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## THE PROBLEM OF REASONABLENESS OF TIME IN THE CRIMINAL JUSTICE SYSTEM

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### SUMMARY

The article deals with the main theoretical positions concerning the problem of reasonableness of time in the criminal justice system. This article makes it possible to understand what precisely such reasonableness of terms and in what is expressed in violation of them, as well as compare this issue with civil procedural law.

**Key words:** reasonable timing, criminal proceedings, delaying the process, control of procedural terms, Criminal Procedure Code of Ukraine, European Court of Human Rights, Civil Procedural Code of Ukraine, participants in the criminal process.

### ПРОБЛЕМА РАЗУМНОСТИ СРОКОВ В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ

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### АННОТАЦИЯ

В статье рассмотрены основные теоретические положения, касающиеся актуальной на сегодняшний день проблемы разумности сроков в уголовном судопроизводстве Украины. Эта статья позволяет понять, что же такое разумность сроков и в чем выражается их нарушение, а также сравнить эту проблему с гражданско-процессуальным законодательством Украины.

**Ключевые слова:** разумность сроков, уголовные производства, затягивание процесса, контроль процессуальных сроков, Уголовный процессуальный кодекс Украины, Европейский суд по правам человека, Гражданско-процессуальный кодекс Украины, участники уголовного процесса.

**Formulation of the problem.** Nowadays, the problem of reasonableness of time is very actual, Since Ukraine is one of the young developing countries and to a greater degree cannot be clearly regulate the reasonableness of the terms in the criminal justice system. That is why this problem appears for the sake of ensuring human and citizenship rights.

**Actuality of the research topic** is that the issue of the institution of stopping criminal proceedings is devoted to many works of such domestic and foreign scientists, as V. Bykov, L. Bogoslovskaya, P. Yelkind, M. Yegorova, E. Zakirova, A. Kochetova, G. Kozhevnikov, I. Krivonos, A. Larin, V. Lomovsky, I. Maluyutin, V. Navrotska, E. Nalyvaiko, B. Romanyuk, M. Strogovich, O. Tatarov and others. But, there is no established approach to solution both theoretical and practical

issues of stopping pre-trial investigation in connection with the absence of a suspect, which became even more acute with the adoption of the new criminal procedural legislation of Ukraine.

**The purpose of the article** is the coverage of the problem in violation of the principle of reasonableness of time in the criminal justice system and to identify the factors that affect their non-compliance, as well as comparison with other branches of law.

**Presentation of the main research material.** Observance of the terms of criminal proceedings is an actual problem of the present. Let's turn to conditions of the current Criminal Procedural Code of Ukraine (then – CPC of Ukraine). The system of the principles of criminal proceedings is provided in art.7 CPC of Ukraine, naming an article is not “rea-

sonableness time”, by analogy with the name of the very basis, but “reasonable term”, which, in our opinion, acquires a completely different content [1]. It should be noted that according to Part 1 of Art. 28 CPC of Ukraine reasonable terms are considered which are objectively necessary for the conduct of procedural actions and the adoption of procedural decisions. There can be no questions about this statement. In fact, in our opinion, it was precisely by this provision that the “fate” was resolved of the reasonableness of time as a basis for criminal. According to O. Yanovska, complaints about non-observance of reasonable time by the investigator, the prosecutor are filed with the prosecutor, who carries out procedural guidance in criminal proceedings and has the right to demand from the investigating authorities to eliminate violations of the law, which



were accepted during the pre-trial investigation. It should be noted that the European Court of Human Rights (then – ECHR) defines the following aspects, namely:

1. The complexity of criminal proceedings. It may be due both to the actual circumstances of the case and to the various legal aspects related to the case indirectly [2]. An example can be: Case «Trosin against Ukraine», application № 39758/05, judgment of 23 February 2012 [3].

2. Behavior of participants in criminal proceedings. Considering the behavior of participants in criminal proceedings is an important factor, since the responsibility for violating the formal terms due to the behavior of a suspect, accused, lawyer, aimed, for example, to delay the process, is mainly carried out by the investigator. The negative behavior of the participants in criminal proceedings is an objective case that cannot be blamed on the part of the prosecution or court and is taken into account in determining the fact of exceeding the reasonable term of criminal proceedings. At the same time, the ECHR is guided by the fact that a suspect or accused person cannot be held liable for delaying the terms of investigation or trial, which resulted in non-observance of reasonable terms of criminal proceedings if these persons used all forms of appeal provided for by law [2]. An example can be: Case “Orlik against Ukraine”, application № 27454/11, judgment of February 11, 2016 [3]. The way in which the interrogator, prosecutor and the court exercise their powers during the examination of the case, the ECHR argues that the postponement of the consideration of the case, the appointment and conduct of an examination, and the participation of the judge in the consideration of other cases by themselves are not in conflict with the law [2]. An example can be: Case “Teliga and others against Ukraine” (Statement № 72551/01) and “Mukhin against Ukraine” (Application No. 39404/02) [3].

Therefore, noting that the consolidation of the principle of “reasonableness of time” in the CPC in itself will not be a guarantee of the rights of participants in the criminal process. As can be seen from the example of administrative and civil proceedings, where the requirement to observe reasonable terms has appeared much earlier, it is a very long distance from the appearance of a certain norma-

tive requirement in the legislation until it is effectively implemented. All of this can be very simply explained, namely, the absence of mechanisms to control the procedural terms. If we talk about criminal proceedings, then more or less effective monitoring of compliance with the procedural terms is carried out only at pre-trial investigation.

Investigating the pre-trial investigation, there are three aspects that are regulated at this stage: firstly, the CPC of Ukraine clearly provides for terms for the investigation of criminal proceedings, secondly, supervision over observance of the law in the pre-trial investigation, including the terms, is carried out both by the prosecutor and the court, and, thirdly, for the violation of the procedural terms, legal liability can be applied to the perpetrators – from disciplinary to criminal [4].

Therefore, the greatest delays in criminal proceedings take place at the trial stages of the process. This situation is explained by the following factors: the absence of terms for criminal proceedings, the absence of effective control over the observance of the terms of judicial review of criminal proceedings and the difficulty in bringing the perpetrators to justice for delaying the trial. When calculating the reasonable time of the inquiry, the Court only takes into account the terms of conduct by the authorities of those actions that are appropriate. The term spent in the course of checking of non-achievable processes of a formal nature or actions that impede the proper conduct of an investigation (pressure on judges, etc.), or actions that were necessary for the investigation, but the authorities, if possible, did not show their intention to reduce their time expenditures, the Court is considered to be negative, and in the calculation of the due (reasonable term) investigation is not counted. The Court also emphasizes that the absence of sufficient number of judges and their congestion cannot justify an increase in the length of the trial [5].

Referring to the Convention, which entered into force on 11.09.1997 for Ukraine, and has undertaken to observe and guarantee at the national level, a catalog of human rights, which contained in the Convention and its additional protocols to it. Among such rights, takes on a special place the right to fair and public hearing within a reasonable terms by an inde-

pendent and impartial tribunal established by law, which is enshrined in Article 6 of the Convention. Taking into account the above, it can be said that everything seems to be so simple, but in reality it is not so, because both the Convention and the CPC of Ukraine, while guaranteeing rationality, allow violation of this norm. What is evidenced by the statistics of complaints, which established the facts of violation of the laws of the right to a fair trial, is almost half (45,01%) [6]. Therefore, the ECHR repeatedly draws attention to the similarity of complaints filed under Article 6 of the Convention due to a violation of the reasonable term for the consideration of cases by national courts of Ukraine, which requires the adoption of measures of a general nature, without which it is impossible to properly implement the rules of this article in the internal law and order [7]. In particular, the standard for determining the reasonableness of time are provided in Part 3 of Art. 28 CPC of Ukraine, which, in essence, fully correspond to the practice of the ECHR, which indicates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case. In considering the statements, the European Court of Human Rights assesses the compliance by the national authorities of the pre-trial investigation and the courts with the criteria for determining the reasonableness of the timing of criminal proceedings in aggregate and examines the suitability of the conduct of both the applicant and the relevant government agencies. In the event that the applicant's inappropriate conduct has contributed to the inadequacy of reasonable terms for proceedings, the state authorities are not exempted from liability for their violation, since they are required to conduct criminal proceedings in accordance with the terms established by the CPC of Ukraine. Judges should be aware of personal responsibility for reviewing cases in accordance with statutory time limits, for reviewing cases, for delinquency, and for taking all necessary measures to ensure strict compliance with the procedural deadlines. Comparing the Civil Procedure Code of Ukraine with the Criminal Procedure Code of Ukraine, which clearly defines the terms of the proceeding, the terms for filing and reviewing appeals and cassation complaints, the following should be emphasized that such regulation does not guarantee consideration and reso-



lution of the case within a reasonable time. The reason for the violation of the reasonableness of time is to delay the trial – this is the referral of cases for reconsideration or consideration of newly discovered conditions. For example, in a criminal proceeding, actions are defined, the purpose of which is to delay the investigation or trial of a case. In particular, they include: avoiding the appearance of participation in the conduct of investigations and other procedural actions; absence for participation in procedural actions, in which the participation of a defense counsel is obligatory; delaying the term of familiarization with the materials of the case, etc. These procedural offenses should be characterized by the purpose stated in the law – to delay the investigation or trial of the case. In the civil process, the party concerned may artificially “delay” the trial, for example, by not appearing before a court session, abusing its procedural rights, such as the right to challenge a judge, the right to engage in other persons, the right to a statement petitions on various issues, etc. [8]. Comparing the reasons for non-observance of the timeliness of civil proceedings, the following aspects can be distinguished: unsuccessful consolidation of Article 157 of the Civil Procedure Code of Ukraine in regard to the fact that the commencement of the deduction of a term in a civil case begins from the day the proceedings are opened, and not from the moment the claim is filed in court; systematic absence without valid reasons for court hearings of the parties to the case and persons who are other participants in the civil process; the actions of the participants of the process, directed at deliberately delaying the consideration of the case (for example, a petition for a judge to be divorced, a case trial collectively, submission of additional evidence to the court, etc.); delays in the consideration of disputes may also occur as a result of late due diligence; violation of the requirements stipulated by chapter 3 of the CPC regarding the proper preparation of the case for trial; absence of legal remedies for the judiciary of our state in case of violation of the terms established by law for consideration of a civil case; heavy workload, insufficient number and inexperience of court personnel [9].

**Findings.** Therefore, on the basis of the aforementioned problem of the violation of terms in criminal proceedings is relevant and requires a more detailed

consideration and a concrete solution. The greatest delays in criminal proceedings take place at the trial stages of the process. We believe that today the main task of the legislator should be the development of an effective action for ensuring reasonableness of term, namely the formation of a system of effective legal means, which would allow to achieve a balance of realization of public and legal personal interests of specific individual of criminal procedure proceedings in the maximum approximation to the individual circumstances of the legal dispute.

So comparing civilian problems of violation of reasonable terms with the criminal process it should be noted that the reasons for their non-compliance are similar, namely, delaying the trial with the aim of avoiding justice in all possible ways.

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