DOI: https://doi.org/10.46991/SL/2025.100.061

REASONABLE TIME AS A PRINCIPLE OF CRIMINAL PROCEDURE

SAMVEL DILBANDYAN[*]
Yerevan State University

Abstract. This article is devoted to several issues of theoretical and practical application of the principle of "Reasonable Time of Criminal Proceedings". The mentioned principle was enshrined in the current Code of Criminal Procedure for the first time and has not yet been sufficiently studied in the domestic procedural literature. In addition, in practice, it is often violated due to objective or subjective factors, which naturally gives rise to serious concern. Today, there are numerous cases when judges are subject to disciplinary liability for the fact of violation of a reasonable time in the proceedings they are examining. It is worth noting that the public is quite negatively disposed towards cases of prolonged examination of criminal cases. The fact that the prolonged examination of criminal cases leads to the expiration of the statute of limitations for bringing a person to criminal liability provided for by the Criminal Code, as a result of which persons who have committed a crime are released from criminal liability, is even more unacceptable. This circumstance belittles the role of justice among the public. Of course, there are also problems that are objective obstacles to the implementation of criminal proceedings within a reasonable time. In particular, the lack of deadlines for conducting preliminary investigations before initiating criminal prosecution, the lengthy implementation of expert examinations, as well as the failure of participants in the proceedings to appear at the trial are problematic. Therefore, it is important to provide guarantees that should ensure the possibility of conducting proceedings within a reasonable time.

Keywords: *criminal proceedings; principles of criminal proceedings; criminal prosecution; pre-trial proceedings; trial; reasonable time; criteria for a reasonable time; violation of a reasonable time.*

Introduction

A number of fundamental ideas have been developed in international law, which are of vital importance for ensuring the protection of individual rights and

[*] Head of the Department of Criminal Procedure and Criminalistics, faculty of law, YSU, Doctor of Law, Professor , Email - s.dilbandyan@ysu.am, ORCID - 0000-0001-6494-2791

The article received 07 February 2025,
reviewed 26 February 2025,
accepted for publication 20 May 2025

freedoms within the framework of criminal proceedings. One of such ideas is the right to consider a case within a reasonable time, which has been enshrined in domestic legislation as a principle of conducting proceedings. Before being enshrined in law, it was used in practice and in the case law of the RA Court of Cassation. Such use is due to the fact that ratified international treaties form an integral part of our legal system and are a source of criminal procedure law. Regardless of practical application, we believe that the enshrining of these and many other rights in the legislation is an important guarantee for their effective application. The ongoing judicial and legal reforms in the republic aim to bring domestic legislation into maximum compliance with these values. The abovementioned particularly applies to the current Criminal Procedure Code of the Republic of Armenia (2021)[1], which enshrines a number of rights that constitute the components of the right to a fair trial. Among these rights, the right of a person to have his or her case examined within a reasonable time should be emphasized.

Despite its practical application, the principle of "Reasonable Time of Conduct" was first enshrined in the current Code. The principle mentioned in the domestic procedural literature has not been analyzed in depth theoretically; we assume that the reason was the absence of a separate legislative regulation. In the science of criminal procedure law, there is no unified approach to the concept of "Reasonable Time of Conduct" and its characteristic features; therefore, the theoretical study of the mentioned principle is relevant both for the further development of legislation and its effective application.

Summary of the main material

Among the international treaties, the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in resolution 2200 A (XX) on December 16, 1960, should be highlighted. According to Article 9, paragraph 3, of the said Covenant: "Everyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial or release within a reasonable time." The internationally accepted approach is that "justice delayed is justice denied."[2]

The idea of conducting proceedings within a reasonable time is also enshrined in the European Convention for the Protection of Human Rights and Fundamental

[1] Hereinafter: Code.

[2] ECHR, Cases of (for example, ECHR, Cases of Vazagashvili and Shanava v. Georgia, application no. 50375/07, 18/07/2019, and Lopatin and Medvedskiy v. Vazagashvili and Shanava v. Georgia, application no. 50375/07, 18/07/2019, and Lopatin and Medvedskiy v. Ukraine, applications nos. 2278/03 and 6222/03, 20/05/2010.

Freedoms, adopted on November 4, 1950. Thus, according to Article 5 § 3 of the European Convention: "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be subject to guarantees that he will appear for trial".

According to Article 6(1) of the European Convention: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The European Court of Human Rights has repeatedly referred to the content of the requirement to conduct a trial within a reasonable time, also emphasizing the importance of this requirement. The latter, in particular, noted that by requiring a trial "within a reasonable time", the Convention emphasizes the fact that justice should not be administered with such delays as may jeopardize its effectiveness and credibility[3]. By ratifying the aforementioned international treaties, the Republic of Armenia simultaneously undertook an obligation to bring its legislation into line with the standards set forth in the aforementioned treaties.

This right, enshrined in international treaties, was implemented in national legislation. Thus, according to Article 63, Part 1 of the Constitution of the Republic of Armenia: "Everyone has the right to a fair, public, and reasonable hearing within a reasonable time by an independent and impartial court."

The principle of reasonable time was enshrined in Article 9 of the Constitutional Law of the Republic of Armenia, the Judicial Code of the Republic of Armenia, according to which: "The examination and resolution of the case must be carried out within a reasonable time". It should be noted that the legislator, taking as a basis the precedent decisions of the European Court, also enshrined in the mentioned article the criteria that are taken into consideration when determining the reasonableness of the duration of the examination of the case in court, in particular: 1) the circumstances of the case, including the legal and factual complexity, the behavior of the participants in the proceedings and the consequences of the lengthy examination of the case for the participant in the proceedings, 2) the actions taken by the court in order to carry out the examination and resolution of the case in the shortest possible time and their effectiveness, 3) the total duration of the examination of the case, 4) the average guideline duration

[3] Cases of H. v. France, application no. 10073/82, 24/10/1989, and (Cases of H. v. France, application no. 10073/82, 24/10/1989, and Katte Klitsche de la Grange v. Italy, application no. 12539/86, 27/10/1994.

of the examination of the case (including by stages) established by the Supreme Judicial Council (Article 9, Part 2 of the Constitutional Law of the Republic of Armenia, the Judicial Code of the Republic of Armenia). The Constitutional Court of the Republic of Armenia By decision of the Supreme Judicial Council of Armenia (DCC-1585) of March 16, 2021, the Judicial Code of the Republic of Armenia addressed the constitutionality of Article 9 of the Constitutional Law of the Republic of Armenia and highlighted the issues that are important for maintaining the principle of conducting proceedings within a reasonable time in our judicial system. In particular: "The Constitutional Court of the Republic of Armenia records that the legal regulations enshrined in the contested provision, in terms of the effectiveness of the criteria for assessing the reasonableness of the time limit for examining a case, taking into consideration also the existing practice of the European Court of Human Rights and the legal possibilities for applying them in domestic practice, are consistent with the constitutional right to a fair trial and do not impede the provision of the requirement to conduct the examination of the case within a reasonable time, which is a component of that right. At the same time, the Constitutional Court considers it necessary to emphasize that although the legislator has also provided for the average benchmark duration of the examination of the case, established by the Supreme Judicial Council, as a criterion for assessing the reasonableness of the time limit for examining the case, the latter has not exercised the authority reserved to it by Article 89, Part 1, Paragraph 28 of the Code until the adoption of this decision. The Constitutional Court finds that if the Supreme Judicial Council exercises its stated authority and if the competent authorities effectively respond to violations of the reasonable time limit for the examination of a case, it is possible to practically increase the level of effectiveness of maintaining the reasonable time limit for the examination of a case, as assessed by taking into consideration the criteria set out in the contested provision, as well as those identified by the European Court of Human Rights".

Thus, the European Court of Human Rights distinguishes the following as criteria for assessing the reasonableness of the duration of the case examination: the complexity of the case, the conduct of the applicant and the relevant authorities, the importance of the subject of the dispute for the applicant[4]. Moreover, according to the positions expressed by the European Court of Human Rights, the complexity

[4] Cases of Comingersoll (Cases of Comingersoll S.A. v. Portugal [GC], application no. 35382/97, 06/04/2000, Frydlender v. France [GC], application no. S.A. v. Portugal [GC], application no. 35382/97, 06/04/2000, Frydlender v. France [GC], application no. 30979/96, 27/06/2000, and Sürmeli v. Germany [GC], application no. 75529/01, 08/06/2006): 30979/96, 27/06/2000, and Surmeli v. Germany [GC], application no. 75529/01, 08/06/2006.

of the case may be related to both facts and questions of law[5]. The interested party is only required to exercise diligence in the performance of the procedural steps concerning him, to refrain from resorting to delaying tactics and to avail himself of the scope provided for by domestic law to shorten the duration of the proceedings[6].

The European Commission for Democracy through Law (Venice Commission) has also addressed the issue of the effectiveness of national remedies in relation to the excessive length of the examination of a case, noting, in particular, that in order to fully comply with the requirements of Article 13 of the Convention in relation to the reasonable time requirement laid down in Article 6 § 1 of the Convention, member States of the Council of Europe must first provide for expeditious measures designed to prevent any (further) undue delay at any time before the end of the examination of the case. In addition, they must provide for remedies for any breach of the reasonable time requirement that has already occurred during the examination of the case (before the effective expeditious measures have been applied)[7].

The Criminal Procedure Code of the Republic of Armenia for the first time enshrined the principle of reasonable time limits for proceedings among the principles of criminal proceedings. According to Part 1 of Article 24 of the Code: "The preliminary investigation and trial must be completed within a reasonable time limit. The body conducting the criminal proceedings is obliged to exercise due diligence within its jurisdiction to complete the proceedings within a reasonable time limit". It follows from the mentioned norm that during the criminal proceedings all procedural actions must be performed, and procedural acts must be made within a reasonable time limit.

The institution of deadlines during the conduct of criminal proceedings is of great importance, as it ensures the effective implementation of the tasks of the proceedings. M.S. Storgovich's assertion that the legal effectiveness of a particular action depends on the observance of procedural deadlines is fair[8]. The principle of reasonable time limits underlies the balanced protection of public and private interests. Keeping people in a state of uncertainty about their fate for too long should be avoided[9].

---

[5] Case of Katte Klitsche de (Case of Katte Klitsche de la Grange v. Italy, cit.). la Grange v. Italy, cit.
[6] Case of Union Alimentaria Sanders S.A. v. Spain, application no. 11681/85, 07/07/1989). Spain, application no. 11681/85, 07/07/1989). (Case of Union Alimentaria Sanders S.A. v. Spain).
[7] CDL-AD (2006)036rev, 03/04/2007.
[8] M.S. Strogovich, Course of Soviet Criminal Procedure, Moscow, Vol. 1, p. 2017.
[9] The right to trial within reasonable time under Article 6 ECHR: A practical handbook, Ivana Roagna, 2018, p. 16.

A reasonable time limit may arise not only for the accused, but also for all private participants in the proceedings, including a person not involved in the proceedings, whose rights have been limited (for example, when a seizure has been placed on his property or his property has been recognized as tangible evidence, which has deprived the person of the right to dispose of property for a long time).

A separate chapter is provided in the Code of Criminal Procedure regarding time limits, their calculation, as well as the consequences that may arise in case of their violation. Time limits are necessary not only for the timely exercise of their rights and obligations by public but also by private participants in the proceedings. The Code of Criminal Procedure provides for both specific and reasonable time limits for the performance of procedural actions, the adoption of procedural acts and their appeal. The requirement to perform procedural actions within a reasonable time is enshrined in the Code in various institutions. Thus,

1) In the event of the removal of the public prosecutor from the proceedings or the impossibility of his further participation for any other reason, the public prosecutor shall be replaced by another prosecutor. The court shall grant the new public prosecutor involved in the proceedings a reasonable period of time to study the criminal case and prepare the defense of the charge, taking into consideration the complexity of the proceedings, the time already spent on the court proceedings and other circumstances (Article 273, Part 2 of the Code).

2) The court shall grant the new defense counsel involved in the proceedings a reasonable period of time to study the criminal case and prepare the defense of the accused, taking into consideration the complexity of the proceedings, the time already spent on the court proceedings and other circumstances (Article 273, Part 5 of the Code).

3) The court shall make a decision to postpone the hearings. In each case, the hearings shall be postponed for a reasonable period of time, taking into consideration the specifics of the circumstances preventing the continuation of the proceedings and the nature of the measures taken to eliminate them (Article 278, Part 4 of the Code).

4) The deposition of the testimony shall be scheduled within a reasonable period of time, but not later than 10 days after the decision provided for in Part 1 of this Article is made (Article 308, Part 2 of the Code).

5) The Court of Cassation shall examine the appeal within a reasonable period of time (Article 384, Part 1 of the Code).

6) In the event of recognizing a person as a property defendant, the hearings shall be postponed for a reasonable period of time, giving the property defendant

the opportunity to exercise the rights provided for by this Code (Article 317, Part 4 of the Code).

7) A judicial act issued by the Court of Cassation as a result of a special review shall enter into legal force from the moment of its publication, and in the case of proceedings in a written procedure, on the day of its issuance. The judicial act shall be sent to the participants in the judicial proceedings and the relevant lower court within a reasonable period of time (Article 400, Part 2 of the Code). The abovementioned indicates that the application of the concept of "reasonable period of time" in the Code changed the approach; that is, a transition was made from the definition of specific terms to the evaluative category.

The main requirement of the principle of reasonable time for proceedings is that the body conducting the proceedings conducts the criminal proceedings without delays, that is, not speedy trials, but the exclusion of unjustified delays. The speed of the proceedings should never harm the disclosure of the objective truth, the proper exercise of the right of the participants in the proceedings to a fair trial. The Code devotes more space to the legal regulation of conducting procedural actions within a reasonable time, that is, refusing to set specific deadlines.

Today, the conduct of criminal proceedings within a reasonable time is quite problematic in both pre-trial and judicial proceedings. Unlike judicial proceedings, in pre-trial proceedings, maximum terms of criminal prosecution are provided for according to the severity of the crimes, within which the pre-trial proceedings must be completed. The provision of terms of criminal prosecution in pre-trial proceedings is justified so that there are no artificial delays on the part of the preliminary investigation body and due diligence is demonstrated.

The Code has changed the approach to calculating time limits in pre-trial proceedings and has provided for final deadlines for conducting criminal prosecution in pre-trial proceedings. The period of preliminary investigation was replaced by the period of criminal prosecution, which corresponds to the position of the European Court[10]. Criminal proceedings are conducted until the person who committed the alleged crime is identified and a decision is made to initiate criminal prosecution against him.

Today, in the absence of a decision to initiate criminal prosecution, it seems that there are no procedural control measures over the timely conduct of criminal proceedings. Before the decision to initiate criminal prosecution is made, there should also be effective supervisory or control measures over this procedure of criminal proceedings so that the decision to initiate criminal prosecution is not

[10] ECHR, Foti and others v. Italy, no. 7604/74, para. 52; ECHR, Corigliano v. Italy, no. 8304/78, para. 34.

postponed by the preliminary investigation body without justification. It is true that departmental control and prosecutorial control are established over the legality of pre-trial proceedings, but in reality they do not ensure the reasonableness of the conduct of the preliminary investigation.

The urgency of initiating criminal proceedings stems from the principle of investigation within a reasonable time of proceedings. Unlike the previous Code, when a 10-day period was set for initiating a criminal case to prepare materials, the current Code eliminated the stage of initiating a criminal case and established the requirement to initiate criminal proceedings immediately after receiving the report. From the point of view of initiating criminal proceedings, it fits into the idea of common sense, as it obliges the public participant in the proceedings to immediately respond to the prevention and disruption of a publicly dangerous act.

A new approach was adopted in the legislation in pre-trial proceedings; that is, the term for conducting criminal proceedings was abolished and replaced by the term for criminal prosecution, from which the reasonableness of the term for conducting pre-trial proceedings is already determined. Of course, accepting this legislative innovation, a question arises at the same time, and a reasonable term should not be envisaged in connection with the making of the said decision, since the case of a crime exists, criminal proceedings have been initiated in connection with the fact of the actions of the person who allegedly committed a criminal act, but criminal prosecution is not initiated.

Regulations ensuring the reasonableness of the process of conducting a preliminary investigation before the initiation of criminal prosecution are not envisaged. This is actually problematic both for ensuring the protection of the rights and legitimate interests of persons affected by the crime, as well as for the effective protection of the interests of the person who committed the alleged crime, who does not yet have the status of an accused, but criminal proceedings have been initiated in connection with the fact of his alleged criminal act or inaction. In reality, it is possible that these deadlines may be extended for quite a long time before the person is charged.

Today, the timely performance of expert examinations appointed during criminal proceedings has become quite problematic, which significantly affects the conduct of proceedings within a reasonable time. The delay in the performance of an expert examination may be due to a number of circumstances, in particular, the complexity of the examinations, as well as the workload of experts. A study of practice shows that in most cases, the extension of the term of criminal prosecution for obtaining an expert opinion is due not to the complexity of the examination, but to the workload of experts. Of course, if criminal prosecution has not been

initiated, then there are no procedural mechanisms for the timely performance of the examination, which we believe is problematic, since in many cases the initiation of criminal prosecution is conditioned by the expert's conclusion.

In order to conduct criminal proceedings within a reasonable time, the forced presentation of persons involved in criminal proceedings to the body conducting the proceedings has become quite problematic. Not always, private participants in the proceedings or persons assisting in the proceedings appear on time when summoned by the body conducting the proceedings. Failure to appear for various reasons leads to an artificial delay of the proceedings not only by days, but also by months. There is no doubt that the problem exists, but there are still no effective measures or solutions provided for by law to regulate it. The investigative body, which the court instructs to forcibly present a person involved in criminal proceedings who has not appeared without a good reason, to the court, carries out the order with difficulty, and in many cases they even refuse to do so if it is associated with the use of coercion. Based on the principle of protecting the inviolability of a person's home, the police refrain from entering an apartment and conducting a search to find the person, since a search of an apartment can only be carried out by court decision. On the other hand, since it is often combined with the use of force, police officers, in order to avoid further problems and complications, avoid the use of force. Moreover, as a guarantee, according to Article 299, Part 1, Clause 7 of the Criminal Procedure Code of the Republic of Armenia, the decision on forcibly presenting a person to the body conducting the proceedings may be appealed to the court.

Based on the principle of common sense, the regulation included in the new Criminal Procedure Code of the Republic of Armenia regarding the detention of persons forcibly presented to the body conducting the proceedings should be welcomed. The previous Code did not provide for any restrictions, which was problematic. This gap was filled by the new Code and a maximum of 12 hours of detention of persons forcibly presented to the body conducting the proceedings was established (Article 145, Part 4 of the Criminal Procedure Code of the Republic of Armenia).

We believe that in order to resolve the abovementioned issue, the law should provide for a fine for those unscrupulous persons who, without good reason, maliciously avoid appearing in court. It should be noted that such a regulation is provided for by the legislation of many countries and has justified itself[11].

[11] Gutsenko K. F., Golovko L. V., Filimonov B. A. Criminal Procedure of Western States. Moscow, 2001. p. 252.

It seems that inviting private participants in the proceedings or assisting persons to the body conducting the proceedings is a technical issue, but this is not so. In reality, numerous obstacles arise that preclude the timely convening of a court session. In its precedent decisions, the European Court of Justice obliges the member states of the treaty to organize their legal systems in such a way that the courts fulfill their obligations within reasonable time limits[12]. Turning to the issue of ensuring compliance with the requirement to conduct the examination of a case within a reasonable time, the Constitutional Court also states that the state must organize its legal system in such a way that the courts have the opportunity to conduct the cases within their jurisdiction within a reasonable time (see also: European Court of Human Rights)[13]. An important guarantee for conducting the proceedings within a reasonable time is the legal possibility of demanding compensation for non-pecuniary damage in such cases, as defined by the Civil Code of the Republic of Armenia (Article 162.1, Part 2, Clause 4 of the Civil Code of the Republic of Armenia, interrelated with Article 14 and Article 17, Part 1 of the same Code). Of course, this is an important guarantee, but it is not sufficient if the Code does not provide for appropriate mechanisms for the proper implementation of other institutions.

Conclusion

Today, there are many problems in the implementation of pre-trial proceedings and trials within a reasonable time, which need a legislative solution. Although some changes have been made to the legislation in this regard, they are not sufficient for the actual implementation of the mentioned principle.

We believe that the best solution in relation to the duration of court cases is to provide for prevention and compensation. The mentioned measures are effective to the extent that they accelerate the process of making a decision by the relevant court. At the same time, a measure intended to accelerate the trial may not be adequate to correct the situation when the examination of the case has clearly already taken too long. In such situations, various types of measures, including a compensation measure as a guarantee, can properly restore the violation.

[12] Case of Cappello v. Italy, Case of Cappello v. Italy, application no. 12783/87, 27/02/1992 application no. 12783/87, 27/02/1992.

[13] Decision of the Constitutional Court of the Republic of Armenia of March 16, 2021, No. DCC-1585

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

Reference list

1. Case of Cappello v. Italy, Case of Cappello v. Italy, application no. 12783/87, 27/02/1992 application no. 12783/87, 27/02/1992.
2. Case of Comingersoll S.A. v. Portugal [GC], application no. 35382/97, 06/04/2000,
3. Case of H. v. France, application no. 10073/82, 24/10/1989,
4. Case of Katte Klitsche de (Case of Katte Klitsche de la Grange v. Italy, cit.).
5. Case of Union Alimentaria Sanders S.A. v. Spain, application no. 11681/85, 07/07/1989).
6. Decision of the Constitutional Court of the Republic of Armenia of March 16, 2021, No. DCC-1585
7. ECHR, Case of Vazagashvili and Shanava v. Georgia, application no. 50375/07, 18/07/2019,
8. ECHR, Foti and others v. Italy, no. 7604/74, para. 52; ECHR, Corigliano v. Italy, no. 8304/78, para. 34.
9. Frydlender v. France [GC], application no. 30979/96, 27/06/2000
10. Frydlender v. France [GC], application no. S.A. v. Portugal [GC], application no. 35382/97, 06/04/2000,
11. Gutsenko K. F., Golovko L. V., Filimonov B. A. Criminal Procedure of Western States. Moscow, 2001.
12. Katte Klitsche de la Grange v. Italy, application no. 12539/86, 27/10/1994.
13. Lopatin and Medvedskiy v. Ukraine, applications nos. 2278/03 and 6222/03, 20/05/2010.
14. Lopatin and Medvedskiy v. Vazagashvili and Shanava v. Georgia, application no. 50375/07, 18/07/2019,
15. M.S. Strogovich, Course of Soviet Criminal Procedure, Moscow, Vol. 1, p. 2017.
16. Surmeli v. Germany [GC], application no. 75529/01, 08/06/2006.
17. The right to trial within reasonable time under Article 6 ECHR: A practical handbook, Ivana Roagna, 2018.