

Violation of the Right to a Trial within a Reasonable Time as a Legal Basis for Compensation in the Form of Just Satisfaction

Nenad Stefanović, Dalibor Krstinić and Tanja Varađanin

University Business Academy, Novi Sad, Serbia
Faculty of Law for Commerce and Judiciary

Article Information*

Review Article • 342.722:347.962.6]347.426.6

Volume: 23, Issue: 2, pages: 58–74

Received: June 24, 2026 • Accepted: September 14, 2026

<https://doi.org/10.51738/kpolisa.2026.2r.nsdktv>

Author Note

Nenad Stefanović  <https://orcid.org/0000-0002-7899-9585>

Dalibor Krstinić  <https://orcid.org/0000-0002-9731-9178>

Tanja Varađanin  <https://orcid.org/0000-0003-0070-3446>

We have no known conflict of interest to disclose.

Corresponding author: Nenad Stefanović

E-mail: nenad@pravni-fakultet.edu.rs

* Cite (APA): Stefanović, N., Krstinić, D., & Varađanin, T. (2026). Violation of the Right to a Trial within a Reasonable Time as a Legal Basis for Compensation in the Form of Just Satisfaction. *Kultura polisa*, 23(2), 58–74, <https://doi.org/10.51738/kpolisa.2026.2r.nsdktv>



© 2025 by the authors. This article is an open-access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Violation of the right to a trial within a reasonable time as a legal basis for compensation in the form of just satisfaction

Abstract

Article 6 of the Law on the Ratification of the European Convention for Human Rights and Fundamental Freedoms from 2003 regulates the right to a fair trial within a reasonable time. In this way, this important right was implemented in the legal system of the Republic of Serbia in the form of a constitutional principle, which in Article 32 guarantees a "fair and within a reasonable time" trial. Accordingly, a legal remedy in the form of a constitutional appeal for violation of the right to a trial within a reasonable time was introduced into the legal system of the Republic of Serbia. The right to a trial within a reasonable time is a fundamental and general democratic right, closely related to the right to effective legal protection, which again represents the fundamental basis of the rule of law. The aim of the co-authors is to use adequate scientific methods, primarily analytical and comparative, through the evaluation of current legislation and court practice, to determine the degree of respect for this important principle and the right to compensation in case of violation of this right, both in civil and criminal court proceedings. The authors will try to identify possible problems in realizing the right to compensation for damages, and point out and suggest solutions that would affect a more adequate application and correction, *de lege ferenda*.

Keywords: trial within a reasonable time, the right to a fair trial, compensation for damages, judicial practice, just satisfaction.

Introduction

The foundation of the legal system is made up of rights that guarantee, among other things, adequate and efficient security for legal entities, which vice versa contributes to the functioning of that system. The enumeration, implementation and protection of the aforementioned rights are regulated and guaranteed by numerous acts, from the Constitution, through systemic laws, international conventions and agreements, to by-laws. One of them is the right to a fair trial within a reasonable time, implemented in our legal system by ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as ECHR or Convention) and its accompanying Protocols. By becoming a member of the Council of Europe, the Republic of Serbia accepted the obligation to guarantee to everyone, within its jurisdiction, the rights and freedoms defined by the Convention (Tamaš, 2006). Respect for the right to a trial within a reasonable time is the foundation of an efficient judiciary and to a large extent affects public confidence in the work of judicial authorities. However, failure to respect this right may have repercussions that the authors will address. Compensation for damage due to a violation of the right to a trial within a reasonable time is a logical consequence of a violation of fundamental rights. To begin with, it is necessary to define the terminological and conceptual definitions regarding the right to a fair trial and the right to a trial within a reasonable time. After that, it is necessary to establish the determinants regarding the determination of the duration of the trial and explain the issue of liability for damage resulting from the violation of this right. Relying on case law, the authors will analyze the forms

of compensation for damage in the event of a violation of the right to a fair trial in the central part of the paper, with a special emphasis on monetary compensation and compensation for property damage.

The concepts of the right to a fair trial and the right to a trial within a reasonable time

The right to a fair trial is regulated and guaranteed by both the Constitution of the Republic of Serbia (hereinafter: the Constitution) and the aforementioned Convention. Article 32 of the Constitution of the Republic of Serbia regulates the right to a fair trial: „Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them.“ The Convention regulates this right in paragraph 1, Article 6: „In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice“.

From the above provisions of the Convention and the Constitution, it is clear that the right to a fair trial is guaranteed and indisputable. Applying linguistic interpretation, we conclude that the right to a trial within a reasonable time is incorporated into the right to a fair trial, or according to the understanding of Professor Slavoljub Carić, the right to a trial within a reasonable time is part of the right to a fair trial, regulated by Article 6, paragraph 1 of the Convention (Carić, 2011, p. 264). According to this analogy, these are two concepts that are inextricably linked, because only a trial that is completed within a reasonable time can be fair.

The State Union of Serbia and Montenegro joined the Council of Europe in 2003 and shortly thereafter, in the same year, ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this way, the right to a trial within a reasonable time was incorporated into the legal system of the Republic of Serbia, and three years later, as a fundamental right, it was included in the provisions of the new Constitution of 2006. In the following years, from 2007 to 2014, the only legal remedy protecting the right to a trial within a reasonable time was a constitutional appeal, which proved in practice to be an effective instrument in protecting this constitutionally guaranteed right. As part of the work on the implementation of the National Strategy for Judicial Reform for the period 2013–2018, five key principles on which the judicial system of the Republic of Serbia is based were established: independence, impartiality and quality of justice, expertise, accountability and efficiency (Manojlović-Andrić et al., 2018, p. 5). As a result of the implemented strategy, nine years after the adoption of the Constitution, the Law on the Protection of the Right to a Trial within a Reasonable Time was adopted in 2015 (hereinafter referred to as: the Law). The aim of the new Law is to provide judicial protection of the right to a trial within a reasonable time and thus prevent violations of the right to a trial within a reasonable time, to stimulate the active participation of parties in preventing violations of the right to a trial within a reasonable time, and to relieve the Constitutional Court, as a large number of constitutional appeals related to violations of

the right to a trial within a reasonable time (Salma, 2015, p. 1005). It was logical to expect that the definition and determination of the right to a fair trial would be in the law that regulates it, however, the Law does not contain the concept and more precise definition of a reasonable time. One can only assume why this is so. Namely, since this is an institute that largely depends on the circumstances of each specific court case, the assumption is that the legislator decided to omit a precise and strict definition of a reasonable time and leave its determination to those who deal with the application of the Law, namely the courts. On the one hand, the absence of a definition of the right to a fair trial may to some extent affect the legal certainty of the subjects in the proceedings, because the failure to specify a time frame opens up space for free assessment and evaluation, while on the other hand it contributes to the flexibility of interpretation of the concept, which makes it easier for judges to arbitrate when issuing judgments.

Certain positive legal regulations in the Republic of Serbia clearly regulate the right to a trial within a reasonable time. Thus, within the framework of the Family and Civil Procedure Laws, a trial within a reasonable time is regulated through the concept of urgency. The Family Law emphasizes urgency in six procedures: a procedure related to family relations is urgent if it relates to a child or a parent exercising parental rights (Narodna skupština Republike Srbije, 2015a, Art. 204). The procedure for placing a child under guardianship is also urgent (Narodna skupština Republike Srbije, 2015a, Art. 285), while four procedures are particularly urgent: the procedure for the protection of the rights of the child and the procedure for the deprivation of parental rights (Narodna skupština Republike Srbije, 2015a, Art. 269), the procedure in a dispute over maintenance (Narodna skupština Republike Srbije, 2015a, Art. 280) and the procedure in a dispute for protection from domestic violence (Narodna skupština Republike Srbije, 2015a, Art. 285). The Law on Civil Procedure (hereinafter referred to as the LCP) also emphasizes the speed and rationality of the procedure: the court is obliged to conduct the procedure without delay, in accordance with the previously determined time frame for undertaking civil actions and with as few costs as possible (Narodna skupština Republike Srbije, 2011b, Art. 10). The court is also obliged to ensure that the subject of the dispute is discussed comprehensively, that the procedure is not delayed and that the discussion is completed, if possible, in one hearing, i.e. within the time frame (Narodna skupština Republike Srbije, 2011b, Art. 326).

Determinants for determining the duration of a trial

Trial within a reasonable time is a qualification subject to the free assessment of the judge, however, the key determinant for determining whether this right has been violated lies in determining the exact duration of the proceedings. The explanation of the Supreme Court of Cassation's decision states that "the reasonable length of the court proceedings represents the optimal time to decide on the party's right that is in dispute, in order to remove uncertainty and for the party to learn whether the disputed right belongs to it or not, thereby ensuring legal certainty for the parties. However, the optimal time required to complete the proceedings is a relative category, which is assessed in each specific case on the basis of circumstances concerning the complexity of the factual and legal issues in the court proceedings, the conduct of the objector to the protection of the right to a trial within a reasonable time, the conduct of the court, the nature of the request, or the importance of the subject matter of the dispute for the objector." (Rešenje VKSBG, RŽ g 1/2022 1.6.6.7).

Therefore, it is necessary to determine exactly the moment when the procedure began and the moment when it was completed. For this, the relevant dates are the dates of filing the document or undertaking the actions for which it is considered that the procedure was initiated, or the date of delivery of the final decision, i.e. the decision made pursuant to the submitted legal remedy. Based on the determination of these two time frames, it is possible to precisely find out the exact length of the procedure, from the moment of its beginning to the moment of its completion. They differ in criminal, civil and administrative proceedings. Criminal proceedings begin with their initiation, which is regulated by the Criminal Procedure Code (hereinafter referred to as the CPC), which in Article 7 determines the following:

Criminal proceedings are initiated:

- 1) by issuing an order to conduct an investigation (Art. 296);
- 2) by confirming an indictment that was not preceded by an investigation (Art. 341, para. 1);
- 3) by issuing a decision to order detention before filing an indictment in summary proceedings (Art. 498, para. 2);
- 4) by scheduling a main trial or a hearing for imposing a criminal sanction in summary proceedings (Art. 504, para. 1, Art. 514, para. 1 and Art. 515, para. 1);
- 5) by scheduling a main trial in proceedings for imposing a security measure of mandatory psychiatric treatment (Art. 523) (Narodna skupština Republike Srbije, 2011a, Art. 7).

What is stipulated in this provision of the CPC is also confirmed in paragraph 3 of Article 1 of the Law on the Protection of the Right to a Trial within a Reasonable Time, that the deadline is calculated from the beginning of the investigation, i.e. that the judicial protection of the right to a trial within a reasonable time also includes the investigation conducted by the public prosecutor in criminal proceedings. Therefore, the pre-investigation procedure in positive law is not included in the calculation of deadlines for a trial within a reasonable time. The position of the European Court of Human Rights is different (hereinafter: the ECHR). According to this court, the beginning of the deadline for assessing the duration of criminal or misdemeanor proceedings is calculated from the moment a person is accused. In addition, it defines an indictment in criminal matters as “an official statement by a competent authority about a criminal offense committed (Manojlović-Andrić et al, 2018, p. 16).

When it comes to civil proceedings, Article 191 of the LCP stipulates that civil proceedings are initiated by filing a lawsuit. This is the moment from which the proceedings are considered to have begun and is relevant for the beginning of calculating the length of the proceedings. In civil law cases, the time taken into account begins to run from the moment the proceedings are initiated until the completion of the proceedings at the highest court, i.e. the finality and enforceability of the decision (Prelević, et al., 2011, p. 42).

Administrative proceedings can be initiated in two ways: at the request of a party and ex officio.

- a) The proceedings are initiated at the request of a party when the authority receives the party's request.
- b) Ex officio, the proceedings can be conducted in the interest of the party and then it is considered that it was initiated when the authority takes any action to conduct the proceedings, and if the proceedings are not conducted in the interest of the party, the proceedings are initiated when the party is notified of the act on the initiation of the proceedings (Narodna skupština Republike Srbije, 2016, Art. 91). It is important to note that the administrative proceedings and the administrative dispute are viewed as a single

entity, so that in the event that an administrative dispute is initiated, the filing of a lawsuit with the administrative court is considered the beginning of the proceedings, but the duration of the administrative proceedings, which preceded the administrative dispute, can also be included in the total time limit.

The end of the time limit when assessing the right to a trial within a reasonable time is the day on which the participants in the proceedings were served with a final court decision, and if there were legal remedies (regular or extraordinary), the day of the decision on the submitted legal remedy. The Law on Judges also takes into account the duration of the proceedings and regulates the deadlines within which judges must report to the president of the court on the reasons for the delay. Thus: A judge is obliged to inform the president of the court of the reasons why the first-instance proceedings have not been completed within one year and to inform him every six months about the further course of the proceedings. In proceedings under a legal remedy, the judge is obliged to inform the president of the court every three months about the reasons why the proceedings have not been completed. In first-instance proceedings, the president of the court is obliged to inform the president of the immediately higher court about any proceedings that have not been completed within two years and the reasons for that. In proceedings under a regular legal remedy that have not been completed within one year, the president of the court is obliged to inform the president of the Supreme Court (Narodna skupština Republike Srbije, 2023, Art. 28, para. 1–4).

Liability for Damage Caused by Violation of the Right to Trial within a Reasonable Time

Liability for damage caused by a violation of the right to a trial within a reasonable time arises from the provisions of the Law of Contract and Torts (hereinafter: the LCT), where Article 172 stipulates that: „(1) A legal person shall be liable for injury or loss caused by its governing body to a third person in performing or in connection to performing its functions. (2) Unless otherwise specified by the law for a specific case, a legal person shall be entitled to recover against a person being at fault for injury or loss with intent or by gross negligence. (3) That right shall expire six months after the payment of damages“ (Savezna Skupština Socijalističke Federativne Republike Jugoslavije 1978, Art. 172, para. 1-3). Therefore, the Republic of Serbia is liable for any damage caused by courts and prosecutors' offices violating the right to a trial within a reasonable time. The Law on the Protection of the Right to a Trial within a Reasonable Time regulates this liability as objective through two articles: Article 23 regulates the liability of the Republic of Serbia for non-pecuniary damage, and Article 31 regulates objective liability for pecuniary damage (Narodna skupština Republike Srbije, 2015b, Art. 17 and 31). A party to the proceedings may file a lawsuit against the Republic of Serbia for compensation for property damage caused by a violation of the right to a trial within a reasonable time, within one year from the date on which he or she acquired the right to just satisfaction, as stated in the first paragraph of the aforementioned Article 31. In the following paragraph, the legislator further specifies that in addition to the provisions of the law regulating obligations, the court also applies criteria for assessing the duration of the trial within a reasonable time, foreseeing the objective liability of the Republic of Serbia for property damage caused by its authorities. The issue of the liability of the Republic of Serbia in enforcement proceedings arises. In legal literature and theory, there is a consensus that "the liability of the Republic of Serbia exists in relation to the work of the court, but also in relation to the work of the public bailiff, since the public bailiff is the holder of public powers acquired precisely by the will of the state, i.e. he or she is appointed by the competent minister and has

the status of an official who exercises the powers entrusted to him or her by law, so that he or she acts on behalf of the state (Munjić, 2022, p. 641).

The liability of the Republic of Serbia for damage caused by its authorities is conditioned by the fact that such damage must be caused in the performance of or in direct connection with the performance of its functions. The Republic is liable according to the principle of objective liability regardless of fault, however, it has the right to recourse for costs: „a legal person shall be entitled to recover against a person being at fault for injury or loss with intent or by gross negligence“ (Savezna Skupština Socijalističke Federativne Republike Jugoslavije 1978, Art. 172, para. 2). In the specific case of a violation of the right to a fair trial within a reasonable time, this would mean that the Republic's right to recourse exists if it is explicitly established that the delay in the proceedings was due to intent or gross negligence on the part of its judicial authorities. The only way to avoid liability on this basis is in cases of general esculpability from objective liability, namely if the damage was caused by force majeure, the fault of the injured party or the fault of a third party.

Damage compensation

In legal theory, it is generally accepted that compensation for damage is a civil law sanction for causing damage, where damage is understood as the reduction of someone's property and the prevention of its increase, as well as causing physical or mental pain and fear to another (Radovanov, 2009, pp. 263-264). Based on this, an elementary division of compensation for damage has been made into material and non-material.

When determining compensation for damages due to a violation of the right to a fair trial within a reasonable time, the starting point is the legal remedies and the entities authorized to use them. In the period from 2007 to 2014, until the adoption of the Law, the legal mechanism provided for by the Constitution and Article 82 of the Law on the Constitutional Court was applied: A constitutional appeal may be filed against an individual act or action of a state body or organization entrusted with public authority, which violates or denies human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have been exhausted or are not provided for, or the right to their judicial protection is excluded by law (Narodna skupština Republike Srbije, 2007, Art. 82, para. 1). Exceptionally, a constitutional appeal complaint could be filed even if legal remedies had not been exhausted, if the applicant's right to a trial within a reasonable time was violated in bankruptcy and enforcement proceedings conducted for the settlement of recognized or established claims in which the bankruptcy or enforcement debtor is an enterprise with majority social or state capital, as provided for in the following paragraph in the same article of this law (Narodna skupština Republike Srbije, 2007, Art. 82, para. 2). The purpose of the constitutional complaint lies in the legislator's desire to prevent undue delay in proceedings, while the subject of a constitutional complaint due to a violation of the right to a trial within a reasonable time is the failure of courts and other state bodies to act in proceedings in which the rights and obligations of the parties are decided. A new step towards the adoption of the current law was taken in 2014 with the adoption of the Law on Amendments to the Law on the Organization of Courts. These amendments to the law introduced special protection of the right to a trial within a reasonable time and a new legal remedy – a request for the protection of the right to a trial within a reasonable time. The authorized submitter of this request is any party in court proceedings who believes that the right to a trial within a reasonable time

has been violated. According to these amendments to the law, the party was authorized to submit two requests: a request for the protection of the right to a trial within a reasonable time to the immediately higher court and a request for compensation for the violation of the right to a trial within a reasonable time. The decision-making procedures based on the submitted request were urgent. In the event that the immediately higher court determines that the request is well-founded and that there has been a violation of the right to a trial within a reasonable time, the court shall award appropriate compensation and a deadline within which the court must complete the proceedings in which the right to a trial within a reasonable time has been violated. Within three months from the date of filing the request, the party must be paid compensation from the budget funds of the Republic of Serbia. Regarding these legal solutions, case law has taken the view that a request for appropriate compensation for a violation of the right to a trial within a reasonable time may be submitted only together with a request seeking a determination of a violation of that right, i.e. that such a request cannot be submitted independently (Rešenje VKSBG, Rž g 1401/2015).

When it comes to subjects authorized to exercise this right, the initial provisions of the Law on the Protection of the Right to a Trial within a Reasonable Time are relevant to us, which state who all have the right to a trial within a reasonable time, and in what procedure: The following persons are entitled to the right to a trial within a reasonable time: every party in court proceeding, including the enforcement proceeding, every participant pursuant to the law governing non-contentious proceeding, while the following participant in criminal proceeding: the injured party, private plaintiff and injured party, only if they claimed damages in criminal proceeding (Narodna skupština Republike Srbije, 2015b, Article 2, Paragraph 1). The law also emphasizes that the public prosecutor as a party in the criminal proceeding is not entitled to right to a trial within a reasonable time.

In the event of a violation of the right to a trial within a reasonable time, the parties have at their disposal the following legal remedies as instruments for the protection of the violated right: 1) objection for accelerating the proceeding (hereinafter: the objection); 2) appeal; 3) claim for just satisfaction (Narodna skupština Republike Srbije, 2015b, Article 3).

The purpose and role of these remedies differ. A request for just satisfaction achieves personal satisfaction, while an objection and an appeal aim to speed up the court proceedings. These means are in a causal relationship and are mutually conditioned, so that if the injured party wants to exercise his right to a fair trial through a request for just satisfaction, he must first file an objection and appeal, as a means of speeding up the procedure, and only if he does not realize his rights with them, he has the right to submit a request. In other words, objection and appeal are *conditio sine qua non* for filing a claim for just satisfaction.

A party begins the procedure for the protection of the right to a trial within a reasonable time by submitting an objection to the proceeding court that conducts the "perpetual" procedure. A party files an objection to the court conducting the proceeding or to the court before which the proceeding is being conducted, if it considers that the public prosecutor has violated its rights. (Narodna skupština Republike Srbije, 2015b, Article 7, Paragraph 1). The Law on the Protection of the Right to a Trial within a Reasonable Time has thus standardized the mandatory elements of an objection, without which the objection is rejected as incomplete. After the amendments from 2023, another norm was introduced that contributes to speeding up the procedure. Namely, when the attorney of the party is authorized to take all actions in the procedure

that is requested to be accelerated, then a special power of attorney is not required for submitting an objection. But, if it is an attorney who is authorized to take only certain actions in the procedure, and protection of the right to a trial within a reasonable time is not one of those actions, then he is obliged to submit a special power of attorney that authorizes him to file an objection. Article 7 of the Law regulates the rules of the procedure based on objections: it is led by the president of the court, who also decides on the objection within two months from the day of receipt of the objection, oral hearings are not held, and all issues are resolved in accordance with the provisions of the Law on non-litigation proceedings. However, in practice, as Bodiřoga notes, this creates major problems, given that the Law on Non-Citizenship Procedure "does not regulate individual procedural issues and situations, but in this respect refers to the consistent application of the Law on Civil Procedure. It is a question of a double, consistent application of the law, which resulted in different actions by the courts" (Bodiřoga, 2023, p. 243).

After the submitted complaint, the president of the court can either reject it (if the complaint is unfounded), i.e. reject the complaint (if it was submitted by an unauthorized person, if it was premature or if it was submitted after the end of the procedure), or to initiate an examination procedure. The legal procedure upon the submitted objection authorizes the president of the court to conduct the examination procedure by requiring the judge, the Presiding Judge or the public prosecutor to submit a report to him within 15 days, which must contain a statement on the development of the procedure in time and a proposal for the deadline in which the procedure can be expected to end. After studying the submitted report, the Presiding Judge either rejects the complaint by decision or states that there has been a violation of the right to a trial within a reasonable time. If the objection is accepted, the judge and the public prosecutor do not have the right to appeal, while the party whose objection is accepted has the right to compensation for the costs of the objection procedure. The rule on reimbursement of costs was introduced by the Amendments to the Law in 2023. When the decision accepts the objection and establishes the existence of violations of the right to a trial within a reasonable time, the president of the court indicates to the judge or public prosecutor in the decision the reasons why the party's right has been violated and orders the judge to take procedural actions that effectively speed up the procedure, setting a deadline for taking procedural actions within a period of no less than 15 days and no longer than four months. The obligation of the judge to regularly submit reports to the president of the court on the actions taken is also established. Exceptionally, the president of the court can, if the procedure is urgent, take the case away from a judge who is overloaded or absent for a long time and assign it to another judge (Narodna skupština Republike Srbije, 2015b, Articles 8-10).

An appeal is a procedural instrument available to a party whose objection is rejected or the president of the court does not decide on the appeal within two months of receiving the objection. Appeals can also be filed for other reasons listed in Article 14 of the Law on the Protection of the Right to a Trial within a Reasonable Time. Eight days is the deadline for the appeal, the beginning of which is determined differently depending on the reason for which the appeal is filed. The appeal, which must contain all the mandatory elements specified in the Law and for the objection, is submitted to the president who decided on the objection, and he is obliged to immediately submit it to the president of the immediately higher court, together with the case files, which conducts the appeal procedure and decides on it. If the appeal proceedings are conducted before the Supreme Court, the proceedings are conducted before a panel of three judges of the Supreme Court who decide on the appeal (Narodna skupština Republike Srbije, 2015b,

Articles 14-16). The party to the proceedings whose appeal was accepted and the party whose objection was accepted, but the appeal was rejected, can submit a new objection immediately after the deadline in which the judge or public prosecutor was obliged to take effective procedural actions. It is important to emphasize that the limitations of the right to submit a new complaint do not apply in the procedure in which custody or a temporary measure is proposed or determined, in the enforcement procedure and in the procedure against minors, as well as in the case of rejection of the complaint or appeal.

Monetary Compensation for Non-Pecuniary Damage

Thus we come to the essence of the issue of the right to compensation for damages due to the violation of the right to a fair trial within a reasonable time. Namely, the Law on the Protection of the Right to a Trial within a Reasonable Time stipulates that a party has the right to fair satisfaction in three cases: a) a party whose objection was accepted, but who did not file an appeal, b) a party whose appeal was rejected with confirmation of the first-instance decision on acceptance of the objection, and c) a party whose appeal was accepted (Narodna skupština Republike Srbije, 2015b, Article 23, Paragraph 1). Article 23 stipulates that monetary compensation is a form of just satisfaction in the event of non-property damage caused by the violation of the right to trial within a reasonable time. The responsibility of the Republic of Serbia for non-property damage caused by the violation of the right to trial within a reasonable time is objective and regulated by Article 23 of the Law, and for property damage by Article 31 of the same Law. In judicial practice, this point of view is manifested through the decisions of the Supreme Court of Cassation: the Republic of Serbia is liable for material damage caused by the complete or partial non-execution of final and enforceable court decisions, i.e. in bankruptcy established claims of employees from the employment relationship that remained unexecuted through no fault of their own and in bankruptcy proceedings conducted against a bankrupt debtor with majority social or state capital, with the condition that a violation of the right to a trial within a reasonable time has been previously established (Rešenje VKSBG, Rev 12609/2025). This also represents the Conclusion adopted at the session of the Civil Department of the Supreme Court of Cassation until November 2, 2018. year.

Before filing a lawsuit, the Law provides for the possibility of a settlement between the party and the Attorney General's Office. In order to implement this legal provision, and in order to reduce the flow of petitions, both in the European Court of Human Rights due to the violation of Article 6 of the European Convention on Human Rights, and in the Constitutional Court of the Republic of Serbia due to the violation of Article 32 of the Constitution of the Republic of Serbia, the President of the Supreme Court of Cassation and the High Council of the Judiciary, the Minister of Justice, the State Advocate and the Director of the Judicial Academy signed on July 18, 2018 the Guidelines for the improvement and promotion of the procedure for extrajudicial settlements in proceedings for the protection of the right to a trial within a reasonable time (USAID, 2026, p. 5).

A party to the proceedings may submit a settlement proposal to the Attorney General's Office within six months from the day on which he acquired the right to fair satisfaction. In the proposal for settlement, the party in the proceedings states whether it requests the payment of monetary compensation or the issuance and publication of a written statement from the Attorney General's Office establishing that its right to a trial within a reasonable time was violated, or both. The Attorney General's Office is given a two-month deadline by law to reach an out-of-court settlement, which, if reached, constitutes an enforceable

document, whereby the party to the proceedings has the right to notify the Attorney General's Office in writing at any time that he is abandoning the settlement attempt (Narodna skupština Republike Srbije, 2015b, Article 24, Paragraph 1-5).

If no settlement agreement is reached with the Office of the Attorney General, the party can exercise its rights through a lawsuit. Realization of the right to compensation in the form of payment of monetary compensation is conditioned by the fulfillment of conditions and assumptions concerning: a) the deadline for filing a claim for monetary compensation, b) the procedure for the filed claim and the amount of compensation requested and c) jurisdiction of the court.

- a) The deadline for filing a lawsuit against the Republic of Serbia for financial compensation is one year from the day the party acquired the right to fair satisfaction. However, if a settlement has been reached or the settlement process is still ongoing, filing a lawsuit is not allowed.
- b) Regarding the procedure and the amount of compensation, the Law on the Protection of the Right to a Trial within a Reasonable Time is strict and refers to the corresponding application of the provisions on small value disputes from the law governing civil proceedings, while determining the limits within which monetary compensation should range from 300 to 3,000 euros in dinar equivalents on the day of payment according to the middle exchange rate of the National Bank of Serbia per case (Narodna skupština Republike Srbije, 2015b, Article 30, Paragraph 1). Based on the fact that according to the LCP, small value disputes represent disputes in which the claim refers to a claim in money that does not exceed the dinar equivalent value of 3,000 euros at the middle exchange rate of the National Bank of Serbia on the day the claim is filed, at first glance it seems strange why the legislator felt the need to emphasize in the first part of the cited article that regardless of the type and amount of the claim, the rules on small value disputes must be applied. The answer to this doubt lies in the legal provision that regulates the amount of monetary compensation. In addition to the limit on the amount of compensation for damages, the legislator introduced additional limits by imposing a ban on revision. Regardless of the fact that the application of procedural rules for small value disputes is prescribed, the legislator expressly excluded the possibility of declaring a review, although there is a provision on this in Art. 479th st. 6. LCP. The dilemma remains whether it refers only to the audit or to a special audit, bearing in mind the actions of the Supreme Court. Monetary compensation is awarded in the amount of 300 to 3,000 euros, which is a rather large range that opens up space for uneven treatment by first and second instance courts. (Bodiroga, 2023, p. 252).

is not enough for the domestic court to only state that there has been a violation of the right to a fair trial within a reasonable time, but it should also award adequate monetary compensation that is proportionate to the violation of rights. That is why Article 41 of the ECHR foresees Just satisfaction: If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. Therefore, in the event that the domestic court awards only a part, i.e. partial, incomplete compensation for the difference will be awarded by the European Court of Human Rights.

An excellent example from judicial practice in support of this claim can be found in the judgment of the European Court of Human Rights from March 29, 2006, *Skordino v. Italy*. The judgment (paragraph 176) states that: „The Court awarded higher levels of compensation than those awarded by the Convention institutions prior to 1999, and which may differ from those applied in the event of a finding of other violations. This increase, far from being a punitive measure, was intended to serve two purposes. On the one hand it encouraged States to find their own, universally accessible, solution to the problem, and on the other hand it allowed applicants to avoid being penalised for the lack of domestic remedies.“ (Scordino v. Italy, 1997/2006). Later, in paragraph 195 of the judgment it is stated: „With regard to the appropriate and sufficient redress even if a remedy is “effective” in that it allows for an earlier decision by the courts to which the case has been referred or for the aggrieved party to be given adequate compensation for the delays that have already occurred, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings.“ (Scordino v. Italy, 1997/2006).

- c) Jurisdiction is regulated by Article 28 of the Law, according to which: Basic court on whose territory the plaintiff has permanent or temporary residence, or headquarters has exclusive territorial jurisdiction to rule on the complaint. If the plaintiff has no domicile, residence or seat in the Republic of Serbia, the basic court which has its seat in the place of the seat of the court that established the violation of the right to trial within a reasonable time, shall have the exclusive territorial jurisdiction, and if there are two or more of those courts, the lawsuit can be filed in any of those courts (Narodna skupština Republike Srbije, 2015b, Article 28, Paragraph 1-2).

Compensation for property damage

According to the Law of contract and torts a person sustaining damage shall be entitled both to indemnity of common damage and compensation of profit lost (Savezna Skupština Socijalističke Federativne Republike Jugoslavije 1978, Art. 189, para. 1). Materijal damage can be a diminution of someone's property (simple loss – *damnum emergens*) and preventing its increase (profit lost – *lucrum cessans*) (Savezna Skupština Socijalističke Federativne Republike Jugoslavije 1978, Art. 155, para. 1).

Article 31 of the Law regulates Claim for Compensation of Material Damages: A party may file a appeal against the Republic of Serbia for compensation of material damages caused by the violation of the right to a trial within a reasonable time, within the term of one year from the day when it attained the right to just satisfaction (Narodna skupština Republike Srbije, 2015b, Article 31, Paragraph 1).

This means that the injured party has the right to claim compensation for material damage suffered if it is established that the damage occurred as a direct consequence of the violation of the right to a trial within a reasonable time, i.e. if it is established that there is a cause-and-effect relationship between the work of state authorities and the resulting damage. This is the result of the position taken in our legal theory and judicial practice, which accepted the theory of adequate causation, according to which only that cause is legally relevant, i.e. the circumstance that causes the damage. The question arises, what if there are multiple causes? The answer is provided by legal theory: when the damage was caused by the action of several conditions, the condition that is typical for the occurrence of damage, in the specific case, is causal. Other conditions are not causes of damage. (Ivošević, 1994, p. 439).

From the previous elaboration, it can be seen that the Law on the Protection of the Right to a Trial within a Reasonable Time provides special procedural rules for lawsuits for financial compensation due to the violation of the right to a trial within a reasonable time. However, in the case of a claim for compensation for property damage, those rules are not in this law, but the rules of the Law on the Organization of Courts are applied by analogy. This means that apart from the basic court, whose actual jurisdiction is overlooked by the Law on the Protection of the Right to a Trial within a Reasonable Time, a higher court can also be competent. After all, it is also written in Article 17 of the Law on Civil Procedure that: during the entire procedure, the court *ex officio* takes care of its actual jurisdiction. Therefore, jurisdiction is determined depending on the amount of the claim. In other words, it depends on whether the provisions on small value disputes or the rules of general civil procedure will be applied in the specific case, i.e., whether the party will have the possibility to declare a review, unlike a claim for non-property damage, where the legislator, regardless of the type and amount of the claim, expressly prescribed the application of the provisions on small value disputes and the impossibility of declaring a review, finding justification for it in the provision regulating the amount of monetary compensation.

What monetary compensation and compensation for property damage have in common is that they are paid by the court or the public prosecutor's office who violated the right to a trial within a reasonable time, and within a period for voluntary payment of monetary compensation of four months from the date of finality of the judgment (Narodna skupština Republike Srbije, 2015b, Article 32, Paragraph 1-2). However, the question arises: who will be obliged to pay them if several courts or the court and the public prosecutor's office violate the right to a trial within a reasonable time in the same procedure? Of course, it is the Republic of Serbia that pays the compensation, but it is only passively legitimized, because the payment is made from the account of the specific court or public prosecution that violated the right to a trial within a reasonable time. In order to eliminate doubts, the following article stipulates that: the funds for payment of the monetary compensation and compensation for material damages is provided from the budget of the Republic of Serbia, from the funds that are intended to cover the current expenditures of courts and public prosecutor's offices, excluding the expenses for employees and the current maintenance of facilities and equipment (Narodna skupština Republike Srbije, 2015b, Article 33). In this way, all doubts regarding the source of funds intended for the purposes of financial compensation and compensation for property damage to those injured due to the violation of the right to a trial within a reasonable time were removed.

Conclusion

Legal history has taught us that there is no perfect law. Amendments to current legal solutions are a common occurrence, and the example of protecting the right to a trial within a reasonable time and its evolution in the legal system of the Republic of Serbia is the best example of that. The original decision was reflected in the procedure conducted before the Constitutional Court through a constitutional appeal, it is an effective legal tool for protecting the right to a trial within a reasonable time, however, practice has shown that this solution is unsustainable, because the number of appeals submitted in a very short period of time exceeded the court's capacity and threatened the normal functioning of the court, especially with regard to disputes against companies in bankruptcy. An attempt was made to find a solution through amendments to the Law on the Organization of Courts, all with the intention of regulating the system of

protection of the right to a trial within a reasonable time. In practice, it turned out that even this solution does not produce the expected results. With the adoption of the Law on the Protection of the Right to a Trial within a Reasonable Time in 2015 and amendments in 2023, a mechanism for the protection of the right to a trial within a reasonable time was established, which shows greater efficiency than before. In this way, the problem that arose in practice where the domestic courts only stated that there was a violation of the right to a fair trial was eliminated. However, it is not enough for the domestic court to only state that there has been a violation of the right to a fair trial within a reasonable time, but it should also award adequate monetary compensation that is commensurate with the violation of rights.

The problem to which the Law failed to provide an answer and an adequate solution lies in the fact that a party that seeks to achieve the protection of the right to a trial within a reasonable time can, potentially, lead as many as four proceedings. Namely, in case of violation of the right to a trial within a reasonable time, the Law offers the following legal remedies to the parties as instruments of protection of the violated right: 1) objection for accelerating the proceeding (hereinafter: the objection); 2) appeal; 3) claim for just satisfaction. It may happen that, in addition to the objection, the party has to file an appeal against the decision by which the objection was decided, so if it is established that there is a violation of the right to trial within a reasonable time, the litigation procedure for the compensation of property damage, i.e. the procedure for the compensation of non-property damage, follows. In this way, only one goal would be achieved, monetary funds would be paid in the name of compensation for damages, however, the procedure would not be accelerated, but on the contrary, it would be additionally prolonged, which in itself deviates from the goal and motive that the legislator had when enacting this Law. The legislator's attempt to consider the 2023 Amendment in Article 16 to speed up the bankruptcy or enforcement proceedings, the appeal against the decision rejecting the objection, the claim for monetary compensation and the claim for compensation of property damage filed in connection with the violation of the right to a trial within a reasonable time in bankruptcy or enforcement proceedings as a constitutional appeal, we see that indirectly the legislator admitted that the current mechanism for protecting the right to a trial within a reasonable time is not provided the expected results. The hope remains that some subsequent iteration of the law *de lege ferenda* will offer a better and more efficient solution.

References

- Bodiroga N. (2023). O mogućim izmenama Zakona o zaštiti prava na suđenje u razumnom roku, In S. Perović, (Ed.), *Zbornik radova 36. susreta Kopaoničke škole prirodnog prava* (pp. 241-260). Kopaonička škola prirodnog prava – Slobodan Perović, Patrijarha Gavrila 12, Beograd.
- Carić, S. (2011). *Evropski sistem ljudskih prava* [European human rights system]. Novi Sad: Fakultet za ekonomiju i inženjerski menadžment.
- Constitution of the Republic of Serbia, ("Official Gazette of the Republic of Serbia", Nos. 98/2006 and 115/2021)
- European Convention on Human Rights (as amended by Protocols Nos. 11, 14 and 15 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16)
https://www.echr.coe.int/documents/d/echr/convention_ENG

- Ivošević, Z. (1994). Adekvatna uzročnost kod odgovornosti za štetu - Komentar rešenja Vrhovnog suda Srbije Rev. 1882/92 od 25.6. 1992. god. *Anali Pravnog fakulteta u Beogradu*, 42(3–4), pp. 437–439.
- Manojlović-Andrić, K., Milutinović, Lj., Andrejević, S., Rodić, V., Kršikapa, M., Bajić, M., (2018). Zbornik radova *Kriterijumi za ocenu povredu prava na suđenje u razumnom roku*. Savet Evrope, Beograd.
- Munjić J. (2022). Neka pitanja u vezi sa zaštitom prava na suđenje u razumnom roku, Zbornik radova: *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije*, (Ur. prof. dr Snežana Soković), Kragujevac, 625-645.
- Narodna skupština Republike Srbije (2007). *Zakon o Ustavnom sudu* [Law on the Constitutional Court]. (Službeni glasnik Republike Srbije, br. 109/2007, 99/2011, 18/2013 – odluka US, 103/2015, 40/2015 - dr. zakon, 10/2023 i 92/2023). Paragraf.
https://www.paragraf.rs/propisi/zakon_o_ustavnom_sudu.html
- Narodna skupština Republike Srbije (2011a). *Zakonik o krivičnom postupku* [Criminal Procedure Code]. (Službeni glasnik Republike Srbije, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – odluka US i 62/2021 – odluka US). Paragraf.
https://www.paragraf.rs/propisi/zakonik_o_krivicnom_postupku.html
- Narodna skupština Republike Srbije (2011b). *Zakon o parničnom postupku* [Civil procedure act]. (Službeni glasnik Republike Srbije, br. 72/2011 49/2013 – odluka US, 74/2013 – odluka US, 55/2014, 87/2018, 18/2020 i 10/2023 – dr. zakon). Paragraf.
https://www.paragraf.rs/propisi/zakon_o_parnicnom_postupku.html
- Narodna skupština Republike Srbije (2013). *Zakon o izmenama i dopunama Zakona o uređenju sudova* [Law on Amendments to the Law on Organization of Courts]. (Službeni glasnik Republike Srbije, br. 101/2013). <https://www.tasiclaw.com/baza-znanja/zakon-o-izmenama-i-dopunama-zakona-o-uredjenju-sudova-sluzbeni-glasnik-rs-br-101-2013/>
- Narodna skupština Republike Srbije (2015a). *Porodični zakon* [Family Law]. (Službeni glasnik Republike Srbije, br. 18/2005, 72/2011 – dr. zakon i 6/2015). Paragraf.
https://www.paragraf.rs/propisi/porodicni_zakon.html
- Narodna skupština Republike Srbije (2015b). *Zakon o zaštiti prava na suđenje u razumnom roku* [Law on the Protection of the Right to a Trial within a Reasonable Time]. (Službeni glasnik Republike Srbije, br. 40/2015 i 92/2023). Paragraf.
http://demo.paragraf.rs/demo/combined/Old/t/t2023_11/EN_011_2023_001.htm
- Narodna skupština Republike Srbije (2016). *Zakon o opštem upravnom postupku* [Law on General Administrative Procedure]. (Službeni glasnik Republike Srbije, br. 18/2016, 95/2018 - autentično tumačenje i 2/2023 - odluka US). Paragraf. <https://www.paragraf.rs/propisi/zakon-o-opstem-upravnom-postupku.html>

Narodna skupština Republike Srbije (2023). *Zakon o sudijama* [Law on Judges]. (Službeni glasnik Republike Srbije, br. 10/2023 i 9/2026). Paragraf.

https://www.paragraf.rs/propisi/zakon_o_sudijama.html

Narodna skupština Republike Srbije i Crne Gore. (2003). *Zakon o ratifikaciji Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda* [Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms]. (Službeni list Srbije i Crne Gore – Međunarodni ugovori, br. 9/2003, 5/2005 i 7/2005 – ispr. i Službeni glasnik Republike Srbije – Međunarodni ugovori, br. 12/2010 i 10/2015). Pravno informacioni sistem Republike Srbije. Paragraf. <https://www.paragraf.rs/propisi/zakon-ratifikaciji-evropske-konvencije-ljudska-prava-osnovne-slobode.html>

Prelević S, Lampe R, Džudović M. (2009). Pravo na suđenje u razumnom roku - značajan princip građansko procesnog prava. *Pravo – teorija i praksa*. 26(5-6):36-45.

Radovanov, A. (2009). *Obligaciono pravo*, Novi Sad : Pravni fakultet za privredu i pravosuđe u Novom Sadu, Univerzitet Privredna akademija

Rešenje Vrhovnog kasacionog suda u Beogradu [VKSBG] [Decision of the Supreme Court of the Republic of Serbia]. RŽ g 1401/2015 od 10.09.2022. godine, sudska praksa Vrhovnog suda, pristup dana 28.05.2026. <https://www.vrh.sud.rs/sr-lat/r%C5%BE-g-14012015-akcesorna-priroda-zahteva-zanov%C4%8Danu-naknadu>

Rešenje Vrhovnog kasacionog suda u Beogradu [VKSBG] [Decision of the Supreme Court of the Republic of Serbia]. RŽ g 1/2022 1.6.6.7 od 22.02.2022. godine, sudska praksa Vrhovnog suda, pristup dana 27.05.2026. <https://www.vrh.sud.rs/sr-lat/r%C5%BE-g-12022-1667>

Rešenje Vrhovnog kasacionog suda u Beogradu [VKSBG] [Decision of the Supreme Court of the Republic of Serbia], Rev 12609/2025 od 13.03.2026. godine, sudska praksa Vrhovnog suda, pristup dana 04.06.2026. <https://vrh.sud.rs/sr-lat/rev-126092025-31912614>

Salma, M. (2015). Suđenje u razumnom roku – Pravna sredstva kojima se štiti pravo na suđenje u razumnom roku. Novi Sad *Faculty of Law: Collected Papers/Zbornik Radova*: Pravni Fakultet u Novom Sadu, 49(3). pp.1001-1016.

Savezna Skupština Socijalističke Federativne Republike Jugoslavije (1978). *Zakon o obligacionim odnosima* [Law of Contract and Torts]. (Službeni glasnik Republike Srbije, br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 – Ustavna povelja i "Sl. glasnik RS", br. 18/2020). Paragraf. https://www.paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html

Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 6 AND 41, ECHR, 29. March 2006. (2026, june 9). [https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22ENG%22\],%22appno%22:\[%2236813/97%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22\],%22itemid%22:\[%22001-72925%22\]}](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22appno%22:[%2236813/97%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-72925%22]})

Tamaš, V. (2006). Suđenje u razumnom roku [Trial in a Reasonable Time Period]. *Glasnik advokatske komore Vojvodine*, 660–664.

USAID, (June, 2026), *Otvorena vrata pravosuđa, Poravnanje u postupcima zaštite prava na suđenje u razumnom roku*, Beograd, 2018. <https://otvorenavratapravosudja.rs/media/poravnanje-kod-povrede-prava-na-sudjenje-u-razumnom-roku-brosura.pdf>

Povreda prava na suđenje u razumnom roku kao pravni osnov za naknadu štete u vidu pravičnog zadovoljenja

Nenad Stefanović, Dalibor Krstinić i Tanja Varađanin

Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe, Novi Sad, Srbija

Sažetak

Zakonom o ratifikaciji Evropske konvencije za ljudska prava i osnovne slobode iz 2003. godine članom 6. normirano je pravo na pravično suđenje u razumnom roku. Na taj način ovo bitno pravo je implementirano u pravni sistem Republike Srbije u vidu ustavnog načela, koje u članu 32 garantuje „pravično i u razumnom roku“ suđenje. Shodno tome, u pravni sistem Republike Srbije uvedeno je pravno sredstvo u vidu ustavne žalbe zbog povrede prava na suđenje u razumnom roku. Pravo na suđenje u razumnom roku je fundamentalno i opšte demokratsko pravo, usko vezano za pravo na efikasnu pravnu zaštitu, koje opet predstavlja temeljni osnov vladavine prava. Težnja je koautora da upotrebom adekvatnih naučnih metoda, pre svega analitičkog i komparativnog, kroz evaluaciju aktuelne zakonske regulative i sudske prakse, utvrde stepen poštovanja ovog bitnog načela i prava na naknadu štete u slučaju kršenja ovoga prava, kako u građanskim, tako i u okviru krivičnih sudskih postupaka. Autori će nastojati da uoče eventualne probleme u ostvarenju prava na naknadu štete, te ukažu i sugerišu na rešenja koja bi uticala na adekvatniju primenu i korekciju, *de lege ferenda*

Ključne reči: suđenje u razumnom roku, pravo na pravično suđenje, naknada štete, sudska praksa, pravično zadovoljenje.