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THE COURT'S PROVISION OF REASONABLE TIME IN CRIMINAL PROCEEDINGS

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Abstract

This article aims to define theoretical and practical importance of the “reasonable time” principle in criminal proceedings. We analyze the conceptions of legal developments on reasonable time in criminal proceedings as regards the efficiency of justice. The position of the European Court of Human Rights and the Russian comprehension of the regulations on reasonable time in pretrial proceedings serve as a basis for determining importance and correlation between circumstances considered in setting reasonable time. We analyze legislative rules on determining reasonable time in criminal proceedings and the possibilities of parties to participate in accelerating procedures.

Keywords

Criminal case – Independence of judges – Procedural terms

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Introduction

Constitutional right to defend one's rights in case of their violation should be executed on time. The effectiveness of redress correlates with the timeliness of defense, i.e. criminal proceedings should have reasonable time limits. The issue of determining reasonable time in criminal proceedings is related to the known restrictions on constitutional rights of parties.

Materials and methods

In this work, we have used the results obtained with legal statistics analysis, interviews, and comparative and legal research, i.e. content analysis of materials from investigative and court practice in the Russian and European criminal proceedings. The results of the content analysis are used to justify the suggested point of view.

Result analysis

Russian citizens' complaints filed to the European Court of Human Rights (hereinafter – ECHR) are evident of the importance of right violation on the reasonable time of criminal proceedings. These complaints are related to the extended time limits of criminal proceedings. It should be noted that it is not the case of specific criminal proceedings but overall time limits of criminal proceedings that can be deemed reasonable. These aspects are also mentioned in scientific writing¹.

European "standards" for a reasonable period of judicial proceedings in criminal cases are stated in article 6 paragraph 1 of the Convention for the protection of human rights and fundamental freedoms, Concluded in Rome on 04.11.1950 (with ed. from 13.05.2004) (hereinafter – the Convention), which States that in the determination of their civil rights and obligations or against them, any criminal charge is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In addition, the requirement to ensure prompt and effective remedies is stated in the Declaration of basic principles of justice for victims of crime and abuse, adopted on 29.11.1985 by UN General Assembly Resolution 40/34, which implies the right of people who have been harmed to have access to justice mechanisms and prompt compensation for the damage caused to them in accordance with national legislation, as well as the right to adequate assistance throughout the trial and to prevent unnecessary delays in the consideration of cases.

The above mentioned international legal provisions concerning the reasonable period of judicial proceedings and the related right of citizens to compensation for violation of the right to legal proceedings within a reasonable time are also reflected in the decisions of the constitutional Court of the Russian Federation (e.g., in the decisions of 19 July 2011 No. 17-P and 22 April 2013 No. 8-P, 11 November 2014 No. 28-P; decisions of 17 April 2003 No. 123-O, 16 November 2006 No. 493-O, 17 November 2009 No. 1427-O, and 23 March 2010 No. 388-O-O, from may 13, 2014, No. 975-o, etc.).

¹ V. V. Pushkarev; P. V. Fadeev; S. A. Khmelev; N. Van Tien; E. A. Trishkina y A. A. Tsviliy-Buklanova, "Crimes in the Military-Industrial Complex", International Journal of Recent Technology and Engineering Vol: 8 num 3 (2019): 7950-7952 y V. V. Pushkarev, A. Gaevoy, A. V. Skachko, A. Kolchurin, D. N. Lozovsky, "Criminal Prosecution and Qualification of Cybercrime in the Digital Economy", Journal of Advanced Research in Dynamical and Control Systems Vol: 11 num 8 (2019): 2563-2566.

The content of the current Criminal Procedure Code of the Russian Federation (hereinafter – Code of Criminal Procedure) regulations on reasonable time of criminal proceedings raised to the rank of a principle of criminal proceedings is enshrined in article 6.1, in accordance with the Federal Law from 30. 04. 2010 g. № 69-FZ). During the validity of this principle in the normative version, as embodied in the code of criminal procedure, has evolved and has been complemented by additional provisions on the basis of a number of known Federal Laws of July 21, 2014 № 273-FZ , 29 Jun 2015 № 190-FZ, December 30 2015 No. 440-FZ.

Such close attention of the legislator emphasizes the importance of this principle and its "viability", which is expressed in a true practical implementation, causing the need for clarification by the legislator of its legal regulation.

First of all, we consider it appropriate to note that the inclusion of the principle of a reasonable period of criminal proceedings in the system of modern principles of criminal procedure of the Russian Federation was not far-fetched and premature, on the contrary, the need to take into account its requirements resulting from the recognition by the Russian Federation of legal values proclaimed by ratified international acts. The normative expression "reasonable time for criminal proceedings" as a criminal procedure principle is a well-founded fact.

However, along with this, scientific assessment of the principle of "reasonable time for criminal proceedings" cannot be characterized by an unanimity of views. In this work we do not set the purpose to go deep into characteristics of the properties of the reasonable time principle for criminal proceedings, we will only express our solidarity with those scientists who have no doubts about the usefulness of the reasonable time principle for criminal proceedings.

When it comes to a direct analysis of the content of the principle of reasonable time for criminal proceedings, from the point of view of determining the features of its provision in court proceedings. First of all, it will be appropriate to determine the limits of the principle of reasonable time in criminal proceedings in court proceedings.

We will begin with the position of the ECHR, regarding the calculation of the limits of a reasonable period of criminal proceedings. According to his legal position in the case of Kalashnikov V. Russia (complaint No. 47095/99, § 124), the time when a reasonable period of time for proceeding starts with an individual charge specification for detainees and ends when the criminal proceedings are finished.

The criminal procedure legislation of Russia fully complies with this position. In accordance with part 3 of article 6 of the Criminal Procedure Code, the beginning of a reasonable period of criminal proceedings is associated with the beginning of the criminal prosecution and ends with the termination of the criminal prosecution or the moment of conviction. When it comes to the limits of determining the period of reasonableness of judicial proceedings, it should be calculated from the moment the judge accepts the case for his own production, confirmed by a procedural decision on a court session appointment for a specific criminal case. The end of a reasonable period of time in court proceedings coincides with the end of the duration of the entire reasonable period of legal proceedings, marked by the final decision for the criminal case: a sentence or a decision to terminate the criminal prosecution.

Therefore, it is obvious who is responsible by the law on criminal procedure for observing a reasonable period of judicial proceedings.

The main subject of ensuring the reasonableness of the terms of judicial proceedings in criminal cases is the presiding judge. In the process of exercising their power, they must be guided by clear criteria that determine a reasonable period of time for the duration of judicial proceedings. Clear stands are developed on this issue, both at the level of the ECHR and at the level of Russian legislation.

The criteria for assessing the reasonableness of criminal proceedings duration, from the ESCHP experience are the complexity of the case, the applicant's behavior, the actions of the competent authorities, and the applicant's degree of risk (Panchenko V. Russia, February 8, 2005, complaint No. 45100/98, § 129).

The reasonableness of proceedings duration, in the opinion of the ESCHP, is also based on what is important in the case for the applicant (the Decision of the Grand Chamber of the European Court of justice in the case "Kudla V. Poland", § 124). Note that it is the court actions that are considered by the ECHR as one of the criteria for determining the reasonableness of the duration of criminal proceedings.

The content of these criteria are almost completely reproduced in the legal standpoints of the Constitutional Court of the Russian Federation indicating that the criteria which should be considered in assessing the reasonableness of criminal proceedings term, to take into account such circumstances as "legal and actual complexity of criminal case, behavior of participants of criminal proceedings, sufficiency and efficiency activity of the court, the prosecutor, the head of the investigative body, the investigator, the chief of division of inquiry, the body of inquiry, the interrogating officer, for timely implementation of criminal prosecution or criminal case consideration, and the total duration of criminal proceedings"².

Legal position of the Constitutional Court of the Russian Federation is stated in article 61 part 3 of the Criminal Procedure Code of the Russian Federation.

We are going to define the problem of modern law enforcement practice in relation to the question under consideration and to propose a possible solution, when the assessment of the reasonableness of pre-trial detention cannot be given in abstracto. The assessment is required for each case, taking into account specific features, arguments from the decisions of national courts, and documented facts mentioned in the application for custody release.

The extension of the period of detention can only be justified by the existence of specific indications of a genuine necessity of protection the public's interests, which, despite the presumption of innocence, outweigh the principle of respect for the individual's freedom (see, among others, case W. V. Switzerland, judgment of 26 January 1993, Series A No.

² The Constitutional Court of the Russian Federation ruling on 11 November 2014 "on a petition case regarding article 1 part 1 of the Federal law "On compensating for the right to the reasonable time of proceedings" and article 61 part 3 of the Criminal Procedure Code of the Russian Federation as regards petitions by Kurochkin V. V., Mikhaylov A. B., and Rusinov A. S. Rossiyskaya gazeta, November 21, 2014. Retrieved from: <https://rg.ru/2014/11/21/sud-dok.html>

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254-A, p. 15, § 30; case Labita V. Italy [GC] § 152) (case "Klyakhin V. Russia" (Complaint No.46082/99) ECHR Ruling. Strasbourg, November 30, 2004).

There are no regulatory obligations for the parties (not officials) concerning proactive efforts of the party aimed at observing a reasonable period of judicial proceedings in the case.

Concerning this issue, the ECHR, in accordance with the provision enshrined in article 6 of the Convention, emphasizes that the specified normative regulation does not require a person prosecuted to actively assist the court (the ruling of the European Court of justice in the case "Dobbertin V. France" (Dobbertin V. France) of 25 February 1993, Series A, No. 256-C, p.117, § 43).

At the same time, to guarantee reasonable duration of judicial proceedings act (part 5, article 6 of the Code of Criminal Procedure) provides the parties (stakeholders) the right to appeal to the President of the court for acceleration of the case consideration, if criminal case investigation is delayed or ignored for long time since the time it was received.

As follows from the content of article 6 part 6 of the Criminal Procedure Code of Russian Federation, an application for speeding up a criminal case investigation is considered by the Chairman of the court no later than 5 days from the date of its receipt in court. Based on the results of consideration of this application, the Chairman of the court makes a reasoned ruling, which determines the term of the court session for the case and (or) other procedural actions may be taken to accelerate case consideration.

Conclusion

1. The presiding judge is obliged to track the length of the total period of proceedings in court, which is the sum of procedural terms, clearly defined by law and are usually strictly observed. Generally, time losses occur during inter-stage periods of trials.

2. In our opinion, optimization of the trial period can be achieved by: 1) effective preparation for criminal case investigation; 2) enhancing legal techniques during the organization and right at the time of case consideration; 3) using a lower bound of the procedural terms defined by law.

3. According to law conferring powers that allow "intrusion" into the course of judicial proceedings carried out by another judge on the president of the court, he becomes a subsidiary subject of ensuring a reasonable duration of judicial proceedings.

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