MORE ABOUT THE TRIAL AND DISPOSAL OF CASES WITHIN REASONABLE TIME UNDER THE BULGARIAN CRIMINAL PROCEDURE CODE

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Abstract

In the Bulgarian theory of criminal procedure, the issue of trial and disposal of cases within reasonable time has emerged as relevant. In the first place, therefore, the lack of an objective and thorough study of it testifies. Secondly, it must be said that where it is concerned, this is in so far as it expresses different views on the progress of the process. With all this, however, it is not possible to reach the essence of the question and answer whether the consideration and resolution of cases within a reasonable time is a normative requirement or a principle of criminal proceedings. For this reason, with this report an attempt is made to check theoretically the possibility regulated in Art. 22 of the Bulgarian Criminal Procedure Code to be raised in an independent principle of the Bulgarian criminal proceedings. To achieve this goal, a critical analysis has been made for the compatibility of the envisaged situation, both with some of the main principles of the criminal process and with its tasks, including those institutions that shape its modern democratic image.

Keywords: *criminal proceedings, reasonable time, right of protection, European court of Human right, case-law, criminal law.*

1. Introduction

In the new Criminal Procedure Code of the Republic of Bulgaria (CPC)[1], the legislator enriched (expanded) Chapter Two - "Basic Principles". It also regulated the requirement to resolve criminal cases within a "reasonable time". Thus, according to Art. 22, para. 1 of the CPC: "The court shall try and dispose of the cases within „reasonable time". In para. 2 of Art. 22 of the CPC, it is explicitly stated that: "the prosecutor and investigative bodies shall be obligated to secure the conduct of pre-trial proceedings within the time limits set forth in this code." This amendment of the procedural law continues to give grounds to some established in the Bulgarian procedural theory authors to treat the requirement for "reasonable time" as a principle of modern criminal proceedings. Here is what Margarita Chinova shares on the issue, for example: "… the obligation to consider cases within a reasonable time is so significant that it is raised in a basic leading procedural position - the principle of criminal proceedings."[2] A similar opinion is expressed in the case law of the Constitutional Court of the Republic of Bulgaria. In Decision №10 of 28.09.2010 of the Constitutional Court the following was reproduced: „… the current CPC with Art. 22 assigns respective responsibilities to the bodies of the criminal process, raising the consideration and resolution of the criminal cases within a "reasonable time" as a basic principle of the criminal process. Most involved in the problem are those bodies that perform the functions of supervision at the relevant stage of the process - the prosecutor in the pre-trial phase and the court in the judicial phase…

2. Content

The perception of the obligation to resolve criminal cases within a "reasonable time" as a principle of the Bulgarian criminal process, in a sense has a legal basis in terms of the systematic place of Art. 22 of the CPC, namely, Chapter Two, which lists the basic principles. However, the systematic place of a provision does not always (automatically) reveal its essence. It is by nature an indication (direction) for this, therefore as an argument the systematic place appears - formal and insufficiently convincing in itself! For this reason, it is imperative that the proclamation of a given legal position as a principle be justified ideologically and conceptually, and not pro forma - by placing it among other (already) established in jurisprudence legal principles. The opinions cited above in favor of the principled character of Art. 22 of the CPC take into account, on the one hand, namely its systematic place in the code, and on the other hand, the notion that in this way the Bulgarian CPC is fully and in the most satisfactory way synchronized with the rule for hearing criminal cases within a "reasonable time" under Art. 6, item 1 of the ECHR.[3] It is worth mentioning here that this publication does not discuss the need and usefulness of such synchronization with the provisions of the ECHR, but only - how logical, effective and justified it is to do so by raising the "reasonable time" requirement in principle in the Bulgarian criminal trial!? In other words, it is not disputed whether, *de lege lata*, the resolution of criminal cases within a "reasonable time" is conceived and explicit as a

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[1] Обн., ДВ, бр. 86 от 28.10.2005 г., в сила от 29.04.2006 г

[2] М. Чинова, Досъдебното производство по НПК – теория и практика, С., „Сиела", 2013 г., с.34.

[3] М. Чинова, Г. Митов, Кратък курс лекции по наказателно-процесуално право, С., Сиела, 2021 г., с. 125.

principle, but whether this does not overestimate and favor the idea of ending criminal proceedings a case in an indefinite, but definable (reasonable) procedural term before the idea for the qualitative (correct) completion of the criminal proceedings. Moreover, there are many theoretical obstacles to the provision of Article 22 of the Criminal Procedure Code to manifest and develop as a classical legal principle of the system of basic principles of the Bulgarian criminal process. The main arguments in this direction are set out and developed below.

First of all, emphasis must be placed on the fact that the legislator puts different content into the requirement of a "reasonable time" depending on the addressee to whom it applies. According to Art. 22, para 1 of the CPC, the court must consider and decide the case within a "reasonable time". According to paragraph 2 of the same article, the prosecutor and the investigative bodies are obliged to ensure the conduct of the pre-trial proceedings within the terms provided for in the CPC. Therefore, in the first case, the work of the court is bound by a "reasonable time", which is clearly not defined, neither in absolute nor in relative terms, nor according to any legal criteria. And in the second case, the bodies of the pre-trial proceedings should be guided by the clear and explicitly fixed in the CPC deadlines, i.e. the term deliberately described in the law is preferred to the ad hoc "reasonable time". It is also not clear whether the deadlines set for the pre-trial proceedings in the Criminal Procedure Code are "reasonable" *in facto*. Another thing, however, is clearly absurd, the same legal principle leads to two opposites in meaning and content results!

It is no coincidence that the requirement to conduct criminal proceedings within a "reasonable time" under the ECHR is regulated as a subjective right of the accused and not as a legal principle. Thus, it turns out to be a recognized and guaranteed by the Convention possibility of the accused to possess, and to require observance of a certain counter-behavior by the state. It is in this way that uncontroversial regulation of public relations concerning the duration of criminal proceedings is ensured. Therefore, human rights theory assumes that the purpose of the "reasonable time" guarantee in criminal cases is to "avoid a situation in which a person with pressed charges has remained in a state of uncertainty for too long about his or her destiny."[4] Consequently, the right to have criminal cases heard within a "reasonable time" is part of the accused"s right to a defense, and in particular one of his rights of defense. The inclusion of this right in Art. 6, item 1 of the ECHR represents the strengthening of the principle of protection of the accused, and not the implementation of some new and independent principle of the criminal process!

From the literal interpretation of Art. 22 of the CPC, it is clear that the legislator does not define the term "reasonable time". There are no clear criteria by which participants in the process can assess and verify whether and to what extent a given deadline is "reasonable". Then, for what reason does a vague situation arise in principle of the criminal process, i.e. in a leading idea for constructing and developing the institutes of criminal procedure? The question is rhetorical! The role of legal principles in the continental legal system is also essential for law enforcement as an activity. In the absence of a law, or in the presence of an unclear law (in interpretation), the judge is obliged to resolve the legal dispute in a way that best corresponds to the basic principles of law.[5] Hence, Article 22 of the Criminal Procedure Code cannot (effectively) serve to fill in and overcome any ambiguities in the course of criminal proceedings, since it is itself unclear. Then where is his principled character?

The guiding criteria for determining the reasonableness of a procedural time-limit have been developed in the case law of the Strasbourg Court. In „König v Germany "[6], the reasonableness of the length of the proceedings was considered to be determined by the following three factors: the complexity of the case, the behavior of the person concerned (the accused) and the behavior of the competent public authorities. The reasonableness of the term ipso jure is always a function of specific factual and legal circumstances, and the more complex and diverse these circumstances are, the more extensible the "reasonable time" can be, and vice versa. Another issue is that the assessment of the existence and complexity of the mentioned circumstances is relative and depends on the experience, knowledge and professionalism of the state bodies involved in the criminal proceedings. Such a direct connection with the discretion of the competent procedural authorities reveals a risk of arbitrariness, both in determining the amount of the "reasonable" time limit and in resolving the issue of its expiration, respectively violation. It turns out that there is no obstacle for the same subject to lead the process (to accuse) and to define which term is "reasonable", i.e. to decide whether the right of the accused to a trial within a "reasonable time" has been violated in the absence of a legal template for this! It is here that it is appropriate to point out that the ECHR is interpreted and applied not arbitrarily and literally, but in compliance with a reasonable ratio of proportionality between the means used and the objective pursued.[7] It should also be borne in mind that the practice of the ECtHR is ambiguous. In a number of cases with a similar subject matter, the court has rendered radically different court decisions. The borrowing of institutions and practices indefinite in content is dangerous because it makes the Bulgarian

[4] Харис, О' Бойл, Уробрик, Бейтс, Бъкли, Право на европейската конвенция за правата на човека., С., „Сиела", 2015, с. 523.
[5] Р. Ташев, Обща теория на правото, С., Сиби, 2010 г., с.222.
[6] HUDOC.
[7] Харис, О' Бойл, Уробрик, Бейтс, Бъкли. Цит. съч., с. 3-27.

criminal process eclectic. On this occasion, it is worth paying serious attention to the following statement of Ivan Salov: "The main defect of our current criminal procedure system is its uncertainty and, accordingly, its opportunistic development and eclecticism..."[8] Here is an example that confirms the above. According to M. Chinova: "… in its case law, the European Court of Human Rights first determines the length of the relevant period by determining the starting and ending point, and then decides whether this period is reasonable. Reasonableness is assessed not in the abstract, but in view of the circumstances of the particular case."[9] It is clear from the citation that the uncertainty in the content of the concept of "reasonable time" leads to its confusion with the concept of relevant period of time. The term is always a numerically defined period of time for the realization of something. According to the author, however, the duration and reasonableness of the period are determined separately for each case, but not with the help of numbers, but by the circumstances of the case, i.e. it is not exactly a term, but a time. So, in fine the vague period of time becomes reasonable, if it is reasonable! In practice, we come to a useless tautology - "reasonable time" is "reasonable" because it is "reasonable"!

Furthermore, it follows from the fact that under the Convention the examination and resolution of criminal cases within a "reasonable time" is the right of the accused, that both its existence and its content are not judged presumably or by the conduct of public authorities, as is the case under Bulgarian law. As a general rule, subjective rights are provided for and determined by volume in the law and by the legislator. And their exercise depends on the will of the subject who owns them. The right to defense of the accused must also be implemented in the law by the legislator, for fear of being left objectively unrecognized and unsecured. Nowadays, in Art. 55 of the Criminal Procedure Code, which lists the rights of defense of the accused, the right to criminal proceedings cannot be found within a "reasonable time"! The accused is nevertheless able to derive this right directly from the Convention by invoking Art. 5, para 4 of the Constitution of the Republic of Bulgaria. In this sense, it is untenable to claim that as a principle Art. 22 of the CPC may give rise to subjective rights, resp. legal obligations.[10] It is sufficiently to remind that no legal principle, including that expressed in Art. 22 of the CPC, cannot have a decisive role as a source of subjective rights. The legal principle is first of all a way of arguing. It "expresses an idea, not a norm "[11], i.e. does not describe specific behavior that can / should be performed in a specific factual situation.

For greater objectivity, it should be mentioned that the ECtHR is inclined to treat the requirement of a trial within a "reasonable time" not only as a subjective right of the accused, but also as a legal guarantee. According to him, the requirement "emphasizes the importance of justice without delay, which could threaten its effectiveness and reliability."[12] From the views of the court it is easy to be left with the impression that faster a proceeding is more efficient and reliable it is! In other words, there is a tendency in jurisprudence to equate reasonableness with rapidity. In my opinion, raising such "reasonableness" in principle is harmful because it exaggerates the benefits of procedural economy and infiltrates rapidity among the tasks of the process. The pursuit of rapidity "stakes" the procedural error and "poisons" the need for a proper conclusion of the criminal case. In the same sense, Simeon Tasev states: "… procedural economy and rapidity in the proceedings should not be in conflict with the ultimate goal of the process - a lawful and fair process."[13] Making the requirement for a trial within a "reasonable time "in principle is subject to criticism in several other aspects.

First, the idea of "reasonable" (fast) proceedings does not correspond to the immediate task of criminal proceedings. According to Art. 1, para 1 of the CPC in each criminal case must be ensured the disclosure of the crimes, exposing the guilty and proper application of the law. Nowhere is it a question of quick (reasonable) detection of the crime, quick (reasonable) exposing of the guilty and quick (reasonable) application of the law. This is because in the criminal process the unconditional disclosure of the objective truth and the correct application of the law is a main priority! Therefore, any principle of criminal procedure should be in line with this priority. Not coincidentally, Stefan Pavlov points out that: "… according to the concept lying down in the Criminal Procedure Code, the basic principles of the criminal process are the basic guidelines on which the entire procedural system is built in order to ensure the implementation of its tasks."[14] From all that has been said so far, it can be summarized that it seems more logical and legally argumented not to set the timely completion of the criminal case as a principle, but as a practical result in the pursuit of the tasks of the process. Nikola Manev takes a similar position, arguing that: "it should not be forgotten that rapidity, a reasonable time for hearing the case is not so much a goal or principle in the criminal process but a result of the action of a well-worked state machine, criminal law enforcement and criminal justice… "[15]

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[8] И. Сълов, Актуални въпроси на наказателния процес, С., „Нова звезда", 2014 г., с. 43.
[9] М. Чинова, Г. Митов, кратък лекционен курс.., цит. съч., с. 127.
[10] М. Чинова, Досъдебното производство…, цит. съч., с.34 -35.
[11] Р. Ташев, Цит. съч., с.213
[12] HUDOC, „H vs France "; „Stögmüller v Austria ".
[13] С. Тасев, За отказа от правосъдие, ИК „Труд и право", сп. Собственост и право, кн. 7/2013 г., с. 9.
[14] С. Павлов, Наказателен процес на Република България – обща част, С. „Сиби", 1996 г., с. 61
[15] Н. Манев, Развитие на реформата на наказателния процес, С., „Сиела", 2018 г., с. 73

Secondly, the basic principles of the criminal process of the Republic of Bulgaria are built in a complete system, in which they are mutually secured and conditioned. That is why, it is accepted in theory that they function in organic unity,[16] i.e. without contradicting each other. Therefore, if it is accepted that the resolution of criminal cases within a "reasonable time" is a principle, it must be accepted, and that it is organically compatible with the other principles of Chapter Two of the Criminal Procedure Code. The implementation of a comparative verification, however, convinces otherwise. For example, there is no organic compatibility between the principle of objective truth and that of resolving criminal cases within a "reasonable time". According to Art. 13, para 2 of the CPC, the disclosure of what has actually happened / occurred in the objective reality is not made dependent on any procedural term, even on a "reasonable" one. The objective truth must be established regardless of the expiry of the procedural time limits, as long as the statute of limitations for criminal prosecution has not expired. The Bulgarian CPC does not recognize the termination of the criminal proceedings due to the expiration of a "reasonable" procedural term - arg. Art. 24 CPC. In my opinion, the court is obliged to decide the criminal case and when the proper procedural deadlines have expired, the opposite will mean a denial of justice! Moreover, some of the criteria for a "reasonable time" *de lege lata* apply as preconditions for extending the time-limits. For example, the factual and legal complexity of the case is grounds for extending the term for pre-trial investigation - arg. Art. 234, para 3 of the CPC.

Thirdly, the theory confirms the understanding that the principles of the criminal process are applied "through the organization of the separate procedural stages and institutes determined by them ". Therefore, if it is assumed that in Art. 22 of the CPC contains a principle, it must, in order to be applied, should model certain stages and institutes of the CPC. Even the most superficial review of the law denies the veracity of such a statement. Where the regulations of the pre-trial proceedings provide deadlines, they are in a pre-determined amount by the legislator, and it is not a question of a "reasonable term" - arg. Art. 234; Art. 242, para 4; Art. 243, para. 4 and para 5 of the CPC. The same applies to the court phase - arg. Art. 247 a, para. 2, item 1; Art. 308; Art. 318 of the Criminal Procedure Code, etc. It is interesting to note that the requirement of a "reasonable time" does not determine the appearance of even section two of Chapter Fifteen of the CPC, which regulates: the calculation of time limits, compliance with time limits, extension of time limits and their recovery. The legislative approach to use a fixed ex lege period with the possibility of extension if necessary deserves support because, except bringing clarity, it disciplines and motivates the competent state authorities.

3. Conclusions

In conclusion, the following five conclusions can be made:

- firstly, the place of Art. 22 of the PPC in the system of basic principles is controversial and problematic;
- secondly, it is imperative the legislator to clarify the concept of "reasonable time";
- thirdly, understood as a guarantee against unjustified delay of the criminal proceedings, the requirement for a "reasonable term" has a place in the Criminal Procedure Code as a subjective right of the accused, respectively a legal obligation of the competent procedural bodies;
- fourthly, it is not always possible to equate the fast (reasonable) criminal process with the productive (lawful) criminal process;
- fifthly, a reasonable criminal trial is not one that ends quickly, but one that ends with a criminal conviction fully consistent with the objective truth and the law.

What has been said in conclusion can serve de lege ferenda as a ground for revoking Art. 22 of the CPC. Simultaneously, and as a presumption to supplement Art. 55 of the Criminal Procedure Code with a new right of the accused to a trial within a "reasonable time".

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[16] С. Павлов, Цит. съч., с. 65.