26	0	4	0	Claim was dismissed because it was submitted contrary to Article 10 of the Civil Procedure Law[88] (conscientious use of rights) in conjunction with Article	4	107
2022	59	5	12	20	4		2	102
TOTAL	236	75	33	51	17		39	451

85 Law on the Protection of the Right to a Trial within a Reasonable Time, Article 37, paragraph 2: "In a decision, the Supreme Court will reject an untimely lawsuit, a lawsuit filed by an unauthorised person and a lawsuit filed in violation of Article 33, paragraphs 1 and 2 of this Law"; Article 33, paragraph 3: "The lawsuit from paragraphs 1 and 2 of this Article shall be submitted to the Supreme Court no later than six months from the date of receipt of the final decision made in the proceedings referred to in Article 2 of this Law, and in the procedure for enforcing the decision - within six months from the date of receipt of the final decision on the control request".

86 Law on the Protection of the Right to a Trial within a Reasonable Time, Article 33, paragraph 1: "A lawsuit [claim] for just satisfaction may be filed by the party that had previously submitted a control request to the competent court".

87 Law on the Protection of the Right to a Trial within a Reasonable Time, Article 2, paragraph 1: "A party and an intervener in a civil court proceeding, a party and an interested person in an administrative dispute, the defendant and the injured party in a criminal proceeding (hereinafter: the party) shall have the right to judicial protection due to a violation of the right to a trial within a reasonable time if the proceedings relate to the protection of their rights in the sense of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

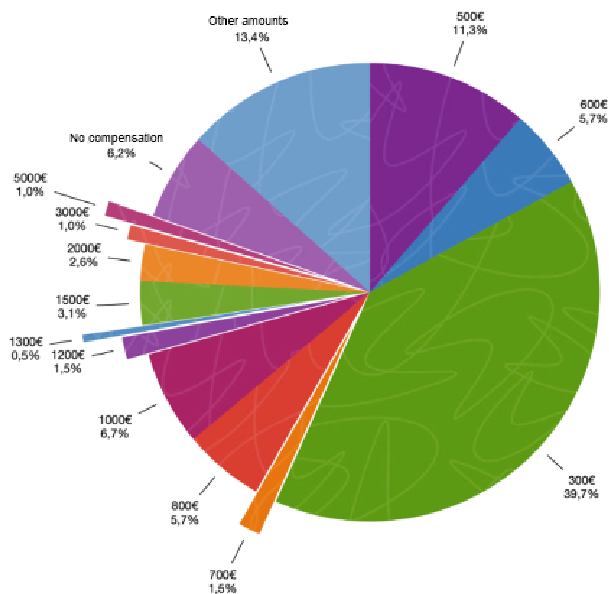
88 The category refers to cases in which the applicants have previously submitted claims and received compensation, so the Supreme Court viewed the re-submission as abuse of rights under the Civil Procedure Code.

In the period 2017-2022, the Supreme Court approved 236 or 52.3% of the total of 451 resolved claims for just satisfaction (Tpz). In the period 2011-2015, the percentage was 50%, so the difference is insignificant.

Year	The total amount of compensation awarded for just satisfaction (Tpz)
2017	42.700€
2018	41.500€
2019	50.000€
2020	38.100€
2021	40.900€
2022	52.200€
TOTAL	265.400€

Out of 236 cases in which a violation was established and the claim was approved, we inspected 194 (82% of the sample) in relation to the awarded amount of compensation. Of these, compensation of EUR 300 was awarded in 77 cases (39.7%), EUR 500 was awarded in 22 cases (11.3%), EUR 600 was awarded in 11 cases (5.7 %), EUR 700 was awarded in three cases (1.5%), and EUR 800 was awarded in 11 cases (5.7%). All in all, compensation of less than EUR 1,000 was awarded in 63.9% of cases.

Just compensation for the unreasonably long duration of the proceedings in the amount of EUR 1,000 was awarded in 13 cases (6.7%), EUR 1,200 in three cases, EUR 1,300 in one case, and EUR 1,500 in 6 cases. Compensation of EUR 2,000 was awarded in five cases and EUR 3,000 in two cases, while the highest compensation allowed by law, in the amount of EUR 5,000 was awarded in two cases back in 2017 and in one case in 2019. The highest compensation awarded in decisions from 2020, 2021 and 2022, did not exceed the amount od EUR 2,000.



Overview of compensations awarded in cases in which violation was established and the claim approved

A claim for just satisfaction does not have an accelerating effect on the proceedings because such an effect is not provided for by law. What is missing is a clear formula to be uased by the Supreme Court to calculate the amount of compensation in each individual case.

The Law on the Protection of the Right to a Trial within a Reasonable Time limits compensation to no more than EUR 5,000, although the European Court of Human Rights *has* awarded higher amounts of compensation for non-material damages due to the violation of the right to a trial within a reasonable time in cases involving Montenegro (e.g. *Sinex D.O.O. v. Montenegro* from 2017 – EUR 5,500; *Milić v. Montenegro and Serbia* – EUR 7,000; *Djuković v. Montenegro* - EUR 5,400, etc.)

5.
MISDEMEANOUR COURTS – THE NUMBER OF CASES AND THE APPLICATION OF MEANS FOR THE PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

Year	Number of pending cases	Number of resolved cases	Number of unresolved cases	Resolved in other ways
2017[89]	105.222	69.259 (65,82%)	35.963 (34,18%)	5.082
2018[90]	108.697	65.793 (60,53%)	37.742 (34,72%)	5.162 (4,75%)
2019[91]	107.051	66.176 (61,82%)	36.570 (34,16%)	4.304 (4%)
2020[92]	95.594	54.051(56,54%)	38.461 (40,24%)	3.083 (3,2%)
2021[93]	91.290	50.174 (54,96%)	37.728(41,33%)	3.388 (3,71%)
2022[94]	111.317	59.222(53,20%)	49.871(44,80%)	2.223(2%)

The existing courts for minor offences (misdemeanour cours) are: the Misdemeanour Court in Budva,[95] the Misdemeanour Court in Bijelo Polje[96] and the Misdemeanour Court in

89 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2017, *op.cit,* p. 66

90 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2018, *op.cit*, p. 60

91 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2019, *op.cit*, p. 62

92 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2020, *op.cit*, p. 62

93 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2021, *op.cit,* p. 75

94 Annual Report on the Work of the Judicial Council and the State of the Judiciary for the year 2022, *op.cit*, p. 74

95 Misdemanour Court in Budva, source: for 2017 - letter Su.161/23 of 17 May 2012, Report on the Work for the period from 1 January 2018 to 31 December 2018, p. 56, available at: https://sudovi.me/static/spbd/doc/Godisnji_Izvjestaj_o_radu_za_2018._godinu(1).pdf, Report on the Work for the period from 1 January 2019 to 31 December 2019, p. 56, available at: https://sudovi.me/static/spbd/doc/Godisnji_zbirni_izvjestaj__o_radu-2019._.pdf, Report on the Work for the period from 1 January 2020 to 31 December 2020, p. 50, available at: https://sudovi.me/static//spbd/doc/Godisnji_zbirni_izvjestaj__o_radu-2020..pdf, Report on the Work for the period from 1 January 2021 to 31 December 2021, SU I no. 57/22 of 8 February 2022, Budva, p. 54, Report on the Work for the period from 1 January 2022 to 31 December 2022, SU I no. 60/23 of 6 February 2023, Budva, p. 53

96 Misdemanour Court in Bijelo Polje, source: for 2017 – letter from 17 May 2023. Report on the Work for the period from 1 January 2018 to 31 December 2018, Misdemeanour Cpurt in Bijelo Polje, SU.I. no. 92/19 Bijelo Polje of 12 December 2019, p. 45, Report on the Work for the period from 1 January 2019 to 31 December 2019, Misdemanour Court in Bijelo Polje, SU.I. no. 24/20, Bijelo Polje of 3 February 2020, p. 39. Report on the Work for the period from 1 January 2020 to 31 December 2020, Misdemanour Court in Bijelo Polje, SU.I. no. 54/21 Bijelo Polje, 2 February 2021, p. 42, Report on the Work for the period from 1 January 2021 to 31 December 2021, Misdemeanour Court in Bijelo Polje, SU.I. no. 32/22 Bijelo Polje of 28 January 2022, p. 48. Report on the Work for the period from 1 January 2022 to 31 December 2022, Misdemeanour Court in Bijelo Polje, SU.I. no. 40/23 Bijelo Polje of 6 February 2023. godine, p. 44

Podgorica,[97] with their respective departments. The second-instance authority is the High Misdemeanour Court of Montenegro.[98] These courts employ a total of 57 judges, and their average number of pending cases per year is 103,195. Although the promptness rate of misdemeanour courts has dropped from 111% in 2017 to 80% in 2022, means for speeding up the procedure are rarely used due to the specificity of the misdemeanour proceedings. A total of 45 control requests were submitted to misdemeanour courts in the period 2017-2022, of which 14 were rejected. In connection with 28, a notification was dispatched stating that action would be taken within a period of less than four months from the date of submission of the request (Article 17), one request was approved (Article 18), while in two cases the applicants withdrew the control requests. The appeal against the decision on the control request was filed in two cases. There were no claims for just satisfaction.

The annual reports on the work of the Judicial Council and the state of the judiciary deal with data on the work of misdemeanour courts in a separate chapter, and do not contain an overview of decisions according to means for accelerating the proceedings. Since 2018, misdemeanour courts have been publishing data on control requests and related appeals in their annual reports.

Despite the fact that the promptness rate in the observed period varied from 53.2% to 65.8%, the number of filed control requests was negligibly small (an average of just over 7 control requests per year) compared to the average annual number of cases before those courts (103,195).

97 Misdemeanour Court in Podgorica, source: for 2017, letter Su.479/2023 of 17 May 2023. Report on the Work for the period from 1 January 2018 to 31 December 2018, Misdemeanour Court in Podgorica with departments in Nikšić, Danilovgrad and the seat in Cetinje, SU I no. 8/19, Podgorica, 8 February 2019, p. 95; Report on the Work for the period from 1 January 2019 to 31 December 2019, Misdemeanour Court in Podgorica with departments in in Nikšić, Danilovgrad and the seat in Cetinje, SU I no. 12/20, Podgorica, 3 February 2019, p. 99; Report on the Work for the period from 1 January 2020 to 31 December 2020, Misdemeanour Court in Podgorica with departments in in Nikšić, Danilovgrad and the seat in Cetinje, Su I no. 13/21, p. 98; Report on the Work for the period from 1 January 2021 to 31 December 2021, Misdemeanour Court in Podgorica with departments in in Nikšić, Danilovgrad and the seat in Cetinje, SU I no. 8/21, p. 102; Report on the Work for the period from 1 January 2022 to 31 December 2022, Misdemeanour Court in Podgorica with departments in in Nikšić, Danilovgrad and the seat in Cetinje, SU I no. 8/23, p. 99

98 High Misdemeanour Court of Montenegro, source: High Misdemeanour Court of Montenegro, Su II no. 11/18, Podgorica, of 25 January 2018, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2017, p. 33 ; High Misdemeanour Court of Montenegro, Su II brno11/19, Podgorica of 16 January 2019, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2018, p. 52; High Misdemeanour Court of Montenegro, Su II no. 15/20, Podgorica of 28. January 2020, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2019, p. 57; High Misdemeanour Court of Montenegro, Su II no. 18/21, Podgorica of 19. January 2021, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2020, p. 48 High Misdemeanour Court of Montenegro, Su II no. 6/22, Podgorica of 22. January 2022, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2021, p. 39 High Misdemeanour Court of Montenegro, Su II no. 4/23, Podgorica of 11. January 2023, Annual Report on the Work of the High Misdemeanour Court of Montenegro for the year 2022, p. 37

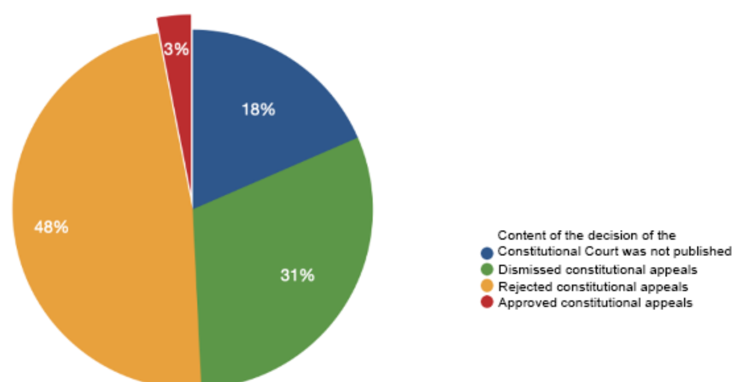
6.
CONSTITUTIONAL COURT – CONSTITUTIONAL APPEAL AND TRIAL WITHIN A REASONABLE PERIOD OF TIME

Year	Dismissed constitutional appeals	Rejected constitutional appeals	Approved constitutional appeals	Constitutional appeals approved and compensation awarded	Unpublished decisions
2017	4	1	0	0	0
2018	0	14	0	0	0
2019	1	9	1	1	2
2020	5	0	0	0	0
2021	1	4	0	0	6
2022	10	3	0	0	4
TOTAL	20	31	1	1	12

In the period 2017-2022, the Constitutional Court issued a total of 65 decisions on constitutional appeals that were submitted against the decisions of the Supreme Court regarding claims for just satisfaction (Tpz).

Of these, in 12 cases the content of the decision was not published on the website www.ustavnisud.me, although the number of cases was presented.

Of the remaining 53 decisions (sample of 81.5%), 20 constitutional appeals were dismissed (37.7%) and 31 were rejected (58.5%), Two were approved (3.7%) and monetary compensation was awarded in one of them.



Overview of the decisions of the Constitutional Court on appeals filed against the decisions of the Supreme Court marked 'Tpz', 2017-2022

In 15 cases (28%), constitutional appeals were rejected with the explanation that thay included only a formal reference to the violation of certain constitutional or Convention rights, without stating accurate and legally based allegations which would represent constitutional reasons showing a violation of the indicated constitutional and Convention rights, which made the appeals clearly unfounded.

Eleven constitutional appeals (20%) were rejected because the deadline was missed in the previous procedure, or because the person did not have the status of a party, or because the lawsuit was filed in a non-competent court, or the power of attorney was defective, or because legally binding decisions on control requests were not submitted during the preliminary procedure. In 13 cases (24%), the Constitutional Court was of the opinion that the amount of compensation that was awarded by the Supreme Court was sufficient to correct the injustice.

The only decision of the Constitutional Court upon a constitutional appeal filed due to the violation of the right to a trial within a reasonable time by long-term non-enforcement of the judgment that awarded compensation was not submitted against the decision of the Supreme Court in a just satisfaction claim case (Tpz). It involved the proceeding Uz. III 1647/19 (it was not published on the website of the Constitutional Court) caused by the non-enforcement of the final [legally binding] decision of the Commercial Court, St. no. 490/16 of 15 December 2016. The Constitutional Court obliged Montenegro to pay EUR 2,000 to each of the applicants of the constitutional appeal (172 of them) due to non-enforcement of the decision from 2006, i.e. for 14 years, of which 6 passed without any activity of the state authorities.

Despite the extremely small percentage of 3.7% of approved constitutional appeals that were filed against the decisions of the Supreme Court of Montenegro made in lawsuits for just compensation due to the long duration of the procedure, this legal remedy must be used prior to addressing the European Court of Human Rights.[99] The low success rate of constitutional appeals is influenced also by their insufficient reasoning – namely, 28% were dismissed because the reference to violations of constitutional rights was made only formally, without stating well-founded reasons that would indicate a violation of constitutional or Convention rights.

99 Article 69, paragraph 3 of the Law on Constitutional Court ("Official Gazette of Montenegro", no. 11/2015)

7.
ADMINISTRATION AND DECISION-MAKING WITHIN A REASONABLE TIME

7.1. Organisation of State Administration

The Law on State Administration[100] (LSA) governs the affairs of the state administration, its organisation, and the entrustment and transfer of its tasks. According to the Law, state administration tasks are carried out by ministries and administrative bodies, local self-government bodies or other legal entities when these tasks are transferred to them by law or entrusted by a decision of the Government of Montenegro (state administration bodies). By its act, the Government of Montenegro establishes administrative bodies, determines the areas for which they are established, and regulates the way they operate and their organisation. The Law also prescribes supervision of the legality and effectiveness of the work of administrative bodies (administrative supervision), which is carried out by ministries. This supervision, among other things, includes the control and evaluation of the efficiency and economy of work and the organisation of work. As part of administrative supervision, the authority responsible for supervision is allowed to request reports and information relating to work.

Inspection supervision is carried out in accordance with a special law[101] and includes determining whether the subjects of supervision are complying with the law, other regulations and general acts, as well as taking administrative and other measures and actions to eliminate established irregularities and ensure the correct application of regulations.

By the Decree on the Organisation and Mode of Operation of the State Administration,[102] the Government has established 18 ministries and 24 administrative bodies (directorates, administrations, institutes, agencies, funds, etc.). The Decree prescribes the competences of the ministry for the supervision of individual administrative bodies, and the obligation of the ministry to submit to the Government in the first quarter of the current year a report on

100 Law on State Administration, "Official Gazette of Montenegro", nos. 78/2018, 70/2021 and 52/2022 (former Law on State Administration, "Official Gazette of the Republic of Montenegro", no. 38/03 and "Official Gazette of Montenegro", nos. 22/08, 42/11 and 54/16)

101 Law on Inspection Supervision, "Official Gazette of the Republic of Montenegro", no. 39/2003 and "Official Gazette of Montenegro", nos. 76/2009 57/2011, 18/2014, 11/2015 and 52/2016

102 Decree on the Organisation and Mode of Operation of the State Administration, "Official Gazette of Montenegro", nos. 49/2022, 52/2022, 56/2022, 82/2022, 110/2022 and 139/2022

the situation in a certain administrative area for the previous year, based on the adopted work programme that also contains performance indicators.

Ministries act as second-instance administrative authorities in relation to their regional units or the local self-government bodies to which powers have been transferred or entrusted, except when they are in charge of decision-making in the first instance.

Based on special laws, the Government also established two Commissions as second-instance administrative authorities. One is the Appeals Commission that acts as a second-instance authority in proceedings in which decisions are made about the rights, obligations and responsibilities of civil servants and state employees,[103] while the other is the Appeals Commission in charge of the procedure involving restitution of confiscated property rights and compensation.[104]

The Law on Local Self-Government[105] (LSSG) stipulates that local self-government units (municipalities, the capital and royal capital), in addition to carrying out tasks that are transferred or entrusted to them by state administration authorities, are to establish administrative bodies to carry out tasks within their jurisdictions, and may also establish institutions, companies and other forms of organisation (local government bodies). Local administration authorities supervise the legality and effectiveness of bodies that decide on the rights, obligations and interests of citizens and legal entities, while state administration authorities supervise local administration bodies, both regarding the tasks under their jurisdictions and the tasks that are transferred or entrusted to them by the state administration authorities. All activities of the local government bodies are subject to inspection supervision.

The second-instance administrative authority in administrative matters under the jurisdiction of local self-government is the chief administrator, who is appointed by the local self-government unit based on the LLSG.[106] The chief administrator submits an annual report on the work to the president of the municipality. As regards acting in the capacity of the second-instance authority, the reports contain the number of cases, decisions upon appeals and the number of decisions upheld by the Administrative Court and the Supreme Court, but there is no information about the duration of the proceedings. Reports on the Internet cannot be found for the entire period 2017-2022, or for all the municipalities. The reports are not standardised, so those that could be inspected differed from one municipality to the next.[107]

103 Law on Civil Servants and State Employees, "Official Gazette of Montenegro", nos. 2/18, 34/19 and 8/21, Articles 137-147

104 Law on Restitution of Confiscated Property Rights and Compensation, "Official Gazette of the Republic of Montenegro", nos. 21/2004, 12/2007 – other law, 49/2007, 60/2007, 30/2017 and 70/2017, Articles 36, 36a and 36b

105 Law on Local Self-Government, "Official Gazette of Montenegro", nos. 2/2018, 34/2019, 38/2020, 50/2022 and 84/2022

106 Law on Local Self-Government, *op.cit,* Articles 77-80

107 See e.g. Report of the Chief Administrator of the Municipality of Gusinje for the period 2018-2022, available at: https://www.opstinagusinje.me/wp-content/uploads/2022/05/Izvjestaj-o-radu-glavnog-administratora-od-2019-do-2022.pdf1, Report of the Chief Administrator of the Municipality of Budva for the year 2021, available at: https://budva.me/sites/default/files/PDF/glavni-administrator/izvjestaj-o-radu-2021.pdf, Report of the Chief Administrator of the Municipality of Bijelo Polje for the year 2020, available at: https://www.bijelopolje.co.me/images/2021/izvjestaj-2020-glavni-administrator.pdf, Report of the Chief Administrator of the Municipality of Cetinje for the year 2019, available at: http://www.cetinje.me/cetinje/cms/public/image/dokumenta/7dd1c7a38aeabe75306945547c47e79b.pdf, while the reports of Chief Administrators of Podogorica, Kotor, Herceg Novi etc. could not be found on the internet.

7.2. Administrative Procedure and the Efficiency of Decision-Making

7.2.1. New Solutions Contained in the Law on Administrative Procedure

When deciding on the rights, obligations and legal interests of citizens, legal entities and other forms of organisation, state administration authorities and local self-government bodies (hereinafter referred to as administrative authorities) apply, in the procedural sense, the Law on Administrative Procedure[108] - LAP (hereinafter referred to as the "new Law on Administrative Procedure" – the new LAP). This Law, although enacted and published in the "Official Gazette of Montenegro" on 24 December 2014, began to be applied, as prescribed by its amendments, only on 1 July 2017.

In the explanation of the need to pass the new LAP, the proponent[109] stated that certain provisions of the current LAP have proven to be a limiting factor, that the understanding of public administration has fundamentally changed, that greater demands have been made for better administrative practices, that the state administration took on new organisational forms, and that the administration must adapt to the development of information and communication technologies. The following were listed in the explanation as the main goals[110] of adopting the new Law: simplification and acceleration of the administrative procedure, reduction of the costs of the procedure for all participants, modernisation of the procedural mechanisms contained in the LAP, *e-administration*, more effective protection of both the public interest and the individual interests of citizens and legal entities, and easier and more complete realisation and protection of legality and citizens' freedoms and rights in the process of direct application of regulations in administrative matters.

The new LAP improved the legal means that affect the timely completion of administrative matters.

The most important change made to speed up the administrative procedure is the provision which stipulates that when the second-instance authority has already annulled the first-instance decision upon appeal, and the party files an appeal against the new decision of the first-instance public authority, the second-instance authority is obliged to annul the first-instance decision and resolve the administrative matter **itself**.[111]

As in the previous Law, the new LAP provides for an appeal due to the silence of the administration, so the second-instance authority, when it determines that the first-instance authority justifiably did not issue a decision within the time limit prescribed by law, is to order the first-instance authority, in a decision, to issue a decision within a period that cannot be longer than 30 days, while when it assesses that the reasons for which the first-instance public authority did not issue a decision within the time prescribed by law are not justified, it is to decide on the party's request **itself**, within 45 days from the receipt of the appeal, or order the first-instance public authority to decide on the party's

108 Law on Administrative Procedure, "Official Gazette of Montenegro", nos. 56/2014, 20/2015, 40/2016 and 37/2017

109 Draft Law on Administrative Procedure, Government of Montenegro (MoI) 25 November 2014, p. 49, available at: https://www.gov.me/dokumenta/abe98c64-6291-4058-a890-f49eb8d379a0)

110 *Ibid*, p. 52

111 Law on Administrative Procedure, "Official Gazette of Montenegro", nos. 56/2014, 20/2015, 40/2016 and 37/2017, Article 126, paragraph 9

request within 15 days from the date of receipt of the decision.[112] The Law also envisages the following legal mechanism: in case of silence of the administration (absence of a decision on the party's request), it shall be deemed that the party's request was approved (*positive fiction*), if this is envisaged by special regulations.[113]

The new LAP also sets **short deadlines** for resolving administrative matters; thus, the first-instance authority has 30 days from the day the procedure was initiated to issue a decision,[114] except in the case of complex legal matters, while the second-instance authority has 45 days from the day of receiving the appeal to decide thereupon.[115]

7.2.2. Absence of a Transitional Solution

Even before the start of implementation, the Law was amended and supplemented in a way that postponed its implementation from 1 January 2016[116] to 1 July 2016, and then once again to 1 July 2017,[117] due to the harmonisation of a number of regulations with the new LAP.

The amendment to the Law[118] that had the most disastrous effect on decision-making within a reasonable period of time in administrative matters, and which violated the concept and objectives of the new Law, entered into force only 8 days[119] before the start of its implementation. This amendment stipulates that procedures that have not ended with a legally binding decision by the date of application of the new Law shall be concluded based on the provisions contained in the previous Law on General Administrative Procedure, published in the "Official Gazette of the Republic of Montenegro", nos. 60/3 and 32/11.

The proponent of the basic text of the Law explained[120] that Article 161 of the LAP - which at the time stipulated that proceedings that have not ended with a legally binding decision by the date of application of this Law "shall be concluded based on this (author's note: the **new**) Law" - protects legal security and certainty of all participants in ongoing administrative procedures.

The proponents of the Law on Amendments to the Law on Administrative Procedure ("Official Gazette of Montenegro", no. 37/2017), (two female members of the Parliament of Montenegro) briefly explained the Proposal by saying that the assessment showed that the new institutes contained in the LAP, whose application was about to begin, will not be able to be applied to a large number of cases that were initiated under the previous Law.

Instead of the provisions of the new LAP being applied to all participants in administrative proceedings, only administrative proceedings that were initiated prior to 1 July 2017

112 *Ibid*, Article 129

113 *Ibid*, Article 117

114 *Ibid*, Article 114

115 *Ibid*, Article 130

116 Law on Amendments and Supplements to the Law on Administrative Procedure, "Official Gazette of Montenegro", no. 20/2015

117 Law on Amendments to the Law on Administrative Procedure, "Official Gazette of Montenegro", no. 40/2016

118 Law on Amendments to the Law on Administrative Procedure, "Official Gazette of Montenegro", no. 37/2017

119 The amendments came into effect on 22 June 2017.

120 Draft Law on Administrative Procedure, Government of Montenegro (MoI) 25 November 2014, p. 69, available at: https://www.gov.me/dokumenta/abe98c64-6291-4058-a890-f49eb8d379a0

were to be resolved based on the procedural provisions of the old Law, which in the appeals procedure allowed unlimited return of cases for re-trial, which put the parties (through no fault of their own) at a disadvantage compared to those who initiated their proceedings later. The provisions of the old Law apply to all still-unfinished proceedings related to the just compensation and restitution procedure that were initiated under the Law on Restitution of Property Rights and Compensation[121] back in 2005, to numerous proceedings pending before regional units of the Cadastre and State Property Administration, and so on.

In the judgment in the case of *Stanka Mirković and others v. Montenegro*[122] of 7 June 2017, which related to the proceedings before the Commission for Restitution of Property and Compensation, the European Court of Human Rights found that a total of 16 decisions were made in the proceedings that began in 2005 and were still pending after no less than12 years, as well as 8 before the administration and 8 before the Administrative Court. The European Court briefly stated that the cause of the excessively long duration of the administrative and Administrative Court proceedings was the possibility of returning cases for re-trial for unlimited number of times. It was assessed that neither the national legal remedies under the then Law, nor the remedies against the silence of the administration, nor the control request, nor the claim for just satisfaction were effective, i.e. that they did not produce the desired effects of speeding up and ending the administrative and Administrative Court proceedings.

Because of all this, it is not clear why the legislator adopted such a harmful amendment. The application of new rules would certainly speed up the procedure and benefit the parties. Such a decision would be a burden for the administration and the Administrative Court for a period of time, but things would normalise after a while and it is certain that, in the end, the violation of the right to a trial within a reasonable time and other resulting damages would be prevented.

7.2.3. Lack of Means to Speed Up the Administrative Procedure

According to the Law on the Protection of the Right to a Trial within a Reasonable Time, the request for speeding up the proceedings (the control request) cannot be applied to administrative procedure because the right to such protection is granted to "the party and the intervener in a civil court proceeding, the party and the interested person in an administrative dispute, the defendant and the victim in criminal proceedings (hereinafter referrd to as: the party), if the proceedings refer to the protection of their rights in the sense of the European Convention for the Protection of Human Rights and Fundamental Freedoms".[123]

Although there is no legal means in the domestic legal system to protect the right to a reasonable length of the administrative procedure, that procedure is often subject to the protection of the European Convention for the Protection of Human Rights and

121 "Official Gazette of the Republic of Montenegro", nos. 21/2004, 12/2007 – other law, 49/2007, 60/2007, 30/2017 and 70/2017

122 *Stanka Mirković and others v. Montenegro,* no. 33781/15, available at: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22mirkovic%20v.%20montenegro%22],%22documentcollection-id2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-171781%22]}

123 Law on the Protection of the Right to a Trial within a Reasonable Time, *op.cit,* Article 2

Fundamental Freedoms. In accordance with its autonomous interpretation of the term "dispute",[124] to which it assigns an essential and not a formal meaning, the European Court of Human Rights takes the specific moment in the administrative procedure when the case acquired the character of a "dispute" as the beginning of the procedure when it calculates its total duration and verifies whether there has been a violation of Article 6, paragraph 1 of the Convention in relation to the guarantee of a trial within a reasonable time. Therefore, there is no reason not to expand the application of existing legal means in Montenegro in accordance with this interpretation of the European Court.

In several judgments of the Supreme Court of Montenegro[125] regarding claims for just satisfaction in administrative proceedings, the court approved the claim even though the applicant never submitted a control request due to the fact that it was an administrative procedure. The Supreme Court concluded, in terms of Article 33 of the Law on Protection of the Right to a Trial within a Reasonable Time, that the applicant could not submit such a request for objective reasons. The duration of the procedure was counted from the day the complaint was filed due to the silence of the administration, because it was at that moment that the case acquired the character of a "dispute" according to the practice of the European Court of Human Rights, which the Supreme Court referred to.

In administrative proceedings, there is no special means for speeding up the procedure, but there is a right to compensation for damages incurred due to the violation of the right to a trial within a reasonable time, which is realised by filing a lawsuit with the Supreme Court under the Law on the Protection of the Right to a Trial within a Reasonable Time.

7.3. Reports on Proceedings Conducted before the Administrative Authorities and their Duration

Administrative authorities submit reports on their work to the competent hierarchically higher authority or to their founder, but these reports do not contain data on the total duration of the administrative procedure.

Ministries publish reports on administrative procedures regarding areas for which they were established, in the annual work report that they submit to the Government of Montenegro in the first quarter of the following year (for the previous year). In these reports, one can find data on the number of cases, the duration of administrative proceedings, the way the

124 The Right to a Trial within a Reasonable Time, Ivana Roagna, Council of Europe, p. 21 (https://rm.coe.int/mne-pravo-na-sudjenje-u-razumnom-roku-mne/16808e729c): "This means that the ECHR can take as a starting point the date of the preliminary report to the administrative body, especially when such a report is a prerequisite for the start of the procedure. Therefore, the ECtHR had the opportunity to accept the following as *dies a quo*: the date of the preliminary claim for compensation of damages submitted to the administrative body; the date of the out-of-court request that was submitted to the Prime Minister; the date when the applicant filed a complaint with the administrative authorities that revoked his license to practice medicine and run a clinic; the date of request for termination of public protection for three children; the date when the applicant contested the decision with the competent authority that issued it; the date of the applicant's request for formal confirmation of the association's decision; the date of request for restitution of immovable property; the date of the first contesting with the government office of the total amount of compensation after the nationalisation of the company".

125 For example, Tpz.12/19, Tpz 53/20. Tpz.5/19 etc., in which just compensation was awarded, as pointed out by the Constitutional Court judge Snežana Armenko.

cases were resolved, and the quality of decision-making.[126] However, the reports do not refer to the total duration of the procedure, from the moment of submission of the request until the final and legally binding decision, but only to the duration of the procedure before that authority.

The **Appeals Commission of the Government of Montenegro** publishes monthly reports on cases resolved in administrative proceedings and annual reports submitted to the Government of Montenegro. In the report on the work of this Commission for the year 2021,[127] it was stated that in the reporting period the Commission had a total of 935 of cases, of which 63.5%[128] were based on appeals filed against decisions of state authorities, while 36.5%[129] were based on appeals filed against decisions of local self-government bodies.[130] Of the total number of cases, the Commission resolved 519, that is, slightly more than a half (55.5%), while 416 appeals (44.5%)[131] remained unresolved. Of the resolved cases, the Commission annulled the decision in 48%,[132] returning them to the first-instance authority for repeated procedure, while in 43%[133] of cases it rejected the appeal. Only 26 appeals were filed due to silence of the administration (5%). The Commission made a decision on the merits in only three cases (0.5%). From October 2021 to April 2022, the Commission did not work for almost 7 months because of the election of its new members and president.

According to the report on the work of the Commission for 2022,[134] the results are now significantly better. Out of 951 cases, the Commission resolved 93.16%:[135] the appeal was rejected in 43%[136] of the cases, the first-instance decision was annulled in 46%[137], while the

126 Report on the work and situation in the administrative areas of the Ministry of Justice for the year 2022, Ministry of Justice (https://wapi.gov.me/download-preview/072d2dc7-2b0d-4c89-a6c7-3e396439c028?version=1.0); Report of the Ministry of the Interior on the work and situation in administrative areas with the organisational unit of the Ministry responsible for police affairs for the year 2022, Ministry of the Interior (https://www.gov.me/dokumenta/9157d372-cf1c-4115-b0af-ba7868c5fe9f); Report on the work and situation in the administrative areas of the Ministry of Public Administration for the year 2022, Ministry of Public Administration (https://www.gov.me/dokumenta/07c9adb6-7a42-489e-ad11-f45c2deb8c52); Report on the work and situation in the administrative areas of the Ministry of Ecology, Spatial Planning and Urbanism with the bodies supervised by the Ministry for the period January – December 2022, Ministry of Ecology, Spatial Planning and Urbanism (https://www.gov.me/dokumenta/8fa066dc-0720-4382-9a89-03fea91fc39b)

127 Government of Montenegro, Appeals Commission, Report on the work of the Appeals Commission for the year 2021, March 2022, p.13, available at: https://www.gov.me/dokumenta/1f13a2b6-5219-497c-9fb5-17588c7f2b99

128 594 cases

129 341 cases

130 When the Law on Local Self-Government came into effect on 18 January 2018, the Commission's competences were extended to include dealing with appeals filed against decisions on the rights and obligations of local officials, i.e. state employees, and appeals filed against decisions on the selection of candidates based on advertised competitions.

131 Report on the work of the Appeals Commission for the year 2021, *op.cit.*, p. 11: "The high percentage of unresolved cases is influenced also by the fact that the mandate of the president and members of the Appeals Commission ended in October 2021, and that members of the new Appeals Commission were appointed on 2 February 2022, while the president of the Appeals Commission was appointed on 14 April 2022. The Appeals Commission is a collegial body, independent and autonomous in its work, that regulates the manner of working and decision-making in accordance with the Rules of Procedure. Since the duties and powers of the president of the Commission are, among other things, to represent the Commission, organise the work of the Commission and sign the acts adopted by the Commission, as well as to submit the Draft Annual Report on the Work of the Commission, the appointment of the president of the Commission created the legal conditions for the Appeals Commission to start working on 14 April 2022."

132 254 cases

133 228 cases

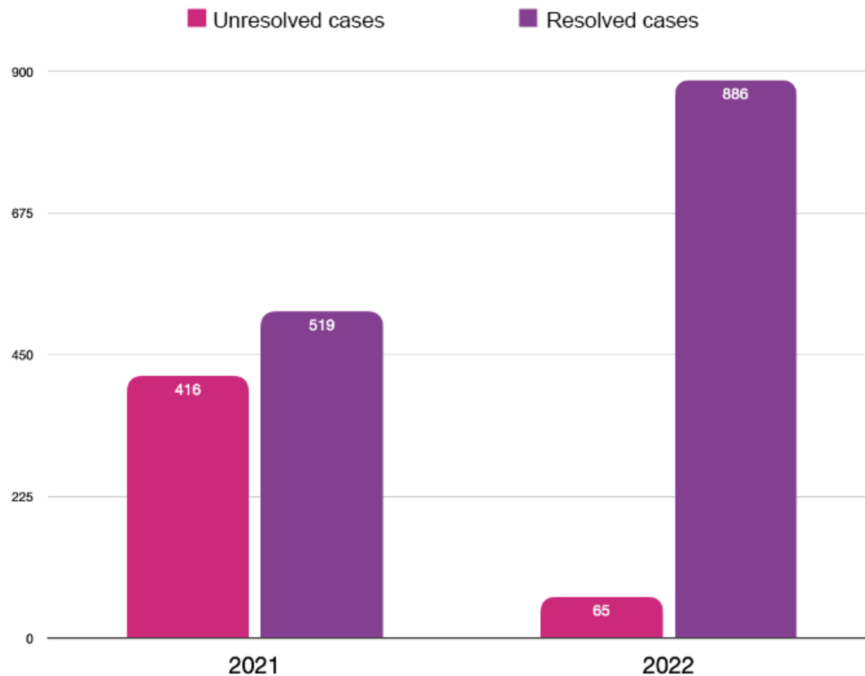
134 Government of Montenegro, Appeals Commission, Report on the Work of the Appeals Commission for the year 2022, March 2023, p. 15, available at: https://www.gov.me/dokumenta/0549cab4-8b10-49cf-aa54-64b342758f32

135 886 cases

136 382 cases (in the Report, the cases from 2021 and the cases from 2022 were presented separately, so the number was obtained by adding up the cases that were resolved the same way).

137 413 cases

rest of the cases were resolved by suspension or in some other way. 2%[138] of the cases were decided on the merits, and all cases from 2021 have been concluded.



Ratio between unresolved and resolved cases by the Appeals Commission of the Government of Montenegro, 2021-2022

In the Report for the year 2022, as well as the one for the previous year, it was stated[139] that, apart from the stoppage of work that was caused by the election of new members of the Commission, the promptness of the Commission was conditioned also by the efficiency of the work of the first-instance authorities, and above all by the timely delivery of the appeal, i.e. the statement on the appeal, and the delivery of complete case files by the first-instance authorities. This indicates that the promptness of the Commission depends to a certain degree on the professionalism and promptness of the administrative authorities of the first instance. Also, in practice, first-instance authorities sometimes do not examine the timeliness and admissibility of the appeal, but rather submit the appeal and case files without properly examining the premise for resolving the appeal, which makes the work of the Appeals Commission more difficult.

The **Appeals Commission does not publish reports on the procedure for restitution of confiscated property rights and compensation**. To find out whether it submits them to the Government as its founder, on 14 March 2023 we submitted a request for free access to information to the Government of Montenegro, asking to be provided with the reports of this Commission. However, by the end of the work on this Report, that request had not yet been answered. Therefore, it can be concluded that almost nothing is known about the work and decisions of the Appeals Commission in the procedure of restitution of confiscated property rights and compensation, except for individual cases which became known thanks to the decisions of the Administrative, Supreme and Constitutional Courts.

138 19 cases

139 Report on the Work of the Appeals Commission for the year 2022, *op.cit*, p. 14

The existing solution contained in the "Transitional and Final Provisions" of the Law on Administrative Procedure, according to which the proceedings that were initiated before the application of the new Law are to be resolved based on the provisions of the old Law, has threatened the very concept of the new Law, put the parties in an unequal position, and made it possible for administrative procedures to last a very long time due to the "ping-pong" effect.

The legal means for accelerating the procedure provided by the LAP, such as the appeal filed due to the silence of the administration, a report to the inspection, or the supervision of a hierarchically higher body, are not causing the acceleration of the proceedings, especially those that are still pending based on the provisions of the old LAP, because they cannot prevent multiple annulment.

8.
CONTROL REQUESTS AND CLAIMS FOR JUST SATISFACTION IN ADMINISTRATIVE PROCEEDINGS

8.1. Legal Framework

The Administrative Court of Montenegro, which is competent to judicially control the administrative proceedings, started operating in January 2005.[140] The procedure before this court is prescribed by the Law on Administrative Disputes (LAD).[141]

In terms of respecting the right to a trial within a reasonable time, the LAD prescribes the *possibility* of the Administrative Court to resolve the administrative matter on its own (full jurisdiction dispute). If the Administrative Court annuls the contested act - and the nature of the administrative matter allows it to do so - it is allowed to decide on the administrative matter in question on its own in the following cases:

(1) If the court itself has established the factual situation at the oral hearing;
(2) If the annulment of the contested act and a repeated administrative procedure would cause damages for the plaintiff that would be difficult to compensate;
(3) If, based on public documents or other evidence in the case file, it is obvious that the factual situation is different from the one that was established in the administrative procedure;
(4) If the act has already been annulled in the same dispute, and the defendant public body did not fully comply with the judgment;
(5) If an act has already been annulled in the same dispute, and the defendant public body has not adopted a new act within 30 days from the date of annulment, or within another period determined by the Administrative Court, or if the competent public body has not adopted the act within the legally prescribed period of time.[142]

When the Administrative Court has already annulled the contested act in the same administrative matter, it **is obliged** to resolve the subject matter on its own based on the lawsuit filed against the new act of the public body in that administrative matter, when the nature of the administrative matter allows it to do so.[143]

140 Law on Courts, "Official Gazette of the Republic of Montenegr", nos. 5/2002 and 49/2004, Article 14

141 Law on Administrative Procedure, "Official Gazette of Montenegro", no. 54/2016 of 15 August 2016

142 *Ibid*, Article 36, paragraph1, items 1-6

143 *Ibid.* Article 36, paragraph 3

However, the legal term "nature of the administrative matter" allows for different interpretations and accordingly opens up space for avoiding the application of full jurisdiction in administrative-judicial matters, in cases where such a duty of the Administrative Court is prescribed by law.

The law envisages decision-making following the finality of one judgment based on a sample, meaning that if there is a large number of cases with the same factual and legal basis, and the judgment passed in one such case becomes final (legally binding), then decisions in all other similar cases are made based on the same principle, without scheduling hearings.[144]

The obligation of the Administrative Court to schedule a public hearing whenever a party so requests[145] opens up the possibility of abuse of procedural rights by the parties, especially when the facts can be established based on written evidence, which prolongs the duration of the procedure and increases costs.

The Law on Administrative Disputes (Chapter VII)[146] prescribes the binding nature of the judgment of the Administrative Court in which an administrative body is ordered to issue, if such is the nature of the matter, a new act within 30 days from the date of receipt of the judgment. If the administrative body fails to do so, the party may request the issuance of such an act within 7 days. If the administrative body fails to issue it, the party can request the issuance of such an act from the Administrative Court. The Administrative Court will ask the administrative body to declare within 7 days why it did not issue the act in compliance with the Administrative Court's judgment, and if the declaration is not provided within the 7-day deadline, or is not satisfactory, the Administrative Court will itself issue a decision that will replace said act in all respects, deliver it to the administrative body which is then obliged to enforce it without delay, and inform the authority competent for supervising the work of said administrative body. The supervising authority is obliged to inform the Administrative Court about the undertaken measures within a period of 30 days.

Although, with regard to the mandatory enforcement of the judgments of the Administrative Court, the LAD recognises the role of the authority that supervises the public body that issued the administrative act, the possibilities and scope of that type of supervision in practice have proven to be very limited.[147] Attention has been drawn, for example, to the problem of non-enforcement of the judgments of the Administrative Court when said Court annulled the decisions of the Fund for Minorities 8 times in its judgments, yet the administrative body persistently refused to comply with them. The reaction of the authority supervising the Fund was completely absent and responsible persons were never sanctioned.[148]

144 *Ibid,* Article 25

145 *Ibid,* Article 28, paragraph 2

146 *Ibid,* Articles 56-59

147 Administrative judiciary in Montenegro, Reasonable deadlines and the enforcement of judgments of the Administrative Court, Civic Alliance, December 2020, p. 31, available at: https://gamn.org/wp-content/uploads/2020/12/GA-Analiza-Upravno-sudstvo.pdf

148 *Ibid*, p. 29

8.2. Increase in the Number of Cases in the Administrative Court

Number of unresolved cases in the period 2011-2015

Year	Total number of unresolved cases	Number of unresolved cases older than three years	Number of judges
2011[149]	1.264 (priliv 3.717)	0	9
2012[150]	1.702 (priliv 3.413)	0	10
2013[151]	1.475 (priliv 3.183)	0	10
2014[152]	1.814 (priliv 3.657)	0	9
2015[153]	2.159 (priliv 3.656)	0	12

Number of unresolved cases in the period 2017-2022

Year	Total number of unresolved cases	Number of unresolved cases older than three years	Number of judges
2017[154]	10.743 (priliv 12.828)	0	11
2018[155]	10.397 (priliv 9.112)	0	14
2019[156]	10.077 (priliv 6.565)	0	16
2020[157]	8.505 (priliv 5.535)	0	16
2021[158]	9.043 (priliv 6.675)	0	11
2022[159]	17.093 (priliv 13.438)	0	14

The number of unresolved cases before the Administrative Court decreased from 10,743 in 2017 to 8,505 in 2020. In 2021, it began to rise, reaching 9,043, while in 2022 it suddenly jumped to 17,093 cases, showing an increase of 89% compared to the year before. The average number of unresolved cases before the Administrative Court at the end of the

149 Annual Report for 2011, Judicial Council, *op.cit*, pp. 27 and 193

150 Annual Report for 2012, Judicial Council, *op.cit*, pp. 31 and 150

151 Annual Report for 2013, Judicial Council, *op.cit*, pp. 25 and 149

152 Annual Report for 2014, Judicial Council, *op.cit,* pp. 26 and 63

153 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2015, Judicial Council, 2015, *op.cit*, pp. 13 and 46

154 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2017, Judicial Council, *op.cit*, p. 38

155 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2018, Judicial Council, *op.cit*, p. 34

156 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2019, Judicial Council, *op.cit*, p. 34

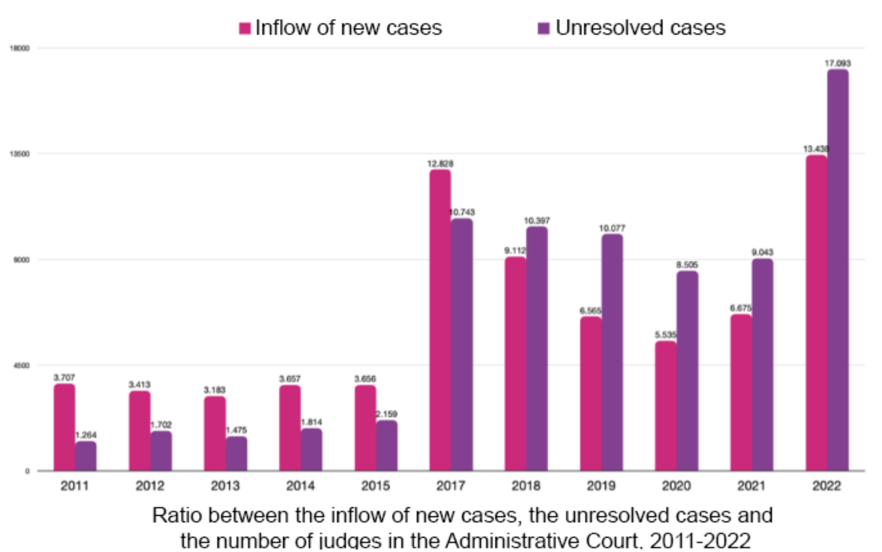
157 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2020, Judicial Council, *op.cit,* p. 34

158 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2021, Judicial Council, *op.cit*, p. 43

159 Annual Report on the Work of the Judicial Council and the Overall State of the Judiciary for the year 2022, Judicial Council, *op.cit*, p. 44

year (for the period 2017-2022) was 11,066. If we look at the average annual number of cases pending before Montenegrin courts - 40,311, the above number represents 27.5%, or more than one quarter of all the cases pending before all the courts.

The increase in the number of unresolved cases was mostly influenced by the increased inflow of cases, which has tripled compared to the period 2011-2015, i.e. quadrupled in 2022, and the drop in the number of judges from 16 to 11 in a couple of years. It was therefore to be expected that the decision-making time in administrative disputes - from 6 to 8 months in the period 2011-2015 (175 days, 199 days, 238 days) - would increase to 538 days in 2021 and reach a worrying 1,158 days[160] (longer than three years) in 2022.



Ratio between the inflow of new cases, the unresolved cases and the number of judges in the Administrative Court, 2011-2022

8.3. Administrative Court's Rulings on Control Requests

8.3.1. Number of Control Requests

In the period 2017-2022, the Administrative Court decided on 1,184 control requests. In relation to the total number of decisions on control requests made in the same period before all the courts in Montenegro (2,667), the above number represents as much as 44% of all the decisions, that is, almost half. On average, the Administrative Court received 197 control requests per year.

In relation to the average number of unresolved cases per year (11,066), the average number of submitted control requests (197) shows that such a request was submitted in every 56th unresolved case, which is 38% more often compared to the submission of such a request in every 90th unresolved case at the level of all courts.

160 *Ibid*, p. 58

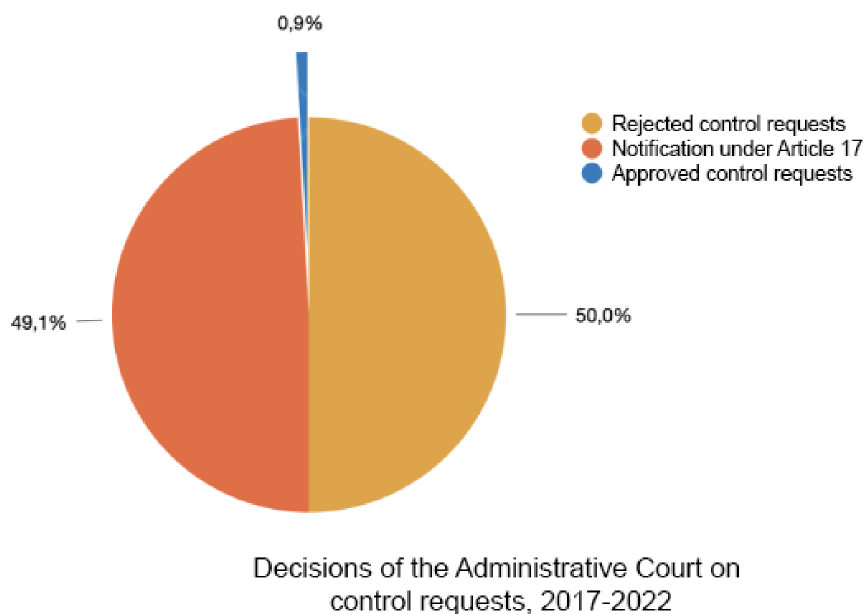
8.3.2. Method of Decision Making

Year of submission of the control request	Approved requests	Rejected requests	Notification in accordance with Article 17	Notification in accordance with Article 18	Control requests that were dismissed, withdrawn, resolved in other ways, etc.	TOTAL
2017	1	2	20	0	0	23
2018	0	10	79	0	0	89
2019	5	483	30	0	0	518
2020	0	56	22	1	9	88
2021	0	33	25	0	0	58
2022	1	398	8	0	1	408
TOTAL	7	82	185	1	10	1.184

According to data from the Annual Reports, out of 1,184 decisions, control requests were rejected in 982 cases (83%). The notification under Article 17 of the Law, that the court will take action or make a decision within four months, was dispatched in 185 cases (15%), However, if we take the actual number of these cases, i.e. 215, then the percentage rises to 21%. The control request was adopted in 7 cases (0.6%), while in 10 cases it was resolved in another way or dismissed (0.89%).

For the purpose of this research, we inspected 438 control request cases that were submitted to us, i.e. 37% of the total number of such cases. According to the explanation of the President of the Administrative Court, the rest was not submitted because the explanations were repeated in a large number of similar cases, and these were the decisions rejecting the control request.

Of the 438 inspected decisions on control requests, 219 were rejected (50.78%), while in 215 cases a notification was delivered under Article 17 of the Law (48.31%). The control request was approved only in four cases, which is less than 1% (0.89%).



Decisions of the Administrative Court on control requests, 2017-2022

8.3.2.1. Approval of Control Requests

Approved control requests

A total of 7 control requests were approved. We inspected four such cases - since that is how many were submitted to us: all the approvals were complied with, and decisions were made within two to four months.[161]

Notification under Article 17

According to the annual reports on the work of the courts for the period 2017-2022, the number of cases the Administrative Court resolved in this way was 185, which differs from the decisions that were submitted for the purposes of this report. Namely, the total number of inspected decisions on control requests that ended with notification was actually 215.[162] Out of 215 cases, the judges completed 177 within the legal deadline of four months, while in 22 cases the decision was not made within this period of time, with delays ranging from several days or weeks to a full year (in one case). In 16 cases, the decision was not published on the website "sudovi.me", so the date of completion of the case could not be verified.

Considering the inspected sample, it can be concluded that the effect of speeding up the procedure by dispatching a notification under Article 17 of the Law was achieved in 82% of the cases, which makes this remedy highly effective before the Administrative Court.

The Administrative Court approved control requests under Article 18 (approval of the control request and priority treatment of the case) in a very small number of cases (only 7), while 21% of the total number of control requests, i.e. 48.3% of the inspected sample, were resolved based on Article 17 (notification to the party).

161 Su. 280/22, 47/20, 297/19, 299/19

162 21 cases in 2017, 82 cases in 2018, 28 cases in 2019, 35 cases in 2020, 43 cases in 2021 and 6 cases in 2022.

8.3.2.2. Non-Approval of Control Requests before the Administrative Court

Rejected control requests

In the largest number of cases the control request was rejected because, at the time of the decision, the decision in the case has already been made, i.e. the judge has used the 60-day period (allowed the court president) and resolved the case in the meantime, causing the applicant to lose his/her status of the injured party. Out of 438 inspected cases, the mere filing of the request influenced the acceleration in 149 cases (34%), regardless of the president's later decision to reject the control request. A large number of such cases before the Administrative Court are affected also by the very nature of the administrative dispute, which as a rule does not require the production of additional evidence; it is decided based on the documentation contained in the case file and, also as a rule, without a public hearing.

In a certain number of cases, the Administrative Court did not provide protection of the right to trial within a reasonable time (requests for the acceleration of proceedings were rejected) due to the lack of *ratione materia* jurisdiction,[163] e.g. in disputes against the decision on forced collection of real estate tax[164] and regarding the request for inspection and copying of files which was rejected by the Real Estate Administration.[165]

In a certain number of cases, the parties requested the acceleration of the procedure before the administrative authorities, e.g. in cases of inspection supervision, proceedings before the Ministry of Finance, cases conducted by real estate authorities that have been pending since 1992 or 1993 (!), and in cases of the Commission for Restitution and Compensation that have been pending since 2005.[166] The court rejected them because the Law on the Protection of the Right to a Trial within a Reasonable Time does not apply to proceedings conducted before administrative bodies.

The President of the Administrative Court rejected a small number of control requests because he did not consider the duration of the procedure long enough to approve them. These were cases in which the proceedings lasted three, four, five and up to 11 months.[167]

In 15% of the total number of control requests rejected by the Administrative Court, i.e. in 34% of cases from the sample, the mere submission of the control request influenced the acceleration of the procedure, having in mind the moment of the submission of the control request, the moment of making the decision closing the case, and the average duration of the procedure before the Administrative Court.

163 The Right to a Trial within a Reasonable Time, *op.cit.*, p. 15: "Tax disputes (which are not criminal cases) are not included in the scope of application of Article 6 in civil matters because they are deemed to be part of the 'very essence of public powers'". As the ECtHR pointed out in the admissibility decision, "It is not enough to show that the dispute is 'material' in nature in order to be covered by the term 'civil rights and obligations'" (author's note: judgment in *Ferrazzini v. Italy*).

164 Su. 12/19, 28/19, 29/19, 37/19 i 39/19, 41/20, 42/20, 43/20,46/20, 23/21, 29/21, 249/22

165 Su. 87/19, 89/19, 534/19,535/19,536/19, 537/19

166 Su. 7/17, 23/17, 18/19, 23/19, 31/19, 32/19, 86/201/21, 2/21, 39/21

167 Su. 122/22, 290/22, 291/22, 292/22

8.4. Claims for Just Satisfaction Filed in Proceedings before the Administrative Court

The number of claims for just satisfaction and the ways in which they were resolved by the Administrative Court were taken from that Court's annual reports.

YEAR	2017[168]	2018[169]	2019[170]	2020[171]	2021[172]	2022[173]
Number of submitted claims	0	0	13	6	30	25
Number of approved claims	0	0	2	0	21	13
Number of partially approved claims	0	0	7	2	0	1
Number of rejected claims	0	0	2	2	2	1
Number of dismissed claims	0	0	2	2	7	10

There were 74 in total, of which 36 were approved, 10 were partially approved, 7 were rejected and 21 were dismissed.

168 Report on the Work of the Administrative Court for the year 2017, Administrative Court, Podgorica, February 2018, available at: https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_Crne_Gore__za_2017._godinu.pdf

169 Annual Report on the Work for the year 2018, Administrative Court, Podgorica, February 2019, available at: https://sudovi.me/static/uscg/doc/9561.pdf

170 Report on the Work of the Administrative Court of Montenegro for the period 1 January 2019 – 1 december 2019, Administrative Court, Podgorica, February 2020, available at: https://sudovi.me/static/uscg/doc/Godisnji_izvjestaj.pdf

171 Report on the Work of the Administrative Court of Montenegro for the period 1 January 2020 - 31 December 2020, Administrative Court, Podgorica, 2021, available at: https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_Crne_Gore_za_2020_godinu.pdf

172 Report on the Work of the Administrative Court of Montenegro for the period 1 January 2021 – 31 December 2021, Administrative Court, Podgorica, February 2022, available at: https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_CG_-_2021._godina.pdf

173 Report on the Work of the Administrative Court of Montenegro for the year 2022, Administrative Court, Podgorica, February 2023, available at: https://sudovi.me/static//uscg/doc/Izvjestaj_o_radu_Upravnog_suda_Crne_Gore_za_2022_godinu.pdf

9.
TRIAL WITHIN A REASONABLE TIME IN THE REPORTS OF THE EUROPEAN COMMISSION ON MONTENEGRO

In its annual reports on Montenegro,[174] the European Commission (EC) monitors the efficiency of the judiciary by looking at the total number of cases before the courts, the number of resolved and unresolved cases, the number of cases older than three years and the length of time required to make a decision, comparing these data with those from the previous period. The reports do not deal with legal remedies for the protection of the right to a trial within a reasonable time.

In its report for the year 2022, the EC observed that the total number of cases pending in the courts, including the number of resolved cases, has decreased, but it also noted that the number of cases older than three years, as well as that the decision-making time in the basic courts, the Commercial Court and the Administrative Court has increased.[175] It was established that the duration of the proceedings before the Administrative Court was 538 days,[176] before the basic courts - 158 days, and before the Commercial Court - 197 days. As in *every other report in the last 10 years*, it was reiterated that the problem of the reliability of statistical data on the work of the courts has not been solved. It was noted that the full implementation of the instructions for the collection of statistical data in accordance with the CEPEJ guidelines has remained a challenge. In the absence of a case management system, information on the total duration of proceedings is unavailable[177] because the indicators refer to the average duration of proceedings before a single court

174 In December 2010, Montenegro became a candidate for membership in the European Union (EU), and negotiations with the EU officially began on 29 June 2012. The EU applied a new approach in the negotiations with Montenegro, according to which negotiation Chapters 23 - Judiciary and Fundamental Rights and 24 - Justice, Freedom and Security were among the first to be opened, and will remain open until the end of the negotiation process.

175 Montenegro 2022 Report, European Commission, Brussels 12 October 2022, p. 25: "**In 2021**, 118,568 cases (2020: 139,560) were pending before Montenegrin courts, 84,143 of which were new cases (2020: 80,723). Some 80,485 cases were resolved (2020: 83 206), and at the end of 2021 there was 37,963 cases pending. The number of cases older than 3 years was 3,794 at the end of 2021 (2020: 3,036). The disposition time, i.e. the average time from filing to decision, was 158 days in basic court cases (2020: 150), 197 for commercial cases (2020: 148) and 538 days before the Administrative Court (2020: 438)", available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf

176 In the EC reports for 2020 and 2021, it was expressly emphasised that the decision-making time before the Administrative Court (534 days in 2020 and 438 days in 2021) is a cause for concern: Montenegro 2020 Report, European Commission, Brussels, 6 October 2020, p. 24 and Montenegro 2021 Report, European Commission, Strasbourg, 19 October 2021, p. 23

177 The time required to solve a case (DT indicator) represents the ratio between the number of days in a year and the case flow coefficient - in days. (The case flow coefficient (CTR indicator) represents the ratio between the number of resolved cases and the number of unresolved cases at the end of the reporting period).

instance and the duration of proceedings in individual cases is not monitored. Statistical data on the performance of the judiciary have not been systematically analysed or used for management and policy design. The implementation of the ICT strategy and the programme for the judiciary are still pending.[178]

The same remarks and recommendations - including the recommendation to rationalise the court network due to the large number of judges compared to the European average[179] - have been repeated for 11 years, in every single EC report. The IT equipment of the judiciary is also still pending.[180] The Judicial Council, on the other hand, keeps repeating in every one of its annual reports that it has a problem with inadequate work space and lack of technical equipment and staff.

The unreliability of statistical reporting in annual reports has surfaced this time as well. For example, according to the annual reports, the number of control requests resolved before the Administrative Court by notification under Article 17 for the observed 6 year period was 185, while the Administrative Court submitted 215 photocopied written decisions as a response to our request. A special problem is the impossibility of monitoring the actual length of the proceedings, because the annual reports state the duration of the proceedings before a single court instance, then stating the sum of the cases that last that long before all court instances. This makes it difficult to figure out the actual length of the duration of one case based on statistical reports.

Harmonisation of the number of judges in Montenegro with the European average should be carefully considered in the existing legal system because the decrease in the number of judges from 257 in 2017 to 212 in 2022, along with other factors, has led to a decrease in the promptness and efficiency of the judiciary. As regards judges, the current occupancy is 79%.[181]

178 Montenegro 2022 Report, *op.cit,* p. 26

179 Montenegro is still the second in Europe in terms of the number of judges in relation to the population, immediately after Monaco. The average number of judges in the member states of the Council of Europe is 22.2 per 100,000 inhabitants, while in Montenegro, according to the report on the evaluation of the European Commission for the Efficiency of Justice (for the year 2022, based on data from 2020), there were 49.8 judges (the number is now obviously smaller): CEPEJ Evaluation Report, European judicial systems, 2022 Evaluation cycle (2020 data), Report on the Assessment of the European Commission for the Efficiency of Justice, European judicial systems (for the year 2022. Based on data from 2020), p. 48, available at: https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279

180 Montenegro 2022 Report, EU Commission, p. 27

181 The Deceision on the number of judges in courts ("Official Gazette of Montenegro", nos. 025/15 of 15 May 2015, 62/15 of 2 November 2015, 47/16 of 29 July 2016, 83/16 of 31 December 2016, 79/18 of 7 December 2018, 54/19 of 23 September 2019, 52/23 of 19 May 2023) envisages a total of 269 judges in the courts of Montenegro (with the exception of misdemeanour courts). According to the Annual Report for the year 2022, the courts had 212 judges, which is 21% fewer than required.

10. EUROPEAN COURT OF HUMAN RIGHTS AND TRIAL WITHIN A REASONABLE TIME IN MONTENEGRO

As regards protection of the right to a trial within a reasonable time, guaranteed by Article 6, paragraph 1 of the Convention (*reasonable time guarantee*), the European Court of Human Rights has issued four judgments that are significant for Montenegro and the effectiveness of its domestic legal remedies. The first was in *Vukelić v. Montenegro*,[182] which, starting from 4 June 2013, confirmed the effectiveness of the control request as a legal remedy in terms of the length of the procedure; the second was *Vučeljić v. Montenegro*,[183] which, starting from 17 November 2016, recognised the claim for just satisfaction as an effective legal remedy for compensation for damages due to the excessive duration of the procedure, although it does not lead to its acceleration; the third was from *Siništaj and others v. Montenegro*,[184] which, starting from 20 March 2015, accepted the constitutional appeal as an effective legal remedy remedy in terms of a trial held within a reasonable time and compensation of damages for exceeding the term. It is necessary to stress that this position of the European Court on the constitutional appeal is based also on the provision according to which the Constitutional Court was obliged to decide on the constitutional appeal within 18 months from the date of its submission, which was abolished by later amendments. The deletion of the provision, in and and of itself, would not have been a problem had decisions on constitutional appeals been made roughly within this time limit. However, the practice of the Constitutional Court, which extended the decision on constitutional appeals to two to three years, seriously calls into question the effectiveness of this remedy, which will not go unnoticed by the European Court of Human Rights. We remind that the absence of a time limit in deciding on a constitutional appeal was one of the reasons that the constitutional appeal was considered ineffective in the

182 Translated judgment in the case of *Vukelić v. Montenegro,* application no. 58258/09, available on the website of the Supreme Court of Montenegro: www.sudovi.mehttp://sudovi.me/podaci/vrhs/dokumenta/1200.pdf

183 Translated judgment in the case of *Vučeljić v. Montenegro,* application no. 59129/15, available on the website of the Supreme Court of Montenegro: https://www.sudovi.me/static/vrhs/doc/5339.pdf, paragraph 30: "...Nevertheless, it has been shown that, by using it, it is possible to obtain adequate compensation for the violation of the right to a trial within a reasonable time... Accordingly, the Court considers it an effective domestic remedy..."

184 Translated judgment in the case of *Siništaj and others v. Montenegro* no. 1451/10, 7260/10 i 7382/10, available on the website of the Supreme Court of Montenegro: https://www.sudovi.me/static/vrhs/doc/7672.pdf, paragraph 123: "The new legislation, however, explicitly envisages the possibility of submitting a constitutional appeal not only in relation to the decision, but also in relation to action or inaction. In addition, it further provides, among other things, the possibility of awarding just compensation and limits the processing of all cases before the Constitutional Court on a constitutional appeal to a maximum of 18 months.... Considering the above, the Court is of the opinion that a constitutional appeal in Montenegro can in principle be considered an effective legal remedy since 20 March 2015, because that is the day when the new legislation entered into force."

case of *Siništaj and others v. Montenegro*.[185] With that judgment, the European Court established for the first time a violation of Article 6, paragraph 1 of the Convention (right to a fair trial) due to the excessive length of the proceedings before the Constitutional Court of Montenegro, which lasted a total of four years, four months and 20 days. Although the obligation to hold a trial within a reasonable time also applies to the Constitutional Court, the Court is of the opinion that it cannot be interpreted in the same way as for regular courts, because the Constitutional Court, as the guardian of the Constitution, takes into account - besides the time when the case got its turn - also the nature of the case and its political or other significance. However, in this case, such a long period for making a decision was excessive and did not meet the requirement of "reasonable time", so the Court established a violation of Article 6, paragraph 1 of the Convention. In this case, an amicable settlement was concluded at the end of May 2023, and so was in the case of *Pajović v. Montenegro*, in which the same violation was established. However, in that case the proceedings before the Constitutional Court of Montenegro lasted less - a total of 3 years, 7 months and 14 days.[186]

Of the total number of judgments relating to Montenegro that were issued until 2017, 20 concerned the established excessive length of the procedure.[187] In these 20 cases, the European Court of Human Rights ordered the payment of EUR 75,090 on account of non-material damages and/or the costs of the proceedings.[188] After that, by the end of 2022, the court issued 17 more judgments in which it found a violation of the right to a trial within a reasonable time: *Mastilović and others v. Montenegro* [189] (non-compliance with court decisions), *Jovašević and others v. Montenegro,*[190] *Centroprom Holding v. Montenegro* [191] *i Mercur System A.D. and others v. Montenegro,*[192]

185 Judgment in the case of *Siništaj and others v. Montenegro, op.cit*, paragraph 122: "...Additionally, the legislation which was in force at that time did not envisage a **time limit for processing constitutional appeals**, or the possibility for the Constitutional Court to award any compensation in cases where it found a violation".

186 *Pajović v. Montenegro*, no. 56823/21, 2021

187 "Right to a trial within a reasonable time - Analysis of national legislation and practice", NGO Centre for Monitoring and Research (CeMI), October 2019, authors: Ana Nenezić and Mr. Ivan Vukčević, p. 17: *Bujković v. Montenegro*, judgment of 10 March 2015; *Mijanović v. Montenegro*, judgment of 17 September 2013; *Vukelić v. Montenegro*, judgment of 4 June 2013; *Milić v. Montenegro* and Serbia, judgment of 11 December 2012; *Novović v. Montenegro*, judgment of 23 October 2012; *Stakić v. Montenegro*, judgment of 2 October 2012; *Velimirović v. Montenegro*, judgment of 2 October 2012; *Boucke v. Montenegro*, judgment of 21 February 2012; *Barać and others v. Montenegro*, judgment of 13 December 2011; *Živaljević v. Montenegro*, judgment of 8 March 2011; *Garzičić v. Montenegro*, judgment of 21 September 2010; *Mugoša v. Montenegro*, judgment of 21 June 2016; *Radunović and others v. Montenegro*, judgment of 25 October 2016; *Mirković and others v. Montenegro*, judgment of 2 March 2017; *Đuković v. Montenegro*, judgment of 13 June 2017; *Svorcan v. Montenegro*, judgment of 13 June 2017; *Tomašević v. Montenegro*, judgment of 13 June 2017; *Jovović v. Montenegro*, judgment of 18 July 2017; *Sineks d. o. o. v. Montenegro*, judgment of 5 September 2017; *Vučinić v. Montenegro*, judgment of 5 September 2017; *Nedić v. Montenegro*, judgment of 10 October 2017; *Tripcovici v. Montenegro*, judgment of 7 November 2017; *Dimitrijević v. Montenegro*, judgment of 12 December 2017. Cited according to: Ivana Roagna, The right to a trial within a reasonable time - Manual for the application of Article 6 (1) of the European Convention on Human Rights, Council of Europe, September 2018., pp. 67 – 73, http://sudovi.me/podaci/ vrhs/dokumenta/8860.pdf

188 *Ibid*.

189 Translated judgment in the case of *Mastilović and others v. Montenegro,* no. 28754/10, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/Presuda_MASTILOVIC_I_DRUGI_protiv_CRNE_GORE.pdf

190 Translated judgment in the case of *Jovašević and others v. Montenegro,* no. 41809/14, available on the website of the Supreme Court of Montenegro: https://www.sudovi.me/static//vrhs/doc/Presuda_JOVASEVIC_I_DRUGI_protiv_CRNE_GORE.pdf

191 Translated judgment in the case of *Centroprom Holding v. Montenegro,* no. 30796/10, available on the website of the Supreme Court of Montenegro:
https://sudovi.me/static//vrhs/doc/Presuda_CENTROPROM_HOLDING_AD_Beograd_protiv_CRNE_GORE.pdf

192 Translated judgment in the case of *Mercur System A.D. and others v. Montenegro* no. 5862/11 and 70851/13, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_MERCUR_SYSTEM_A.D._I_DRUGI_protiv_CRNE_GORE.pdf

Sinanović and others v. Montenegro,[193] *Raspopović and others v. Montenegro,*[194] *Piletić v. Montenegro,*[195] *Marković v. Montenegro,*[196] *Glušica and Djurović v. Montenegro,*[197] *Despotović v. Montenegro* [198] (no compensation), *Kešelj and others v. Montenegro,*[199] *Rajak v. Montenegro,*[200] *Novaković and others v. Montenegro*[201] (no compensation), *Montemlin Šajo v. Montenegro,*[202] *Arčon and others v. Montenegro,*[203] *Jasavić v. Montenegro,*[204] *KIPS DOO and Drekalović v. Montenegro,*[205] and *Lekić v. Montenegro*[206]). In these judgments, the European Court did not deal with the effectiveness of domestic remedies, given that in accordance with the position taken in the judgment rendered on 4 June 2013, *Vukelić v. Montenegro,*[207] in cases where petitions were submitted before the control request was considered effective (4 June 2013), the above remedy did not have to be used for the petition to be admissible. Therefore, in these cases, as a reference precedent, the Court referred to the principles that were set forth in the case *Stakić v. Montenegro,*[208] without much further explanation. In two cases,[209] the Court did not award any damages because the parties did not request them, while the total compensation awarded in the remaining 15 judgments for non-material damages and costs was EUR 117,150.[210] Therefore, based on the excessively long duration of the proceedings conducted to date, the European Court of Human Rights obliged

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193 Translated judgment in the case of *Sinanović and others v. Montenegro,* no. 45028/13, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_SINANOVIC_I_DRUGI_protiv_CRNE_GORE.pdf

194 Translated judgment in the case of *Raspopović and others v. Montenegro,* no. 58942/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_RASPOPOVIC_I_DRUGI_protiv_CRNE_GORE.pdf

195 Translated judgment in the case of *Piletić v. Montenegro,* no. 53044/13, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_PILETIC_protiv_CRNE_GORE_(2).pdf

196 Translated judgment in the case of *Marković v. Montenegro*, no. 6978/13, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_MARKOVIC_protiv_CRNE_GORE.pdf

197 Translated judgment in the case of *Glušica and Đurović v. Montenegro,* no. 34882/12, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static//vrhs/doc/presuda_GLUSICA_I_DjUROVIC_protiv_CRNE_GORE.pdf

198 Translated judgment in the case of *Despotović v. Montenegro* no. 36225/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/Despotovic_protiv_Crne_Gore_.pdf

199 Translated judgment in the case of *Kešelj and others v. Montenegro,* no. 33264/11, available on the website of the Supreme Court of Montenegro: https://www.sudovi.me/static/vrhs/doc/8330.pdf

200 Translated judgment in the case of *Rajak v. Montenegro,* no. 71998/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/8331.pdf

201 Translated judgment in the case of *Novaković and others v. Montenegro,* no. 44143/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/8345.pdf

202 Translated judgment in the case of *Montemlin Šajo v. Montenegro,* no. 61976/10, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/8346.pdf

203 Translated judgment in the case of *Arčon and others v. Montenegro,* no. 15495/10, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/8349.pdf

204 Translated judgment in the case of *Jasavić v. Montenegro,* no. 32655/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/9042.pdf

205 Translated judgment in the case of *Kips DOO and Drekalović v. Montenegro,* no. 28766/06, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/9043.pdf

206 Translated judgment in the case of *Lekić v. Montenegro,* no. 37726/11, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/9213.pdf

207 *Vukelić v. Montenegro,* no. 58258/09 , *op.cit.*

208 Translated judgment in the case of *Stakić v. Montenegro,* no. 49320/07, available on the website of the Supreme Court of Montenegro: https://sudovi.me/static/vrhs/doc/1155.pdf, paragraphs 45-51. These are the well-known and consistently repeated criteria which are applied to any specific case: the complexity of the case, behaviour of the applicants and relevant authorities and the importance of the dispute for the applicants, and the calculation of the reasonable deadline starting from 3 March 2004 as the date of ratification of the Convention.

209 *Despotović v. Montenegro* and *Novaković and others v. Montenegro*

210 This amount does not include amounts the state is obliged to pay for non-compliance with court decisions which were awarded in domestic proceedings (cases *Mastilović and others* and *Kešelj and others*)

Montenegro to pay a total of EUR 192,240. This amount does not include payments that were to be made on other grounds, such as e.g. settlement.[211]

As for the long duration of the administrative procedure, in two cases - *Stanka Mirković and others v. Montenegro*[212] and *KIPS DOO and Drekalović v. Montenegro*[213] - the Court found that there was no effective legal remedy for the administrative procedure, either for speeding up the procedure or for preventing cases from being returned many times for a retrial.

The case law of the European Court of Human Rights regarding the applied standards and the amount of damages for the long duration of the procedure represents a source of law for domestic courts. The tables presented at the end of most judgments, which state the duration of the procedure and the amount of compensation awarded, are especially useful and could be used by our Supreme Court.

211 Information on the exact amount is not available in the reports on the work of the Office of the Representative of Montenegro before the European Court of Human Rights in Strasbourg, because the amounts paid are presented collectively in relation to all established violations of all articles of the European Convention on Human Rights. The Representative of Montenegro before the ECtHR, Valentina Pavličić, stated that the total amount paid due to the violation of the right to a trial within a reasonable time on all grounds was EUR 560,000.

212 Translated judgment in the case of *Stanka Mirković and others v. Montenegro,* no. 33781/15, available on the website of the Supreme Court of Montenegro: https://www.sudovi.me/static/vrhs/doc/5767.pdf
Paragraphs 46 - 47: "In the second case, the Court notes that attempts to speed up the duration of the administrative procedure by conducting inspection did not succeed, and rejects the Government's allegations of non-exhaustion of domestic legal remedies (see Živaljević v. Montenegro no. 17229/04, paragraph 15 and paragraphs 58-59, March 8, 2011). Since the Government failed to submit domestic case law that would be contrary to the case in question, the Court finds no reason to depart from its earlier conclusion. Therefore, the Government's objections must be rejected. As for the Law on General Administrative Procedure and the Law on Administrative Disputes, they provide legal remedies in cases where an administrative authority fails to make a decision within a certain time limit (see paragraphs 22-23 and 25 above). Although the above mentioned legal remedies are essentially effective (see *Vuković v. Montenegro* (decision) no. 18626/11, paragraphs 30-31 of 27 November 2012, where the Commission did not decide on the applicant's request for a period that was longer than 7 years and 6 months), the Court believes that they are not applicable in the case of the petitioners, because the majority of authorities did decide within the deadline (see paragraph 12 above). Except in a few exceptions where this was not the case, the Court believes that, even if the procedures could have been slightly accelerated in such circumstances, this would not have prevented their being returned for repeated decision-making, and consequently their postponement, which is what is being disputed in this case. Thus, the Court finds that the Government's objections in this sense must be rejected as well."

213 *KIPS DOO and Drekalović v. Montenegro*, op.cit, paragraph 107: "Returning to the case in question, the Court notes that the disputed proceedings were initiated on 15 August 2005, when the applicants filed the administrative appeal (see, *mutatis mutandis*, *Počuča v. Croatia* no. 38550/02, paragraph 30 of 29 June 2006) and that they were still pending on 23 June 2017, when the first applicant initiated the administrative dispute (see paragraphs 20-23 above). Therefore, they lasted more than 11 years and 10 months, during which period the domestic courts returned the cases for re-trial 7 times. Until 29 September 2017, when the Court received the final statement on the case, there was no information on whether the proceedings had been completed in the meantime. For the same reasons, the Court concludes that there was a violation of Article 13 of the Convention, in conjunction with Article 6, paragraph 1, due to the absence of an effective remedy based on domestic law, at the time that was relevant for the applicants' complaints regarding the length of the proceedings."

11. PROCEEDINGS BEFORE THE DEFENDER OF HUMAN RIGHTS AND FREEDOMS OF MONTENEGRO FOR VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME, WITH REFERENCE TO THE ADMINISTRATIVE PROCEDURE

In terms of protecting the right to a trial within a reasonable time, according to Articles 2 and 17 of the Law on the Protector of Human Rights and Freedoms, the Protector (Ombudsman) takes measures to protect human rights and freedoms when they are violated by an act, action or inaction of state authorities, state administration authorities, local self-government bodies and local administration bodies, public services and other holders of public powers (hereinafter referred to as: bodies), while in relation to the work of the courts it is authorised to act only in case of protracted proceedings, abuse of procedural powers or non-compliance with court decisions. In the period 2017-2022, the Ombudsman received a total of 48 complaints regarding the violation of the right to a trial within a reasonable time, in which a violation of that right was established.

Of these, 25 complaints (52%) were filed due to unjustifiably long court trials. 23[214] complaints or (48%) were submitted due to the unreasonably long duration of the proceedings before the administrative bodies and the Administrative Court (of which two were submitted regarding the long duration of the proceedings before the Administrative Court).

As regards long duration of the administrative procedure, 6 complaints related to procedures for restitution and compensation that were conducted before the commissions for restitution and fair compensation in Podgorica, Bar and Bijelo Polje, while one was related to several administrative procedures for the restitution of agricultural land conducted before the Real Estate Administration in Bijelo Polje and the Ministry of Finance of Montenegro. Administrative procedures for restitution conducted before the commissions have been pending since 2005, and the procedure for the restitution of agricultural land in Bijelo Polje since 1992. One complaint related to the the Ministry of Defence's compliance with the

214 Opinions no: 01-665-18 i 693/18 of 7 December 2018; no. 01-467/19 of 15 November 2019; no. 01-682/20 of 10 September 2020; no. 01-275/19 of 30 September 2019; no. 01-139/20 of 11 October 2020; no. 01-590/19 of 19 October 2020; no. 01-322/20 of 30 December 2020; no. 01-576/20 of 19 April 2021; no. 01-08/21 of 4 May 2021; no. 01-1001/20 of 28 May 2021; no. 01-121/21 of 28 June 2021; no. 01- 811/21 of 30 December 2021; no. 01- 449/21 of 30 December 2021; no. 01-719/21 of 30 March 2022; no. 01-245/22 of 27 April 2022; no. 01-151/22 of 9 May 2022; no. 01- 885/21 of 10 May 2022; no. 01-222/22 of 1 June 2022; no. 01-872/21 of 14 June 2022; no. 37/22-5 of 14 April 2022; no. 01-271/22 of 21 September 2022; no. 01-721/21 of 12 July 2022; no. 01-376/22 of 21 November 2022.

final court decisions, while others concerned the work of various administrative bodies: the cadastre, the centre for social work and municipal administrative bodies.

According to the Ombusman's Report for 2021,[215] the main reason for the long duration of proceedings in administrative matters was the application of previously valid procedural laws - the Law on Administrative Procedure and the Law on Administrative Disputes - instead of new laws that limit the number of decision-annullments and returns of cases for repeated procedure, i.e. oblige the Administrative Court, in the case of repeated proceedings in the same administrative matter, to resolve the matter on its own.

For the purpose of this research, the Ombudsman informed us that the recommendation in cases against administrative bodies was complied with in 14 cases (61%), that it was partially complied with in three cases (13%), and that it was not complied with in five cases (22%). The following did not comply with the recommendation: Administration for Cadastre and State Property – regional unit in Budva in two cases and regional unit in Bijelo Polje in one case, the Commission for Restitution and Compensation Podgorica in one case, and the Ministry of Defence in one case.

In the absence of special legal means to speed up the administrative procedure, a complaint to the Ombudsman was the only legal remedy, which was used rarely and was effective in 61% of the cases.

The parties turn to the Protector of Human Rights because of the long duration of both judicial and administrative proceedings. Due to the lack of an effective means to speed up the administrative procedure, addressing the Ombudsman was often the only legal way to exercise that right.

215 Annual Report on the Work of the Ombusman for the year 2021, Podgorica, March 2022, p. 84, available at: https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

12.
CONCLUSIONS AND RECOMMENDATIONS

12.1. CONCLUSIONS

12.1.1. Promptness of courts

The promptness of the courts was significantly reduced in the period 2017-2022. Although the inflow of cases decreased by 11% on average, compared to the period 2011-2015, the total number of unresolved cases increased by 12%, of unresolved backlog cases by 11.4%, and of unresolved cases older than three years by 23.8%. The promptness rate (CR indicator) dropped by 3.7% and the efficiency rate (ER indicator) by 9.4%.

The judiciary failed to achieve the goal of reducing the number of backlog cases envisaged by the Action Plan for the implementation of the Judicial Reform Strategy since, instead of decreasing, the number of such cases increased by no less than 49.5% compared to the set goal. The 21% of vacancy of judges' positions, especially in 2021 and 2022, contributed to a marked deterioration in promptness in 2022. A careful analysis should examine whether other indicators (inflow, CR and ER indicators) suggest that the decline in promptness was also contributed to by the fact that the management of human resources and cases in the courts was less successful than before. At the same time, it should be borne in mind that Montenegro is still second in the number of judges in Europe, with twice the number of judges than the European average.

12.1.2. Frequency of submission of requests for acceleration of the procedure

In the last 6 years, there was an average of 444 requests per year to accelerate proceedings (control requests), which is almost twice more than in the previous period from 2011 to 2015. However, requests are submitted only in every eighth case older than three years, which means that we can expect their number to keep growing.

The increase in the frequency of submission of control requests was significantly influenced by the number of such requests submitted to the Administrative Court in 2019 (518) and 2022 (408), which accounted for 71% and 56% of all submitted control requests in those two years, respectively. Control requests submitted to the Administrative Court account for an average of 44% of the total number of control requests filed with the courts in the last 6 years. On the other hand, in the last 6 years, misdemeanour courts received a negligibly small number of such requests (an average of 7 per year).

12.1.3. Deciding on requests for acceleration of the procedure

A total of 69% of control requests were rejected. However, in 10% of those cases, the procedure was still completed within 60 days, counting from the day of submission of the request to the court president's decision thereon (the completion of the procedure is one of the reasons for rejecting the control request). This information may indicate that, in a number of cases, the submission of a control request itself is enough to achieve the effect of speeding up the procedure. However, this practice (rejection of a control request due to the adoption of a decision in the main case within 60 days) may be negatively evaluated by the European Court of Human Rights, in the case where applicant can be denied the right to fair compensation due to the violation of the right to a trial within a reasonable time due to the rejection of the control request.

Presidents of higher instance courts improved the practice - if the president of the first instance court rejects the control request in a long-lasting case (e.g. 11 years), as a rule, the president of the higher court will change such a decision and adopt the control request with an order for priority treatment. This was not the case earlier.

The adoption of a control request (Article 18) which orders the priority resolution of the case or gives the judge a deadline of up to four months to resolve the case or take action, is effective only in one third of the cases, when it actually leads to the acceleration of the resolution of the case or taking an action within that period.

Notifying the party (Article 17) that the judge will take action or close the case within four months is effective in a high percentage of cases (78% or almost four fifths), mostly thanks to success of the reviewed sample before the Administrative Court - 82%).

12.1.4. Claim for just satisfaction

A claim for just satisfaction still does not have an accelerating effect on the proceedings, because such an effect is not envisaged. Also, there is a lack of a clear formula by which the Supreme Court panel is to calculate the amount of compensation when it accepts a claim, because the Supreme Court does not use the formula of the European Court of Human Rights for calculating the amount of compensation for the violation of the right to a trial within a reasonable time, and has not established its own.

The lowest compensation of EUR 300 was awarded most frequently (in 39.7% of cases), while the highest compensation of EUR 5,000 was awarded only in three cases (1%).

In the past 6 years, the number of filed claims has increased, while every other claim is still accepted on average.

12.1.5. Constitutional appeal

The effectiveness of the constitutional appeal has been called into question in several cases before the European Court of Human Rights due to the excessively long duration of the proceedings before the Constitutional Court (the last time, in the case of Pajović, a violation of the standard of decision-making within a reasonable time was established in the proceedings that lasted three years and 7 months). The decision of the Constitutional Court to abolish the time limit for deciding on a constitutional appeal, which used to be 18 months, certainly contributed to this.

12.1.6. Administrative Court

The Administrative Court is overburdened with cases and even the election of the missing judges will not help it work faster. This negatively affects the rights of the parties in all areas of administrative activity.

The control request is extremely effective in cases before the Administrative Court; namely, in 82% of the cases where it was resolved positively it has led to the completion of the procedure within the given time limit. Consequently, and given the reduced promptness of this court, we can expect it to be used more frequently in the future.

12.1.7. Administrative procedure

There is no means that would effectively speed up the administrative procedure, although such a means would be in line with the standards of the practice of the European Court of Human Rights. The legal means for speeding up the procedure provided by the Law on Administrative Procedure, such as a complaint filed due to the silence of the administration, a report to the inspection, or supervision by a hierarchically higher body did not speed up the proceedings, especially not those that are conducted based on the provisions of the old Law on Administrative Proceedings, as they cannot prevent multiple reversals. Since there are no effective means to speed up the administrative procedure, filing a complaint with the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is often the only legal way to exercise that right.

In the absence of means for speeding up the administrative procedure, the Supreme Court of Montenegro established the practice of awarding fair compensation for the violation of the right to a trial within a reasonable time in the administrative procedure, counting the beginning of the procedure from the moment of filing the complaint due to the silence of the administration.

The amendment to the Law on Administrative Procedure, which as a temporary solution stipulates that cases started before the new Law came into effect are to be resolved based on the old Law, has led to the inequality of the parties in the administrative procedure and the long duration of administrative procedures, with the possibility of multiple returns for a repeated proceeding (the ping-pong effect).
The reports of the administrative authorities do not contain data on the total duration of the administrative procedure, and the Complaints Commission in the Refund and Compensation Procedure does not publish reports on its work.

The promptness of the second instance administrative bodies/the Administrative Court is affected by irregular, incomplete and/or untimely submission of cases by lower instance administrative bodies.

12.1.8. Ministry of Justice

Since 2018, based on the Justice Reform Strategy that was adopted at the time, the Ministry of Justice does not prepare annual reports on the application of the Law on the Protection of the Right to a Trial within a Reasonable Time; instead, the situation related to the application of the Law is monitored through reports about the work of the courts, which contain only general statistics on legal remedies for the duration of proceedings, without evaluating their effectiveness.

In the 2022 progress report, the European Commission stated that data on the total duration of the procedure are still not available and that statistical data on the performance of the judicial system are neither analysed nor used for management and policy-making purposes, which confirms the negative consequences caused by the fact that the Ministry of Justice no longer monitors or analyses the application of the Law.

The European Court of Human Rights has confirmed that both the control request and the claim for just satisfaction are effective legal means in Montenegro - the first for acceleration and the second for compensation - and that a constitutional appeal should be used following these as it is also an effective legal remedy. However, it was established that there is no effective legal remedy to speed up the administrative procedure, although the existence of such a legal remedy would be in line with the standards of the practice of the European Court of Human Rights.

12.2. RECOMMENDATIONS

The Judicial Council should urgently assign candidates for judges, elect the missing judges and hire more judicial advisers so that the promptness of the courts could start improving.

The training of court presidents on the application of the Law on the Protection of the Right to a Trial within a Reasonable Time and the standards of the European Court of Human Rights, should continue so that control requests would not be rejected at any instance in cases processed for a long time. All judgments by which the Supreme Court approves claims for fair satisfaction should be delivered to judges who are responsible for the main case and/or the competent administrative body, they should be encouraged to speed them up, and those cases should bear a special mark on the cover of the case file and in Judicial information system (JIS). Judgments regarding administrative procedures should be published on the websites of the ministries supervising the administrative bodies that caused violations of the procedure.

All persons acting in procedures affecting the right to a trial within a reasonable time should be regularly informed about the relevant case law of the Supreme Court, the Constitutional Court and the ECtHR, and the initial training of candidates for judges should include examples from such cases.

The reasons for insufficient effectiveness of the remedy - decision on the adoption of the control request (Article 18) - in cases where there was no acceleration should be analysed and a plan of measures for deciding on those cases adopted in every court.

Following the example of the European Court of Human Rights, the Supreme Court should adopt a formula for determination of the amount of fair compensation so as to ensure equality before the law.

The Law on the Protection of the Right to a Trial within a Reasonable Time should be amended by deleting the limitation on the amount of just satisfaction and ensuring that the claim for just satisfaction has the character of a remedy capable of speeding up the procedure.

In the new Justice Reform Strategy, reinstitute the obligation of the Ministry of Justice to monitor and prepare reports on the application of the Law on the Protection of the Right

to Trial within a Reasonable Time, which should include assessment of the effectiveness of the application of remedies for speeding up the procedure.

Attorneys and lawyers should be trained on the preparation of legal means for speeding up the procedure, especially constitutional appeals involving the right to a trial within a reasonable time.

The number of judges and advisors in the Administrative Court should be increased in line with the inflow of cases by amending the decision on the number of judicial positions in the courts.

Provide that all administrative procedures be resolved according to the new Law on Administrative Procedure by urgently amending the Law on Administrative Procedure.

Provide for a special legal remedy for speeding up the administrative procedure by amending the Law on the Administrative Procedure.

Amend the Law on Administrative Disputes regarding mandatory scheduling of hearings at the request of a party, and leave the decision on scheduling of hearings to the court's discretion.

Amend and supplement the Law on Administrative Disputes and prescribe that lawsuits filed due to the silence of the administration be treated as urgent.

Authorities responsible for supervision and administrative inspection should monitor cases that are resolved based on the old Law on Administrative Procedure and regularly submit a report thereon to the Ministry of Public Administration. The Complaints Commission in the Refund and Compensation Procedure should publish annual reports on its work.

Sanction the management of the administrative body in case of failure to act within a reasonable time, especially due to delay or disorderly and incomplete delivery of cases to the second instance body, i.e. in the case of failure to follow the instructions of a hierarchically higher body or non-enforcement of the judgments of the Administrative Court.

Connect the Administrative Court through the ICT system with the administrative bodies' IT systems, in order to enable the Court's immediate online access to administrative cases and thus eliminate waiting time for cases to be submitted to the Court.