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NEW INSIGHTS INTO THE PROCEDURE WITHIN A REASONABLE TIME AS A LEGAL PRINCIPLE

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Abstract. *The article deals with a discussion of the concept and implementation of the procedure within a reasonable time as a legal principle. The main purpose of the article is to reveal the content and functioning of this principle. The author presents new insights into this principle. From time to time this legal ground evolves into new forms or the criteria, on which it depends, changes; therefore, such issues have to be taken as the basis for evaluating this principle. The following conclusion is drawn in the article: the effect of the principle of the procedure within a reasonable time is not only tied to the obvious suspicion or indictment, but also to any reasonable assumption about the probable prosecution due to various actions carried out by criminal procedure officers under the Code of Criminal Procedure. After summing up the arguments, the author concludes that it is important to estimate the procedural interest of the suspect, defendant or sentenced person.*

Keywords: *reasonable time, legal principle, insights, criminal procedure, interests of the culprit, probable prosecution.*

Introduction

‘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 the reasonable time by an independent and impartial tribunal, established by laws.’ It is the statement proclaimed in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ (hereinafter referred to as the Convention); it is followed by plentiful criminal laws of the democratic states which in the national laws regulate the rights of the person, suspect or defendant accused of committing a criminal act as well as the procedure which is to be held as soon as possible.

According to Part 5 Article 44 of the Code of Criminal Procedure of the Republic of Lithuania² (hereinafter referred to as the CCP), each person accused of committing a criminal act has the right to a fair trial of his/her case by an independent and impartial court in the conditions of equality and publicity as soon as possible. The provision of Article 1 of the CCP regarding criminal procedure determines the legal grounds of this requirement. It may seem that these provisions define the requirements for the assurance of the culprit’s legal status in the criminal proceedings; the implementation of these requirements ensures that fair and honest actions are taken towards a person in a criminal procedure. However, the content of the components-requirements for the appropriate procedure principle is not only insufficiently revealed; sometimes the concepts of these requirements are being superficially speculated on without relating them to the legal doctrine and legal practice. A similar situation occurs regarding the right to the criminal procedure to be held within a reasonable time, i.e. the content of the principle pertaining to the right to the procedure to be held as soon as possible. Various theoretical discussions and practical evaluations emerge when considering the moment or the stage at which a person gets the right to insist on running the criminal procedure without justified delay, when this right ceases to exist, which criteria must be applied in evaluating whether the criminal procedure is being or had been carried out without justified delay and how these criteria must be differentiated. Such uncertainties prove that till now the content of the principle which is being analyzed is not explicit in the law of criminal procedure. What regards the court practice in Lithuania, the provision that the requirement for running the criminal procedure within a reasonable time means the time interval from indicting a person (according to Article 6 of the Convention) for committing a criminal act till the decision-making in the procedure, is not clearly laid down in the national law in spite of the fact that this issue is much discussed by the European Court of Human Rights (hereinafter referred to as the ECHR).

The ECHR names the concept ‘the arraignment’ as an independent concept which serves as the subject of the national law in this context. Thus, the perception of the prin-

1 Convention on the Protection of Human Rights and Fundamental Freedoms. *Official Gazette*. 1995, No. 40-987.

2 Code of the Criminal Procedure of the Republic of Lithuania. *Official Gazette*. 2002, No. 37-1341.

ciple under investigation depends on the provisions regarding the Lithuanian criminal procedure.

While using the elements of the content of the principle of the procedure within reasonable time, usually one lacks a clear understanding when the duration of the legal procedure, for example, 1-2 years, is justifiable and when the procedure which seems to be running just for several months is regarded as gratuitous. Thus, questions regarding the starting-point of the calculation of the duration of the procedure as well as the duration evaluation criteria, the whole of which makes the subject of the legal evaluation in a particular criminal case, arise. Finally, the issues selected for the present research set the author as well as the reader closer to the answer to the question what is the relationship between the principle of the procedure to be held within a reasonable time and the principle of comprehensiveness (particularity) as well as what are the value-levers of these principles in their interaction?

Criminal procedure legal relations which have appeared in the course of the implementation of the person's right to the procedure to be held within a reasonable time serve as the subject of the present research. This article deals with a search for the answers to the following questions: what is the essence and significance of this principle; when does it start to operate; what are the aspects of the evaluation of the procedure to be held within a reasonable time.

The aim of the article is to analyze the essence and significance of the procedure to be held within a reasonable time and find out the moment of the criminal case at which a person gets the right to insist on the appropriate procedure in respect of himself/herself as well as the aspects of the evaluation of the duration of a procedure. Thus, an attempt is made to suggest new insights into the principle, as so far it has neither got sufficient attention in the legal doctrine nor, particularly, in practice. Therefore, a risk of the violation of human rights occurs. The issue of the procedure to be held within a reasonable time has been analyzed in scientific articles of certain authors³. However, the extent to which the problem has been investigated is rather narrow and there is still a lack of attention to the issues regarding this legal principle.

Various methods of scientific research were applied prior to drawing the conclusions formulated at the end of this article. The application of the logic, systemic, comparative and documentary analysis methods was of great significance for the veracity and reliability of the generalizations and conclusions.

3 Urbaitė, L. Valstybės pozityvių pareigų vertinimas Europos Žmogaus Teisių Teismo bylose prieš Lietuvą [Assesment of the State's Positive Obligations in the Cases of the European Court of Human Rights against Lithuania]. *Socialinių mokslų studijos*. 2009, 3(3): 123–144; Štarienė, L. The Limits of the Use of Undercover Agents and the Right to a Fair Trial under Article 6(1) of the European Convention of Humna Rights. *Jurisprudencija*. 2009, 3(117): 263–281; Štarienė, L. Teisės į teisingą teismą, įtvirtintos Europos Žmogaus teisių konvencijos 6 straipsnyje, pobūdis, vieta ir apsaugos lygis kitų konvencijos teisių požiūriu [The Character, Place and the Level of Protection of the Right to a Fair Court Established in Article 6 of the European Convention of Human Rights]. *Jurisprudencija*. 2006, 10(88): 40–48; Štarienė, L. Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 6 straipsnio taikymo sritis: civilinių teisių ir pareigų bei baudžiamojo kaltinimo klausimai [The Applicability of the Scope of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms: the Issues of Civil Rights and Obligations and Criminal Charge]. *Jurisprudencija*. 2005, 78(70): 53–68.

1. Origin, Essence and Significance of the Principle

The most ancient source of the Roman law issued in writing, i.e. the Law of the Twelve Tables, serves as one of the first historical sources of law which prove the significance of the duration of a procedure. ‘The one day’s rule’ according to which the case had to be investigated and the decision had to be made prior to the sunset⁴, was established. Already in the eighteenth century in his book ‘About the Crimes and Punishments’ (1766) Cesare Beccaria made an attempt to define the essence of the principle, which prohibits to delay an investigation of an infringement and to delay the decision of the fate of a person who has possibly committed an infringement, from the legal point of view. Therein the philosopher noted simply, but precisely enough that the culprit must be punished quickly because it ‘shortens the culprit’s senseless and cruel torment while waiting for something unknown, imagined and felt in superlative’.⁵ According to the author, it is necessary to punish the culprit quickly, seeking for the avoidance of his/her physical and spiritual torments which would turn the whole punishment, i.e. the prosecution procedure, into an inhuman and hardly meaningful one. However, it is natural that all this makes only a part of the essence of the principle under investigation because the issue regarding the extent of the principle of the procedure to be held within the shortest time can be more explicitly described with reference to the modern legal activity (the criminal proceedings). One must consider that the state’s duty to take all possible measures to avoid long-lasting legal procedures is not the only factor of importance; other factors, such as the behavior of the person regarding whom the procedure is held, the complexity of the case, etc. which may impact the duration of the legal procedure must be taken into account.

Prior to defining the essence of the principle of the procedure to be held within a reasonable time, it is necessary to answer the question why particularly such a name, i.e. the procedure to be held within a reasonable time, was chosen for the principle (actually, such a name of the principle is also used in the provisions of the CCP: Articles 2, 44, 60, 175, 176, 178, 189, 460), bearing in mind that various interpretations and equivalents of the name of this principle exist in the theory of the law of criminal procedure. A discussion of the abovementioned question is necessary for a full-fledged analysis of the principle because no doubts regarding the name of the subject of the research should arise. The purified, precise and unambiguous name of the principle is necessary as if the solid foundation on which the whole analysis is to be constructed.

There exist quite different names of the principle which is being analyzed: the principle of the right to a quick procedure, the principle of the expedition of a procedure, the prohibition of unjustified delay, the principle of the non-delayed procedure, the procedure within a reasonable time, etc.

4 Vėlyvis, S.; Jonaitis M. *XII lentelių įstatymai ir jų komentaras* [Law of XII Tables and its Commentary]. Vilnius: Teisinės informacijos centras, 2007, p. 24, 25, 30.

5 Goda, G. *Kardomasis kalinimas ir žmogaus teisių apsauga (lyginamoji teisinė analizė)* [Pre-Trial Detention and the Protection of Human Rights (Comparative Legal Analysis)] Ph.D. diss. Vilnius: Vilniaus universitetas, 1995, p. 22.

According to the author, the name ‘the procedure within a reasonable time’, if compared with other names of this principle, is the best in revealing the principle’s idea—a criminal procedure of any procedural form must be free from unnecessary or undesirable delay. Any legal procedure held in a criminal case is related to the main factor—the dimension (interrelation) of time and procedural deeds which may be determined by the necessity or by the demand to secure the requirements of other principles of criminal procedure. The assumption that such a name most exactly reflects the essence of this principle in criminal procedure is based on the fact that the requirement to investigate and to judge a criminal case within a reasonable time is concurrent with three factors set in the theory of the criminal procedure law, i.e. the complexity of the case, authority institutions’ behaviour and the culprit’s (suspect’s or defendant’s) behaviour in the case. All these factors, evaluated with reference to the actual circumstances of a particular case, allow observing the aggregate picture of the principle. However, other names of the principle, i.e. the quick procedure, the prohibition of unjustified delay, etc. are evaluated as jug-handled interpretations without taking into consideration certain circumstances in a particular case (for example, the culprit’s behaviour in the course of criminal procedure when the suspect or the defendant, or his/her defense counsel consciously misuses procedural rights as a result of which the procedure is delayed). Thus, it is not enough to have the standpoint en face for the interpretation and application of this principle because it should be observed, speaking in images, in the ‘three-dimensional space’, i.e. the activity of the subjects executing a criminal procedure, the behaviour of the participants of the proceedings and, finally, the complexity of the should be comprehensively evaluated from the actual and juridical point of view.

Certain authors (S. Zappalà, S. Trechsel) attempted to differentiate the essence of the principle under investigation depending on its name. While commenting on the case of the International Criminal Tribunal for the former Yugoslavia (Blaškić case), Zappalà states that the Board of the Judges drew attention to the fact that the essence of the principles ‘the procedure within a reasonable time’ and ‘the prohibition of unjustified delay’ is not the same. Expanding the motivation provided by the court, the author explains that the concept of the principle of the procedure within a reasonable time must be used when the term of the application of the procedural compulsory measures is meant, whereas other cases of the procedures of criminal proceedings, i.e. the execution of investigative actions, evidence making, the arrangement of the pre-trial investigation, etc. occur within the limits of the concept of the prohibition of unjustified delay.⁶ Trechsel notes that the abovementioned principles are not the same; moreover, the requirement of the procedure to be executed without unjustified delay, as a matter of fact, covers the concept of the procedure within a reasonable time because, according to the author, ‘the reasonable time is the time which will not be delayed’.⁷ While evaluating these vantage-points, it must not be forgotten that administration of justice requires time. Thus, in spite of the nature of the issue considered in a criminal procedure, the same requirement, i.e.

6 Zappalà, S. *Human Rights in International Criminal Proceedings*. Oxford: Oxford University Press, 2005, p. 117.

7 Trechsel, S. *Human Rights in Criminal Proceedings*. Oxford: Oxford University Press, 2005, p. 135.

the execution of the proceedings within the shortest time, must be applied to the whole procedure as an integral system. Thus, in any case, i.e. the execution of the investigative actions or evidence making, the application of the procedural compulsion, the review of the decisions passed by lower instance courts, etc., justice and the ascertainment of truth must be striven for within the shortest time possible. Otherwise, it would condition the trivialization of justice as a process and as a result.

To summarize the above discussion, it must be stated that the wording ‘the procedure within the shortest reasonable time’ most exactly reflects the essence of the principle because of several reasons. Firstly, it outlines the behaviour of the officers and institutions executing a criminal procedure which can be affected by subjective and objective factors determining the duration of the investigation and the hearing of the case. These factors consist of circumstances which do not depend on the will and professional skills of the officers executing the procedure. However, the human factor or other circumstances may directly impact the behaviour of an officer. Secondly, the behaviour of separate participants of a procedure conditioned by both subjective and objective factors also affects quantitative and qualitative indices of the duration of a procedure. And, thirdly, the actual and juridical aspects of the complexity of a criminal case as an objective factor also influence the interpretations of the concept the ‘shortest time’ which are concurrent with the content of other principles of criminal procedure.

While considering the essence of the principle of the procedure within a reasonable time, it must be noticed that the legislator does not reveal the content of this principle in the procedural laws because its interpretation and application in each particular case depend on the actual circumstances of the case. For this reason, in the context of the present research, it would be sufficient to find out the main requirements of the principle and their meaning. It was mentioned that a criminal procedure must be free from any unnecessary or undesired delay. Thus, it is the principle of the whole criminal procedure, i.e. the requirements of this principle must be observed within the cycle of the stages of the whole process and independently of the choice of the procedural form while investigating or hearing a criminal case (i.e. it is not important whether the procedure is executed as per the order of public indictment or under the provisions for a simplified procedure, etc.). Therefore, the requirements of the principle are adapted according to the tasks set for each stage of the procedure, according to various procedural forms, etc. Thus, pre-trial investigation officers, the prosecutor or the court must take all the measures and use all the methods provided for in laws ensuring that the criminal act is investigated and judged within the shortest period of time, that the procedure is intensive at all the stages, and that each person, with respect to whom the procedure is being executed, is protected from the long-lasting ignorance of his/her fate and the long-lasting psychological strain or empathy. That is to say, non-securing of the procedure within a reasonable time may plunge a person into a condition of ‘long-lasting uncertainty’ (the case of *König v. Germany*, 1978⁸). Moreover, a non-delayed procedure cannot be secured at the expense of the rights and interests of the participants of the procedure. The

8 *König v. Germany*, 28 June 1978, Series A No. 27.

person notified about the suspicion can appeal with the request to defend his/her right to hearing his/her case within a reasonable time at any stage of the criminal procedure, if, according to him/her, the signs of unjustified delay occur because of the possible violations of other fundamental human rights that can be related with the violation of the abovementioned right (freedom of movement, restrictions of the rights to property, the right to work, etc.). Therefore, the appropriate state institutions and their officers are obliged to make all possible efforts to avoid unnecessary delay of the procedure; they must act responsibly and conscientiously. A delay is such a period of time of a procedure within which no procedural actions are taken or the duration of the execution of certain actions is considered to be too long, for example, the expertise is protractedly carried out (the case of *Girdauskas v. Lithuania*, 2003⁹). Besides, the situation when no procedural actions are executed within a longer period of time in a case in the ECHR practice is referred to as the severest form of the delay of a procedure (the case of *Schumacher v. Luxembourg*, 2003¹⁰). Moreover, the ECHR in the case of *Bottazzi v. Italy* (1999) felicitously noted that justice must be executed without any delay which may cause threat to the efficiency of justice and trustworthiness.¹¹

An analysis of the practice of the ECHR and Lithuanian courts allows stating that the content of the requirement of the procedure to be held within a reasonable time implies the following: firstly, the procedural actions (survey, investigation of the objects, confrontation, etc.) must be executed quickly and operatively:

...[E]xpedition means that only the pre-trial investigation institutions' and officers' actions which meet this condition are considered as lawful. The main responsibility for the duration of the preparation of a case and for the impossibility of the delay of a case belongs to the officers of pre-trial investigation institutions who investigate the case and control the course of the pre-trial investigation. It is to be evaluated in the case which is being judged..., if the whole period, amounting to 187 days, was necessary for taking into custody in order to execute the qualified investigation and if less time could be sufficient for the same purpose under the same conditions. Only after having ascertained that the pre-trial investigation institutions and officers had been making all the efforts in order to act as operatively as possible, it is possible to justify the duration of such an investigation and, simultaneously, the duration of the confinement (custody).¹²

The Supreme Court of Lithuania also stated in this case that '...the whole duration of taking into custody and the intermediary terms of taking into custody must correspond to the time spent for the execution of particular procedural actions of the pre-trial investigation. Deviation from the operative investigation of the case and a gratuitously long duration between the execution of separate procedural actions would mean procedural violations, admitted by the investigative institutions...'. Secondly, the procedures of the procedural decision-making must not run over; these procedures must be lucid (the definite dates of the procedures, the order of their calculation, etc.). Thirdly, the intervals between the procedural actions must be reasonably short. It means that these intervals, according to the author, must not be defined in the law because they depend

9 *Girdauskas v. Lithuania*, 11 December 2003, § 35.

10 *Schumacher v. Luxembourg*, 25 November 2003, § 28. 1 72.

11 *Bottazzi v. Italy*, 28 July 1999, § 30, ECHR 1999-V.

12 Supreme Court of Lithuania, Civil Division Ruling of 13 of May, 2004 (case No. 3K-7-298/2004).

on the ‘individuality’ of a particular case. Fourthly, while applying the procedural compulsion (for example, taking into custody), it is necessary to execute the appropriate investigative actions quickly and intensively:

... [T]he person’s right to hearing his/her case within a reasonable time means that in all cases the duration of the pre-trial investigation and the hearing of a case in the court and the period of keeping a person in custody cannot exceed the terms fixed in the criminal procedure laws as well as the actual duration of the execution of procedural actions; the intervals between separate procedural actions must justify the necessity to keep a person in custody.¹³

While applying the compulsory procedural means, the procedure must be concentrated.

It is obvious that the content of the requirements of the principle under investigation covers the legal relations in a criminal procedure; however, it must be accepted that due to its integrity this principle is inevitably important for the relations which are not directly related to the adjudication of a criminal case. To be more precise, this principle also covers all other items not directly related to the subject of a criminal case. For example:

[U]nder Paragraph 2 of Article 115 of the Constitution, the judges are discharged from their position according to the order established by the law after the expiry of the term of their commission or after having reached the pension age fixed in the law. Under Part 2 of Article 57 of the Law on Courts, the judges of the district courts are appointed till the time when they turn 65 years of age. If the term of the commission of a judge expires while the case is being heard, his/her commission is prolonged till the case is exhausted or its hearing is postponed... Thus, the commission is prolonged if the term of the commission expires while the case is being heard and is prolonged till the case is exhausted or its hearing is postponed; besides, it applies only to non-exhausted cases which must be judged within a reasonable time. For this reason, the decrees issued by the President of the Republic of Lithuania on the prolongation of the commission of judges contain the information about certain non-exhausted cases; the commission of such judges is cancelled as per the established order as soon as the cases become exhausted.¹⁴

Thus, the essence of the procedure within the shortest time is as follows: procedural actions must be executed and the decisions must be made within the due period of time, justified by the circumstances of a particular case. This principle is significant in a number of aspects. Firstly, it assists in securing the rights and lawful interests of the participants of a procedure. An obligation to exhaust a case within a reasonable time is intended for granting the discontinuation of the condition of uncertainty of the person with respect to whom the procedure is held as well as for securing the interest of the person (his/her rights and duties regarding the settlement of the questions raised in the course of the procedure as the result of which the court makes the decision) and maintaining the common legal confidence. Secondly, meeting the requirements of the principle creates the conditions for a process of a particular case to be acknowledged as efficient, i.e. the implementation of this principle must be acknowledged as an index

13 Appeal Court of Lithuania, Civil Division Decision of 20 of September, 2004 (case No. 2A-282/2004).

14 Supreme Court of Lithuania, Criminal Division Ruling of 16 of October, 2007 (case No. 2K-600/2007).

showing whether a criminal procedure gives tangible results. Thirdly, it conditions the society members' confidence in justice and in the institutions securing the preservation of law and order as well as in the legal procedure in general. Fourthly, the execution of a non-delayed procedure allows to state that attempts are made to maintain the balance between this principle and other principles of different nature, for example, the principle of particularity. The constant struggle for the significance of these principles in the criminal procedure cherishes the thought that the balance between these fundamental guidelines is inevitably necessary seeking for a quick procedure but avoiding a non-exhausted legal procedure. Fifthly, this principle allows identifying the starting point of the calculation of the duration of the procedure in a particular criminal case. Accordingly, it is possible to answer the question regarding the moment in the criminal proceedings at which a person gets the right to insist on running the procedure within reasonable time.

2. The Limits of the Functioning of the Principle

While evaluating the limits of the operation of the procedure within a reasonable time, the question regarding the moment at which a person acquires the right to insist on the quick procedure immediately arises. That is to say, the principal provisions of the CCP oblige the appropriate subjects to finalize the proceedings within the shortest possible period of time; however, it remains unclear when such an obligation appears. In this regard, one may find a partial answer in the ECHR jurisprudence. The practice of this court proves that the requirement to finalize a criminal procedure within a reasonable time implies the period of time from the moment of accusing a person of having committed a criminal act under Article 6 of the Convention and ends with the decision-making in the procedure (see: *Šleževičius v. Lithuania*, 2001¹⁵) or, to say it otherwise, 'the period of the quick procedure must start on the date, on which the person is accused' (*Neumeister v. Austria*, 1968¹⁶). Though, according to the Convention, the procedure within a reasonable time must be secured from the moment of bringing a criminal indictment; nonetheless, this question is not as clear as it may seem.

The limits of the operation of the principle are differently evaluated in the ECHR practice; the evaluation depends on the circumstances of a case, the specificity of the criminal procedure and the procedural form. For example, the following question may arise: since when do the requirements of the abovementioned principle enter into force, if the criminal procedure had been running since the primary stage—the start of the pre-trial investigation—till the procedure in the Appeal court within a reasonable time, whereas later on this culprit's right could be violated exactly in the course of the appeal procedure? The ECHR states in the case of *Portington v. Greece* (1998) that 'the claimant's right to quick investigation of his case in the appeal court in this particular case enters into force from the moment, when the claimant lodged his plaint to the appeal court'.¹⁷

15 *Sleževičius v. Lithuania*, 13 November 2001, § 26. 1 1 0.

16 *Neumeister v. Austria*, 27 June 1968, Series A No. 8.

17 *Portington v. Greece*, 23 September 1998, 1998-VI, No. 90.

Thus, under Article 6 of the Convention, an indictment of a person, serving as the ‘doorstep’ from which the requirement for the procedure within a reasonable time enters into force must be considered in a wider context. It is acknowledged in the jurisprudence of this court that the requirement to run a criminal procedure within a reasonable time means the time when a competent institution in charge of the law and order officially accuses a person of committing a criminal act; however, taking other official procedural measures which prove that a person can turn into a suspect can be also evaluated as bringing suspicion or indictment (for example, *Foti and the others v. Italy*, 1982¹⁸; *Corigliano v. Italy*, 1982¹⁹). In the case of *Philippe Bertin-Mourov v. France* (2000) the court stated that it could be the situation when a person, due to the actions of competent institutions, could reasonably think that very soon criminal prosecution may start regarding him/her.²⁰ According to other cases judged by this court, it can be the moment of the provisional investigation when an arrest warrant or a search warrant is issued; the moment when the decision to detain or to arrest a person is taken; when a person is informed about the suspicion or indictment; when the immunity against the criminal jurisdiction is quashed for a person; when a magisterial notification or a notification about the instigation of the criminal procedure is sent or received; and, finally, when a defense counsel is appointed for a person or when a decision is taken to confiscate certain objects, etc.²¹ These examples prove that, with reference to the Convention, the moment is determined depending on the circumstances of a particular case. However, one thing is clear: there is an essential feature typical to these examples, namely, the probability (the possibility) of the criminal prosecution of a person (notification about the suspicion, bringing the indictment, etc.) which proves the non-existing but possible fact or circumstances which may influence the person’s legal status. Thus, how must all these things be evaluated in the context of the Lithuanian criminal procedure law; what is implied under the conventional concept ‘the criminal indictment’ at the level of the national law?

Being aware of the fact that the problem regarding the concept ‘the criminal indictment’ is often ‘camouflaged’ under the national law, it is traditionally understood that the beginning of the accusation of a person in a case is related to the notification about the suspicion of the commitment of a criminal act (Article 187 of the CCP) or lodging a plaint in the procedure of a private prosecution case (Article 408 of the CCP). According to the author, such a standpoint is too restricted. The requirement to run a criminal procedure within a reasonable time means the time not only from the allegation of suspicion, but also the time when, under the provisions of the CCP, other procedural measures are taken when it is obvious that a criminal procedure can be held (for example, when detaining a person caught at the moment of committing a criminal act or immediately after its commitment (Article 140 of the CCP); when one copy of the application regarding the investigation of the case as per the order of the stepped-up procedure is handed

18 *Foti and others v. Italy*, 10 December 1982, Series A No. 56.

19 *Corigliano v. Italy*, 10 December 1982, Series A No. 57.

20 *Philippe Bertin-Mourov v. France*, 2 August 2000, § 52.

21 Edel, F. The Length of Civil and Criminal Proceedings in the Case-Law of the European Court of Human Rights. *Human Rights Files*. 2007, 16: 22–24.

to the accused person (Article 427 of the CCP); when a person or his/her lawful attorney lodges a plaint in the private prosecution procedure (Articles 407-408 of the CCP), etc.). According to the author, even the moment of starting the search, if a person is temporarily detained after this act, must be evaluated as the actual moment of the criminal prosecution of the person since which, as it was mentioned before, the person gets the right to insist on the procedure within a reasonable time. It is stated in the juridical literature that, in order to secure a person's (suspect's) right to defense, it is to be acknowledged that an indictment is possible when a person's legal status is 'strongly influenced' by the actions of state officers, i.e. when data against a particular person start to be collected. The conception of an 'indictment' must be perceived in a broader sense, i.e. it is not only a formal interpretation, it also covers procedural requirements (for example, notifying the person against whom the actions of state institutions (officers) are directed; providing the person with a possibility to get prepared for the defense, etc.). That is to say, an indictment starts to exist since the moment when particular state institutions, being ruled by the presumptions set on the grounds of the suspicion that a person may be guilty, perform certain definite actions regarding the person.²²

Thus, a person acquires the right to insist on the criminal procedure within a reasonable time from the moment when the grounded assumption that criminal prosecution will be started regarding him/her appears. In this case the actions of state institutions or officers serve as the grounds for the assumption that a particular person actually starts to be suspected of committing a criminal act. Though it is obvious that the time interval between the actual and official suspicion may be only symbolic, it is important to perceive the very essence, i.e. the start of an indictment in a criminal procedure not always can directly depend on the reflection of the concepts 'suspicion' or 'indictment' in the materials of a particular criminal case. Any procedural action of the subject executing the procedure (for example, temporary detention) which symbolizes this officer's activity directed towards the prosecution of a person *sensu largo* can be interpreted as an indictment from the point of view of the principle under the present investigation. A person who is questioned about the committed criminal act and who, under Paragraph 1 Article 80 of the CCP, agrees to give evidence (in this case the provisions of Part 3 Article 82 of the CCP must also be observed) acting as a witness may reasonably think that in future he/she will be prosecuted according to the criminal order. Thus, the questioning of such a person as a witness may symbolize the probability (the presumption) of future suspicion (indictment) regarding him/her. The moment of questioning marks the moment since which such a person acquires the subjective right to insist on the procedure within a reasonable time. Thus, in this case the reasonable assumption is grounded by the prognostication of the probability of a smaller or larger degree regarding the possible suspicion (indictment).²³

22 Gušauskienė, M. *Teisė į gynybą atskleidžiant ir tiriant nusikalstamas veikas: teorinės teisinės prielaidos ir praktinio taikymo problemos* [The Right to Defence while Detecting and Investigating Criminal Acts: Theoretical Legal Assumptions and the Problems of Practical Application]. Ph. D. diss. Vilnius: Mykolo Romerio universitetas, 2007, p. 35.

23 Merkevičius, R. *Baudžiamasis procesas: įtariamojo samprata* [Criminal Procedure: Conception of the

3. Evaluation of the Procedure within a Reasonable Time

There is a prevailing attitude that while considering the duration of the investigation of a criminal case and of the proceedings it is necessary to take into consideration the following three aspects developed in the course of the ECHR practice: the complexity of the case; the behaviour of the participant of the procedure (the culprit); the behaviour of state institutions and the efficiency of their actions while investigating a particular criminal case. The content of these aspects has been also revealed by the ECHR in a number of cases *v. Lithuania*, for example, *Meilus v. Lithuania* (2003), *Šleževičius v. Lithuania* (2001), *Girdauskas v. Lithuania* (2003), etc. In a particular case the legitimacy of the duration which may be questioned, the mentioned aspects must be evaluated as a whole, i.e. by keeping to the *pars pro toto* principle. Accordingly, each aspect must be evaluated concurrently with the rest of them. Otherwise, by singling out one of them the evaluation of the efficiency of a procedure may become inadequate: the values of one kind become less valuable, whereas the others unreasonably significant. Thus, focusing on one aspect of the evaluation of the procedure within a reasonable time can make a mess in the total consistent pattern of procedural guarantees, their coherence and, speaking in images, the procedural architectonics of the case.

However, there is no unanimous consensus on the aspects which set the procedure within a reasonable time. Such a situation is conditioned by the disinclination of certain authors to differentiate the principle while settling juridical questions of civil or criminal nature. Here, according to certain authors (E. Dinjens, W. Henning), the questions regarding the evaluation of the duration of a procedure must be identical in spite of the nature of the case (civil or criminal) which is being judged. The definite circumstances of a case determine if all or partial aspects are to be evaluated. The following aspects must be evaluated in each case in which the question on the legitimacy of the duration of a procedure is raised: firstly, what kind of threat arises or may arise to the procedural rights or interests of the participants of the procedure (in this aspect, the suspect, the defended or the convicted person) and, secondly, the condition of the procedure.²⁴ Indeed, usually the significance of the protected interest is considered as an aspect only while solving legal questions of civil nature. Usually this aspect is not taken into consideration in criminal cases; however, the author of the present article is rather sceptical about such a standpoint because a criminal procedure is not only an auto-motive mechanism which defends the public interest, but also a legal procedural instrumentation which often depends on a particular person's procedural interests (which also implies his/her will). The provisions of the CCP attest the significance of the culprit's interest. Here, according to Part 1 Article 273 of the CCP, a court of the first instance may take the decision on the execution of the hastened investigation of evidence in the court, if, besides other conditions, the accused person, being guilty, expresses his/her will in the court to give evidence

Suspect]. Monografija. Vilnius: Registrų centro Teisinės informacijos departamentas, 2008, p. 286–298.

24 Dinjens, E.; Henning, W. *Undue Delay in the Case-Law of the European Court of Human Rights*. Amsterdam: International Law Clinic, 2001, p. 9–13.

immediately and agrees that other evidence is not to be investigated. These provisions prove that any question solved in the course of the procedure depends on the culprit's will, i.e. on his/her interest in the procedure to be finalized as soon as possible. Another example: the accused person's will determined by the mentioned interest is also necessary in order to finalize the criminal procedure by the court's prescription. According to Part 3 Article 418 of the CCP, in order to finalize a criminal procedure by the court's prescription it is not enough to secure only the prosecutor's ruling; the accused person's consent is also necessary. The situation is similar to the conditions of the speeded-up procedure. Part 1 Article 428 of the CCP provides that the court must ask whether the accused person agrees to be immediately judged or wishes the hearing to be held later. Thus, all these examples prove that while solving the legal questions of criminal indictment it is often necessary to take the interest of the participant of a procedure into consideration in order to substantiate the duration of the procedure. Besides, it is also obviously seen while considering the possible counterclaim (Article 410 of the CCP) in the course of a procedure dealing with private prosecution cases. Similar provisions exist in the laws of Slovenia where, referring to the Act on the Protection of the Right to a Trial without Undue Delay of 21 August 2006, the following factors affecting the duration of a procedure are singled out: the complexity of a case (the aspects of fact and law); the behaviour of the parties of the procedure; the terms of the procedure fixed by the laws; the way of running the case prior and after lodging the claim on the non-observance of the terms of the procedure; the nature of the case and its significance for the parties of the procedure. In United States, a country which sticks to the common law traditions, the Supreme Court (in the case of *Barker v. Wing*, 1972) formulated four aspects which must be taken into consideration while evaluating the duration of the procedure in a criminal case: 1) the duration of the delay; 2) the reasons for delaying; 3) the data which serve as the grounds to decide whether the culprit had been previously defending his/her right to a short procedure in the course of the proceedings; 4) the data which serve as the grounds to decide to which extent the culprit had been suffering through the long duration of a procedure, as a result of which his/her procedural guarantees were violated or restricted otherwise.²⁵ Moreover, it is not enough to evaluate one or several abovementioned aspects in order to justify the delay of the procedure or to recognize such a delay as a procedural violation. It is necessary to evaluate the aspects as a whole.²⁶

Thus, the aspects of the evaluation of the procedure within a reasonable time, in spite of what definitely will be evaluated (the complexity of the case or the delay admitted by the authorities, or other circumstances impacting the duration of a procedure and, particularly, the delayed procedure impacting the security of the procedural interests of the culprit), always cover the actual and/or legal aspects, the content, place and impact in the criminal proceedings. In a criminal case per se inevitable and unconsciously obligatory are the actual and legal aspects themselves or the grounds for their appearance.

25 Hall Daniel, E. *Criminal Procedure and the Constitution*. Boston: Delmar Publishers, 1997, p. 236.

26 V. del Carmen, R. *Criminal Procedure: Law and Practice*. 2nd edition. Pacific Grove: Cole Publishing Company, 1991, p. 324.

Thus, the author dwells on the differentiation of certain abovementioned aspects and their theoretical and practical analysis.

While evaluating the duration of the pre-trial investigation of a case and of the proceedings, it is necessary to take the following actual aspects of the case into consideration: a) the number of committed criminal acts; b) the number of persons who are to be made answerable; c) the number of procedural actions being executed or have already been executed; d) the complexity of the procedures of procedural actions (for example, the revision of documents); e) the condition of the health of the participants of the criminal procedure, and, particularly, of the suspect, the accused, the convict or the victim; f) the suspect's, the accused person's or the convict's behaviour; g) the authorities' behaviour (the method of conducting the case); h) the peculiarities of certain stages of the procedure; i) the presence of the international element in the collection of data (for example, an application for the provision of legal assistance); j) the circumstances of a particular case (the particular situation of the criminal case), etc.

The following aspects are attributed to the legal aspects of the case: a) an attempt to secure other principles of criminal procedure in a certain case (for example, the peculiarities of the procedure); b) ambiguous practice of the legal evaluation of the incriminated criminal acts; c) the scope of the criminal case (for example, when several cases are combined into one); d) the complexity of the case (investigation or hearing of a case involving a severe or very severe crime); e) suspension of a case or making breaks, etc. Thus, the alterations of the legal acts, the complexity of legal items significant for the evaluation of the extent of the officer's work in the case, the interrelation between the procedures in several cases which impacts the course of the procedure, the combination of cases, etc. may serve as legal aspects predetermining the complexity of a case.

While deciding if the requirements of the principle of the procedure within a reasonable time are observed, it is necessary to consider if the actual and legal aspects of a case can really predetermine a delay of a pre-trial investigation or the hearing and if inefficient activity of the officers or institutions can be justified. It is worth to mention the case of *Šleževičius v. Lithuania* in which the ECHR attempted to evaluate if the right to the procedure within a reasonable time was not restricted through the submission of its petition or through the behaviour of the officers who had been investigating the case. The court stated that:

...the officers, who had been investigating the case, manifested neither sufficient strictness, nor assiduity. The courts of Lithuania refused to judge the case three times, i.e. in the years 1997, 1998 and 1999, stating that the brought indictments are not clear. The Constitutional Court was also involved in the procedure of the case. But the explicit and definite indictments were never formulated and hearing of the case was never held in the court. The court also ascertained that the bearer of the petition was not guilty for the mentioned delays and that any unjustified behavior could be spied in his actions.²⁷

27 Jočienė, D.; Čilinskas, K. *Žmogaus teisių apsaugos problemos tarptautinėje ir Lietuvos Respublikos teisėje* [The Problems of Human Rights Protection in International and Lithuanian Republic Law]. Vilnius: Petro ofsetas, 2004, p. 215.

What is more, it stated that the procedure of the investigation of the case was too long and failed to meet the principle of the shortest possible (reasonable) time stipulated in Part 1 Article 6 of the Constitution. The position of the ECHR was stricter in the case of *Guincho v. Portugal* (1984), in which the court stressed that:

The Government stated that, while hearing the case in both courts, in the Vila Franca de Xira Regional Court and in the Lisbon Regional Court, deviations from the norm were admitted through the deranged work of the institutions as a result of the return of Portugal to democracy.... As the Government stated,...at that time the less-experienced judges were commissioned to administer justice in the courts, which were overloaded with work. In spite of this, the competent institutions, i.e. the Supreme Magistracy Council, had been laying the utmost efforts so as to change the situation.... The court acknowledges the significance of the first argument. It has to admit that the restoration of democracy in Portugal in April of the year 1974 was related to the reform of the legal system of the country, which had been going on in the complex conditions, which are atypical of the majority of other European states....

However, what regards this issue, the Court must accept the Commission's and the applicant's opinion. By ratifying the Convention, Portugal committed itself 'to grant the rights and freedoms, defined in Part 1 of this Convention, to every person, who falls under its jurisdiction...' ²⁸. Portugal committed itself to manage its legal system in such a way, so that it meets the requirements of Part 1 Article 6 of the Convention, including hearing of the case in the court 'within the shortest possible time.... Once more the court would like to draw the attention towards the particular significance of this requirement while administrating justice appropriately' ²⁹.

Often the principle of the quickness of the procedure is violated through inappropriate organization of the investigation of a case. One of the most outstanding cases must be mentioned:

[T]he file contains the facts about the investigation of smuggling at the solid scale around the whole territory of the Republic of Lithuania (...more than two hundred witnesses were questioned; seizures and searches were done, fourteen forensics were done, the request for rendering the legal assistance was issued seventeen times; twenty three persons were prosecuted; the size of the case makes 80 volumes).... [W]hile evaluating the complexity of the case from the aspect of facts, the court took into consideration the deeds, executed by the investigators regarding the plaintiff, but it did not consider the context of the whole case. The Board draws attention to the fact that, while evaluating the duration of the procedure in the case in which several persons act as suspects or accused persons, the complexity of the case may serve as the reason for the longer procedure, if the acts, committed by these persons, were interrelated to such extent that it was impossible to separate them because the interests of justice would suffer. In such a case, the execution of the procedural actions regarding other persons related to the suspect or the accused means the justified procedural activity in the whole case. The Board takes into consideration the circumstances, ascertained by the Court of Appeal, which are significant for the evaluation of the justification of the long procedure in this case: 1) the plaintiff was suspected of the officary forgery, whereas the facts about her possible cooperation in smuggling had not been ascertained; 2) the averment had been held on the grounds of seizure of the documents and their analysis; 3) the possibility to set the case apart and pass it to the court was omitted.... The suspicions were brought against the plaintiff and all the procedural deeds, related with her, were executed in the year 1998. The proofs were gathered in the year 1998; the procedural deeds, related with the plaintiff, had not been executed in the case for more than five years.... [N]o reasons, through which the criminal case regarding the plaintiff could not be set apart,

28 *Guincho v. Portugal*, 10 July 1984, Series A No. 81, p. 13, § 29.

29 *Ibid.*

were ascertained in the case while securing her right to an appropriate court procedure.... [S]ince the year 1998 till the year 2004, when the prosecution term had expired, the pre-trial investigation institutions had been impermissibly delaying to pass the plaintiff's case to the court. In this case, the complexity of the case does not justify the duration of the procedure because, as regards the plaintiff, the possibility to reduce its duration was omitted while implementing the procedural right to set the case apart and pass it to the court, though the case was set apart, as regards certain persons. Timely setting of the case apart may block the way to the unjustified procedural delay.... [T]he investigation institutions had been gratuitously delaying the passing of the case to the court; thus, they violated the plaintiff's right to a non-delayed procedure. Acting as the accused person within the long period of time, the plaintiff had been suffering the condition of uncertainty as regards the demise of the criminal procedure, instituted against her; moreover, this procedural situation had been restricting her other rights for the gratuitously long period of time, i.e.: the right to free movement (the written commitment for non-departure from the place of residence), property rights (the property was arrested). These restrictions had been in force from the year 1998 till the year 2004. Her right to work (removed from the position) had been restricted from 21 December 1998 till the 01 July 2002.³⁰

In the ECHR case of *Starace v. Italy* (2000) the court, stating the violation of the Convention, stressed the insufficient initiative and unjustified behaviour of the officers who had been running the proceedings in the course of the procedure because the hearing was postponed or suspended three times. The competent institutions failed to carry out the appropriate audit of the company, did not ascertain and did not question the victims about the incriminated acts.³¹

It must be mentioned that the major part of this principle is related to the non-observance of the conditions and basics of the application (prescription or prolongation) of the procedural duress measures. The usual reason for this is that the subjects who carry out the pre-trial investigation do not execute any actions or execute the investigation passively within the prolonged arrest:

[W]ithout executing the consequent investigation actions, aimed at ascertaining possible participation of the accused person or the other persons in committing the crime, within the prescribed period of arrest or within the prolonged period of arrest, the passive pre-trial investigation regarding the accused person means... the violation of the person's right to an investigation of the case within a reasonable time.... [N]ot the very fact of the duration of arrest, but the course of the investigation of the case, which is non-adequate to the duration of arrest, violates the provisions of the Convention.... [W]hile judging about the legitimacy of the actions executed by the pre-trial investigation officers and the prosecutors..., the court takes into consideration the actual duration of arrest, the material, moral and other consequences, caused by the duration of arrest to the arrested person, the arrested person's behaviour, the course of the investigation, its intensity, trend and operativeness, the behaviour of the investigation institutions, the complexity of the case, the number of witnesses, the result of the case as well as the fact that the pre-trial investigation institutions and officers are not restricted in the course of investigation of the case by the duration of the prescribed arrest in such a case, when the prescription of the arrest or its prolongation is grounded by the necessity to execute certain investigative deeds fluently; besides, after the disappearance of necessity, the court has the right to substitute the detention measure by a less severe one.³²

30 Supreme Court of Lithuania, Civil Division Ruling of 6 of February, 2007 (case No. 3K-7-7/2007).

31 *Starace v. Italy*, 27 April 2000, ECHR 179.

32 Appeal Court of Lithuania, Civil Division Ruling of 19 of February, 2007 (case No. 2A-148/2007).

Thus, in all the cases the duration of the pre-trial investigation and of the hearing of a case in the court as well as the term of keeping the arrested person in detention cannot exceed the terms, fixed in the criminal procedure laws; also the actual duration of the execution of procedural actions and the intervals between separate actions must be justified by the necessity to keep the person under arrest. If the term of arrest, assigned for the execution of the actions by the pre-trial investigation institutions in a particular case, is not maximally short so as to justify the appropriate investigation of the case, i.e. the actual duration of the execution of procedural actions and the intervals between separate actions are too long and do not justify the spent time, the digress from the state's commitment to secure the shortest possible investigation of a case for each person is evident; thus, the person's right to freedom, without an objective necessity for a too long restriction of such a right, is violated. It must be mentioned that there exist cases, when a person's right to the procedure within a reasonable time is restricted at the time when the question pertaining to his/her civil rights and duties is being considered:

[A]lso the unreasonably too long duration of keeping the plaintiff's property in custody, i.e. within 8 years, stipulated illegitimacy of the actions executed by the court.... The fact, that ... the right to the investigation of the case within a reasonable time was acknowledged by the European Court of Human Rights in its ruling, passed on 11 December 2003 in the case of *G. v. Lithuania*.... The assets of the private joint-stock company "Naujapilė" had been taken into custody within almost the whole unreasonably too long period of the investigation of the criminal case; thus, the principle of the usage of the ownership by the state control officers pro rata to the general interest was violated.... What regards this ... particular case, the unreasonably long restriction of the plaintiff's rights to the property was at variance with the principle of proportionality to the general interest; thus, also judging from this aspect, the actions executed by the pre-trial investigation officers, prosecution officers and court are to be acknowledged as illegitimate as well.³³

Meeting the requirements of the principle on the procedure within a reasonable time is one of the conditions important for securing a person's right to a fair trial. Though the definite aspects which define the expedience and legitimacy of the duration of a procedure (for the case when the content of the implementation of the principle is being evaluated) are not established in legal acts, in each particular case it is necessary to evaluate the whole of the actual and legal circumstances of the case, the formed practice and their impact while realizing the assignment of a criminal procedure.

Conclusions

1. The essence of the principle of the procedure within a reasonable time is as follows: procedural actions must be executed and a decision in a case must be made within a reasonable period of time, justified by the circumstances of the case.

33 Appeal Court of Lithuania, Civil Division Ruling of 26 of September, 2005 (case No. 2A-214/2005).

2. The person acquires the right to insist on the criminal procedure within a reasonable time when the justified presumption that the criminal prosecution of him/her will be started appears. It is predetermined by the prognostication of the probability (of a smaller or larger degree) of the possible suspicion (indictment). Thus, the principle of the procedure within a reasonable time starts to operate not only at the moment of bringing suspicion or indictment; it is reasonable to think that criminal prosecution may be exercised in respect of the person in the course of the procedure.

3. Though the laws do not establish the aspects which define the expedience and legitimacy of the duration of a procedure, in every case, while evaluating the content of the implementation of the principle, it is necessary to evaluate the whole of the actual and legal circumstances of the case, the set practice as well as their impact on the realization of the assignment of a criminal procedure. Moreover, alongside such aspects as the complexity of the case, the suspect's, the accused person's and the convict's behaviour and the actions of the institutions and officers which/who run the procedure, it is also necessary to evaluate the essence of the interest of the participant of a procedure which sometimes determines the direction of the procedure.

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PROCESO PER ĮMANOMAI TRUMPIAUSIĄ LAIKĄ TEISĖS PRINCIPAS: NAUJOS IŽVALGOS

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Santrauka. Moksliniame straipsnyje analizuojama ir tiriama baudžiamojo proceso per trumpiausią laiką, kaip teisės principo, sampratos problema. Šis baudžiamojo proceso principas, kaip ir kiti principai, yra žinomas teisinis reikalavimas, tačiau jo turinys iki šiol nėra atskleistas ir visiškai suvokiamas, mat šios gairės santykis su kitais principais, taip pat jos plėtra formuoja į visa tai naują požiūrį. Straipsnio autorius, analizuodamas šio principo turinį ir komentuodamas tarptautinių bei nacionalinių teismų praktiką nagrinėjama tema, formuluoja naujas išvagas, kurių pagrindu teigiama, jog pirmiausia kiekvieno asmens teisė į greitą baudžiamąjį procesą jo atžvilgiu atsiranda nuo to momento, kai paaiškėja objektyvi tikimybė, kad netrukus gali vykti (prasidėti) to asmens baudžiamasis persekiojimas. Taigi pakanka tik objektyvių prielaidų manyti, kad gali prasidėti vieno arba kito asmens baudžiamasis procesas. Ir šias prielaidas gali lemti bet kokie valstybės institucijų arba jų pareigūnų veiksmai, iš kurių turinio galima spręsti, jog valstybė inicijuos baudžiamąją procesinę veiklą.

Antra, autorius įsitikinęs, kad be valstybės institucijų elgesio, proceso dalyvių veiksnių bei baudžiamosios bylos aplinkybių, kaip aspektų, kuriuos įvertinus galima atsakyti į

klausimą, ar procesas yra, arba buvo vykdomas per trumpiausią laiką, būtina įvertinti dar vieną aspektą – kaip galimai uždelstas procesas nulėmė asmens, kuriam vykdomas teisinis procesas, interesus. Šis aspektas parodo, ar ilgiau nei paprastai trunkantis baudžiamasis procesas iš tiesų turėjo neigiamos įtakos įtariamąjui, kaltinamojo arba nuteistojo procesiniams interesams.

Reikšminiai žodžiai: *trumpiausias laikas, teisės principas, įžvalgos, baudžiamasis procesas, kaltininko interesai, tikėtinas (galimas) persekiojimas.*

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