

PRINCIPLE OF REASONABLE TIME IN CRIMINAL PROCEEDINGS

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Abstract

The delay of the proceedings is a chronic sore point of the judicial system more often encountered accusations of slowness of procedures. In such circumstances, all talk of a voice more appreciate the rapid completion of the procedure rather than perfectly correct application of the law.

The right of subjects to a trial within a reasonable time is part of the wider discourse of human rights, as well as all other rights dedicated to the existence of due process compliance of this procedural standard in general is a significant indicator for human rights.

In our country the issue of respecting the right to trial within a reasonable time is increasing. On the one hand the ratification of the European Convention on Human Rights as well as other documents that guarantee those rights are the foundation began the rising level of this principle. On the other hand the existence of remedies as the remedy before the Macedonian Supreme Court and European Court of Human Rights, gives another opportunity to the subject to prove their claims.

The violation of this principle cause negative consequences for both sides, first for the applicant whose rights had been done, and second this violation means that the state must pay compensation to the applicants, which can cause serious problems and consequences if the state don't take the necessary measures to improve their judicial system.

Key words: *reasonable time, criminal procedure, reforms, court delay.*

Introduction

Trial within a reasonable time is one of the most important procedural principles predicted and protected by domestic law, but also guaranteed by international acts. The international documents raised the need of trial evidence in which the procedure would be straight forward and without delay.

From the existence of this standard until today, this principle has always remained as one of the most frequent bases for which the parties have addressed procedural lawsuits by the national and international courts. This is because the underdevelopment of the procedure within a reasonable time means nonexistence of many other important components which will cause delay of the procedures prior the courts.

This is a standard that entails a specific which cannot be found in any other principle. Thus it makes this study even more remarkable. In this article we will approach to this principle in the normative aspect as well in practice, by highlighting the real situation and whether this standard is protected by the courts of the Republic of Macedonia.

1. Normative regulation of principle trial within a reasonable time

There are a number of legal acts which, unlike the Constitution, contain provisions and ways of protecting the standards of the trial within a reasonable time. Law on Courts provides norms for the organization, operation and basic principles for the work of the courts, from which, article 6 will be highlighted. It is a provision that is very important, since there lays the foundation of legal protection to trial within a reasonable time period.

Everyone shall be entitled to equal access before the court for protection of their rights and legal interests. While deciding on civil rights and obligations as well as deciding on criminal liability, everyone shall be entitled to just and public trial within a reasonable time before an independent and impartial court established by law.,(article 6 CC-RM)

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From this article, standards are ejected without which the procedures are “sine quanon”. In the first paragraph the rights of citizens are protected, in order to address the court to protect their interests that are being violated or disrespected. Ongoing, the law calls in procedure should be developed within a reasonable time without concretizing the reasonable time, however the local courts use the same criteria as ECHR.

The Code of Criminal Procedure also approaches to this standard with 9 concrete acts, such as act 6, which foresees *“The person who is subject of the procedure is entitled to be brought before a court of law within a reasonable time and be tried without unjustified delay. The court of law is obliged to conduct the procedure without delay and impede any misuse of the rights of the persons participating in the procedure. The duration of the detention and other restrictions of the personal freedom must be reduced to the shortest period necessary,..* Such approach is a very important guarantee for a procedure which is quite complex and sensitive at the same time. However, while other legislation only envisage this standard, our CPP also foresees the measures that will apply to all of those that will act contrary to this principle.

2. Duration of the procedure

The long duration of the procedure is an old and known problem to when the domestic criminal procedure is at stake. Thus, in accordance with the data provided by the State Statistic Office for 2013 the duration of the procedure from the moment of the submission of the charges till the reaching of the judgment in the cases with known offender, out of 15 012 submitted charges the procedure lasted: up to 1 month-in 4 046 cases; from 1 to 2 months –in 1 744 cases; out of 2 up to 4 month– 2 204; from 4 to 6 months –1 417; from 6 months to 1 year -2 051 cases, and over 1 year – 3 550 cases. Observed through this aspect the picture remains almost the same year in year out, with the difference that the numbers are higher for couple of percents each year.

When the acts against office are concerned, the length is somewhat longer due to the complexity of the cases and the number of the offenders that are tried for the same. Thus,

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according the data of the last year provided from the same source, the procedure for these criminal acts lasted: up to 1 month—in 1143 cases; from 1 to 2 months-104 cases; from 2 to 4 months -111; from 4 to 6 months - 84; from 6 months to 1 year -158 cases; over 1 year- 205 cases.

The fact that the criminal procedures last so long is negatively reflected in the efficiency of the penal system in general, but special damages are suffered by the defendant, especially if he or she is in detention, which was often a case in the observed cases.

One should bear in mind in the observed cases their complexity – we speak of extensive and complex cases which means that they need more time for completion. The extensiveness and the complexity of these cases is concerned both from the aspect of the actual and legal issues.

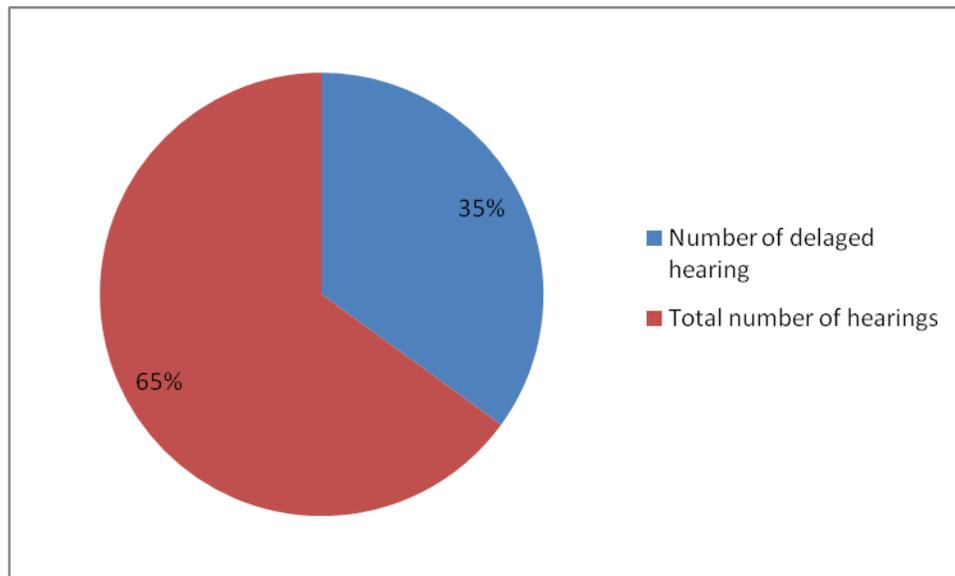
Tab. 1. The duration of proceedings before the Supreme Court

	Total	Under 1 month	Over 1-2 month	Over 2-4 month	Over 4-6 month	Over 6 month to 1 ye	Over 1 year
2008	15019	4996	1341	1693	1198	2418	3373
2009	15462	4875	1556	1866	1005	2552	3608
2010	15511	4670	1686	1902	1125	2505	3623
2011	15383	4526	1771	1940	1271	2564	3311
2012	14627	4477	1755	1920	1249	2198	3028
2013	15480	4492	1872	2203	1330	2313	3270

The delay of the proceedings is a chronic sore point of the judicial system more often encountered accusations of slowness of procedures. In such circumstances, all talk of a voice more appreciate the rapid completion of the procedure rather than perfectly correct application of the law.

1. *Delaying of the trial*

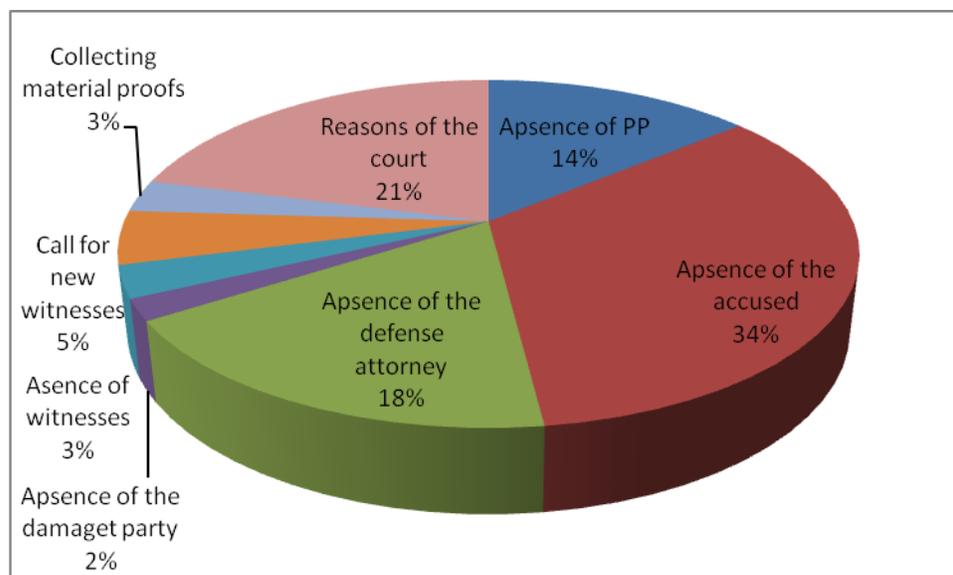
Grfikon 1.



Number of delayed hearings

The data clearly shows that the number of the delayed trials/hearings significantly contribute in the prolongation of the procedure. The sole fact that almost half of the scheduled hearings are postponed is really worrying and speaks of the bad organization and the lack of professionalism of the participants in the procedure. Admittedly the worst part here, is seems that everybody are used to this manner of working, and the people (including the media) even perceive as normal the trials to take place in phases and with frequent delays. Some of the experts find the reason for this in the model of the procedure itself, where the proofs are gathered sometimes when the hearing and the trial are in process. Contrary to these, for us common practices, most of the western states find that the efficiency of the procedure is one of the most important principles and thus they speak of the principle of concentration, and the trials are previously well prepared and then are conducted in continuity, and if needed in couple of days in a raw.

Grafikon .2



Reasons for postponing a hearing

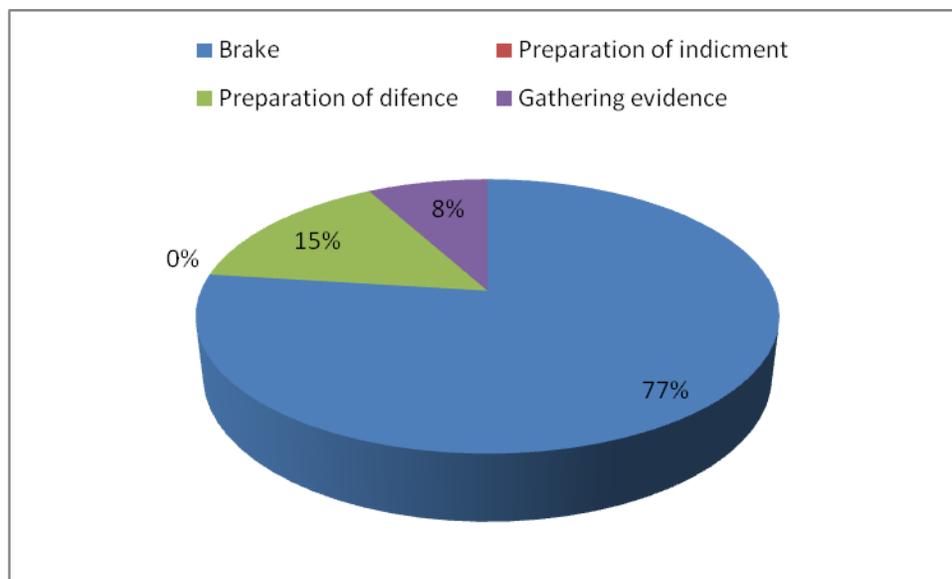
As main reasons for prolongation of the procedure often objective reasons appear – such as when the reason for the prolongation is due the difficulties in finding and presentation of evidence, the time span of the analyse of the expertise etc., but more often the reasons are due subjective factors –when the procedure is prolonged delayed due to the fault of the participants in the proceedings. As it can be seen from the gathered data, the participants in the proceedings, the defendant and the defense were in most cases appearing on the scheduled hearings.

In spite of this, the defendant has often submitted objections and complaints which were not seriously grounded, concealed certain facts essential to the length of the case, defense requested a delay because of the excessive workload and so on.

The behavior of public authorities (the court, the public prosecutor and the police) in most of the cases can be evaluated as expeditious since they have shown an active approach in solving

the criminal acts, when it was necessary the collection of a large body of evidence and so on, but the cases have been observed where unnecessary delays in almost all phases and stages of the procedure were happening. Thus, the number of the delayed or postponed hearings which in the monitored cases is caused by the absence of the public prosecutor (14%) or because the court has made them in (21%), is simply unacceptable.

Grafikon .3.

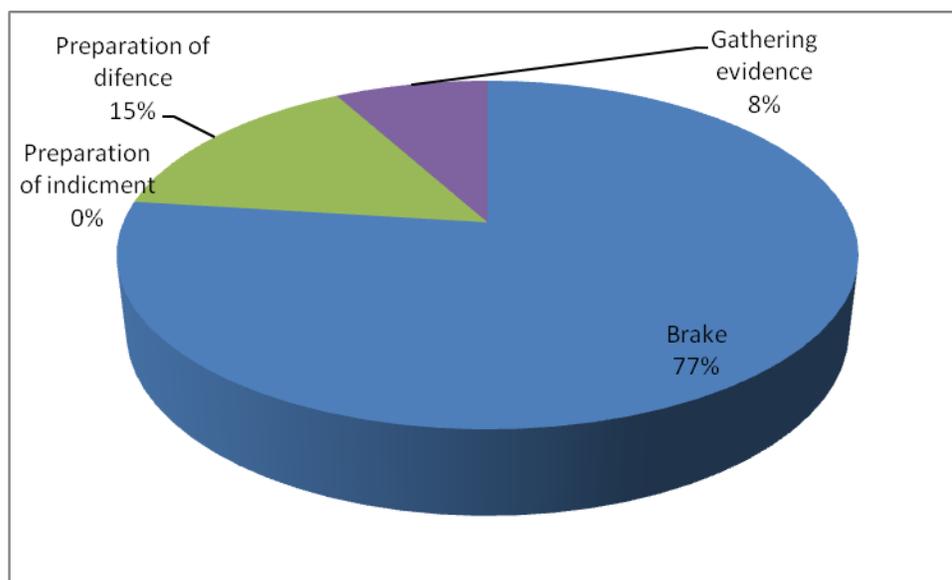


Reasons of discontinuation of the trail

The monitors have noted the existence of numerous and different circumstances, which means that there is a need of interruption of the main hearing (it's stopping in a short period that doesn't surpasses 30 day). Among the circumstances that lead to the interruption of the main hearings are: short reassess/brake during the hearing (77%), preparation of the conviction (8%)

or defense (15%), and only in exceptional cases the need for gathering new evidences and other circumstances that are provided for by law.

Grafikon .4



Reasons of discontinuation of the trial

Conclusion

Laws that deal within a reasonable judgment in the Republic of Macedonia not only guarantee but also create other prerequisites for realizing this right even if it is breached. This is the result of increasingly high efforts to limit unnecessary delay. But taking into consideration the legal time controlled by the courts, laws present the clock and the courts are its hands. This means that the laws are necessary, but courts are even more necessary because they apply laws. How do things function here in Macedonia? There is no law for disciplining of judicial time. Judicial practice relies on the decisions of the Strasbourg Court, which is considered as a confirmed source of law for us. But whether the courts apply it or not it remains a big question

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mark. This article is closed with an expression of Shakespeare that says: „How does the world move?“, the painter responds: "It wears, sir, as it grows". The world is consumed and it has no time to expect a delayed justice.

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