



## **The Constitutional Right to A Reasonable Period of Consideration of The Case**

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### **Abstract**

The scientific article is devoted to the determination of the content and legal nature of the concept of "reasonable terms" in national judicial proceedings. It has been established that a reasonable period of trial is a separate element of access to justice, which is not limited to the speed of making a decision or resolving a dispute in a case, its author's definition is formulated. Based on the research of scientific concepts in this field, a review of judicial practice and the practice of the European Court of Human Rights, the criteria of reasonableness of time limits during the implementation of legal proceedings (complexity of proceedings, behavior of its participants, organization and procedure of legal proceedings, significance of proceedings for interested parties) were determined. It was concluded that the observance of the selected criteria in the national judiciary, taking into account the individual approach to determining the duration of the relevant procedures, will lead to greater efficiency in the consideration of criminal, civil and administrative cases.

**Keywords:** judiciary, right to a fair trial, procedural terms, reasonable term of trial, European Court of Human Rights.

### **Introduction**

For a long time, Ukraine has been deepening cooperation in the economic, political and legal spheres with the member states of the European Union with the aim of becoming a full member of it. In the conditions of European integration processes, a key element of European standards of justice and one of the most important tasks of the state is the observance of the rights and freedoms of a person and a citizen, ensuring and implementing the right to a fair trial.

Among the principles of justice, the Constitution of Ukraine includes a new principle of "reasonable terms of court consideration" (Constitution of Ukraine, 1996). Its appearance, as it is commonly believed, is caused by Ukraine's participation in the Convention on the Protection of Human Rights and Fundamental Freedoms, which was ratified on July 17, 1997, together with

the protocols to it, which became an integral part of national legislation. Ukraine undertook to guarantee and implement the right to a fair trial provided for by the Convention.

The specified novel directly follows from the content of the international legal document, in Art. 6 of which the right of a person to a fair trial is postulated precisely in such a way that it includes as an integral part the right to a reasonable period of consideration of the case. At the same time, using the term "reasonable period", the Convention does not define its meaning. This happens through the analysis of the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR), which according to the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" is recognized as a source of national law. Under such circumstances, each person has the right to apply to the national court for the protection of his violated subjective right, substantiating his claims not only by the laws of Ukraine, but also by specific decisions of the ECtHR, which have a precedential nature.

It is axiomatic that many factors influence the implementation of judicial proceedings, among them – justice, legality, publicity, accessibility and efficiency. However, the timeliness of the protection of the rights, freedoms and interests of the persons involved in the case is one of the most important factors that determines the effectiveness of its implementation.

The relevance of the study of the problem of "reasonableness" of the terms of consideration of the case is determined not only by the ongoing judicial reform, but also by a large number of cases regarding Ukraine's violation of a person's right to a "reasonable" consideration of his case by a court in the practice of the ECtHR. Under such conditions, one of the key issues of today's Ukraine, on the territory of which martial law has been introduced, is whether the modern national judicial system is able to ensure the administration of justice and the right of citizens to a fair trial, which is a fundamental and priority duty of the state, within a reasonable time frame (Rogach et al., 2022, p. 617).

### **1. Methodology of the study**

The methodological basis of this scientific article is a set of general scientific and special methods of cognition, in particular: the method of analysis of dictionary definitions - for an in-depth analysis of the concepts of the category-conceptual apparatus of the research topic; systemic – during consideration of regulatory features and determination of reasonable terms in court proceedings; comparativist (comparative legal) – in the process of analyzing national legislation in terms of determining and regulating reasonable terms, as well as to identify common and different provisions of criminal procedural, civil procedural and administrative legislation of Ukraine; dogmatic (logical-legal) – to establish inaccuracies and determine ways to improve current legislation; induction - for formulating general conclusions, improving the conceptual and categorical apparatus of the subject of research.

### **2. Analysis of recent research**

In the doctrine of constitutional law and other legal sciences, there are many scientific works devoted to issues of timely justice. The studies of many scientists are aimed at providing a general description of the concept of fair justice, including its temporal dimension. However, in modern legal science, there is a lack of analysis of the efficiency and effectiveness of updated temporal legislation. There is no serious elucidation of issues regarding the terms of consideration of cases and the execution of court decisions, which would meet the criterion of reasonableness in specific cases. Carrying out the relevant work will contribute to the development of concepts regarding the effectiveness of the timeliness of law enforcement. The study of legal approaches to the effectiveness of the enforcement of the European principle of timely justice as one of the main principles of a fair process will contribute to the disclosure of the content and legal nature of the concept of "reasonable time" in criminal, civil and administrative proceedings, will allow, based on the study of scientific concepts in this area, review of judicial practice and the practice of the European Court of Human Rights to determine the criteria of reasonableness of terms during the implementation of judicial proceedings.

### **3. Results and discussion**

Adherence to procedural deadlines is one of the criteria for the effectiveness of the judiciary in any country. Procedural terms as legal facts entail the emergence, change or termination of

procedural rights and obligations of participants in criminal proceedings. Expiration of procedural terms is also a reason for various legal consequences. The determined procedural terms of judicial proceedings can be recognized as procedural guarantees of timely making of procedural decisions and conducting investigative actions, as well as ensuring the rights and legitimate interests of participants in criminal proceedings (Kushnyeriov, 2017, p. 228). Scientists distinguish the following properties inherent in procedural terms: they ensure the dynamism of procedural activity; organize procedural activities; guarantee the achievement of a legal result; regulate procedural legal relations (Kushneriov, 2017, p. 228).

In the doctrine, the concept of procedural terms is defined in different ways. In particular, Ya. Zeikan defines the procedural period as: a period of time established by law or appointed by the court, with which procedural norms link the possibility and necessity of specific procedural actions or the occurrence of certain legal consequences (Zeikan, 2002, p. 43).

L. Tatsiy interprets a reasonable term as determined by the complexity of the case, as well as the behavior of the persons participating in it, the shortest term for its consideration and resolution, sufficient to provide timely (without unjustified delays) judicial protection of violated rights, freedoms and interests in public law relations (Tatsiy, 2014, p. 39). The scientist notes that the reasonableness of the term is related to the result of justice – the achievement of justice and restoration of rights. The term of consideration of the case is a component of the reasonable term, because it includes the time during which the case is decided by the courts of all instances, the term for which the proceedings in the case are stopped, as well as the term of execution of the court decision (Tatsiy, 2014, p. 37). Z. Tsybulenko believes that a reasonable term should be considered as a real term, because depending on certain circumstances, its duration can be different (Tsybulenko, 2014, p. 141).

As we can see, scientists are still debating about the correctness of defining reasonable terms for consideration of cases. In Art. 28 of the Criminal Procedure Code of Ukraine states that reasonable terms are terms that are objectively necessary for the execution of procedural actions and the adoption of procedural decisions. They may not exceed the terms of the execution of certain procedural actions or the adoption of certain procedural decisions provided by the Criminal Procedure Code of Ukraine (Criminal Procedure Code of Ukraine: Law of Ukraine, 2012). Within the framework of civil proceedings, the legislator obliged the court to set reasonable terms for taking procedural actions and enshrined in Art. 121 of the Civil Procedure Code of Ukraine, this concept is as follows: "The court must establish reasonable terms for taking procedural actions. The term is reasonable if it provides for a time sufficient, taking into account the circumstances of the case, to perform a procedural action and corresponds to the task of civil proceedings" (Civil Procedure Code of Ukraine, 2007). Thus, in civil proceedings, the essence of the concept of "reasonable period" is defined through the category "sufficient period", but without disclosing the criteria for determining such "reasonableness".

In our opinion, when analyzing the concept of "reasonable terms", it is necessary to clarify the essence of the categories "reasonable" and "term".

According to Art. 251 of the Civil Code of Ukraine, a term is a certain period of time, the expiration of which is associated with an action or event that has legal significance (Civil Code of Ukraine: Law of Ukraine, 2003). According to Art. 113 of the Criminal Procedure Code of Ukraine, procedural terms are time periods established by law or in accordance with it by the prosecutor, investigating judge or court, within which the participants in criminal proceedings are obliged (have the right) to make procedural decisions or take procedural actions (Criminal Procedure Code of Ukraine: Law of Ukraine, 2012). In the dictionary of the Ukrainian language, the word "term" is interpreted as an established, defined period of time for someone or something or as a period of time in general (Dictionary of the Ukrainian Language, 2023).

Therefore, the term of consideration of cases is a certain period (interval) of time, within which the participants of criminal proceedings perform procedural actions or make procedural decisions. The academic explanatory dictionary of the Ukrainian language gives the word "smart" several definitions, in particular: skillful, skillful; who quickly perceives, learns anything; which is guided by reason, performed with reason; which contains common sense, sound thoughts; practically

useful, expedient (Kushneriov, 2019, p. 252). So, the etymology of the word "reasonable" gives reason to assert that the specified term during the judicial proceedings cannot indicate only the speed of the process or be associated only with the activity of the officials who are involved in the judicial proceedings.

From the analysis of the given definitions, it is possible to reach at least the following conclusions regarding the meaning of the concept of "reasonable time" in the Ukrainian judiciary: a reasonable time is the shortest possible time for consideration and resolution of a legal dispute, however, such a time cannot be equated with speedy consideration of a case: the length of reasonable time has to be the shortest, but sufficient for the case to be comprehensively investigated by the court with an assessment of the arguments and arguments of the participants in the proceedings, which are based on the evidence provided by them; the duration of the "reasonable period" is influenced by various factors of both an objective (complexity of the case, the behavior of the parties to the dispute, the need to attract and study additional evidence, the workload of the court, etc.) and a subjective nature (the behavior of the judge and court staff). In our opinion, the concept of "reasonable term" has a wider meaning than simply speeding up the judicial proceedings and the consideration of the case. On the basis of the above, it can be stated that reasonable terms are aimed not only at speeding up the work of officials and bodies that carry out judicial proceedings, but also at the rational and effective use of time, which is really necessary within the procedural terms established by law for a full, impartial and comprehensive resolution of the case essentially. Constituent elements of a reasonable term are time intervals during which: 1) the court considers the case and makes a decision on it; 2) the relevant judicial instance reviews the court decision in an appellate or cassation procedure, makes a final decision in the case; 3) the final court decision becomes legally binding and may be enforced; 4) the court decision is executed.

In the commentary to the provisions of part 1 of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms states that the term of consideration of a case by a court includes all proceedings from the moment of application to the court or in the order of preliminary consideration of the case to the relevant body until the moment of execution of the decision (Convention on the Protection of Human Rights and Fundamental Freedoms, 1950). The essence of the specified provision on the "reasonableness of the terms" of such proceedings should be interpreted as determining both the terms of court proceedings and the terms of executive proceedings. Although such a principle is legally enshrined in the provisions of civil proceedings, in reality it is not actually implemented.

Also, with regard to the last element, the Constitutional Court of Ukraine in its decision No. 18-пн/2012 dated 13.12.2012 noted that the execution of a court decision is an integral part of everyone's right to legal protection and includes, in particular, a set of actions defined in law aimed at protecting and restoration of violated rights, freedoms, and legitimate interests of individuals and legal entities, society, and the state (Decision of the Constitutional Court of Ukraine No. 18-пн/2012, 2012).

From the above conclusions of the Constitutional Court of Ukraine, it can be seen that the right of everyone, in whose favor a court decision has been passed, to implement such a decision has been declared at the national level. Such a circumstance as missing the deadline for the submission of an executive document for execution cannot call into question the obligation to execute a court decision established by the Constitution of Ukraine and the Convention on the Protection of Human Rights and Fundamental Freedoms. That is, the timely execution of a court decision is an integral element of a person's right to consider and resolve a case within a reasonable time.

Judicial practice, in particular, the practice of the ECtHR, plays an important role in the realization of the right to a fair trial guaranteed to a person. As already mentioned, each case must be considered by the court within the period established by the procedural law, which, in turn, must be reasonable. It is in the practice of the ECtHR that the concept of "reasonable term of trial" is developed in the most detail. The normative basis for the functioning of the judicial system of

Ukraine and the European Court of Human Rights is the Convention on the Protection of Human Rights and Fundamental Freedoms.

The statistical analysis of the ECtHR indicates that the number of complaints based on which states violated the right to a fair trial is barely half of the total number of cases against Council of Europe member states. The main problem in this context is the significant delay in the consideration of cases by the courts. In addition, the share of cases in which the ECtHR established the fact of Ukraine's violation of the right to a fair trial is the largest, approximately 33% of the total number of decisions made against Ukraine.

In order to determine the duration of the case consideration in "reasonable terms", it is first necessary to determine the time intervals of the case consideration. After establishing the time frame for consideration of cases at the national level, the ECtHR evaluates its "reasonableness" through the prism of whether the duration of the proceedings is appropriate, while developing its own criteria for the reasonableness of the terms of consideration of the case in court. As an example, we can cite the decision in the case "Sayenko and others v. Ukraine", in which the ECtHR stated that Ukraine had violated Clause 1 of Art. 6, Art. 13 of the Convention on the Protection of Human Rights and Fundamental Freedoms, in connection with the long duration of civil proceedings, he emphasized that the reasonableness of the duration of the trial should be assessed taking into account such criteria as: the complexity of the case, the behavior of the applicants and the relevant authorities, as well as the importance of the subject of the dispute for the applicants (Court decision in the ECHR case No. 39167/08 "Sayenko and others v. Ukraine", 2017).

The proper behavior of the applicant, as a criterion of "reasonableness" of the term of consideration of the case, should not lead to the deliberate delay of the consideration of the case. If the delay in the consideration of the case occurred because of the applicant, the court may recognize the absence of a violation of Art. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. In the case of *Chiricosta and Viola v. Italy*, the ECtHR decided that the 15-year period of consideration was not unreasonable, because the applicants requested 17 times to postpone the process and did not object to the other party's demands, expressed 6 times, to postpone the consideration of the case (Court decision in the ECtHR case No. 5/1995/511/594 "Chiricosta and Viola v. Italy", 1995).

As for the behavior of the relevant state authorities, in order to comply with the "reasonableness" of the review terms, it is evaluated much more strictly. In the case *Allene De Ribemont v. France*, which took approximately 11 years and 8 months, the ECtHR pointed to a violation of the "reasonable period of trial" requirement in that the judicial authorities repeatedly refused the applicant to grant him the request to provide him with evidence that was for him very important, which led to the delay of the trial for more than 8 years (Court decision in the ECtHR case No. 15175/89 "Allene De Ribemont v. France", 1995).

As E. Tregubov rightly points out, "the ECtHR extends the requirement regarding the reasonableness of terms not only to the consideration of the case in court, but also to the execution of the court decision. Thus, in the case of *Burdov v. Russia*, the ECtHR directly indicates that the right to appeal to the court, enshrined in Art. 6 of the Convention, it would be illusory if the legal system of the countries participating in the Convention allowed that a court decision, which has entered into legal force and is mandatory for execution, would remain invalid against one of the parties contrary to its interests. Interpretation of Art. 6 of the Convention in the light of the principle of the rule of law requires a broader approach, according to which formalities cannot be grounds for justifying injustice. Therefore, it is impossible to imagine that Art. 6 of the Convention, while protecting the right to a reasonable period of consideration of the case, would not provide for the protection of the right to enforce the court decision" (Tregubov, 2010, p. 361).

The Constitutional Court of Ukraine in ch. 1-2 st. 55 of the Basic Law follows from the fact that in Ukraine the rights and freedoms of man and citizen are protected by the court; everyone is guaranteed the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officials (Constitution of Ukraine, 1996).

In particular, the decision of the ECtHR in the case "Guincho v. Portugal" states that member states of the Council of Europe are obliged to organize their legal system in such a way as to ensure compliance with the provisions of paragraph 1 of Article 6 of the Convention and the requirements for a trial within a reasonable time ("Guincho v. Portugal": decision of the ECtHR, No. 8990/80, 1984), the Constitutional Court of Ukraine came to the conclusion that the procedural codes only shortened the terms of certain procedural actions, and the content and scope of the constitutional right to judicial protection and access not narrowed down to justice. Therefore, the above changes do not make it impossible to effectively consider court cases, therefore they do not contradict the Constitution of Ukraine.

At the same time, although the duration of reasonable terms is differentiated depending on the category of the case and its complexity, the criteria of reasonableness of terms must be unified within the relevant judicial procedure. Thus, in the Resolution of the Plenum of the Higher Specialized Court for the Consideration of Civil and Criminal Cases "On Some Issues of Compliance with Reasonable Terms of Consideration by Courts of Civil, Criminal Cases and Cases on Administrative Offenses" (Resolution of the Plenum of the Higher Specialized Court for the Consideration of Civil and Criminal Cases No. 11, 2014) it is determined that, taking into account the practice of the ECtHR, the criteria for reasonable terms in civil cases are: legal and factual complexity of the case; the behavior of the applicant, as well as other persons involved in the case, other participants in the process; the behavior of state authorities (primarily courts); the nature of the process and its meaning for the applicant (the decision in the cases "Smirnova v. Ukraine" ("Smirnova v. Ukraine": decision of the ECtHR, No. 36655/02, 2005), "Fedina v. Ukraine" ("Fedina v. Ukraine": decision of the ECtHR, No. 17185/02, 2010), "Matica v. Romania" ("Matica v. Romania": decision of the ECtHR, No. 19567/02, 2006) and others).

The Higher Specialized Court for the Consideration of Civil and Criminal Cases also emphasized that when assessing the legal and factual complexity of the case, one should take into account, in particular, the presence of circumstances complicating the consideration of the case; the number of co-plaintiffs, co-defendants and other participants in the process; the need for examinations and their complexity; the need to interrogate a significant number of witnesses; participation in the case of a foreign subject and the need to find out and apply the norms of foreign law (Resolution of the Plenum of the High Specialized Court on Consideration of Civil and Criminal Cases No. 11, 2014).

From the analysis of the judicial practice conducted by us, it was established that the most frequent examples of non-observance of due deadlines in cases against Ukraine are: repeated referrals by the courts for a new trial; failure to hold court hearings for a long time; non-application of coercive measures to persons who do not appear at the appointed meeting and many other examples. In order to develop effective mechanisms for the rapid consideration of court cases, the domestic judicial system should use the precedent practice of the ECtHR, which at one time simplified certain procedures by introducing the use of accelerated procedures for consideration of minor or uncontested cases.

Responsibility for compliance by national courts with reasonable deadlines for consideration of cases rests with the state. Provision in the budgetary financing of costs for the implementation of the compensations awarded to Ukraine in favor of the applicants, which led to the violation of reasonable deadlines for the consideration of the case, will serve as a guarantee of the actual implementation of the decisions of the European Court of Human Rights.

It is to solve this problem that the Cabinet of Ministers of Ukraine supported draft law No. 8083 of 09/28/2022 "On Amendments to Certain Legislative Acts on Solving the Problem of Excessive Length of Civil, Economic, and Administrative Proceedings" regarding the solution of the problem of excessive length of civil, economic, and administrative proceedings.

The draft law, in particular, envisages the introduction of the following changes: supplementing the provisions of the procedural codes with rules that the court, when deciding on the issue of consideration of a case in the order of simplified or general legal proceedings, takes into account the priority of quick resolution of the case; extension of the term of consideration of the case in

the order of simplified legal proceedings in exceptional cases, but not more than 30 days; granting the right to appellate courts during the consideration of cases in civil and commercial proceedings to consider the case in the order of written proceedings based on the materials available in the case; improvement of the procedure for consideration of administrative cases by the court of cassation (On amendments to certain legislative acts to solve the problem of excessive duration of civil, economic and administrative proceedings. Draft Law No. 8083).

In addition, the draft law provides for the following changes: giving the claimant (applicant, complainant) the right to submit an application for a refund from the state budget of the court fee paid by him when filing a claim (application, appeal or cassation complaint), in the event that the judge violates the terms of consideration of the case established by law ; reduction of the term of consideration of a disciplinary case in relation to unjustified delay or failure by a judge to take measures to consider an application, complaint or case within the period established by law, delay in making a reasoned court decision - 30 days from the day of its opening; coordination of provisions regarding the payment of a court fee for submitting an application to the administrative court to change or establish the method, order and term of execution of a court decision; inclusion in the list of objects for which a court fee is not paid, lawsuits and appeals in cases related to forced return or forced deportation of foreigners or stateless persons outside the territory of Ukraine, detention of foreigners or stateless persons (The government supported the draft law on solving the problem of excessive length of court proceedings, 2022).

Undoubtedly, the implementation of the mentioned act will require additional expenditures from the State Budget of Ukraine for 2024 and the following years to the State Judicial Administration and the Supreme Court for the administration of justice in connection with the return to the plaintiffs of the court fees paid as a result of the judges' violation of the deadlines for consideration of cases (On amendments to certain legislative acts to solve the problem of excessive duration of civil, economic and administrative proceedings. Draft Law No. 8083). At the same time, the lack of initial data on the number of possible cases of returning the paid court fee to the plaintiffs and directly on the amount of the paid court fee deprives the opportunity to determine the value of the impact of the provisions of the draft law on the indicators of the state budget.

Therefore, the courts must take into account the introduction of reasonable time limits for consideration of the case and consider cases within a reasonable time limit for each individual case, while the reference point should not always be the limit period determined by procedural norms, but should take into account the nature of the disputed relationship and its significance for the parties, the behavior of others participants in the case. The importance and necessity of further improvement of criminal procedural, civil procedural and administrative legislation is one of the most important tasks of the modern legal community, since a perfect mechanism for restoring justice is a guarantee of harmonious and stable existence and development of modern society.

## Conclusions

The conducted scientific research gave grounds to single out different views on the legal content of the constitutional right to a reasonable time for consideration of the case, the analysis of which proved that the theoretical-applied approaches to understanding the specified category are identified with the main properties of the legal process. Exclusively procedural deadlines are endowed with the following characteristics: they ensure the dynamism of procedural activity; guarantee the achievement of a legal result; regulate procedural legal relations; regulate procedural activity.

Reasonable terms of consideration of the case, regardless of the type of legal proceedings, can be defined as the shortest terms under specific circumstances, within the limits set by law or established by the court, during which the court (judge) carries out the consideration and decision of the case and which make it possible to comprehensively and fully investigate the evidence submitted by the parties, establish factual circumstances of the case, which are important for making a legal and reasoned decision.

A reasonable period of consideration of a case is the shortest possible period of consideration

and resolution of a legal dispute, which should not be equated with a quick consideration of the case: the duration of reasonable periods should be the shortest, but sufficient for the case to be comprehensively investigated by the court with an assessment of the arguments and arguments of the participants proceedings based on the evidence submitted by them; the duration of the "reasonable period" is influenced by various factors of both an objective (complexity of the case, the behavior of the parties to the dispute, the need to attract and study additional evidence, the workload of the court, etc.) and a subjective nature (the behavior of the judge and court staff). Based on the analysis of precedent practice of the ECtHR, the following criteria for determining the reasonableness of the terms of consideration of the case have been singled out: complexity of the proceedings; the behavior of the participants in the proceedings; organization and procedure of judicial proceedings by authorized state institutions; the significance of the proceedings for the applicant, suspect, accused, etc. Adherence to the specified criteria in the national judiciary, taking into account an individual approach to determining the duration of the relevant procedures, will lead to greater efficiency in the consideration of criminal, civil and administrative cases.

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