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Criteria for Assessing the Violation of the Right to a Trial Within a Reasonable Time

Abstract: The well-known sentence in English Justice delayed is justice denied confirms historical awareness of the value of a speedy court decision. The right to a fair trial within a reasonable time applies to both civil and criminal proceedings. In a criminal trial, the issue of adjournment may also be regulated under Article 5 paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms when a person is detained. The rationale for the principle, in criminal proceedings, is "based on the need to allow the accused not to remain for too long in a state of uncertainty as to the outcome of criminal charges against him" (*Kart v. Turkey*, European Court of Human Rights, 2009). Furthermore, the variability of criminal proceedings that take too long - generally damages the reputation of the alleged offender. The European Court of Human Rights explained that "the reason for the verdict in so many lengthy proceedings is that certain contracting parties have not complied with the 'reasonable time' requirement under Article 6 paragraph 1 of the European Convention and have not prescribed a domestic remedy for this type of appeal" (*Scordino v. Italy* (no. 1) [GC], 2006-V).

Key words: reasonable time, Constitution of Bosnia and Herzegovina, European Convention for the Protection of Human Rights and Basic Freedoms, Constitutional Court of Bosnia and Herzegovina, European Court of Human Rights.

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1. REASONABLE TIME

The Committee of Ministers stated that too long proceedings were „so far the most common issue raised in applications before the European Court of Human Rights¹ and, therefore, poses a direct threat to the efficiency of the court“², and thus to the human rights protection system based on the European Convention for the Protection of Human Rights and Funda-

¹ Hereinafter: European Court.

² Recommendation CM/Rec (2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings (adopted by the Committee of Ministers on 24 February 2010 at its 1077th Session). Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf8e9.

mental Freedoms³. The Committee called Member States to ensure existence of mechanisms and remedies to address this issue, pointing out that there is a „strong but rebuttable presumption that the proceedings that take too long will be a reason for awarding non-pecuniary damage“⁴. This has compelled the States to consider ways of non-pecuniary compensation, such as the reduction of sanctions or the suspension of proceedings, and for such measures to be retroactive in appropriate circumstances⁵.

Trying to set guidelines for application of the principle of trial within a reasonable time, the practice does little more than conclusion that this must be assessed „in the light of particular circumstances of the case“, in particular the complexity of the case, the appellant’s proceedings and the proceedings of the authorities“⁶. The line between reasonable and unreasonable time is some five years, „where different criteria work in a difficult puzzle and where predicting the outcome seems most dangerous“⁷.

As regards the authorities’ actions, unjustified delays and periods of inactivity during the investigation are also relevant⁸. The European Court concluded that although it is unable to examine the legal quality of domestic legal systems, where there is a constant re-examination of cases due to errors of lower courts in the same proceedings, this is a „serious shortcoming in legal system“ imposed on the State in deciding on reasonable time⁹. Delays in decision-making process of judges are attributed to the State and are taken into account when calculating „reasonable time“¹⁰.

In criminal matters, the determination of „reasonable time“ begins from the moment a person is „charged“ with a criminal offense. It is an „official notification given by the competent authority to an individual about allegations that he has committed a criminal offense“, a definition that corresponds to the test of whether „the (suspect’s) situation significantly affected“¹¹. The activities of the police and the prosecution before that date may also be relevant to the extent that they have affected the overall fairness of the trial¹².

Regarding the examination of the complexity of the case, factors such as the number of defendants will be taken into account¹³. Economic crimes are often relatively complicated¹⁴, although this is an assumption. If the defendant used sophisticated legal structures that interfere with the work of the investigator, the court will take this into account¹⁵. In

³ Hereinafter: European Convention.

⁴ CM/Rec (2010)3, para. 9.

⁵ CM/Rec (2010)3, paras. 10-11.

⁶ *Pélissier and Sassi v. France*, Merits and Just Satisfaction, App No 25444/94, ECHR 1999-II, [1999] ECHR 17, (2000) 30 EHRR 715, IHRL 3179 (ECHR 1999), 25th March 1999, European Court of Human Rights [ECHR]; Grand Chamber [ECHR], § 67.

⁷ Henzelin M., Rordorf H. (2014). When Does the Length of Criminal Proceedings Become Unreasonable According to the European Court of Human Rights? *New Journal of European Criminal Law*, 5 (1), 78-109.

⁸ *Pélissier and Sassi v. France* [GC], no 25444/94, ECHR 1999-II, § 72.

⁹ *Vlad and Others V. Romania*, no. 40756/06, 26 November 2013, § 133.

¹⁰ *Obasa v. the United Kingdom*, no. 50034/99, 16 January 2013, § 34.

¹¹ *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51.

¹² *McFarlane v. Ireland* [GC], no 31333/06, 10 September 2010, § 144.

¹³ *Pélissier and Sassi v. France* [GC], no 25444/94, ECHR 1999-II, § 71.

¹⁴ *D.M.T. and D.K.I. v. Bulgaria*, no 29476/06, 24 July 2012, § 94.

¹⁵ *Pélissier and Sassi v. France* [GC], no 25444/94, ECHR 1999-II, § 71.

criminal trials, a reasonable time is extended until the proceedings when a judgement is rendered¹⁶.

When it comes to the end of that period, it usually covers the entire proceedings in question, including the appeal proceedings¹⁷, and it extends until the final decision on the dispute is made¹⁸. Therefore, the reasonable time requirement applies to all stages of the court proceedings aimed at resolving the dispute, not excluding the stages after the judgment on the merits is rendered¹⁹.

Enforcement of a final judgment is considered an integral part of the „trial“ for the purpose of assessing the criteria of reasonable time²⁰, although in some cases there may be circumstances that justify a postponement²¹. The enforcement of a judgment rendered by any court must, therefore, be considered an integral part of the proceedings for the purpose of determining the relevant period²². The period does not cease to run until the right sought in the proceedings is exercised²³.

Proceedings before the Constitutional Court are taken into account, even though the Court does not have the power to decide on the merits, when its decision may affect the outcome of the dispute before the regular courts²⁴. However, the obligation to conduct proceedings in a case within a reasonable time cannot be interpreted in the same way as before regular courts²⁵.

In non-criminal matters, the starting point for determining of a reasonable time may also begin before a court decision is taken to initiate proceedings in which a dispute has been initiated, for example in cases where proceedings cannot be instituted until some preliminary procedural steps have been taken, such as filing a request for making of administrative decision²⁶. In legal systems where the injured party may join the criminal proceedings as *partie civile* (civil party), the period taken into account for the length of the proceedings in relation to that person starts from the date on which that person joined the criminal proceedings²⁷.

2. STANDARDS WHEN ASSESSING THE EXISTENCE OF VIOLATION OF REASONABLE TIME

In accordance with the case law of the European Court, the reasonableness of the length of the proceedings should be assessed in the light of particular circumstances of the case, paying particular attention to the following criteria: period taken into account, complexity of the case, conduct of the parties to the proceedings and competent court or

¹⁶ *Findlay v. the United Kingdom*, (110/1995/616/706), 25 February 1997, § 69.

¹⁷ European Court, *König v. Germany*, para. 98, *in fine*.

¹⁸ European Court, *Poiss v. Austria*, para. 50.

¹⁹ European court, *Robins v. United Kingdom*, paras. 28 and 29.

²⁰ *Lăcătuș and Others v. Romania*, no. 12694/05, 13 November 2013, § 117.

²¹ *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, § 35.

²² European Court, *Martins Moreira v. Portugal*, para. 44 and *Di Pede v. Italy*, para. 24.

²³ European Court, *Estima Jorge v. Portugal*, paras. 36-38.

²⁴ European Court, *Pammel v. Germany*, paras. 51-57 and *Süßmann v. Germany*, para. 39.

²⁵ European Court, *Oršuš et al. v. Croatia*, para. 109.

²⁶ *Vilho Eskelinen and Others v Finland* [GC], no. 63235/00, 19 April 2007, §§ 65-66,

²⁷ *Lăcătuș and Others v. Romania*, no. 12694/05, 13 November 2013, § 107.

other public authorities and significance a specific legal matter has for the appellant²⁸. Also, the European Court continuously points out that in certain proceedings, in which it is prescribed by domestic law that they are of urgent nature, special diligence of competent authorities is required. This is the case, for example, with cases concerning personal status and characteristics or, for example, in labor disputes²⁹.

2.1. Period to be taken into account

When considering the issue of a reasonable time, it is necessary to define the period which is to be considered, i.e. to determine starting point and the end. In doing so, a difference is made depending on the type of proceedings, and it does not mean only civil and criminal, but also administrative proceedings.

When it comes to the period to be taken into account, in civil litigations, the beginning of the period generally coincides with the date of addressing the competent court, i.e. the initiation of proceedings before the court, and ends on the day of the final judgment is issued.

The beginning of the relevant period in criminal matters is related to the moment when the person in question became aware of being suspected of criminal offense, because from that moment he has an interest in the court making a decision on the existence of that suspicion. Such determination of relevant period of time is evident in cases where the arrest preceded the formal charges³⁰. Furthermore, the end of the relevant period of time is the moment when the uncertainty regarding legal position of the person in question has ended. In this sense, the European Court applies the same criteria in both criminal and civil matters. In doing so, in criminal proceedings, the decision on the indictment, i.e. acquittal or dismissal of the charges must be final. Finally, final decision on the charges may be a waiver of further criminal proceedings³¹.

Criteria for assessing the reasonableness of the length of proceedings developed by the European Court in its case law, are used in the same way by the Constitutional Court of Bosnia and Herzegovina³².

With regard to calculating the length of the proceedings, i.e. the period to be taken into account, the Constitutional Court takes into account only the time from the date of entry into force of the Constitution of Bosnia and Herzegovina - 14 December 1995, which is calculated as the date of establishment of time jurisdiction of the Constitutional Court. However, the duration of the proceedings before that date is not completely neglected. That time is of great importance for determining at what stage the proceedings were on 14 December 1995 and how much time had elapsed by then.

2.2. Complexity of the case

All types of cases can be important for assessing the complexity of the proceedings. The European Court takes into account procedural aspects, complexity of legal and factual issues in each case, and in particular: the number of parties, defendants and witnesses³³;

²⁸ European Court, *Mikulić v. Croatia*, application No. 1 53176/99 of 7 February 2002.

²⁹ European Court, *Borgese v. Italy*, judgment of 26 February 1992.

³⁰ European Court, *Wemhoff v. Germany*, judgment No. 2122/64 of 27 June 1968, para. 19.

³¹ *Ibid.*, para. 18.

³² Hereinafter: Constitutional Court.

³³ *Golder v. United Kingdom* of 21 February 1975, para. 32.

the scope of written evidence; the complexity of expertise³⁴ and the age of the event that was the subject matter of the dispute³⁵.

Complex cases require more time, but the complexity of the proceedings is not always sufficient to justify the length of the proceedings. The complexity of the proceedings is considered by the Constitutional Court in the light of the factual and legal aspect of the specific dispute, i.e. evidence to be presented by the court (especially the number of witnesses to be heard), and the assessment of legal issues to be resolved. The number of parties to the proceedings is also important. In one of its decisions, the Constitutional Court concluded that there was no violation of the right to a decision within a reasonable time under Article II/3e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention, even though the investigation in criminal proceedings in question lasted for over four years, and since it was a very extensive and complex investigation involving a large number of persons, including the appellant³⁶.

2.3. Behavior of the parties to the proceedings

When it comes to the conducts of judicial bodies, it is important to note, among other things, that the European Court does not accept justifications, such as unresolved cases or administrative difficulties, because the States are obliged to organize their judicial systems in a way that will enable their courts to meet European Convention requirements.

In the case law of the European Court, there are a number of situations in which the applicant was considered to be acting irresponsibly: if he presents new facts that need to be verified and which prove to be incorrect³⁷; if he frequently changes attorneys³⁸; if he frequently and unjustifiably requests the adjournment of the main trial³⁹ and if he evades justice⁴⁰. Although the domestic authorities cannot be held responsible for the conduct of the defendant, the delay tactics used by one party do not relieve the authorities of their duty to ensure that the proceedings are conducted within a reasonable time⁴¹.

In cases where the Constitutional Court concluded that there had been no violation of Article 6 of the European Convention, even when the length of the proceedings was manifestly excessive, one of the reasons for such decision was the fact that the appellant had contributed to the length of the proceedings. Thus, for example, in case AP-2240/05 of 9 November 2006, the Constitutional Court concluded that despite the evident lack of timeliness of the court which contributed to stalling of the proceedings, the appellant's failure to file a proper complaint, that is, to fully settle the lawsuit following the court's ruling, they sufficiently justify the length of the proceedings in question. In one of the cases relating to the length of civil proceedings for the payment of royalties, the Constitutional Court found that the proceedings lasted 16 years and five months, of which 10 years and four months fall into the relevant period after the entry into force of the Constitution of Bosnia and Herzegovina, but the violation of the right to a fair trial within a reasonable

³⁴ *Šilih v. Slovenia*, judgment of 9 April 2009, para. 126.

³⁵ *Kostovska v. Macedonia*, judgment of 15 June 2006, para. 42.

³⁶ Decision No. 1 AP-4340/10 of 15 January 2014.

³⁷ *Bagetta protiv Italije*, presuda od 25. juna 1987. godine.

³⁸ *König protiv Njemačke*, presuda od 28. juna 1978. godine.

³⁹ *Ciricosta and Viola v. Italy*, judgment of 4 December 1995.

⁴⁰ *Sari v. Turkey and Denmark*, judgment of 8 November 2001.

⁴¹ European Court, *Mincheva v. Bulgaria*, para. 68.

time was not established because the responsibility for not making a decision on the merits in the relevant period prevailed on the side of the appellant⁴².

2.4. Behavior of the court and public authorities

The state is obliged to organize its judicial system in such a way as to meet the requirements of Article 6 of the European Convention. According to the case law of the European Court, which was also accepted by the Constitutional Court⁴³, overload of judiciary cannot be accepted in general as a justification for the length of proceedings, since the contracting states are obliged to organize the administration of justice so that various courts meet the requirements of Article 6 of the European Convention⁴⁴. Given that the State party must organize its legal system in a way that guarantees the right to a court decision within a reasonable time, the overload of cases cannot be taken into account⁴⁵. However, temporary delay in resolving the cases does not imply the responsibility of the state, provided that it has taken reasonably prompt corrective measures to resolve an exceptional situation of this kind⁴⁶. In addition, when multiple changes of judges slow down the proceedings, as each new judge must become acquainted with the case, this does not relieve the state of its obligation to request reasonable time, given that the task of the state is to ensure that the judicial system is properly organized⁴⁷.

Only delays attributable to the State can justify a finding that „reasonable time“ requirement has not been met⁴⁸. The state is responsible for all its bodies: not only for the judiciary but also for all public institutions⁴⁹. Even in judicial systems applying the principle that the initiative to conduct proceedings is the responsibility of the parties, behavior of those parties does not relieve the courts of their obligation to ensure a speedy trial as provided for under Article 6 paragraph 1 of the European Convention⁵⁰. The same applies when expert cooperation is required during the proceedings: the responsibility for preparing the case and speeding up the proceedings rests with the judge⁵¹.

In general, the courts in Bosnia and Herzegovina have a large backlog of cases. However, it should be reminded that the European Conventions are an integral part of the legal system of Bosnia and Herzegovina, and, consequently, the State is obliged to ensure the rights and freedoms set forth in the European Convention to all persons under its jurisdiction, and to organize its legal system to ensure compliance with requirements of Article 6 paragraph 1 of the European Convention, including a request for a trial within a reasonable time.

In Decision number AP-1410/05, the Constitutional Court pointed out that omissions in the organization of the legal and judicial system of the State, in this case the Entities, which endanger the protection of individual rights - cannot be attributed to an individu-

⁴² Decision on Admissibility and Merits, No. AP-519/04 of 22 July 2005.

⁴³ Constitutional Court of BiH, Decision No. AP-1097/04 of 17 November 2005.

⁴⁴ European Court, *Francesco Lombardo v. Italy*, judgment of 25 February 1994.

⁴⁵ *Vocaturò v. Italy*, para. 17.

⁴⁶ European Court, *Buchholz v. Germany*, para. 51.

⁴⁷ European Court, *Lechner and Hess v. Austria*, para. 58.

⁴⁸ European Court, *Buchholz v. Germany*, para. 49 and *Papageorgiou v. Greece*, para. 40.

⁴⁹ European Court, *Martins Moreira v. Portugal*, para. 60.

⁵⁰ European Court, *Pafitis et al. v. Greece*, para. 93 and *Sürmeli v. Germany*, para.129.

⁵¹ European Court, *Capuano v. Italy*, paras. 30 and 31 and *Versini v. France*, para. 29.

al, nor can the consequences be borne by an individual. According to the Constitutional Court, regular courts have an obligation to direct the competent public authorities, and the High Judicial and Prosecutorial Council have an obligation to ensure independent, impartial and professional judiciary, and to establish a professional and efficient judicial system. Despite the fact that the appellants can contribute, to some extent, to the extension of duration of the proceedings as a whole, the court, which has the role of effectively controlling the proceedings - has a crucial and the most important role.

The Constitutional Court often notes that in its decision *Uljar et al. v. Croatia* it concluded that regular courts must effectively control the proceedings, as they decide how to conduct the proceedings, how to present evidence and how to assess the parties' actions and omissions, taking into account all requirements guaranteed under Article 6 paragraph 1 of the European Convention. As regards to the conduct of the court in the proceedings, an example should be given of a case in which the Constitutional Court fully charged the regular court with failing to reach a decision within a reasonable time, in a situation where in civil proceedings for compensation of pecuniary and non-pecuniary damage, in period of four years and seven months, the regular court did not hold a single hearing (AP-1319/08 of 29 June 2010).

2.5. The importance of what is at stake for the appellant in the dispute

The European Court also draws attention to the special interest the applicant may have. Criminal cases are expected to be resolved faster than civil ones, especially in a situation where the defendant is in custody. This relates in particular to Article 5 paragraph 3 of the European Convention which provides for that anyone arrested or deprived of his liberty pursuant to the provisions of paragraph 1(c) of this Article, shall be brought promptly before a judge and shall have a right to be tried within a reasonable time or to be released pending trial. However, the case law of the European Court indicates that civil proceedings also require expediency.

In the case law of the Constitutional Court, according to this criterion, in addition to cases related to the freedom and security of a person, there are also cases in labor and family legal disputes that have priority in resolving. In several cases, the Constitutional Court found that the proceedings in which the appellant's claim to return to work and be paid his salary and other rights from work was decided, was a proceedings that was extremely important for the appellant, and should therefore be resolved as soon as possible. (AP-3007/07 of 14 April 2010). Also, in case number AP-3013/06 of 29 April 2009, the Constitutional Court determined that this was an extremely important case for the appellant when his the claim is based on a claim for a significant amount of money.

3. CASE LAW OF THE CONSTITUTIONAL COURT OF BOSIA AND HERZEGOVINA

The Rules of the Constitutional Court of BiH (Article 18, paragraph 2), in order to protect the right to a trial within a reasonable time, guarantee the parties to the proceedings before regular courts (in some situations and before administrative bodies) that, even „without fulfilling other requirements necessary for admissibility of the appeal“ (such as the existence of a decision on the merits of regular court, deadline, exhaustion of legal remedies, etc.), may file an appeal during the proceedings before the regular courts. The

purpose of this provision is to enable the Constitutional Court to consider the appeal only in terms of the length of the proceedings in order to enable the appellants to reach a final decision on the merits of the dispute within a reasonable time, which is the basic meaning and ultimate goal of any court proceedings.

The Constitutional Court dealt with the length of proceedings in such situations for the first time in its Decision No. U-23/00 issued on 2 February 2001. In the said decision, the Constitutional Court, considering the issue of admissibility, stated that in the context of the appellate jurisdiction, defined under Article VI/3b) of the Constitution of Bosnia and Herzegovina, the term “judgment” must be interpreted broadly. According to the Constitutional Court, this term should not only include all types of decisions and rulings, but also the lack of decision-making when such a deficiency is found to be unconstitutional. Pursuant to the said Article, the Constitutional Court concluded in Decision No. AP-992/04 of 13 September 2005 that in Bosnia and Herzegovina, in the case in question in the Federation of Bosnia and Herzegovina, there was no effective remedy to enable the appellant to appeal against the excessive length of the proceedings, and that shortcomings in the organization of the judicial system of the Entity, i.e. the State, must not affect the respect for individual rights and freedoms established under the Constitution of Bosnia and Herzegovina, as well as the requirements and guarantees set forth under Article 6 of the European Convention. The Constitutional Court further pointed out that an individual cannot be placed under an excessive burden in discovering which is the most efficient way to exercise his rights.

4. CASES BEFORE THE CONSTITUTIONAL COURT AND THE EUROPEAN COURT

There are two groups of cases referring to issues of reasonable time. These are regular court proceedings following a lawsuit where no final court decision has been reached and proceedings that have been terminated, but a final court decision has not been executed.

4.1. Duration of court proceedings

The European Court has issued several decisions on the issue of the length of proceedings in cases against Bosnia and Herzegovina since June 2017, in which it found a violation of the right to a fair trial within a reasonable time.

In the *Kahriman* case, the European Court pointed out that, according to well-established case law in cases concerning the length of proceedings, decisions or measures favorable to the applicant were in principle not sufficient to deprive him of „victim“ status, unless the domestic authorities acknowledged the violation, explicitly or substantially, and then provided compensation for that violation⁵². Had the applicant failed to seek compensation before the Constitutional Court, the recognition of violation would, in itself, constitute adequate and sufficient legal protection within the meaning of Article 34 of the Convention⁵³. However, since the applicant sought compensation for breach of the reasonable time requirement⁵⁴, and the Constitutional Court did not award any compensation, the applicant could still claim to be a “victim”. In the present case, the Constitutional Court

⁵² See principles established in the judgment *Cocchiarella v. Italy* [GC], No. 64886/01, paras. 69-98, ESLJP 2006-V.

⁵³ See, analogously, *Lukić v. Bosnia and Herzegovina* (Dec.), No. 34379/03, of 18 November 2008.

⁵⁴ Paragraph 6 of this judgment.

found a violation of the right to a fair trial within a reasonable time, but did not award damage compensation.

In the case law of the Constitutional Court, there are a number of glaring examples of violations of the right to a fair trial within a reasonable time. For example, in case number AP-6162/18, a violation of Article 6 of the European Convention was found because the criminal proceedings against the appellant lasted for more than 17 years. In the case law of the Constitutional Court, there is an example where the proceedings for damage compensation began in 1969 and ended in November 2011 (42 years). The relevant (*ratione temporis*) period considered by the Constitutional Court in assessing the length of the proceedings was a bit more than 15 years and ten months and the Constitutional Court found a violation of the right to a fair trial within a reasonable time.

4.2. Reasonable time in enforcement proceedings

Unfortunately, a very large number of final and enforceable decisions made by courts, which have not been implemented, and therefore, in this segment, there is a violation of Article II/3e) of the Constitution of Bosnia and Herzegovina, Article 6 of the European Convention and Article 1 of Protocol 1 to the European convention.

In case of violation of the right to a trial within a reasonable time, the Constitutional Court may order non-pecuniary compensation, within the meaning of Article 74 paragraph 1 of the Rules of the Constitutional Court. The Constitutional Court used to be more restrictive on this issue, but after several decisions of the European Court, there is simply no choice: where a violation has been established, regardless of whether the case has been completed in the meantime, non-pecuniary compensation must be awarded.

5. THE CASE LAW OF THE EUROPEAN COURT REGARDING A SYSTEMATIC VIOLATION OF THE RIGHT TO A FAIR TRIAL WITHIN A REASONABLE TIME IN RELATION TO MEMBER STATES OF THE COUNCIL OF EUROPE

The judgment of the Grand Chamber of the European Court *Burmych v. Ukraine*⁵⁵ considered applications concerning the same systemic problem identified by the European Court in the pilot judgment in case *Ivanov v. Ukraine* (problems in the functioning of the judiciary in Ukraine leading to non enforcement or late enforcement of the final decision of the domestic courts and the lack of an effective remedy in this regard). In the judgment in case *Ivanov*, the European Court gave guidelines regarding general measures that should be taken in order to enforce the judgment and ensure compensation of former and future victims of the same violation of the European Convention, in a satisfactory manner. However, Ukraine has not yet implemented them.

Having in mind its own efforts in examining cases such as *Ivanov*, and the aim of the pilot judgment (that general measures to be taken by the State to enforce the judgment apply to all other victims of violation of the European Convention), the European Court concluded that its repeated findings of violations in groups of similar cases are not a gain at all, nor is it the best way to administer justice, while, on the other hand, such cases significantly burden the work of the European Court and increase its backlog. Therefore, the European Court has considered whether it is justified, within the meaning of

⁵⁵ Number 46852/13 *et al.*, of 12 October 2017.

Articles 19 and 46 of the European Convention, to continue examining applications filed after the *Ivanov* judgment. In accordance with the principle of subsidiarity, which applies to the whole European Convention, and not only to pilot - judgments, issues covered by the *Ivanov* judgment, including the issue of compensation to victims, are subject matter of enforcement of that judgment in accordance with Article 46 of the European Convention and under the supervision of the Committee of Ministers. The European Court decided to delete these applications from its list of cases, considering that the rights of all the victims of systemic violation established in the *Ivanov* case - should be exercised in the proceedings of execution of that judgment, and not in the proceedings before this court.

The leading (pilot) judgments of the European Court relating to the length of proceedings concern civil, administrative and criminal cases.

6. CONCLUSION

Determining, in an abstract sense, what reasonable duration of criminal proceedings is, is quite a challenge within the case law of the European Court and the Constitutional Court, taking into account the wide variety of cases and circumstances. From a purely academic perspective, a perfect conclusion is impossible. However, the overall analysis of the case law shows at least a fairly clear trend that allows defining the beginning and end of the period to be taken into account for the calculation. In addition, the criteria applicable in the case law of these courts in assessing the reasonable length of the proceedings are well established.

The issue of violation of the right to a trial within a reasonable time in BiH is a systemic problem, which, in addition to violation of the right under Article 11/3e) of the Constitution and Article 6 of the European Convention, also leads to violation of the right under Article 13 of this Convention because, in many cases, the proceedings before the courts are ineffective in essence.

Although the Constitutional Court has a larger number of cases referring to the issue of violation of a trial within a reasonable time, of all States in the region, only in BiH there is no legally regulated procedure referring to reasonable time before applying to the Constitutional Court of BiH. This is a special problem.

Despite the small amounts awarded by the Constitutional Court as non-pecuniary compensation for violations of the right to a trial within a reasonable time, they are very significant. The measures taken by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (work on old cases) do not yield results, given that new items become obsolete. Lack of money or judges is not justification for this violation because it is the duty of public authorities to organize its system so that there are no such violations.

LITERATURE

Monographs, articles

- Carić, S. (2018). *Pravo na suđenje u razumnom roku*. Beograd: JP Službeni glasnik.
- Clapham, A. (1991). *Human Rights and the European Community: A Critical Overview 1991*. In: Cassese et al. (eds.). *European union: the Human Rights Challenge*.
- Council of Europe October (2018). *The right to trial within reasonable time under Article 6 ECHR, A practical handbook prepared by Ivana Roagna*, available at <https://rm.coe.int/the-right-to->

- trial-within-reasonable-time-eng/16808e712c* (17.5.2021).
- Drzemczewski, A. (1981). The Internal Application of the European Human Rights Convention as European Community Law. 30 *INT'L & COMP. L.Q.* 118.
- Efficiency and quality of justice (Council of Europe Publishing, 2010) (CEPEJ, Edition 2010 (data 2008): Efficiency and quality of justice).
- Galand-Carval, S. (1996). The European Court of Human Rights declares war on unreasonable delays. *St Louis-Warsaw Transatlantic Law Journal*.
- Harland, C. et al. (2003). *Komentar Evropske konvencije o ljudskim pravima prema praksi u Bosni i Hercegovini i Strazburu*, Sarajevo: Grafičar promet.
- Harris O. B., Warbrick (2014). *Law of the European Convention on Human Rights*, Oxford University Press.
- Henzelin, M., Rordorf, H. (2014). When Does the Length of Criminal Proceedings Become Unreasonable According to the European Court of Human Rights? *New Journal of European Criminal Law*, 5 (1).
- Katschinka, L. (2014). The impact of Directive 2010/64/EEU on the right to interpretation and translation in criminal proceedings. In: Falbo, C., Viezzi, M. (eds.) *Traduzione e interpretazione per la società e le istituzioni*. Trieste.
- Leclerc, S., Akandji-Kombé, J.F., Redor, M.-J. (1999). *Commission pour l'étude des Communautés européennes (France)*. Université de Caen, Centre de recherche sur les droits fondamentaux. Bruxelles: Bruylant.
- Marochini, M. (2014). The interpretation of the European Convention on Human Rights. *Zbornik radova Pravnog fakulteta u Splitu*, Split, 51(1), 63-84.
- Manojlović, K. et al. (2018). *Kriterijumi za ocjenu povrede prava na suđenje u razumnom Roku*. Beograd: Savjet Evrope.
- Mosler, H. (1976). *Europäische Gemeinschaften*. Internationales Kolloquium veranstaltet vom Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg.
- Moules, R. (2004). The Right to Trial within a Reasonable Time. *The Cambridge Law Journal* 63 (2).
- Rainey, B. et al. (2017). *The European Convention on Human Rights*. Oxford: Oxford University Press.
- Roagna, I. (2018). *Pravo na suđenje u razumnom roku - Priručnik za primjenu člana 6(1) Evropske konvencije o ljudskim pravima*. Strazbur: Savjet Evrope.
- Schabas William, A. (2015). *The European Convention on Human Rights: A Commentary*, Oxford Commentaries on International Law.
- Tavernier, P. (1996). *Quelle Europe pour les droits de l'homme? La cour de Strasbourg et la réalisation d'une "union plus étroite" (35 années de jurisprudence: 1959-1994)*. Bruxelles: Bruylant.
- Trechsel, S. (2005). *Human Rights in Criminal Proceedings*. Oxford University Press.
- Vehabović, F. (2020). Dužina postupka - prava i obaveze, posljedice i rješenja. *Pravo na suđenje u razumnom roku*. Sarajevo: Ustavni sud Bosne i Hercegovine.

Kriterijumi za ocjenu povrede prava na suđenje u razumnom roku

Rezime: Poznata rečenica na engleskom jeziku *Justice delayed is justice denied* (pravo koje kasni je pravo koje se odriče) potvrđuje istorijsku svijest o vrijednosti brze sudske odluke. Pravo na pravično suđenje u razumnom roku primjenjuje se i na građanski i na krivični postupak. U krivičnom suđenju, pitanje odgode može se regulisati i članom 5 stav 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda kada je osoba pritvorena. Obrazloženje principa, u krivičnom postupku „zasnovano je na potrebi da se omogući optuženom da ne ostane predugo u stanju nezivjesnosti o ishodu krivičnih optužbi protiv njega“ (*Kart v. Turkey*, Evropski sud za ljudska prava, 2009). Nadalje, promjenjivost krivičnog postupka koji predugo traje - uopšteno šteti reputaciji navodnog prestupnika. Evropski sud za ljudska prava je objasnio da je „razlog zbog kojeg je done-sena presuda u toliko dugotrajnih postupaka taj što određene ugovorne stranke godinama nisu ispoštovale uslov ‘razumnog roka’ iz člana 6 stav 1 Evropske konvencije i nisu propisale domaći pravni lijek za ovu vrstu žalbe“ (*Scordino v. Italy (no. 1)* [GC], 2006-V).

Ključne riječi: razuman rok, Ustav Bosne i Hercegovine, Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda, Ustavni sud Bosne i Hercegovine, Evropski sud za ljudska prava.

