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THE REQUIREMENT OF ADHERENCE TO THE REASONABLE TERMS IN THE UKRAINIAN CRIMINAL PROCESS AS A DISPLAY OF THE REALIZATION OF THE PROCEDURAL ECONOMY PRINCIPLE.

Despite the long-time existence of discussions in Soviet and later Ukrainian criminal procedure theory on the reasons of referring the idea of procedural economy to the list of principles of justice, today's realities are such that more and more scientists agree that the efficiency of criminal proceedings depends on compliance with such three requirements as quickness, simplicity and cheapness. With limited resources allocated to the war against crime, their rational and economical use is a priority in the activities of state bodies and officials engaged in criminal proceedings. They should also respect the time, effort and money to other participants in criminal proceedings (witnesses, experts, victims, etc.) spent by them to participate in the proceedings. Therefore, we consider the requirement of procedural economy absolutely deserves to be called the principle of criminal justice.

It is important for the successful implementation of this principle to provide specific mechanisms in the criminal procedure legislation which should guarantee the principle's proper implementation.

One of the most important of these mechanisms is the definition of deadlines in the law of criminal justice, the violation of which would indicate its ineffectiveness. Procedural terms are set by law, legal act or decision of the official authority terms for performing by subjects of criminal procedural relations specific activities (sometimes refrain from them) or making procedural decisions [1, p.168]. The institute of procedural terms is intended to provide a significant feature of the effective criminal process as quickness. Thus, procedural terms indirectly influence the achievement of other characteristics of the effective justice - simplicity and cheapness, because these features are closely interrelated. The quickness and simplicity of the process makes less procedural expenditure of time, funds, physical and psychological forces of participants of the proceeding, and in turn, a reasonable expenditure of these resources, refusal of groundless procedural activities, unjustified use of unnecessary procedural means, – all this accelerates and simplifies the process.

Therefore, the systematic violation of procedural terms is a significant problem for today virtually all types of proceedings. Of course, this practice is very harmful for a variety of reasons.

First, the delay in criminal investigation reduces the chances of complete, comprehensive and objective discovery of all circumstances.

Secondly, the principle of opportune justice, according to which the purpose of individual and general crime prevention demands that measures of criminal liability or other legal measures, applied to the guilty, should be as close as possible to the moment of the crime.

Thirdly, undue delay in the commission of certain proceeding activities and criminal hearings increases procedural costs – for both the country as a whole and for specific participants of the proceeding.

Fourth, the systematic violation of procedural terms provokes a reasonable reaction of the community in the form of disbelief in the possibility of law enforcement and judicial systems to protect human rights, distortion of sense of justice among the population, which watching the systematic and gross violations of the law by those who are in a position to protect the rule of law, makes conclusion - the law may not be followed always.

And, fifth, infringement of procedural terms has a significant burden on the budget, through the appointment of compensations by the European Court of Human Rights to claimants, whose right to a fair trial was violated, at the expense of the state. These funds could be spent for other purposes, including the financing needs of law enforcement and judicial systems.

With this in mind, the criminal justice institute of procedural terms should be really effective mechanism for regulating criminal procedure relations, an incentive for better and more timely implementation by participants their tasks and functions.

The importance of determining in the legislation the terms of proceedings, including criminal, is recognized on the international level. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for the right of every person to have a case, in which he (she) is a party, tried by a court within a reasonable time. In particular, Article 6 of the Convention provides that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the determination of his civil rights and obligations or of any charges against his criminal prosecution.

Given the fact that cases of violation of reasonable time justice is one of the most common types of cases that are dealt with by the European Court of Human Rights (hereinafter "the European Court"), today a pretty solid practice of applying the provisions of Article 6 of the Convention concerning compliance with reasonable the term of pre-trial and trial is formed. And taking into account, that a large portion of all cases that are tried with this court are the cases on the suits of citizens against Ukraine, the legal position of the European Court is very important for the process of law in Ukraine.

In 2011, the European Court’s decisions, in which breaches by the national competent authorities of requirements for the reasonable terms of proceedings, was ranked first (341 decisions) in the structure of the Court, representing nearly 30% of all judgments. [2]

Ukraine, which is traditionally one of the leaders, among the countries that have recognized the jurisdiction of the European Court, by the appeals of their citizens to this judicial institution, took up in 2011 the first place among all EU members by the number of violations of the Convention on reasonable terms (66 decisions) [2]. In 2007, by this indicator Ukraine took the 4th place with 34 similar solutions, so that the trend is obvious. [3]

It is the requirement of the Convention and the European Court of Human Rights to which cases of violation of reasonable terms are common, that stipulated that the provisions on reasonable terms gradually entered the Ukrainian procedural codes - Code of Administrative Procedure, Civil Procedure Code, and in 2012 - the Criminal Procedure Code of Ukraine.

However, even before these changes to the law were made, the law enforcement practice had to adapt to the requirements of the Court. The theme of reasonable terms more than once became the subject of research and debate by Ukrainian scholars and practitioners over the past few years.

And the highest judicial body of Ukraine - the Supreme Court - also couldn't evade this issue, given the fact that it is the courts in most cases which are responsible for violation of Art. 6 of the Convention hearing the cases for unreasonably long time. Based on the case-law of the European Court, the Supreme Court of Ukraine has formulated its own position to comply with reasonable terms in his letter to the heads of the appellate courts of 25.01.2006 № 1-5/45 "As for exceeding of reasonable terms of trials".

In particular, he stressed that "the duration of the criminal proceedings starts after bringing in an indictment against the accused person, the detention of a person suspected of committing a crime or his (her) examination as a suspect (even after questioning the person as a witness, if the interrogation protocols testify that the investigator had suspected the examined person of involvement in a specific crime), depending on which of the specified events occurred earlier, and ends with the final decision in a criminal case. At the same time the term of criminal proceeding is not divided on pre-trial investigation and trial and should be analyzed relative to its reasonableness as a whole" [4].

Criteria for evaluating the reasonableness of the terms of the case are common to all categories of cases (civil, commercial, administrative or criminal). They are: the complexity of the case, the applicant's conduct and behavior of public authorities (courts primarily). State responsibility for delaying the proceedings, usually occurs in cases of irregular appointment of hearings, appointment of hearings with large intervals, delay in transmission or forwarding a case from one court to another, failure to take measures to discipline the parties in the case, witnesses, experts, re-sending the case back for additional investigation or a new trial.

The new Code of Criminal Procedure provides very much attention to the adherence to reasonable terms in criminal proceeding. Moreover, the reasonableness of the terms elevated to the rank of a principle of criminal proceeding (Article 7 of the CPC of Ukraine).

The substance of the principle is disclosed in Article 28 of the CPC, according to which during the criminal proceedings every procedural action or judicial decision must be made or received within a reasonable term. A reasonable term is considered as an objectively necessary period for the performance of the procedural activities and making procedural decisions. Reasonable terms may not exceed the deadlines of certain procedural activities or taking certain procedural decisions, stipulated by CPC.

Thus, reasonable terms are included within the limits of deadline procedural terms defined in absolute measures - days, months, years. But not necessarily the reasonable term corresponds to the deadline - it can be much shorter. If the maximum period of pre-trial investigation in cases of crimes is set for 2 months, it does not mean that in simple cases it should last exactly 2 months - without unnecessary delay, it can be completed in a period of several days, which should be considered as a reasonable term for this case.

This approach of the legislator is logical. Reasonable terms are individual for each case. In the same article in Part 3 the legislator provides the criteria for determining the reasonableness of terms: 1) the complexity of the criminal proceedings, 2) the behavior of the participants of proceedings, and 3) the manner in which the investigator, the prosecutor and the court executed their powers. This gives grounds to a suspect, an accused, a victim or any other person interested in the results of certain procedural action to require fulfillment of this action before the deadline ends. Thus, there may be a situation that was previously impossible - acting within the limits of procedural terms set by law, the investigator, prosecutor or court nevertheless violate the requirement of reasonable terms. This will encourage those responsible for the proceeding of the case not to delay certain procedural activities, until the expiration of the preliminary investigation deadline.

Thus, the introduction of provisions on reasonable terms to the criminal procedure law should be considered as definitely positive step, aimed at the approaching of the national criminal justice system to EU standards.

However, this change itself is not a guarantee of the rights of participants in the criminal process. As we can see from the example of administrative and civil proceedings, where the requirement of reasonable terms appeared much earlier - since the entry into force of the relevant procedural codes, i.e. from September 1, 2005, – there is very large distance from the appearance of a regulatory requirement in the legislation to its effective implementation. It is not so much the fact that, unlike criminal proceedings, in administrative and civil proceedings the requirement of reasonable terms has no status of a procedural principle, but the lack of effective mechanisms for monitoring compliance with procedural deadlines.

If we talk about criminal process, more or less effective enforcement of procedural deadlines was carried out only during pre-trial investigation. First, the CPC has always provided clear deadlines for pre-trial investigation, and secondly, observance of the law on pre-trial investigation, including adherence the terms, was made by both the prosecutor and the court, and thirdly, for violation of procedural terms to perpetrators could be applied measures of legal responsibility - from disciplinary to procedural. Therefore, most delays during criminal proceedings have always happened in courts. The similar situation exists in other types of proceedings (except commercial, due to the specific rules of this type of process). This situation is due, in our opinion, the following factors: lack of deadlines of criminal proceedings on the whole, the lack of effective control over the adherence of the terms of trial and the difficulties of bringing the judges guilty for delays to responsibility. And if the influence of first factor to some degree is diminished by the appearance in Criminal Procedure Code of a requirement of reasonable terms, the other two factors are significant reasons that contribute to a violation of procedural deadlines in criminal proceedings. The judiciary is an independent branch of government, the courts and judges in their work are independent of any undue influence, pressure or intervention (Part 1 of Art. 47 of the Law of Ukraine "On the Judicial System and Status of Judges"). This means that such an effective way in other cases to protect by citizens their rights against unlawful acts or decisions of public bodies or their officials as complaints to higher authorities, prosecutor offices, in respect of courts and judges would be ineffective.

Enforcement of legislation on reasonable terms subject to judges is implemented by using the institute of legal responsibility for violations. The most effective mechanism for ensuring proper implementation by officers of their professional duties traditionally disciplinary responsibility is considered. However, in the case of judges, the effectiveness of this institution, in our opinion, is not high for several reasons. Thus, the law provides a procedure for bringing judges to disciplinary responsibility for failure by a judge to consider an application, a complaint or a case within the period, prescribed by law (Section 2, Part 1, Art. 83 of the Law of Ukraine "On the Judicial System and Status of Judges"). However Art. 88 of the same Law provides for only one type of disciplinary measure - a reprimand. This approach of legislators about judges goes beyond the traditional for our domestic concept of discipline responsibility multi-elemental system of disciplinary sanctions - from two penalties (reprimand and dismissal) for all employees in accordance with the Labour Code of Ukraine, for example, to eight - for law enforcement officers under of the Disciplinary Statute of the employees of Interior Affairs Authorities. And always the strictest measure is the termination of professional activities. Installing several types of penalties that differ by consequences for the offender, can individualize disciplinary responsibility depending on the severity of the offense and the personal characteristics of the offender. If the law

provides only one type of sanctions, especially not related to dismissal, it reduces the preventive effect of the threat of force.

The most interesting in this context is that the law actually provides for the removal from office for breach of oath (Article 105 of the Law of Ukraine "On the Judicial System and Status of Judges"), but for the some reason does not consider it as a disciplinary sanction. The same position is obviously based solely on a literal interpretation of the law, and has the High Qualifications Commission of Judges of Ukraine [5]. At the same time, in terms of the grounds for such dismissal, as well as the conventional approach to the institution of disciplinary proceedings for virtually all professions in our country, there is every reason to regard the release of this disciplinary case basis for non-fulfillment or improper fulfillment of their professional duties (rather, for violation of oath). Here, the problem is not just that formal dismissal for violation of the oath is not among disciplinary action and that the conditions disciplining judges do not apply to the dismissal of judges. Nowhere in the law does not find an answer to a question that the statute of limitations is set to address the question whether the acts or omissions of a violation of oath of a judge for a decision on release. Nowhere established procedure for the issue of violation of the oath of the High Qualifications Commission or the High Council of Justice. This negative impact on the efficiency of the institution. In accordance with Part 2 of Art. 32 Law of Ukraine "On the High Council of Justice" violation of oath of office, in particular, lies in the deliberate delaying the timing of the case the judge over legal limit. However, in practice, dismissal for this reason is uncommon. Thus, from 2007 to the 1st half of 2012 only 15 judges were dismissed for violation of oath by the President of Ukraine, and 52 judges for the same reason - the Verkhovna Rada of Ukraine, and violations of procedural deadlines in no case was the main factor that is indicative of a violation of the oath. Typically, the basis of the findings of violation of oath was a gross violation of substantive and procedural law in particular cases, and non-timing was just kind of "circumstance that weighed responsibility."

Another reason that stops potential complainants to artificially delay the process judges are unwillingness to "spoil relations" with the judge who hears the case. In most cases the mere appeal to the High Qualifications Commission of Judges of Ukraine or the High Council of Justice, as well as bringing judges to disciplinary action will not lead to a change in the court in a particular case.

All these factors make an appeal to the High Qualifications Commission of Judges of Ukraine and the High Council of Justice of Ukraine is not quite effective mechanism of protection of the right to a speedy trial.

Application to the European Court of Human Rights in the case of clear violation of the right to a fair trial in breach of reasonable time usually gives a positive result for the applicant, but the mechanism of protection of individual rights difficult in terms of specific procedures for the preparation and submission of the present judicial institutions and, again, a positive result can be obtained only through a long period of time, while losing relevance to the applicant.

In view of the above, the introduction of criminal justice Ukraine generally positive position to follow reasonable procedural terms shall be supported by an effective mechanism for monitoring its compliance with responsible actors. One such mechanism is the adoption of a special law aimed at those involved in compensation for damage caused violations of procedural terms. In many countries, such laws are accepted and play an important role in preventing undue delays the process.

European Court whose decisions led European governments to establish national mechanisms for the protection of the right to trial within a reasonable time. Thus, in the case of 'Kudla v. Poland, "the Court found a violation of Article 13 because the applicant did not

have at their disposal an effective domestic remedy whereby he could exercise his right to a" hearing within a reasonable time "pursuant to paragraph 1 Article 6 of the Convention. In particular, the Court pointed to the lack of domestic law any special legal means by which the applicant could appeal the length of the proceedings and to accelerate it [6]. The applicant could not obtain proper compensation for the delay in hearing. In this regard, the Court ordered Poland to pay the applicant a significant amount of just satisfaction for the violations. In pursuance of the decision specified Poland adopted June 17, 2004 Law "On complaints of violations of the right side in the court proceedings in the trial within a reasonable time" [7].

In order to bring domestic legislation into conformity with the requirements of the Convention in Italy a law passed March 24, 2001, which establishes the legal means of resolving the dispute regarding "reasonable" length of proceedings at the national level. To implement the decisions of the European Court of Human Rights as adopted by the relevant laws in Croatia, the Slovak Republic, Portugal and Finland. [7]

The Russian Federation has also been adopted by the Federal Law № 68-FZ of 30.04.2010r. "On compensation for the violation of the right to justice within a reasonable time or the right to enforce the act within a reasonable time." However, this law is not without drawbacks, because it sets the compensation for the violation of the right to trial within a reasonable time to be determined at the discretion of the court. In addition, liability for breach of the right to justice within a reasonable time was personified, that is possible to bring those responsible for delaying the proceedings to the liability law provides. The right to appropriate authorities regarding the treatment of recourse provided only to collect money from those responsible for the violation of the right to enforce the act within a reasonable time, not the right to justice within a reasonable time.

In our country the current Law of Ukraine "On Implementation and application of the European Court of Human Rights" the decision of the European Court is, in particular, in taking general measures aimed at ensuring compliance of the provisions of the Convention, which established a violation of the decision of the European Court of address the underlying systemic problems that underpin the European Court identified violations and eliminate reasons for submission to his claims against Ukraine caused a problem that has already been criticized by the court. General measures, in particular, amendments to existing legislation and practice. Thus, the provisions of this law would be the impetus for the adoption of a law that would have provided national mechanism undue delay renewal of the pre-trial, trial rights of stakeholders.

However, to date, in Ukraine this law is passed though the bill "On Amendments to Certain Legislative Acts of Ukraine on protection of the right to pre-trial judicial authority or enforcement proceedings within a reasonable time" was developed by the Ministry of Justice of Ukraine and was even submitted to the Verkhovna Rada of Ukraine № 3665 [8]. The essence of this bill was to ensure that a person who believes that a violation of her right to pre-trial judicial authority or enforcement proceedings within a reasonable time, an opportunity to appeal to the Administrative Court against the state administrative agency or officer who should tightening in procedural terms, the finding of a violation and award appropriate compensation. However, having generally negative opinion of the Central Scientific Expert Department of the Verkhovna Rada of Ukraine [9] and actually having prospects to be adopted, was withdrawn 11.03.2010, the Cabinet of Ministers of Ukraine. More to the adoption of such a law, even the revised taking into account the comments made by the Ukrainian authorities did not return. This, of course, does not contribute to acceleration of the criminal process, eliminating unnecessary delays proceedings which regularly occur in different types of legal proceedings, including criminal. With all the shortcomings, which had the bill in it, in our opinion, there was a very sensible rule

regarding personalization those responsible for such violations in the assumption - the court's decision to grant the claim is grounds for bringing legal responsibility of person (s), with caused by circumstances which have arisen which caused the breach of the right to a reasonable time in the exercise of pre-trial proceedings before a judicial authority or enforcement proceedings (clause 11 of the bill).

Therefore, without making changes to the legislation that will set an effective national mechanism to protect the right to pre-trial proceedings and trial within a reasonable time, the principle of procedural economy in criminal justice can not be realized fully.

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