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RATIONALITY OF TERMS AS THE BASIS FOR CRIMINAL PROCEEDINGS OF UKRAINE

According to Art. 2 Code of Ukraine 1960 the priority task of criminal justice system is to protect the rights and legitimate interests of natural and legal persons involved in it. [3] Similarly, the task of the criminal proceedings set out in Art. 2 Code of Ukraine in 2012, according to which primary importance is the protection of individuals, society and the state against criminal offenses, protection of rights, freedoms and legitimate interests of participants in criminal proceedings [4] One of these rights is provided by the participants of criminal proceedings Part 1 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. [1]

In the legal literature research concepts and criteria reasonable time proceedings in criminal cases devoted sufficient attention. However, a comprehensive analysis of the principles of reasonable time of the criminal proceedings were not carried out by scientists. The foregoing necessitated the setting as a goal of this article reasonable time study principles of criminal proceedings with the norms of the CPC of Ukraine in 2012 and the case law of the European Court of Human Rights.

At the present stage of the criminal procedure law national legislator considers the reasonableness of the terms of Proceedings in Criminal Matters among the principles of criminal justice. So, Part 1 Ch. IV Concept for improving the justice system to ensure fair trial in Ukraine in line with European standards, approved by the President of Ukraine from 10.05.2006, № 361/2006 (hereinafter - the Concept) provides that proceedings should be based on a system of general principles, among which applies the principle of reasonable time proceedings obliges the court to decide the case without undue delay and avoid haste which prejudice a fair trial. [2] Similarly, the provisions of Part 1 Ch. IV Concept reasonableness of the terms of proceedings in criminal matters defined in the Code of Ukraine 2012, p. 28 of which ("reasonable time") is included in Chapter 2 ("Principles of Criminal Proceedings") [4].

However, attention is drawn to the difference in the legal definition of reasonable time proceedings by the existing criminal procedure law and the provisions of the CPC of Ukraine in 2012. Thus, in Part 1, Art. 6 § § 1 and Sec. IV Concept reasonableness of the terms of proceedings in criminal cases is fixed by imposing the obligation on the court to hear a case within a reasonable time [1, 2]. Unlike Part 1, Art. 6 § § 1 and Sec. Concept IV, § § 1, 2 and 5. 28 Code of Ukraine 2012 extends the application of the principle of reasonable time proceedings in criminal cases, not only at the trial stage, but also at the stage of preliminary investigation.

The position is provided in the CPC of Ukraine in 2012, is more accurate and meets the interpretation of the European Court of Human Rights Part 1 of Art. 6 of the Convention when considering allegations of permitted pre-trial investigation authorities and courts of violations of human rights enshrined this rule. Thus, in 32 Judgment of 22.11.2005, the case "Antonenkov and others v. Ukraine" (application number 14183/02) states that Part 1 of Art. 6 used throughout the proceedings to decide on the validity of any criminal charge [7]. In this case, the European Court of Human Rights notes that in determining the reasonableness of the terms of the criminal proceedings should be taken during the stages of criminal proceedings against the person (eg, § 40 Decision of 22.11.2005, the case "Antonenkov and others v. Ukraine" (application number 14183/02), p. 100 Judgment of 26.07.2007, the case "Belyaminson against Ukraine" (application number 31585/02) [7, 10]. Thus, based on the interpretation of the European Court of Human Rights, in determining reasonable time proceedings take into account the total length of time the criminal proceedings from the time the person bringing an accused (in cases where the criminal case against the person - since the initiation and in cases which entail the appearance of a suspect in a criminal case - from the moment of detention on suspicion of a crime or the person applying precaution pending the decision to prosecute her as an accused) and ending with the final decision in a criminal case.

Criteria for determining reasonable time proceedings set out in Part 3. 28 Code of Ukraine in 2012, which among them include: 1) the complexity of the criminal proceedings, and 2) the behaviour of participants in criminal proceedings, and 3) the manner in which the investigator, the prosecutor and the court of its authority. [4] However, the last-mentioned criteria are not sufficiently clear. Thus, in the above situation does not specify used the term "way of power" that can not clearly define it. In this regard, seen more appropriate to speak not about the manner in which authority and the attitude of persons engaged in criminal proceedings, to the proper performance of their duties.

Guidance criteria for reasonable time proceedings in criminal matters in the CPC of Ukraine in 2012 by the jurisprudence of the European Court of Human Rights, which states that the reasonableness of the length of proceedings must be assessed in light of the particular circumstances of the case, taking into account the criteria elaborated by the European Court of Justice, in particular the complexity of the case and conduct of the applicant and the relevant authorities. In addition, also has taken into account the nature of the process and the importance it had for the applicant (eg, § 101 Judgment of 26.07.2007, the case "Belyaminson v. Ukraine" (application number 31585/02) § 29 Decisions from 20.09.2007, the case "Serduk against Ukraine" (application number 15002/02) [10, 11].

Another criterion that should be considered in determining the reasonableness of the terms of the criminal proceedings is of the suspect (accused) in custody and reaching the age of eighteen. Such a criterion is proposed to consolidate in the new Code of Ukraine. Thus, § 4. 28 Code of Ukraine 2012 provides that criminal proceedings against the person detained minor must be made without delay and in court primarily considered [4]. This criterion takes into account the European Court of Human Rights, which states that the fact that during the period of the proceedings the applicant was in custody, the court required a zeal for rapid trial (eg, p. 69 Judgment of 04.04.2006, in case "Kobtsev v. Ukraine" (application number 7324/02),

§ 37, judgment of 31.01.2006 in case "Yurtayev v. Ukraine" (application number 11336/02) [8, 9].

According to the law of the European Court of Human Rights, failure reasonable time proceedings in criminal violation of § 1 of Art. 6 of the Convention and entails bringing to justice state that the property is nature. As indicated in the letter from the President of the Supreme Court of Ukraine of 25.01.2006 № 1-5/45, state responsibility for delaying the proceedings, usually occurs in the case of irregular appointment hearings, appointment hearings with large intervals, with a transfer delay or forward a case from one court to another court not taking action to discipline the parties in the case, witnesses, experts, and re-refer the case back for further investigation or a new trial. [5]

In considering the application the European Court of Human Rights estimates compliance by national authorities and courts of preliminary investigation criteria for determining reasonable time proceedings in criminal cases together and explore affiliation behaviour as the applicant and the relevant authorities. If the improper conduct of the applicant contributed to the infringement a reasonable time of the proceedings, the authorities are not exempt from liability for their violation, as they obliged to implement proceedings in criminal matters in accordance with established deadlines in the Code of Ukraine. For example, point 69 Judgment of 08.11.2005, the case "Smirnova v. Ukraine" (application number 36655/02) European Court of Human Rights noted that although the national legislation does not provide any special means against tactics puffs, the courts have had in its disposal sufficient mechanism to ensure the presence of the applicant in court. It is not freed the courts from having to comply with the requirements of a reasonable time in accordance with Part 1 of Art. 6 of the Convention, as the duty of rapid administration of justice relies, primarily, on the relevant authorities. [6]

In conclusion, it should be noted that due to the need for providing and observance of reasonable time of proceedings in criminal matters it is needed to establish in the criminal procedure law clear criteria of determining their rationality and to enforce them through a clear definition of the mechanism responsible for the violations and the state, and officials engaged in proceedings in criminal matters as well. While doing it, it is necessary to consider the interpretation of the European Court of Human Rights Part 1 of Art. 6 of the Convention, stated in relevant decisions rendered after consideration of allegations of permitted pre-trial investigation authorities and courts of violations of human rights consolidated by this rule.

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