**Under the auspices of:**
National Assembly of the Republic of Serbia

**With the support of:**
The National Academy for Public Administration

# Law on General Administrative Procedure: Contemporary Tendencies and Challenges

*Thematic Collection*

Belgrade, 2024

**Law on General Administrative Procedure:**
**Contemporary Tendencies and Challenges**
*Thematic Collection*



**Printing:**
Eurosfera & Partners, Belgrade

**Printing:**
100

**Publishers:**
Eurosfera & Partners, Belgrade
The Institute of Comparative Law, Belgrade
MLC Faculty of Management and Law Ljubljana

**On behalf of publishers:**
Prof. Mihajlo Rabrenović, PhD
Prof. Jelena Ćeranić Perišić, PhD
Prof. Srečko Devjak, PhD

**Publishing a publication helped by:**
Eurosfera & Partners, Belgrade;
The Institute of Comparative Law, Belgrade; MB University, Belgrade

**Address of the Editorial Board:**
Eurosfera, Belgrade 11090, 4-B Susedgradska St.
tel. +381 11 40 94 920; e-mail: sekretarijat@eurosfera.org
web: www.eurosfera.org

**Покровитељ:**
**Народна скупштина Републике Србије**

**Уз подршку:**
Националне академије за јавну управу

# Закон о општем управном поступку: Савремене тенденције и изазови

*Тематски зборник*

Београд, 2024

**Закон о општем управном поступку:**
**Савремене тенденције и изазови**
*Тематски зборник*



**Издавачи:**
Eurosfera & Partners, Београд
Институт за упоредно право, Београд
MLC Fakulteta za management in pravo Ljubljana

**За издаваче:**
Проф. др Михајло Рабреновић
Проф. др Јелена Ћеранић Перишић
Проф. др Срећко Девјак

**Објављивање публикације помогли су:**
Eurosfera & Partners, Београд;
Институт за упоредно право, Београд; МБ Универзитет, Београд

**Адреса редакције:**
Eurosfera & Partners, 11090 Београд, Суседградска 4-Б
Тел. 011 40 94 920; електронска пошта: sekretarijat@eurosfera.org
Веб: www.eurosfera.org

Aleksandra Rabrenović*
Vesna Ćorić**
Ana Knežević Bojović***

# DECISION MAKING WITHIN A REASONABLE TIME IN ADMINISTRATIVE PROCEDURE AND DISPUTE – THE CASE OF SERBIA****

*Abstract*

*The objective of this paper is to analyze the concept of a reasonable time in administrative procedure and dispute and assess how this principle is applied in practice in Serbia. The concept of decision making within a reasonable time is analyzed from the point of view of the European Court of Human Rights and the provisions of the EU Charter of Fundamental Rights and the European Code of Good Administrative Behavior. Based on the available statistical data obtained from the Serbian Administrative Court, the authors conclude that the principle of decision making within a reasonable time is largely observed in the work of the Administrative Court, but not before the Serbian administrative authorities. In order to improve the current trends, the authors, inter alia, recommend that competent authorities introduce a comprehensive methodology for monitoring the implementation of the Law on General Administrative Procedure, which would provide grounds for proposing evidence-based recommendations for an efficient and effective administrative decision-making process.*

**Keywords:** Decision Making Within a Reasonable Time, Administrative Procedure, Administrative Dispute, Serbia.

## 1. Introduction

Decision making within a reasonable time in administrative procedure is a relatively new concept in administrative theory and practice. Until recently, administrative law scholars successfully investigated the observance of time limits for adopting administrative decisions by analyzing the adverse consequences of

* Senior Research Fellow, Institute of Comparative Law, Belgrade, Serbia, ORCID No: 0000-0002-1159-9421.
** Senior Research Fellow, Institute of Comparative Law, Belgrade, ORCID No: 0000-0003-4240-7469.
*** Senior Research Fellow, Institute of Comparative Law, Belgrade, ORCID No: 0000-0002-3746-5747
**** This paper is a result of the research conducted at the Institute of Comparative Law financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia under the Contract on realization and financing of scientific research of SRO in 2024 registered under No. 451-03-66/2024-03/200049.

administrative silence.[1] It was only once the European Court of Human Rights (hereinafter: ECtHR) started to develop its jurisprudence on the right to a trial within a reasonable time *vis-a-vis* administrative disputes (judicial review of administrative decisions), linking them to preceding administrative proceedings, that this concept gained more attention. The concept of administrative decision making within a reasonable time was further pushed with the adoption of the European Union Charter of Fundamental Rights (hereinafter: Charter), which proclaims that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by bodies and agencies of the European Union (hereinafter: EU).[2]

Following these developments, the said concept started attracting more genuine academic attention. One of the key arguments found in academic literature is that it is important to ensure that all procedures conducted by government powers, whether judicial or executive, are conducted within a reasonable time, as this is one of the fundamental principles of good administration and good governance.[3] Furthermore, some authors who investigate the right to an administrative decision to be passed within a reasonable time see this right as a corollary of the right to a trial within a reasonable time guaranteed by Article 6 of the European Convention on Human Rights (hereinafter: ECHR).[4]

Over the past few years, the right to decision making in administrative procedure within a reasonable time has started attracting the attention of Serbian academics, primarily through the analysis of the provisions of the existing domestic legal framework (e.g. Law on General Administrative Procedure; Law on Administrative Dispute; Law on Protection of the Right to Trial within a Reasonable Time, etc).[5] What is, however, missing, is an analysis of whether administrative authorities, both at the central and local Government level, respect this right in practice.

The objective of this paper is to contribute to the ongoing academic discussion on the principle of decision making within a reasonable time in administrative procedure and to assess how this principle is applied in Serbian legislation and practice. After the theoretical section on the concept of the right to an

[1] Predrag Dimitrijević, *Odgovornost uprave za nečinjenje: sa posebnim osvrtom na "ćutanje" uprave*, Pravni fakultet, Istočno Sarajevo, 2005; Dušanka Marjanović, "Procesni uslovi za podnošenje tužbe zbog ćutanja uprave", *Izbor sudske prakse*, No. 10, 2018, pp. 13-21.

[2] Article 41 paragraph 1 of the Charter. See more Aleksandra Rabrenović, Tijana Malezić Rapajić, "Reforma javne uprave u Srbiji u kontekstu evropskih integracija", *65 godina od Rimskih ugovora: Evropska unija i perspektive evropskih integracija Srbije* (eds. Jelena Ćeranić Perišić, Vladimir Đurić, Aleksandra Višekruna), Institut za uporedno pravo, 2022, pp. 127-130.

[3] Tina Sever, "Procedural safeguards under the European convention on human rights in public (administrative) law matters", *DANUBE: Law, Economics and Social Issues Review*, Vol. 9, No. 2, 2018, p. 98.

[4] Koenraad Lenaerts, Jan Vanhamme, "Procedural Rights of Private Parties in the Community Administrative Process", *Common Market Law Review*, 1997, p. 567.

[5] Nataša Mrvić Petrović, Zdravko Petrović, "Pravo na naknadu štete zbog nerazumnog trajanja upravnog postupka", *Prouzrokovanje štete, naknada štete i osiguranje* (eds. Zdravko Petrović, Vladimir Čolović, Dragan Obradović), Institut za uporedno pravo, 2022, pp. 143-214: Stefan Andonović, "Pravo na odlučivanje u razumom roku u upravnom postupku u Republici Srbiji", *Sveske za javno pravo*, Vol. 10, No. 35-36, 2019, pp. 73-81.

administrative procedure within a reasonable time, the authors shall examine the statistical data on the caseload of the Serbian Administrative Court and analyze whether special administrative procedures, such as issuance of construction and exploitation permits, are of reasonable length and in accordance with the stipulated statutory deadlines.

## 2. Concept of Decision Making Within a Reasonable Time in Administrative Proceedings Based on the Case Law of the European Court of Human Rights

The concept of decision making within a reasonable time in the field of administrative proceedings and disputes has been present in the ECtHR case law for more than four decades and is recognized by various CoE acts and documents.[6] The ECtHR exercises the power to review the procedures and the decisions of the executive branch, along with those of the judicial branch. In doing so, it requires the conduct of administrative procedures within a reasonable time.[7] This stance of the ECtHR has been outlined in a number of cases of the ECtHR.[8] Taking into account that the ECHR is a living instrument, the ECtHR applies a dynamic interpretation of the term "a reasonable time in administrative proceedings" and understands it as an autonomous concept, not dependent on national legal systems.[9]

Two main lines of reasoning have been developed in academic literature regarding the legal basis of the application of the reasonable time principle in administrative procedure before the ECtHR. The first group of authors argues that decision making within a reasonable time in the field of administrative law process constitutes an institute which is derived from the right to a fair trial and the right to an effective remedy, as guaranteed by Articles 6 and 13 of the ECHR.[10] The second group of authors claims that such an institute originates from a much broader set of the ECHR's provisions.[11] Supporters of the second line of thought argue that a wider set of the ECHR's provisions have to be taken into account when evaluating whether the requirement to conduct administrative procedures

[6] See Benthem v. the Netherlands, App. No. 8848/80, Judgment of October 23, 1985, para. 36. As referred to in: Maria Filatova, *Reasonable Time of Proceedings: Compilation of Case-law of the European Court of Human Rights*, Council of Europe, 2021, p. 12.

[7] T. Sever, p. 100.

[8] Regner v. Czech Republik [GC], App. No. 35289/11, Judgment of November 26, 2015, para. 99-105; Stokalo and Others v. Croatia, App. No. 15233/05, Judgment of October 16, 2008.

[9] See more on autonomous concepts in Vesna Ćorić, Ana Knežević Bojović, "Autonomous Concepts and Status Quo Method: Quest for Coherent Protection of Human Rights before European Supranational Courts", *Strani pravni zivot*, Vol. 64, No. 4, 2020, pp. 27-40.

[10] Špela Zagorc, "Decision-Making within a Reasonable Time in Administrative Procedures", *HKJU – CCPA*, Vol. 15, No. 4, 2015, pp. 774-777; Ivana Roagna, *The right to trial within a reasonable time under Article 6 ECHR: A practical handbook*, Council of Europe, 2018.

[11] *The Administration and You: A Handbook, Principles of administrative law concerning relations between individuals and public authorities*, Council of Europe, 2018, pp. 34-35.

within a reasonable time has been met, including Articles 2 and 8 of the ECHR and Article 1 of Protocol No. 1 to the ECHR.[12]

Furthermore, it is important to stress that the ECtHR perceives the principle of reasonable time length in both administrative and judicial review procedure.[13] The ECtHR takes the position that the rules from paragraph 1 of Article 6 of the ECHR on a fair trial are also applied to proceedings before administrative bodies, given that the decision whether the proceedings lasted a reasonable time can only be made when the total duration of the dispute is assessed, which, possibly, arises already during the administrative procedure, and does not refer only to the administrative dispute.[14] Such ECtHR approach should encourage states to pay more attention to eliminating all possible delays at each stage of administrative procedure or judicial review/administrative dispute.

Finally, the ECtHR has explicitly pointed out that, when evaluating whether the principle of decision making within a reasonable time is respected, one needs to take into account not only the effectiveness of administrative authorities in the decision-making process, but also the parties' activity in that procedure. If a party wants this right to be recognized, he/she is obliged to show diligence in respecting and executing the procedural requirements that are relevant, to refrain from any tactical delays, as well as to use the opportunities provided by domestic law to shorten the procedure.[15]

## 3. Decision Making Within a Reasonable Time in Administrative Proceedings in the European Union

The right to good administration, which includes the right to a reasonable time for the adoption of an administrative decision, has been expressly regulated by Article 41 of the Charter. Notions such as good, sound, and proper administration have been present in the jurisprudence of the EU courts since the 1950s,[16] even before being incorporated in the Charter as one of the fundamental rights.[17]

[12] See for instance, Beyeler v. Italy [GC], App. No. 33202/96, Judgment of January 5, 2000; Dubetska and Others v. Ukraine, App. No. 30499/03, Judgment of February 10, 2011; Moskal v. Poland, App. No. 10373/05, Judgment of September 15, 2009; as referred to in: *The Administration and You: A Handbook, Principles of administrative law concerning relations between individuals and public authorities*, pp. 34-35.

[13] Ana Knežević Bojović, Vesna Ćorić, *Analiza efekata zakona o zaštiti prava na suđenje u razumnom roku*, Council of Europe, Belgrade, 2022, p. 8.

[14] N. M. Petrović, Z. Petrović, p. 145.

[15] Paragraph 35 of the Judgment of the European Court of Human Rights of July 7, 1989, in the case of Union Alimentaria Sanders S. A. v. Spain, App. No. 11681/85.

[16] The Joined Cases 1-57 and 14-57 Société des usines à tubes de la Sarre contre Haute Autorité de la Communauté européenne du charbon et de l'acier, ECLI:EU:C:1957:13; For other cases see: Herwig CD Hofmann, Cristian Mihaescu, "The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case", *European Constitutional Law Review*, Vol. 9, No. 1, 2013, p. 83.

[17] Zorica Vukašinović Radojičić, Aleksandra Rabrenović, "Theoretical Understandings of the Concept of a 'Public Servant': Towards a Common Definition", NBP, Journal of Criminalistics and Law, Vol. 25, No. 1, 2020, p. 54.

Some authors point out that this move was also prompted by an overarching need to reform and improve administration at the EU level.[18] The wording of the entire Article 41 of the Charter shows that good administration as a fundamental right is in fact prescribed in a relatively narrow sense, as a subjective right which can be invoked in single-case administrative decision making.[19]

When it comes specifically to the concept of reasonable time, or "reasonable period" in administrative decision making, there has been some doubt as to whether it is a general principle *per se* or a component of the principle of good administration. In that context, it is worth examining the Opinion of Advocate General (AG) Wathelet in the Marchiani v. Parliament case.[20] In his opinion, AG stated that the reasonable period principle is undoubtedly "linked intrinsically to the principle of legal certainty and the right to good administration" but is also a general principle of EU law.[21] In continuation, AG asserted that a breach of the principle of reasonable period constitutes an infringement of an essential procedural requirement or, at the very least, an infringement of the Treaties.

The CJEU has not set a generally applicable reasonable period for decision making in administrative proceedings, as there is a multitude of administrative proceedings and a number of time limits for the adoption of administrative decisions prescribed in various pieces of EU legislation. However, the European Code of Good Administrative Behavior, a set of guidelines designed to facilitate a "citizen-focused European administrative culture"[22] does spell out a definite timeline. More specifically, Article 17 of this Code prescribes that EU officials are to ensure that the administrative decision on every complaint or request is passed within a reasonable time, without delay, and in any case no later than two months from the date such complaint or request were received. The Code allows for a departure from the two-month period in case of the complexity of the matter raised. If that is the case, an official must inform the person who made the request or complaint of the delay, and is still obliged to decide within the shortest possible time.

The implications of the concept of good administration in EU law for accession countries should not be underestimated. The increasingly demanding accession process includes regular assessments of the state of affairs with regard to, *inter alia*, the functioning of public administration,[23] including decision making within a reasonable period of time in administrative proceedings.[24]

[18] Klara Kanska, "Towards Administrative Human Rights in the EU - Impact of the Charter of Fundamental Rights", *European Law Journal*, Vol. 10, No. 3, 2004, p. 298.
[19] HCH. Hofmann, C. Mihaescu, p. 87.
[20] Jean-Charles Marchiani v. European Parliament, Case C-566/14 P, Opinion of Advocate General Wathelet delivered on January 19, 2016.
[21] *Ibidem*, para. 31.
[22] Emily O' Reilly, *Foreword to the European Code of Good Administrative Behaviour*, available at: *https://www.ombudsman.europa.eu/pdf/en/3510*, 23. 8. 2024.
[23] Zorica Vukašinović Radojičić, Aleksandra Rabrenović, "Alignment of the Serbian Civil Service Legislation with the EU accession requirements", *EU and Comparative Law Issues and Challenges Series (ECLIC),* 2018, 2, p. 185.
[24] SIGMA/OECD, *Principles of Public Administration*, OECD Publishing, 2023, p. 32.

## 4. The Principle of Reasonable Time in Administrative Proceedings and Administrative Dispute in Serbia – a Gap Between the Legal Framework and Reality?

The principle of "a reasonable time" in Serbia is guaranteed by the Law on General Administrative Procedure primarily through the principle of economy and effectiveness of the administrative procedure.[25] This right is further elaborated through Article 145 of the Law, which prescribes that an administrative authority is bound to issue a decision within 30 days of initiation of the procedure, in case when it decides "directly" (without a hearing).[26] In case when an authority has to hold a hearing, i.e. does not decide directly, a deadline for deciding upon a party's request is 60 days.[27] This is in line with the European Code of Good Administrative Behavior which, as pointed out earlier, determines that administrative decisions upon every complaint or request should be passed within a reasonable time, without delay, and in any case no later than two months from the date such complaint or request were received.

If a first instance authority, however, does not decide within the reasonable time/deadline set out by the law, a party has the right to initiate an appeals procedure[28] before a second instance authority, as if his/her request has been rejected. An appeals procedure before the second instance authority can be initiated after a statutory deadline has expired and, at the latest, within one year after the expiration of the deadline.[29]

Another reason for the extensive length of administrative proceedings may be triggered by a situation where a second instance authority does not substantively decide upon a party's request, but returns it to a first instance authority to make a new decision. Although the Law on General Administrative Procedure prescribes this to be an exception rather than a rule,[30] the statistical data on administrative practices of Serbian ministries show that such a "ping-pong exercise" between the first and second instance authorities has been extensively used in practice.[31]

In case when a second instance authority (or the first instance authority, in case no appeal is permitted in the first instance procedure) does not respond

[25] Art. 9 of the Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 95/2018 – authentic interpretation and 2/2023 – Decision of the Constitutional Court.

[26] Art. 145, para. 2 of the Law on General Administrative Procedure.

[27] Art. 145, para. 3 of the Law on General Administrative Procedure.

[28] Art. 151, para. 3 of the Law on General Administrative Procedure.

[29] This one-year deadline was introduced by Art. 153, para. 2 of the Law on General Administrative Procedure in 2016, aiming to ensure legal certainty and prevent the situation where a party initiates an appeals procedure after an extensive period of time. See: Vuk Cucić, "Fino podešavanje Zakon o opštem upravnom postupku", *Anali Pravnog fakulteta u Beogradu*, Vol. 66, No. 2, 2018, p. 151.

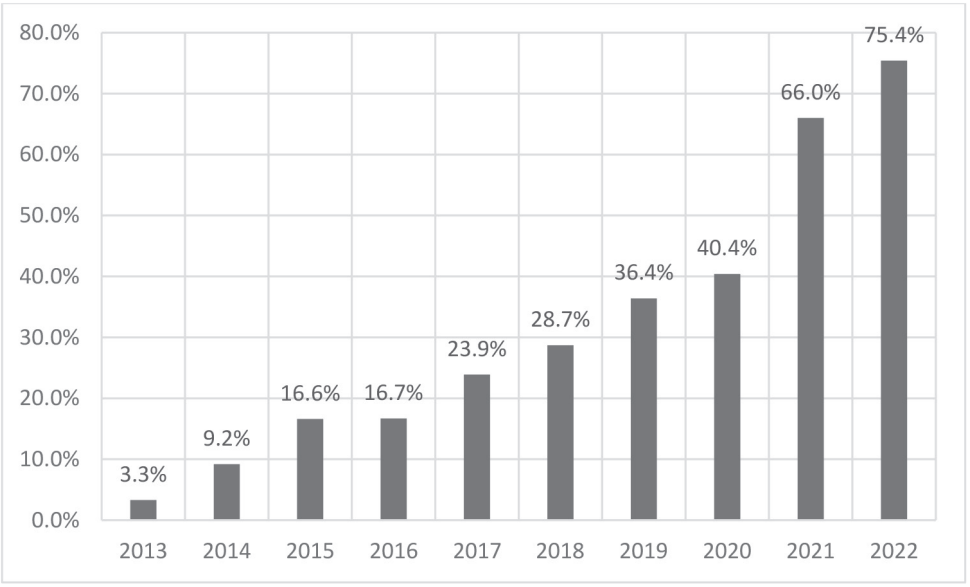
[30] Art. 171 and 172 of the Law on General Administrative Procedure.

[31] In the course of preparation of the draft Law on General Administrative Procedure (adopted in 2016), the competent ministry gathered the data from five Serbian ministries deciding in second instance administrative proceedings, which showed that in only 15.5% of cases second instance authorities decided upon a case substantively, while in 84.5% of cases the case was returned to the first instance authority. See: V. Cucić, p. 154.

to a party's request, there is a situation of so-called "silence of administration,"[32] which represents a breach of the principle of a reasonable time for proceedings. As it is very difficult to collect data on the duration of general administrative proceedings in practice, as no such comprehensive official statistics are available, we have examined the available statistics of the Administrative Court of Serbia to determine the number of cases which have been initiated due to the unreasonable length of procedure, i.e. "silence of administration" in Serbia.

The data obtained from the Administrative Court show a worrying trend of a significant increase in the number of cases related to "silence of administration" over the past 10 years. While in 2013 the percentage of "administration silence" cases in the overall number of cases of the Administrative Court was only 3.3 percent, in 2022, this percentage was 75.4 percent, which is an alarming trend. This means that in 2022 three quarters of all cases before the Administrative Court were those initiated on the basis of a breach of the reasonable time principle.

**Graph 1.** Share of "silence of administration" cases - disrespect for the reasonable time principle, in the overall number of cases of the Administrative Court of Serbia, 2013-2022




**Source:** Data of the Administrative Court of Serbia, obtained by the request for free access to information of public importance

Another open dataset on issuance of construction and exploitation permits, as special administrative procedures, provides additional valuable insights. In 2022, the average length by which all administrative authorities resolved submitted requests

[32] Art. 19 of the Law on Administrative Disputes, *Official Gazette of the Republic of Serbia*, No. 111/2009.

for the issuance of a building permit was 10 days, i.e., five days more than the legally prescribed deadline.[33] More than half of requests in cities are resolved within two to 18 days, while at the municipal level more than 90% of requests are resolved within 30 days.[34] These data show that reasonable time set by the statutory deadlines of special administrative procedures largely was not met. Still, in the vast majority of cases, the authorities were able to solve cases within 30 days, which corresponds to a reasonable time for decision making which is set out in the Law on Administrative Procedure.

Initiation of an administrative dispute before the Administrative Court can further prolong the length of decision making in administrative matters. For this reason, it is useful to pay additional attention to how the right to a trial within a reasonable time is observed before the Administrative Court.[35] The right to a trial within a reasonable time is enshrined in the Serbian Constitution and regulated in more detail by the Law on Protection of the Right to Trial within a Reasonable Time adopted in 2015.[36] Article 4 of the Law on Protection of the Right to Trial within a Reasonable Time takes into account the stance of the ECtHR which stipulates that when deciding on the legal means that protect the right to a trial within a reasonable time, all the circumstances of the subject of the trial are taken into account, as well as the entire duration of the entire previous proceedings.

The data on the number of cases initiated with respect to unreasonable length of administrative dispute before the Administrative Court for the period 2016-2022 show that the overall share of cases initiated under this title is rather low, ranging from 1% in 2016 when the right to a trial within a reasonable time was introduced, to 1.7% in 2019, with a downward trend of only 0.8% in 2022. A more detailed outline is presented in graph 2 below. These data demonstrate that the Administrative Court itself does not have a substantive number of cases related to the breach of the reasonable time principle, in spite of the fact that the judges of the Administrative Court are overburdened with a number of cases they deal with on a daily basis.[37]

[33] NALED, Annual Report of NALED's Association for Property and Investments on Issuing Construction Permits in Serbia in 2022, p. 2, available at: *https://naled.rs/htdocs/Files/12117/Godisnji-izvestaj-o-izdavanju-dozvola-u-vezi-sa-gradnjom-za-2022-godinu.pdf,* 1. 3. 2023.

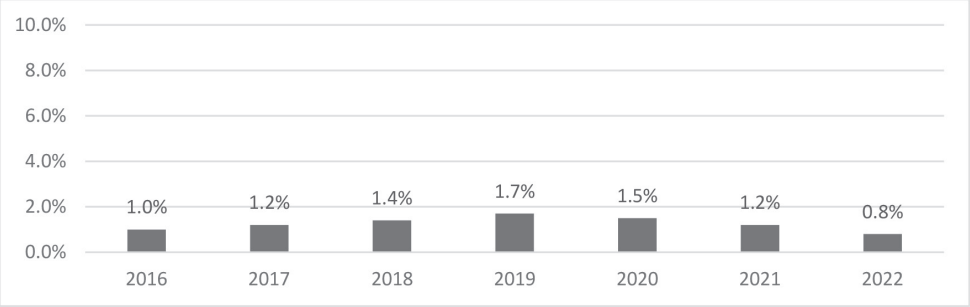
[34] *Ibidem*.

[35] Monika Milošević, Ana Knežević Bojović, "Trial within Reasonable Time in EU Acquis and Serbian Law", *EU and comparative law issues and challenges series (ECLIC), Procedural Aspects of EU Law* (eds. Dunja Duić, Tunjica Petrašević), No. 1, Osijek, 2017, pp. 447-470.

[36] Law on Protection of the Right to a Trial within a Reasonable Time, *Official Gazette of the Republic of Serbia*, Nos. 40/2015 and 92/2023. See: Vesna Ćorić, Ana Knežević Bojović, "Amendments to the Law on the Protection of the Right to Trial within a Reasonable Time – The Role of the Constitutional Court", *Sećanje na dr Jovana Ćirića – Putevi prava* (eds. Jelena Ćeranić Perišić, Vladimir Čolović), Beograd, 2023, pp. 63-83.

[37] On June 30, 2022, the average caseload of judges of the Administrative Court was 1,581.53 cases. See: *Report of the Administrative Court for the period from January 1 to June 30, 2022*, Administrative Court of the Republic of Serbia, 2023; Mihajlo Rabrenović, "Upravno pravo na prekretnici i pravna priroda upravnih aktivnosti: Osvrt na neke osobenosti nadzora nad delatnoscu osiguranja u Srbiji", *Evropska revija za pravo osiguranja*, No. 2, 2022.

**Graph 2.** Share of cases initiated for the procedure for the protection of the right within a reasonable time before the Administrative Court 2016-2022




**Source:** Administrative Court of Serbia 2016-2022

The key problem, however, seems to lie "somewhere in between" the Administrative Court and administrative authorities. During the administrative dispute procedure, the Administrative Court fairly rarely uses its powers to make a substantive decision upon an administrative matter,[38] due to a high workload and lack of capacity of its staff to handle such a significant caseload. Instead, it most often uses its cassation powers - it cancels the individual decision and, if necessary, returns the case to an administrative authority for a new decision-making process,[39] which poses additional risks for excessive duration of the procedure and breach of the principle of decision making within a reasonable time.

## 5. Conclusion

The right to decision making within a reasonable time in administrative procedure has started to attract considerable attention in recent years, both in the case law of the ECtHR and CJEU and in academic discussion. In Serbia, as in many other European countries, the right to a reasonable time in the decision-making process in administrative proceedings is stipulated primarily as a statutory deadline set out by the Law on General Administrative Procedure and legislation regulating special administrative procedures. The problem, however, as we could see from the available statistics of the Administrative Court, is that in many cases this right is not observed in practice.

The questions which naturally arise are what are the reasons for such a high increase in the cases in which administrative authorities obviously did not respect the principle of decision making within a reasonable time? Are the deadlines for decision making set out in the Law on Administrative Procedure appropriate, or should they be extended in order to take into account the current reality? Or does

[38] *Ibidem*, p. 151; Vuk Cucić, *Upravni spor pune jurisdikcije - modeli i vrste*, Pravni fakultet Univerziteta u Beogradu, 2016.

[39] N. Mrvić Petrović, Z. Petrović, p. 151.

the problem perhaps lie with the relatively short deadlines set out in so-called special administrative procedures established by special legislation? Is there a problem with the administrative capacity of administrative authorities who are deciding in administrative matters?

The findings of this research show that the deadlines for decision making in administrative procedure established by the Law on General Administrative Procedure (30 or 60 days) do not appear to be short or excessive. Most authorities deciding in administrative matters in the special procedures analyzed (construction or exploitation permits) are able to make their decisions within these general deadlines. Therefore, we do not see a need for amending the Law on General Administrative Procedure in this respect. However, in order to understand the depth of the identified problems further, we would need to have additional quantitative and qualitative data on general implementation of the Law on General Administrative Procedure in all authorities deciding upon the Law on General Administrative Procedure. Therefore, the development and implementation of this methodology seem to be a must for future progress in this field.

The second conclusion is that statutory deadlines stipulated by the special administrative procedures analyzed (for construction and exploitation permits) appear to be rather short (up to five days), as the majority of local administrative authorities are not able to observe them. There also appears to be a lack of adequate supervision over the implementation process of issuing these permits and a lack of adequate sanctions and accountability of local authorities in cases where the deadlines are not met.[40]

Third, in order to reduce the overall length of administrative proceedings, the competent authorities should examine the possibility of amending Article 173 paragraph 3 of the Law on General Administrative Procedure to exclude the possibility provided to a second instance authority to return the case to the first instance authority and oblige it instead to substantively decide in the second instance proceedings. In cases where the second instance authority is not able to determine all the facts of the case, it could ask a first instance body for assistance and then decide substantively.[41] In a similar vein, the Administrative Court needs to be encouraged to decide on the substance of the case in a dispute of full jurisdiction more frequently, not only in the interest of more effective protection of the interests of the parties, but also in the interest of the state that bears the burden of responsibility for damages due to the violation of the right to a trial within a reasonable time.[42] In that sense, it is recommended that the Law on Administrative Disputes be amended in order to, similarly to criminal or civil proceedings, limit the number of possible cassation decisions. This would, however, require significant prior

[40] State Audit Institution of Serbia, *Report on Efficiency of the Process of Issuing Construction and Exploitation Permits, Presentation*, December 20, 2023, available at: *https://www.dri.rs/storage/newaudits/2023-4-SV%20Efikasnost%20izdavanja%20dozvola.pdf*, 24. 8. 2024.

[41] This option was envisaged in one of the versions of the draft Law on General Administrative Procedure prepared during 2014-2015. See: V. Cucić, 2018, p. 155.

[42] N. Mrvić Petrović, Z. Petrović, p. 151.

strengthening of the capacity of the Administrative Court, both in terms of the number of judges and their specialization in particular administrative matters.

Finally, it is encouraging that the Serbian Supreme Court has recently adopted the stance of the ECtHR that if a party requests the protection of the right to trial within a reasonable time in an administrative dispute pointing to the long duration of the procedure as a whole, the duration of the administrative proceedings that preceded the filing of the lawsuit must not be ignored.[43] This shows that a comprehensive principle of decision making within a reasonable time is slowly but surely finding its way into the Serbian judiciary, which sheds a ray of light for a more effective implementation of this principle in both administrative proceedings and judicial review in the future.

## List of References

Andonović, S., "Pravo na odlučivanje u razumom roku u upravnom postupku u Republici Srbiji", *Sveske za javno pravo*, Vol. 10, No. 35-36, 2019, pp. 73-81.

Court of Justice of the European Union, Jean-Charles Marchiani v. European Parliament, Case C-566/14 P, Opinion of Advocate General Wathelet delivered on January 19, 2016.

Cucić, V., "Fino podešavanje Zakon o opštem upravnom postupku", *Anali Pravnog fakulteta u Beogradu*, Vol. 66, No. 2, 2018, pp. 139-163.

Cucić, V., *Upravni spor pune jurisdikcije - modeli i vrste*, Pravni fakultet Univerziteta u Beogradu, 2016.

Ćorić, V., Knežević Bojović, A., "Amendments to the Law on the Protection of the Right to Trial within a Reasonable Time – The Role of the Constitutional Court", *Sećanje na dr Jovana Ćirića – Putevi prava* (ur. Jelena Ćeranić Perišić, Vladimir Čolović), Beograd, 2023, pp. 63-83.

Ćorić, V., Knežević Bojović, A., "Autonomous concepts and status quo method: Quest for coherent protection of human rights before European supranational courts", *Strani pravni život*, Vol. 64, No. 4, 2020, pp. 27-40.

Dimitrijević, P., Odgovornost uprave za nečinjenje: sa posebnim osvrtom na "ćutanje" uprave, *Pravni fakultet*, Istočno Sarajevo, 2005.

European Court of Human Rights, Benthem v. the Netherlands, App. No. 8848/80, Judgment of October 23, 1985.

European Court of Human Rights, Beyeler v. Italy [GC], App. No. 33202/96, Judgment of January 5, 2000.

European Court of Human Rights, Dubetska and Others v. Ukraine, App. No. 30499/03, Judgment of February 10, 2011.

European Court of Human Rights, Moskal v. Poland, App. No. 10373/05, Judgment of September 15, 2009.

[43] Supreme Court of Cassation of Serbia, Case AA v. Administrative Court, No. 127/2020.

European Court of Human Rights, Regner v. Czech Republik [GC], App. No. 35289/11, Judgment of November 26, 2015.

European Court of Human Rights, Stokalo and Others v. Croatia, App. No. 15233/05, Judgment of October 16, 2008.

European Court of Human Rights, Union Alimentaria Sanders S. A. v. Spain, App. No. 11681/85, Judgment of July 7, 1989.

European Court of Justice, The Joined Cases 1-57 and 14-57 Société des usines à tubes de la Sarre contre Haute Autorité de la Communauté européenne du charbon et de l'acier, ECLI:EU:C:1957:13.

European Union, Charter of Fundamental Rights of the European Union, 2012/C 326/02, 26 October 2012.

Filatova, M., *Reasonable Time of Proceedings: Compilation of Case-law of the European Court of Human Rights*, Council of Europe, 2021.

Hofmann, H. CD., Mihaescu, C., "The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case", *European Constitutional Law Review*, Vol. 9, No. 1, 2013, pp. 73-101.

Kanska, K., "Towards Administrative Human Rights in the EU - Impact of the Charter of Fundamental Rights", *European Law Journal*, Vol. 10, No. 3, 2004, pp. 296-326.

Knežević Bojović, A., Ćorić, V., *Analiza efekata zakona o zaštiti prava na suđenje u razumnom roku*, Council of Europe, Belgrade, 2022.

Knežević Bojović, A., Ćorić, V, "Challenges of Rule of Law Conditionality in EU Accession", *Bratislava Law Review*, Vol. 7, No. 1, 2023, pp.41-62.

Law on Administrative Disputes, *Official Gazette of the Republic of Serbia*, No. 111/2009.

Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 95/2018 – authentic interpretation and 2/2023 – Decision of the Constitutional Court.

Law on Protection of the Right to a Trial within a Reasonable Time, *Official Gazette of the Republic of Serbia*, Nos. 40/2015 and 92/2023.

Lenaerts, K., Vanhamme, J., "Procedural Rights of Private Parties in the Community Administrative Process", *Common Market Law Review*, 1997, pp. 531-569.

Marjanović, D., "Procesni uslovi za podnošenje tužbe zbog ćutanja uprave", *Izbor sudske prakse*, No. 10, 2018, pp. 13-21.

Milošević, M., Knežević Bojović, A., "Trial within Reasonable Time in EU Acquis and Serbian Law", *EU and comparative law issues and challenges series (ECLIC), Procedural Aspects of EU Law* (eds. Dunja Duić, Tunjica Petrašević), No. 1, Osijek, 2017, pp. 447-470.

Mrvić Petrović, N., Petrović, Z., "Pravo na naknadu štete zbog nerazumnog trajanja upravnog postupka", *Prouzrokovanje štete, naknada štete i osiguranje*

(eds. Zdravko Petrović, Vladimir Čolović, Dragan Obradović), Institut za uporedno pravo, 2022, pp. 143-214

NALED, *Annual Report of NALED's Association for Property and Investments on Issuing Construction Permits in Serbia in 2022*, p. 2, available at: *https://naled.rs/htdocs/Files/12117/Godisnji-izvestaj-o-izdavanju-dozvola-u-vezi-sa-gradnjom-za-2022-godinu.pdf*, 1. 3. 2023.

O' Reilly, E., *Foreword to the European Code of Good Administrative Behaviour*, available at: *https://www.ombudsman.europa.eu/pdf/en/3510*, 23. 8. 2024.

Rabrenović, A., Malezić Rapajić, T., "Reforma javne uprave u Srbiji u kontekstu evropskih integracija", *65 godina od Rimskih ugovora: Evropska unija i perspektive evropskih integracija Srbije* (eds. Jelena Ćeranić Perišić, Vladimir Đurić, Aleksandra Višekruna), Institut za uporedno pravo, 2022, pp. 125-139.

Rabrenović, M., "Upravno pravo na prekretnici i pravna priroda upravnih aktivnosti: Osvrt na neke osobenosti nadzora nad delatnošću osiguranja u Srbiji", *Evropska revija za pravo osiguranja*, No. 2, 2022, pp. 9-17.

Report of the Administrative Court for the period from January 1 to June 30, 2022, Administrative Court of the Republic of Serbia, 2023.

Roagna, I., *The right to trial within a reasonable time under Article 6 ECHR: A practical handbook*, Council of Europe, 2018.

Sever, T., "Procedural safeguards under the European convention on human rights in public (administrative) law matters", *DANUBE: Law, Economics and Social Issues Review*, Vol. 9, No. 2, 2018.

SIGMA/OECD, *Principles of Public Administration*, OECD Publishing, 2023.

State Audit Institution of Serbia, *Report on Efficiency of the Process of Issuing Construction and Exploitation Permits, Presentation*, December 20, 2023, available at: *https://www.dri.rs/storage/newaudits/2023-4-SV%20Efikasnost%20izdavanja%20dozvola.pdf*, 24. 8. 2024.

Supreme Court of Cassation of Serbia, Case AA v. Administrative Court, No. 127/2020.

*The Administration and You: A Handbook, Principles of administrative law concerning relations between individuals and public authorities*, Council of Europe, 2018.

Zagorc, Š., "Decision-Making within a Reasonable Time in Administrative Procedures", *HKJU – CCPA*, Vol. 15, No. 4, 2015, pp. 769-790.

Vukašinović Radojičić, Z, Rabrenović, A., "Alignment of the Serbian Civil Service Legislation with the EU Accession Requirements", *EU and Comparative Law Issues and Challenges Series (ECLIC 2)*, 2018, pp. 184–200.

Vukašinović Radojičić, Z, Rabrenović, A., "Theoretical Understandings of the Concept of a 'Public Servant': Towards a Common Definition" *NBP, Journal of Criminalistics and Law,* 2020, 25 (1). pp. 53-64.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

340.134:35.077.3(497.11)(082)

**LAW on general administrative procedure** : contemporary tendencies and challenges : thematic collection / [edited by Srečko Devjak, Predrag Dimitrijević]. - Belgrade : Eurosfera & Partners : The Institute of Comparative Law ; Ljubljana : MLC Faculty of Management and Law, 2024 (Belgrade : Eurosfera & Partners). - 369 str. : graf. prikazi, tabele ; 24 cm

"The regional conference, on the topic 'Analysis of the Law on general administrative procedure in the service of the economy and citizens,' organized by the consulting firm 'Eurosfera,' which was held with the support of the National assembly of the Republic of Serbia, enabled a professional, collegial, and well-argued discussion of all current aspects of the Law on general administrative procedure, particularly on the effects of its implementation. The conference also served as an immediate inspiration for the creation of this collection of papers on this ever-relevant topic." --> Administrative legislation under the microscope. - Na spor. nasl. str.: Закон о општем управном поступку: савремене тенденције и изазови: тематски зборник. - Tiraž 100. - Napomene i bibliografske reference uz tekst. - Bibliografija uz svaki rad.

ISBN 978-86-82582-23-6 (ICL)

а) Управно право -- Зборници б) Управни поступак -- Законодавство -- Србија -- Зборници

COBISS.SR-ID 158363657