

Varazdin Development and Entrepreneurship Agency and University North  
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Faculty of Management University of Warsaw  
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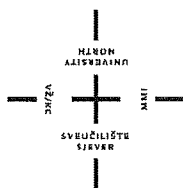
# Economic and Social Development

81<sup>st</sup> International Scientific Conference on Economic and Social Development –  
"Green Economy & Sustainable Development"

## Book of Proceedings

Editors:

Zoltan Baracscai, Ivana Bujan Katanec, Tomislav Hublin



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Cakovec, 06-07 May, 2022

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## **Economic and Social Development**

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## PROTECTION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME IN THE ADMINISTRATIVE DISPUTE IN THE REPUBLIC OF NORTH MACEDONIA

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### ABSTRACT

*The subject of this research is the conceptual determination of the right to a trial within a reasonable time, the positive legal regulation of this principle in the Republic of North Macedonia, the procedure for exercising protection of the right to a trial within a reasonable time, as well as the factors influencing the trial within a reasonable time. The purpose of the research is to analyze the manner of achieving protection of the right to trial within a reasonable time in administrative dispute, as well as to present the innovations in administrative legislation that should directly affect the strengthening of efficiency in the operation of public bodies and administrative courts that decide on the rights, obligations and legal interests of individuals and legal entities. In order to achieve the set goal in this paper, a positive legal analysis of the regulations governing this right will be performed, as well as analysis of empirical data from the actions of the competent courts in achieving judicial protection of this right, but only for cases in the field of administrative matter.*

**Keywords:** trial within a reasonable time, administrative procedure, administrative dispute, efficiency, judicial protection

### 1. INTRODUCTION

Guaranteeing the regulations and consistent respect for the right to a trial within a reasonable time guarantees legal certainty, ensures a fair and equitable procedure, strengthens trust in the institutions and courts. The main purpose of the trial within a reasonable time is to protect the parties from excessive delay in the procedure in which their rights, obligations and legal interests are decided. "Guaranteeing the right to a trial within a reasonable time means protecting all parties to the dispute from too long procedural delays because delayed justice equals injustice. The purpose of this right is to put an end to the legal uncertainty in which a person finds himself in relation to his civil status or criminal procedure. The interest is on the person concerned, but also in the function of legal certainty. The court considers the factors influencing the length of the procedure: the complexity of the case, the applicant's conduct, the conduct of the authorities and the risk to the applicant. A trial within a reasonable time is an extremely important precondition because it sets the framework for a fair trial and equitable procedure."<sup>1</sup> The right to a trial in a reasonable act is regulated by several international acts. For example, according to the Universal Declaration of Human Rights, everyone has the right to an effective remedy before a national tribunal for acts infringing fundamental rights under the Constitution or the law and to have an equal right to a fair and public trial by an independent and impartial tribunal of his rights and obligations and in the conditions of any criminal charge

<sup>1</sup> Human Rights, Jovan Ananiev (first and tenth chapters), Besa Arifi (second and third chapters), Natasha Gaber-Damjanovska (eighth, eleventh and twelfth chapters), Mirjana Lazarova-Trajkovska (fifth, sixth and ninth chapters) Zaneta Poposka, (introduction and fourth chapter), Slavica Cubric, (seventh chapter), Skopje: OSCE, 2018, <https://www.osce.org/files/f/documents/7/0/385947.pdf> (original Човекови права, Јован Ананиев (прва и десетта глава), Беса Арифи (втора и трета глава), Наташа Габер-Дамјановска (осма, единаесетта и дванаесетта глава), Мирјана Лазарова-Трајковска (петта, шеста и деветта глава), Жанета Попоска (овед и четврта глава, Славица Чубрик (седма глава), Скопје : ОБСЕ, 2018, <https://www.osce.org/files/f/documents/7/0/385947.pdf>

against him.<sup>2</sup> The Charter of Fundamental Rights of the European Union also provides for the right to an effective remedy and a fair trial.<sup>3</sup> The European Convention for the Protection of Human Rights and Freedoms, within the framework of the provision governing the right to a fair trial, provides that everyone has the right to a fair and public hearing before an independent and impartial tribunal established by law to evaluate and establish their civil rights and obligations, or the merits of any criminal charges against them.<sup>4</sup> Article 13 of the Convention obliges member states to ensure that any individual who has a dispute concerning the violation of his or her rights and freedoms as set out in the Convention has an effective remedy before a national authority.<sup>5</sup> Recommendation Rec (2010) 3 of the Committee of Ministers of the Council of Europe on effective remedies for excessive length of proceedings, states that each member state at national level should provide in domestic law a remedy for the protection of the right to trial within a reasonable time.<sup>6</sup> In this context is Recommendation Rec (2004) 6 of the Committee of Ministers to member states on the improvement of domestic remedies.<sup>7</sup> A trial within a reasonable time can be directly related to the principle of efficiency. This is because the principle of efficiency as an obligatory principle for acting of public bodies in the administrative procedure according to the Law on General Administrative Procedure (LGAP), but also a mandatory principle in the administrative-court procedure according to the Law on Administrative Disputes (LAD), obliges the competent institutions to complete the procedures without delay. Thus, in accordance with the principle of economy and efficiency of the procedure provided by the LGAP 2015<sup>8</sup>, the procedure should be conducted in the simplest possible way, without delay and with as little cost as possible for the parties, and still to ensure full respect of the rights and legal interests of the parties and complete determination of the factual situation. While, in accordance with the principle of efficiency provided in the LAD, the court will conduct the procedure quickly, without the use of unnecessary actions and costs and will make its decision within a reasonable time, i.e., no later than nine months from the

<sup>2</sup> Article 8 and Article 10 Universal Declaration of Human Rights Adopted and published in Resolution 217 A (III), dated December 10, 1948, at Gen./p/ % 20mehanizmi% 20za% 20zastita% 20na% 20covekovite% 20prava /% D0% 9EN / 1% 20-% 20% D0% A3% D0% BD% D0% B8% D0% B2% D0% B5% D1% 80% D0 % B7% D0% B0% D0% BB% D0% BD% D0% B0% 20% D0% B4% D0% B5% D0% BA% D0% BB% D0% B0% D1% 80% D0% B0% D1 % 86% D0% B8% D1% 98% D0% B0% 20% 20% D0% B7% D0% B0% 20% D1% 87% D0% BE% D0% B2% D0% B5% D0% BA% D0 % BE% D0% B2% D0% B8% D1% 82% D0% B5% 20% D0% BF% D1% 80% D0% B0% D0% B2% D0% B0.pdf

<sup>3</sup> Article 47, CHARTER OF THE FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000 / C 364/01), <https://www.healthrights.mk/pdf/Pravnici/Regionalni%20dokumenti%20i%20mehanizmi%20za%20z%20z%20 20Unija / 1.% 20% D0% 9F% D0% BE% D0% B2% D0% B5% D0% BB% D0% B1% D0% B0% 20n% D0% B0% 20% D0% BE% D1% 81 % D0% BD% D0% BE% D0% B2% D0% BD% D0% B8% D1% 82% D0% B5% 20% D0% BF% D1% 80% D0% B0% D0% B2% D0% B0 % 20% D0% BD% D0% B0% 20% D0% 95% D0% B2% D1% 80% D0% BE% D0% BF% D1% 81% D0% BA% D0% B0% D1% 82% D0 % B0% 20% D1% 83% D0% BD% D0% B8% D1% 98% D0% B0.pdf> and [https://eeas.europa.eu/archives/delegations/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/documents/more\\_info/publications/publications/publications/publications/publications/publications/chart .pdf](https://eeas.europa.eu/archives/delegations/the_former_yugoslav_republic_of_macedonia/documents/more_info/publications/publications/publications/publications/publications/publications/chart .pdf), CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION 2012/C 326/02, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>4</sup> Article 6 of the European Convention for the Protection of Human Rights, [https://www.echr.coe.int/Documents/Convention\\_MKD.pdf](https://www.echr.coe.int/Documents/Convention_MKD.pdf), the Republic of Macedonia ratified the European Convention for Human Rights and Fundamental Freedoms on April 10, 1997, [https://biroescp.gov.mk/wp-content/uploads/2016/12/1.-Convention\\_MKD.pdf](https://biroescp.gov.mk/%D0%B7%D0%B0-%D0%BA%D0%BE%D0%BD%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D1 % 98% D0% B0% D1% 82% D0% B0 / , http://biroescp.gov.mk/wp-content/uploads/2016/12/1.-Convention_MKD.pdf)

<sup>5</sup> Article 13 of the ECHR - Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity, [https://www.echr.coe.int/Documents/Convention\\_MKD.pdf](https://www.echr.coe.int/Documents/Convention_MKD.pdf)

<sup>6</sup> Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings (Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf8e9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf8e9)

<sup>7</sup> Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies (adopted by the Committee of Ministers on 12 May 2004, at its 114th Session), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805dd18e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dd18e)

<sup>8</sup> Article 7 of the Law on General Administrative Procedure, Official Gazette of RM, no. 124 from 23.07.2015

date of submission of documents or creation of conditions to decide on the lawsuit.<sup>9</sup> Analyzing these provisions, we can conclude that the competent authorities in decision-making should equally consider the timeliness, but also the quality of the decisions they make, which means that speed should not reduce the legal protection. What should be especially emphasized is that in accordance with the principle of efficiency provided by the LAD for the first time in the Republic of North Macedonia (RNM) the decision-making deadline for the court is determined. For the party, besides providing legal certainty, this also provides some predictability regarding the termination of the procedure for protection of its right. An addition to strengthening the efficiency in the administrative procedure and administrative dispute are the provisions that refer to the electronic communication between the bodies, but also between the bodies and the parties. The provisions that refer to the specification of the deadline for deciding of the first and second instance body in the administrative procedure, as well as the provisions that regulate the institute of administrative silence (or failure to make a decision within the legally set time limit). So according to the LGAP, the administrative procedure in the first instance, initiated upon request, unless otherwise provided by law, shall be completed as soon as possible, and at the latest within 30 days from the day of its initiation. While, the procedure on the appeal of the second instance body should be completed without delay, and no later than 60 days from the day of submitting the appeal and all documents of the case from the first instance body to the second instance body.<sup>10</sup> The LAD also provides for the possibility of imposing a fine on the person who passed the disputed act, i.e., took the disputed action, or the responsible person, i.e., the authorized person within the defendant, i.e., in the body that has the documents that were not submitted due to unjustified reasons.<sup>11</sup>

## **2. POSITIVE LEGAL REGULATION OF THE LEGAL PROTECTION OF THE RIGHT TO A REASONABLE TIME IN THE REPUBLIC OF NORTH MACEDONIA**

The legal protection of the right to a trial within a reasonable time in the RNM is regulated by the Law on Courts. Specifically, this law stipulates which court is competent to act to protect this right, how the procedure is initiated, the content of the request, the competencies of the Supreme Court in deciding and the right to appeal. According to this law, when deciding on civil rights and obligations and deciding on criminal responsibility, everyone has the right to a fair and public trial within a reasonable time before an independent and impartial court established by law.<sup>12</sup> Also, the trial within a reasonable time is provided as one of the basic principles in court procedures, including legality and legitimacy, equality of the parties, fairness, publicity and transparency, adversarial principle, double degree principle, orality, right of defence, i.e., advocacy, free evaluation of evidence and economy.<sup>13</sup> In RSM, the Supreme Court of RSM is the competent court for protection of the right to trial within a reasonable time. Namely, among the competencies of the court it is stated that this court decides at the request of the parties and other participants in the procedure for violation of the right to trial within a reasonable time, in a procedure determined by law before the courts in the Republic of North Macedonia in accordance with the rules and principles with the European Convention on Human Rights and Fundamental Freedoms and based on the case law of the European Court of

<sup>9</sup> Article 11 of the Law on Administrative Disputes, Official Gazette of RM, no. 96 from 17.5.2019

<sup>10</sup> Article 112 of the Law on General Administrative Procedure, Official Gazette of RM, no. 124 from 23.07.2015

<sup>11</sup> Article 33 of the Law on Administrative Disputes, Official Gazette of RM, no. 96 from 17.5.2019

<sup>12</sup> Article 6 paragraph 2 of the Law on Courts ("Official Gazette of the Republic of Macedonia" No. 58/06, 62/06, 35/08, 150/10, 83/18, 198/18 and "Official Gazette of the Republic of North Macedonia" No. 96/19)

<sup>13</sup> Article 10 of the Law on Courts ("Official Gazette of the Republic of Macedonia" no. 58/06, 62/06, 35/08, 150/10, 83/18, 198/18 and "Official Gazette of the Republic of North Macedonia" no. 96/19)



Human Rights.<sup>14</sup> These cases are resolved by the Division for trial within a reasonable time in the Supreme Court.<sup>15</sup>

## 2.1. Procedure for exercising protection of the right to trial within a reasonable time in an administrative dispute

The procedure for exercising the right to protection at trial within a reasonable time is regulated by the Law on Courts. The procedure for exercising the protection of the right to a trial within a reasonable time is implemented in several stages, namely the initiation of a request by the applicant, the decision of the Supreme Court and the adoption of a decision. The applicant, ie the person who can submit a request for exercising this right is the person whose interest is directly affected by the postponement of the procedure, ie the person who appears as a plaintiff in the administrative court procedure. One of the conditions for submitting a request for exercising this right is that the applicant has previously used all legal remedies provided in the legal solutions (such as, for example, an appeal before a second instance public body, a lawsuit before an Administrative Court, an appeal before the Supreme Administrative Court and other legal remedies provided in accordance with the substantive regulations and the Law on Administrative Disputes). The request for protection of the right to trial within a reasonable time to the Supreme Court may be submitted by the party in the course of the procedure before the domestic courts, and within a period of six months as of the day the decision becomes legally valid at the latest. In terms, the content of the Request the law stipulates that the request should contain data about the party submitting the request and its legal representative, data about the case and the procedure considered by the party to have violated the right to trial within a reasonable period of time, elaboration of the reasons for the alleged violation of the right to trial within a reasonable period of time, statement for claiming fair compensation, and signature of the party submitting the request. In case the request does not contain the stated data, the court may require from the applicant to further edit the request. If the applicant does not regulate the request, the Supreme Court of RNM can reject the request for protection of the trial within a reasonable time as incomplete. Upon receipt of the request referred to in Article 36 paragraph (1) of this Law, the Supreme Court of the Republic of Macedonia shall immediately, and within a period of 15 days at the latest, require from the court of first instance to submit a copy of the acts from the case file, and if necessary, a statement from the court of higher instance for the duration of the procedure conducted before it. After the request is received, the Supreme Court will immediately, and within a period of 15 days at the latest, require from the court of first instance to submit a copy of the acts from the case file, and if necessary, a statement from the

<sup>14</sup> Article 35 of the Law on Courts

The Supreme Court of the Republic of Macedonia has jurisdiction:

- 1) to decide in the second instance against the decisions of its councils when it is determined by law;
- 2) to decide in the third and last instance on appeals against the decisions of the appellate courts;
- 3) to decide on extraordinary legal remedies against the final decisions of the courts and the decisions of their councils when it is determined by law;
- 4) to decide on a conflict of jurisdiction between the basic courts in the area of different courts of appeal, conflict of jurisdiction between appellate courts, conflict of jurisdiction between the Administrative Court and another court, conflict of jurisdiction between the Higher Administrative Court and another court and to decide on transfer of local jurisdiction in these courts;
- 5) to decide at the request of the parties and other participants in the procedure for violation of the right to trial within a reasonable time, in a procedure determined by law before the courts in the Republic of Macedonia in accordance with the rules and principles established by the European Convention on Human Rights and Fundamental Freedoms; based from the case law of the European Court of Human Rights and to perform other tasks determined by law.

<sup>15</sup> Article 19 of the Rules of Procedure of the Supreme Court of the Republic of North Macedonia, Official Gazette of RNM, no. 14 from 20.1.2022

[http://www.vsrn.mk/wps/wcm/connect/vsrn/2415ec6f-f0e0-493b-b8de-f034b584366d/%D0%94%D0%95%D0%9B%D0%9E%D0%92%D0%9D%D0%98%D0%9A+%D0%B7%D0%B0+%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0+%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+%D0%A1%D0%BB.%D0%B2%D0%B5%D1%81%D0%BD%D0%B8%D0%BA+14-2022\\_1.pdf?MOD=AJPERES&CVID=nXuMKNN&CVID=nXuMKNN&CVID=nXuMKNN](http://www.vsrn.mk/wps/wcm/connect/vsrn/2415ec6f-f0e0-493b-b8de-f034b584366d/%D0%94%D0%95%D0%9B%D0%9E%D0%92%D0%9D%D0%98%D0%9A+%D0%B7%D0%B0+%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0+%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+%D0%A1%D0%BB.%D0%B2%D0%B5%D1%81%D0%BD%D0%B8%D0%BA+14-2022_1.pdf?MOD=AJPERES&CVID=nXuMKNN&CVID=nXuMKNN&CVID=nXuMKNN)

court of higher instance for the duration of the procedure conducted before it. Upon the submitted request, the court decides in a panel of three judges in a non-public session, but as an exception, the court may decide to hear the party submitting the request and the representative of the court the procedure of which is subject of the submitted request.<sup>16</sup> In deciding on the request, the Supreme Court decides on the basis of Articles 35 and 36 of the Law on Courts and Article 6 paragraph 1 of the European Convention for the Protection of Human Rights. Pursuant to these regulations, the Supreme Court assesses four criteria, as follows: whether all legal remedies have been used before, assesses the complexity of the case, the behavior of the parties in the procedure, (i.e., whether the applicant postponement of the procedure, whether the public body by taking or not taking certain actions contributed to the postponement of the procedure) and the behavior of the court that acted (whether the administrative courts in deciding in an administrative dispute influenced the delay in exercising the legal protection of the party).<sup>17</sup> Regarding the request, the Supreme Court decides with a decision. The analysis of several decisions made by the Supreme Court, published on the website of this court, concludes that in deciding, the court may issue a decision rejecting the request (for example, when the request is incomplete), a decision refusing the request (for example, when the request is unfounded) and decision adopting the request. The Supreme Court will issue a decision adopting the request in case it determines that the request for protection of the right to a trial within a reasonable time is timely, allowed and justified and when it determines that there is a violation of the right to a trial within a reasonable time. With the dispositive of this decision, the court determines that there is a violation of the right to a trial within a reasonable time by specifically stating the procedure, i.e., the case stating the number of the case under which it is registered in the administrative court. The dispositive of decision also determines the deadline within which the court before which the procedure is ongoing, must decide on the right or obligation. The dispositive of decision also states the awarded fair compensation and the payout deadline. The fair compensation shall be borne by the Court Budget and shall be paid within a period of three months as of the day the decision of the Supreme Court becomes legally valid (decision of the Supreme Court enters into force).<sup>18</sup> Equitable compensation is also provided for in Article 41 of the ECHR. In deciding, the court first determines the legally relevant period. Thus, according to the case law of the European Court of Human Rights, the meaning of Article 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, a dispute in the administrative procedure arises on the day when the party first declares a regular remedy - appeal the first instance decision, i.e., a lawsuit for initiating an administrative dispute

<sup>16</sup> Article 36-a paragraph 2 of the Law on Courts, ("Official Gazette of the Republic of Macedonia" No. 58/06, 62/06, 35/08, 150/10, 83/18, 198/18 and "Official Gazette of the Republic of Macedonia" Northern Macedonia "No. 96/19)

<sup>17</sup> For criteria for assessing the length of the procedure, see also Katarina Manojlovic-Andric Ljubica Milutinovic Snezana Andrejevic Vanja Rodic Majda Krsikapa Milan Bajic, Criteria for Assessing the Violation of the Right to Trial within a Reasonable Time

<https://rm.coe.int/kriterijumi-za-ocenu-povrede-prava-na-sudjenje-u-razumnom-roku/16808c5848> and Snežana Andrejević, Ljubića Milutinović, Ivana Krstić, Silvija Panović-Džurić, Dušan Ignjatović, Jovan Miljković, Manual for the Training of Judges Trial within a Reasonable Time, May, 2016)

<https://www.pars.rs/images/biblioteka/Prirucnik%20za%20obuku%20sudija%20sudenje%20u%20razumnom%20roku.pdf>

<sup>18</sup> See example Decision of the Supreme Court PSRRU. No. 57/2018 ( meaning of the PSRRU is Case for trial within a reasonable time in administrative cases), [http://www.vsrn.mk/wps/portal/vsrn/sud/odluki!ut/p/z1/jc9NDolwEAXgs3CCGbTQsiwKqBSJYgN0Y4gSUsNfDHP-UReuRGc3yfdeZkBBBqof7roqBt21RT3uubKPDi5t012giEPKkEfSEzJYb6ztHNIXsANCKiUoWlJ3kXl2cFlhGPgI6p88fhn-234CqOn6FNQv8gYTL-bjDfQD4pVPkUvPtDjbzYggkDw7dNPX-qSHqDuXNeTD9VZC30iZ4cXqK8N4ADsOfYs!dz/d5/L2dBISEvZ0FBIS9nQSEh?court=A4740E12-387B-4203-8110-940C80A426BF&dateVerifyTo=&dateVerifyFrom=&casenumber=%D0%9F%D0%A1%D0%A0%D0%A0%D0%A3#Z7\\_6G4408K0LOHF70AUE15A8Q24L4](http://www.vsrn.mk/wps/portal/vsrn/sud/odluki!ut/p/z1/jc9NDolwEAXgs3CCGbTQsiwKqBSJYgN0Y4gSUsNfDHP-UReuRGc3yfdeZkBBBqof7roqBt21RT3uubKPDi5t012giEPKkEfSEzJYb6ztHNIXsANCKiUoWlJ3kXl2cFlhGPgI6p88fhn-234CqOn6FNQv8gYTL-bjDfQD4pVPkUvPtDjbzYggkDw7dNPX-qSHqDuXNeTD9VZC30iZ4cXqK8N4ADsOfYs!dz/d5/L2dBISEvZ0FBIS9nQSEh?court=A4740E12-387B-4203-8110-940C80A426BF&dateVerifyTo=&dateVerifyFrom=&casenumber=%D0%9F%D0%A1%D0%A0%D0%A0%D0%A3#Z7_6G4408K0LOHF70AUE15A8Q24L4)

in a case when an appeal of the first instance decision is not allowed by law.<sup>19</sup> Then, the court assesses the complexity of the procedure, which can be considered from a procedural point of view and from a legal point of view. In procedural terms, the complexity depends on the number of parties in the procedure, resolving the previous issue, extensive evidence, more witnesses and more expertise, more lawsuits, deciding on multiple claims, imposing interim measures, residence or domicile of the parties abroad, death of a party during the procedure, finding and questioning witnesses who have changed their place of residence, acting on letters in the country and abroad, use of court translators, translation of documents, etc. The legal complexity of the case may arise due to a change in the applicable law, the application of unclear laws, the need to interpret international agreements, to distinguish jurisdiction between courts and other bodies, as well as to make a decision in a court procedure that is legally related to proceedings before another body.<sup>20 21</sup> The court also assessed whether the applicant contributed to the delay of the procedure by assessing whether in the legally relevant period the applicant was active, took action, i.e., filed legal remedies in accordance with the legal regulations indicating that his conduct there was no effect on delaying the procedure. On the other hand, the conduct of the public authorities and the court is also evaluated, i.e., whether they acted in the direction of conducting the procedure in the shortest possible time, or were inactive and inefficient, thus violating the principle of trial within a reasonable time. The procedure for protection of the right to a trial within a reasonable time in accordance with the Law on Courts is envisaged to be completed within 6 months from the day of submission the request. The dissatisfied party shall have the right, within a period of eight days as of the day of receipt of the decision, to file an appeal against the decision of the panel of the Supreme Court of the Republic of Macedonia to the Supreme Court to decide upon it. According to the provisions of the ECHR, the party has the right to appeal against the decision of the Supreme Court to the European Court of Human Rights (ECHR). The decisions of the ECHR have had an effect not only on the specific case they are dealing with here and on all future same legal situations that arise and thus influence the shaping of the practice in individual countries. The Interdepartmental Commission for the Enforcement of European Court of Human Rights Decisions is the competent body for monitoring and enforcement of ECHR decisions in cases against the Republic of North Macedonia.<sup>22</sup>

### **3. EMPIRICAL ANALYSIS OF DATA FROM THE WORK OF THE SUPREME COURT**

This chapter provides an overview of the data from the proceedings of the Supreme Court of the RSM, upon request for protection of the right to a trial within a reasonable time for administrative cases. The data are taken from the Annual Reports of the Supreme Court.

*Table following on the next page*

<sup>19</sup> The Supreme Court of the Republic of Macedonia in the procedure on the case UI.no.26 / 2018 (previously U.no.3035 / 2007 and U- 4.no.116 / 2011) of the Administrative Court as the legally relevant period for the submitter of the request determined the period from filing an appeal against the decision. See: Decision of the Supreme Court PSRRU. No. 57/2018

<sup>20</sup> Katarina Manojlović Andrić Zvonko Mijan, Analiza pravnog okvira kojim se reguliše zaštita prava na suđenje u razumnom roku, Vijeće Evrope, april 2021, <https://rm.coe.int/analiza-pravnog-okvira-kojim-se-regulise-zastita-prava-na-su-enje-u-ra/1680a3f58d>

<sup>21</sup> For an assessment of the complexity of the proceedings, see also: Davorka Lukanović-Ivanišević, Trial within a Reasonable Time in Administrative Court Proceedings - Practice of the Supreme Court of the Republic of Croatia, Europeanization of Administrative Trial in Croatia, Institute of Public Administration, Zagreb Zagreb, 2014, [https://iju.hr/Dokumenti/pub\\_6.pdf](https://iju.hr/Dokumenti/pub_6.pdf)

<sup>22</sup> Annual Report on the Work of the Interdepartmental Commission for the Execution of ECtHR Decisions for 2020, Skopje, 2021, Ministry of Justice, Representation Bureau of the Republic of North Macedonia before the European Court of Human Rights

Area - reasonable time in administrative cases	Unresolved cases from previous years	Newly applied items	Total in operation	Resolved cases	Unresolved cases	Resolved within a longer period of 6 months
2020	67	93	160	99	61	65
2019	72	69	141	73	68	55
2018	142	104	249	177	72	119
2017	142	165	308	166	142	122

Table 1: Efficiency of exercising the legal protection of the right to a trial within a reasonable time

(Source: Annual reports on the work of the Supreme Court of the RNM)<sup>23</sup>

Analyzing the data in Table 1 we can conclude that:

- the number of cases has been decreasing in recent years, which may indicate that administrative-court proceedings are more efficient;
- The Supreme Court records the remainder of unresolved cases every year, which directly reflects its inefficiency in deciding on these cases and
- Most of the resolved cases have been resolved for a period longer than 6 months, which does not comply with the legal deadline for deciding on a request for protection of the right to trial within a reasonable time.

Type of decisions	Resolved cases	Rejected requests	Refused request	Adopted request
2020	102	17	37	48
2019	73	12	30	31
2018	177	20	81	76
2017	166	25	61	80

Table 2: Type of decisions for administrative cases

(Source: Annual reports on the work of the Supreme Court of the RNM – 2017, 2018, 2019, 2020)

<sup>23</sup> Report on the work of the Supreme Court of the Republic of North Macedonia for 2020, [http://www.vsrn.mk/wps/wcm/connect/vsrn/a45e1912-8617-44dd-a976-9c03f31d3ff9/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%B7%D0%B0+%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0+%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+-+2020+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0+%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%BD%D0%B0.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L0B520APQFKICD0CU3-a45e1912-8617-44dd-a976-9c03f31d3ff9-ldWzOgu](http://www.vsrn.mk/wps/wcm/connect/vsrn/a45e1912-8617-44dd-a976-9c03f31d3ff9/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%B7%D0%B0+%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0+%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+-+2020+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0+%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%BD%D0%B0.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CU3-a45e1912-8617-44dd-a976-9c03f31d3ff9-ldWzOgu), Report on the work of the Supreme Court of the Republic of North Macedonia for 2019, [http://www.vsrn.mk/wps/wcm/connect/vsrn/fdf1b280-782d-42ae-a087-9f669e8cf628/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%B7%D0%B0+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C-%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%B5%D0%BD.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L0B520APQFKICD0CU3-fdf1b280-782d-42ae-a087-9f669e8c](http://www.vsrn.mk/wps/wcm/connect/vsrn/fdf1b280-782d-42ae-a087-9f669e8cf628/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%B7%D0%B0+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C-%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%B5%D0%BD.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CU3-fdf1b280-782d-42ae-a087-9f669e8c) Report on the work of the Supreme Court of the Republic of Macedonia for 2018, [http://www.vsrn.mk/wps/wcm/connect/vsrn/a3f5e0b0-ee44-4f55-b1c0-0843739687ae/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+2018++.Pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L0B520APQFKICD0CU3-a3f5e0b0-ee44-4f55-b1c0-0843739687ae-ldWzOgu](http://www.vsrn.mk/wps/wcm/connect/vsrn/a3f5e0b0-ee44-4f55-b1c0-0843739687ae/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+2018++.Pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CU3-a3f5e0b0-ee44-4f55-b1c0-0843739687ae-ldWzOgu), Report on the work of the Supreme Court of the Republic of Macedonia for 2017, [http://www.vsrn.mk/wps/wcm/connect/vsrn/fc46087a-4a20-49d8-8bc4-f922293738a5/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%92%D0%A1%D0%A0%D0%9C+-+2017.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18\\_L8CC1J41L0B520APQFKICD0CU3-fc46087a-4a20-49d8-8bc4-f922293738a5-ldWzOgu](http://www.vsrn.mk/wps/wcm/connect/vsrn/fc46087a-4a20-49d8-8bc4-f922293738a5/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%92%D0%A1%D0%A0%D0%9C+-+2017.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L0B520APQFKICD0CU3-fc46087a-4a20-49d8-8bc4-f922293738a5-ldWzOgu)

Analyzing the data in Table 2, we can conclude that according to the type of decisions made by the Supreme Court, most of the requests were adopted, which means that the court found a violation of the right to a trial within a reasonable time. This certainly indicates that some administrative procedures and some administrative dispute take too long and given that the parties really need this remedy, i.e., the parties need to protect themselves from the excessive length of administrative procedure and some administrative dispute. The Annual Report on the Work of the Supreme Court of the RNM from 2020 states that, "having in mind the parameters valued by the panel in deciding on a specific request for protection of the right to a trial within a reasonable time, such as the complexity of the case, duration of the procedure, referral of the parties to the proceedings and referral to the court that acted, the most common violations of the procedure for protection of the right to trial within a reasonable time which ended with the acceptance of the request have administrative cases, due to untimely or incomplete delivery of case files."<sup>24</sup> In the Annual Reports of the Supreme Court, in continuity, the main reason for exceeding the deadline of 6 months as a legal framework for resolving this type of case before the Supreme Court of the Republic of North Macedonia is the non-submission of case files to which the request refers. What is stated in the reports is that after filing the request for protection of the right to trial within a reasonable time and filing a case, the judge-rapporteur is obliged to request by letter - urgency the case file from the court before which the procedure was conducted. This is especially the case with administrative cases, where the records of the case to which the request for protection of the right to trial refers within a reasonable time, are located at the acting body. In this context, the reports state that there is a lack of a remedy by which the Supreme Court of the Republic of North Macedonia will impose itself before the lower courts for faster delivery of case files, especially in cases involving a case for protection of the right to trial within a reasonable time, is an active case, i.e., a case in progress, where the rule applies to create conditions for the proceedings in the case to continue in the phase in which it is and not to wait for the decision on the request for protection of the right to trial within a reasonable time.<sup>25</sup> What we can note from the analysis of only a few anonymized decisions on the website of the Supreme Court is that the right to a trial within a reasonable time is violated by the administrative bodies, but also by the Administrative Court. Respectively, the procedure for exercising a certain right and legal protection lasted for years.<sup>26</sup> What is evident from the analyzed decisions is that the main reasons for delaying the procedure are first, the decision by the second instance body with which the appeal is upheld, and the case is returned for retrial to the first instance body and secondly, the adoption of judgments by which the lawsuit is upheld, the decision is annulled, and the case is returned for retrial to the second instance body (the defendant body). Such constant referral of decisions from one body to another directly affects the length of the procedure and the inability of the party to exercise its right over the years. To overcome this situation, it is necessary for the bodies that decide on legal remedies to make merit decisions, to oblige the lower bodies to act upon the decision within a certain deadline and to control the execution of the adopted decisions. Other factors influencing the length of the administrative court procedure are the capacities of the court i.e., personnel, organizational, financial, etc. preconditions for the work of the courts, the system of rewarding the work of

<sup>24</sup> Report on the work of the Supreme Court of the Republic of North Macedonia for 2020,

<http://www.vsrn.mk/wps/wcm/connect/vsrn/a45e1912-8617-44dd-a976-9c03f31d3ff9/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98+%D0%B7%D0%B0+%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B0+%D0%BD%D0%B0+%D0%92%D0%A1%D0%A0%D0%A1%D0%9C+-+2020+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0+%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%BD%D0%B0.pdf?>

<sup>25</sup> Annual Report on the Work of the Supreme Court of the RNM for 2020, see also the decision of the Supreme Court of the PSRRU ». No.« 108 »/« 2016 »

<sup>26</sup> See: Decision of the Supreme Court "PSRRU". No. "83" / "2017", Decision of the Supreme Court, PSRRU. No. 57/2018, "PSRRU" No. "39" / "2018" (PSRRU - Cases for trial within a reasonable time - administrative area) in original ПСРРУ

judges, modernization of the information system in the courts, etc., which were considered "external" factors. Others relate to the conduct of the court in a particular case, and they are determined by the type of dispute, the complexity of the case, the conduct of the court and the parties, the conduct of lawyers, etc.<sup>27</sup>

#### 4. CONCLUSION

The effective exercise of the protection of the right to a trial within a reasonable time is of the utmost importance for the parties in terms of timely realization of their rights and obligations, but also in relation to the institutions because their integrity is strengthened by increasing their efficiency. On the other hand, legal certainty is achieved and trust in the institutions is strengthened. With regard to the question of whether there is a definite reasonable time within which a procedure should be completed, we conclude that a reasonable time is not defined with a precise determination of the time period in which a procedure should be completed, but the violation of the right to trial within a reasonable time determines on the basis of certain criteria such as the complexity of the case, the conduct of the parties in the proceedings, the conduct of the competent authorities in the administrative proceedings and the conduct of the court in an administrative dispute. Consequently, the violation of this right is determined by the court from case to case, i.e., for each case separately. In relation to the legal framework that regulates this issue in the RNM, we note that there are good legal solutions that specifically provide deadlines for decision-making in administrative proceedings. Of particular importance is the provision of the Law on Administrative Disputes which regulates the principle of efficiency, stating that the court will make its decision within a reasonable time, i.e., no later than nine months from the date of submission of documents or creation of conditions for deciding on the lawsuit. It remains debatable why the deadline is tied to the moment of completing the files, because the problem with the submission of files is also noted in the work reports of the Supreme Court. Therefore, it can be expected in practice that the 9-month deadline for the completion of the administrative dispute cannot be observed, so the provision will not have effective application. From the empirical analysis we find that certain procedures (administrative and administrative-judicial last even a few years), which is evident from the decisions of the Supreme Court, which decides on the request for protection of the right to trial within a reasonable time. There are two reasons for such a situation in practice, namely the untimely submission of files, the repeated passing of judgments by the Administrative Court by which the disputed act in an administrative dispute is annulled and returned for reconsideration. However, the legislator in the latest law foresaw these situations as well. Thus, firstly, in relation to the problem of non-delivery of files, the Law on Administrative Disputes provides for the possibility for the court to impose a fine for the body / person who will not submit the files within the set deadline, secondly in relation to the body's failure to act upon the decision of the Administrative Court, the Law provides for the authorization of the Administrative Court to solve the problem on the merits. Also, the problem with the submission of files was noted in the reports on the work of the Supreme Court, stating that it directly affects the deadline for deciding on the request for protection of rights within a reasonable time. Hence, we conclude that what is necessary in the future is to ensure consistent application of the provisions governing these issues, to improve communication between public authorities and the courts and to strengthen the authority of the courts. Special emphasis should be placed on empowering administrative courts and the Supreme Court to monitor the execution of their decisions.

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<sup>27</sup> Lj. Milutinović, *Suđenje u okvirima razumnog vremenskog roka*, Pravni informator, Online izdanje časopisa, str. 1., taken from Dragoljub Drašković, *The Right to a Trial within a Reasonable Time*, Matica, no. 74, summer 2018, pp.63-120, <http://www.maticacrnogorska.me/files/74/07%20dragoljub%20draskovic.pdf> (in original Dragoljub Drašković, *Pravo na suđenje u razumnom roku*, Matica, br. 74, ljeto 2018, str.63-120)

Given that the Supreme Court's handling of the request for protection of the right to a trial within a reasonable time is regulated only by a few provisions of the Law on Courts, perhaps in the future we should consider amending the Law on Courts or enacting Law on Protection of the Right to Trial within a Reasonable Time, which would regulate in a more precise and clear manner the issues related to the procedure for protection of the right to a trial within a reasonable time.

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