THE PROMPTNESS AS A LEGAL COSMOPOLITISM

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Summary. There are some points of intersection between different legal systems and in a figurative sense it is possible to speak about legal cosmopolitism. Certainly one of visible manifestation of it is the principle of promptness, which is known also with the terms in time, reasonable time, promptly, observing of time limits, in shortest time, exigible periods of time, and so on. That is why both in the ancient and the modern times in each legal order there is a requirement to the public authorities to observe in their activities the principle of promptness, as a guaranty for the rights of citizens and legal persons.

Keywords: Legal cosmopolitism, principle of promptness, in time, reasonable time, promptly, observing of time limits, in shortest time, exigible periods of time, public authorities, legal system.

PROMPTITUDINEA DREPT COSMOPOLITISM JURIDIC

Rezumat: Există unele puncte de intersecţie între diverse sisteme juridice şi, într-un sens figurativ, se poate vorbi despre cosmopolitism juridic. Cu siguranţă, una din manifestările sale vizibile este principiul promptitudinii, care este cunoscut, de asemenea, prin termeni ca: în timp, interval de timp rezonabil, fără întârziere, respectarea termenelor, în cel mai scurt timp, perioade exigibile de timp şi altele. De aceea, atât în perioadele antice, cât și în cele moderne, în orice regim juridic există o cerinţă faţă de autorităţile publice să respecte principiul promptitudinii în activitatea lor, ca o garanție pentru drepturile cetăţenilor şi persoanelor juridice.

Cuvinte-cheie: cosmopolitism juridic, principiul promptitudinii în timp, interval de timp rezonabil, cu promptitudine, respectarea termenelor, în cel mai scurt timp, perioade exigibile de timp, autorităţi publice, sistem juridic.

Introduction

Each legal system [1] has different from other legal systems principles, rules and values. But there are some identical postulates, which can be recognized as common for all legal models in the civilized states and societies.

Among them for sure is the principle of promptness, which requires the observing of time limits. By reason of this fact, it is possible to speak for the legal cosmopolitism, concerning the legal actions and acts in time.

Hence, the valid reason for using examples from different legal systems, for argumentation in this article, is namely legal cosmopolitism, which permits the freedom of use from different sources.

Moreover, on the base of common sense we can reach to the same conclusions down below, because the human civilization becomes more and more dynamic, so the time is from crucial importance to all human activities. And because the civilized world is a legal world, the time is a basic value for the modern legal systems (in contrast to the so called traditional or religious legal systems). Even in the last to examples, the legal cosmopolitism plays a serious influence over these systems, and they begin to respect the value of time (promptness).

European Legal Order of Human Rights

The corrects and exact name of this fundamental for our contemporaneousness and pronounced „European Convention on Human Rights" is Convention for the Protection of Human Rights and Fundamental Freedoms [2] (done at Rome on 4th November 1950) and recognized as „fundament of European legal order". Although it is not in very strict sense, this Convention is in the basis of all legal systems in the European countries (in the geographic and cultural point of view), but not only (giving in account that even „non-European countries" respect its values).

The famous Article 6, Para 1 of Convention states that: „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 a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

The concept of reasonable time is really critical

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for our understanding for time in legal procedure. But is there an algorithm for calculation of the rationality of the time limit?

As a projection of a vector with beginning and end, the time limit must be interpreted as „unreasonable short" or „unreasonable long".

The European Court of Human Rights (further down called simply „Court") has enormous cases and, of course, most of them concern unreasonable long period of time. The explanation is near to the mind – the human live is limited, and no one legal procedure do not torment in exaggerated manner the normal human activities and aspirations.

In the context of civil proceedings the leading judgments of the Court they are many different dimensions. For example, a period of approximately eight years and one month cannot be considered reasonable, regard being had to the fact that the case was not complex and to what was at stake for the applicant, namely repayment of half of the sum received in compensation [3]. There is the understanding of the length of the time limit – as it is explained in other case – the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities [4]. Similarly, the fact that the State waited twenty-four years before making such an adjustment…also creates doubts as to whether that really was the legislator's intention [5].

The criminal proceedings require complexity of legal actions, so the promptness here depends of many circumstances. For instance, the case was not a complex one and there were long periods of stagnation in the proceedings, in particular the period of almost five years between October 1983 and October 1988 when the case was before the Reggio Calabria Court of Appeal. The Government accep ted that the Court of Appeal was unable to deal with its heavy caseload. It follows that the Court cannot regard as „reasonable" in the instant case a lapse of time of nine years and seven months [6]. In addition, the criminal proceedings had already lasted more than seven years, and had been found by the Court to be unreasonably lengthy by reason of a number of unjustified delays [7].

In the area of administrative proceedings, the Court has similar statements. For example, before the Administrative Court of Appeal alone the proceedings were pending for almost eight years…in the instant case the length of the proceedings was excessive and failed to meet the „reasonable time" requirement [8]. Moreover, the length of proceedings is sum total from the periods of time before all domestic authorities (administrative bodies and courts), as can be seen - the overall length of the proceedings was excessive and failed to meet the „reasonable time" requirement [9].

It must be pointed at the fact that the Convention obliges the Contracting States, and on this ground the Court summarizes the length of time before all national public authorities, till try all possible means of internal legal order. This is the explanation why on the first view the time limits above appear to be monstrously long.

Legal Order of the European Union (European Community)

There are some judgments of the European Court of Justice, related to the principles of promptness. For instance, the Court states that hose rules on the basis of the criterion, appraised in a discretionary manner that such proceedings must be brought promptly [10]. Also, the Court explains that the authorities concerned should take, within a reasonable time, the appropriate measures to safeguard the financial interests of the Community. In the cases which are the subject of these proceedings, the payment notices were sent after varying periods of between two years and four and a half months and two years and ten months from the date at which the TIR carnet was accepted. Such periods cannot be considered to be compatible with the promptness required [11].

Extremely important is the fact that the Court finds the principle of promptness obligatory for the institutions of the European Union. In such manner, the Court makes clear that – it should be observed that the aim of promptness – which the Commission, at the stage of the administrative procedure, and the Community judicature, at the stage of judicial proceedings, must seek to achieve – must not adversely affect the efforts made by each institution to establish fully the facts at issue, to provide the parties with every opportunity to produce evidence and submit their observations, and to reach a decision only after close consideration of the existence of infringements and of the penalties [12].

Legal Order of one EU Member State (Bulgaria)

The Bulgarian legislation responds to common values both of European Convention of Human Rights and European Union legislation. Moreover, it is very close to the rest legal systems of European states, because of similar legal traditions (Bulgarian legal system is part of so called „Continental Legal System").

Even is the process of harmonization of Bulgar-

ian legislation with the EU legislation the national sovereignty of the procedure legal norms is „untouched", the legislative requirements of promptness is exigible from all procedural codes and laws in Bulgaria.

For example, in the Bulgarian Civil Procedure Code [13] accepts in its Art.13 the principle, that the Court considers and decides the cases in reasonable time. There are many detailed texts about the process of consideration of the case, for instance – the institute of „departure of development of the process" (Art.229 and the next). As a matter of principle, according to Art.235, Para 5, the Court announces its judgment with its argumentation in one-month-period of time at the latest from the judicial sitting, in which the consideration of the case is finished. The judicial practice (legal dogmatic) as a legal source with serious traditional dimensions finds that both in civil and criminal proceedings there is a requirement for increasing of personal exactingness as to other participants in the judicial proceedings, as well as to the Court itself, increasing of exactingness for discipline and promptness to all debatable ground aspects [14]. That is why the professional indicators for appraisals of the judges, public prosecutors and investigators in Bulgaria in its Art.13, Point 3 indicates among others Common criteria for appraisal the criterion of the ability for optimal organization of work [15]. In the same legal text, the Article 36, Point 2 specifies that the one among the indicators for the criterion above is „observing of time limits". There is a judicial practice in connection with this matter in the context of complexity of these indicators – yes, the observing of time limits is indicator, but not self-dependent criterion for appraising of professional qualities of a judge [16]. From crucial importance here is the argumentation that "Does not exist position "Judge of Criminal Proceedings", as well as does not exist Judge on another criterion of specialization (Matrimonial, Labor, Administrative, Military and so Judge) [17]". Hence, every Judge must oblige the time limits in its consideration and deciding of the case.

Criminal Procedure Code [18] in its Article 308, Para 1 provides that the argumentation of the sentence should be issued even after the announcement of the sentence itself, but not latest than 15 days from it.

In Administrative Procedure Code [19], Art.11 provides that the „procedural actions shall be accomplish in the time limits, determined by Law, and in shortest time". The correct understanding of this legal provision is that not only administrative authorities, but also the Administrative Judge is bound by this imperative legal requirement. Exactly in this Code, the Bulgarian Legislator develops the conception of promptness to its new dimension - in shortest time. Demonstration of this concept can be found in Art. 57, Para 1 from the same Code – the administrative act should be issued till 14 days from the date of beginning of the proceedings. The Paragraph 2 of the same legal text even indicates the shorter 7-days period for some acts. The corresponding norm here in connection with 7-days period is Art. 90, Para 1 of Tax-Security Procedure Code [20] in case of request for issuing a document. These extremely short time limits are the legislative exponents of the understanding of „in shortest time conception" above. But the highest legislative achievement is the concept of „immediately" in Para 4 in Art. 57 of the Code. The idea of immediately is manifestation of the „Reasonable Legislator", who renders on account the dynamic in all processes in the modern life. The Civil Servant Act [21] in its Article 76, Para 6, in fine provides in the process of appraisal of implementation of the position of each Civil Servant also „measurability of time limits". A little bit longest are the time limits for the Administrative Judge – he/she must issue the judgment in one-month-period of time from the judicial session, in which the determination of the case is finished (Art.172, Para 1 from the same Code).

New Legal Paradigm

Comparing the treatments of the three legal systems (legal orders) above it is possible to formulate the following conclusions for new understanding of the principle of promptness in the modern legal reality:

First, there is real legal cosmopolitism of the same vision for the shorter and shorter time limits in each legal proceedings (in administrative and judicial phase of the process), following the realistic approach of the dynamic courses in the contemporary world;

Second, there is no uniform formula for the reasonable time, but there are imperative legal provisions for the administrative bodies and the courts for the exigible periods of time for acting;

Third, the observing of time limits is one among the criteria of appraisal of civil servants and the judges;

Finally, the ancient legal postulate „Slow justice isn't justice" must be understood in the path of this new legal paradigm – not only as a rule for the judges, but also to each public authority and civil servant. This is a consequence of dual dimension of „justice" – not only as justice in its „judicial" meaning, but also as „equity" in moral and social aspect. This is because the actions of the each public actor (in possession with public power) directly concern citizens

and legal persons. Hence, the lack of promptness destroys the legal order as a whole.

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