ASPECTS ON COMPARED LAW IN THE AREA OF CRIMINAL PROCEDURAL TIME LIMITS

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Abstract

The establishment of different time limits during the criminal trial both in the Romanian legislation, as well as in the other European legislations, is based on efficiency, a fundamental principle of the judicial activity. The purpose is time limitation of the procedural measures, because without these limitations, the deprivation or restriction measures would become arbitrary, and on the other hand, avoiding the delaying of the criminal procedures.

Keywords: procedural documents; procedural time limits; time limits calculation; nullity of the document; decay; the principle of operability

Disciplining the criminal procedure documents through some time limits and conditions has taken place in all modern Romanian criminal legislation. Thus, in the Criminal Codes of 1865\(^1\), 1937\(^2\), 1948 are found several provisions where the chronological element of duration and time has been precisely regulated.

The actual Code of Criminal Procedure\(^3\) states the institution of the procedural time limitations in its Title V “Common procedural documents”, Chapter 3 “Time limits”, Art 185-188. Therefore, there are regulations of the consequences of non-compliance with the time limits (Art 185), the calculation of procedural time limits (Art 186), documents considered as accomplished within the time limit (Art 187) and the calculation of time limits for preventive measures (Art 188).

The new Code of Criminal Procedure states the “Time limits” in its Title VI, Chapter 2, Art 268-271, based on the same rules of calculation as the actual Code of Criminal Procedure. A new aspect occurs in Art 270 Para 2, where if a document which must be filled within a certain time limit was communicated or sent, by ignorance or an intended mistake of the sender, before the term expired, to a judicial organ without competence is considered to be done in the established

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\(^1\) Code of Criminal Procedure of 2 December 1864, published in the Official Gazette No 230/2 December 1864, entered into force in 1865.


time limit, even if the document reaches the competent judicial organ after the expiration of the established time limit.

The institution of the procedural time limits is regulated, similar or different in the legislation of other European countries. Thus, we shall present the German, Spanish, Italian and French regulations.

1. **German Code of Criminal Procedure** (*Strafprozessordnung*\(^4\)) establishes a method of calculation of the procedural time limits comprising similar rules to those existing in the Romanian legislation. Thus, the calculation of the time limits is made per days, weeks and months.

   According to Section 42 of the German Code of Criminal Procedure, “in calculating a time limit determined in days, the day on which the moment in time or the event determining the beginning of the time limit falls shall not be counted”.

   The calculation per weeks and months is made according to Section 43, as it follows:

   a) Time limit determined in weeks or months shall expire at the end of the day of the last week or the last month, whose name or number corresponds to the day on which the time limit began. Where the last month lacks such day, the time limit shall expire at the end of the last day of that month.

   b) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall expire at the end of the next working day.

   Section 45 of the German Code of Criminal Procedure states the time limit of a week for the restoration of the *status quo ante*, by the person who could not comply independently with the procedural time limit. The limitation is calculated starting from the date of the reason or event determining the non-compliance. Also, an appeal on fact and law can be filed within one week after the pronouncement of the judgment, as stated by Section 314.

   Within two weeks following service of the penal order the defendant may lodge an objection against the penal order at the court which issued it, either in writing or orally to be recorded by the registry, as stated by Section 410. Where the objections on the penal order were are not lodged in time the order shall be equivalent to a judgment that has entered into force.

2. **Spanish Code of Criminal Procedure** (*Ley de Enjuiciamiento Criminal*\(^5\)) states the time limits in Title 9, Art 197-215.

   Thus, Art 197 states that the court judgment and judicial procedures shall be applied according to the time limits established for each of them, and if it is not

\(^4\) StrafprozeBordnung (StPO), www.gesetze-im-internet.de accessed on 19 February 2010.

established a certain time limit, shall be applied immediately and without any delay.

Persons who consider themselves as being prejudiced by unjustified delays of the time limits have the possibility to file a complaint at the Ministry of Justice, which, if it is justified, shall transfer it to the competent prosecuting official who will proceed with the legal compensations (Art 200).

According to Art 201, cases will be brought to court every day of the year (except legal holidays), without any special regulation.

Legal time limits shall not be extended unless the law expressly states this and can be suspended or interrupted (Art 202).

Judgments shall be pronounced and drawn up within three days since the hearing or the final hearing, except the cases prosecuted in absence, where the judgment takes place in the same day or maximum in the following day (Art 203).

Communications, summons and warrants are sent by the trial courts or courts of justice at the farthest in the following day after the issuance of the communication resolution (Art 207), and if the procedure must be fulfilled outside the capital, must be considered the “time limit for distance”, namely a day for every 20 km.

According to Art 212, the appeal is lodged within five days since the communication of the decision, and according to Art 211, the appeals requesting the modification of the decision are lodged within three days since the communication.

For non-compliance with the procedural time limits are disciplinary liable the registrars, as well as other persons who shall be sanctioned by judicial fine of 25-250 pesetas.

Thus, it is found that the judicial proceedings are carried out promptly in the indicated date and time, without delay, and the calculation system of the procedural time limits is partly similar to that used by the Romanian Code of Criminal Procedure, in the meaning that the limits are calculated per hours, days and distance, aspect not found in the Romanian legislation.

3. Italian Code of Criminal Procedure (Codici di procedura penale\(^6\)) states in Title VI “Time limits” general rules on the calculation of the procedural time limits, some legal provisions being similar to those existing in our legislation. Thus, Art 172 Para 1 states that “the procedural time limits are established per hours, days, months and years”, regulation also found in the Romanian Code of Criminal Procedure (Art 186).

Regarding the calculation system, it is easy to notice the similarity between these two codes on the beginning of the time limit per hours and days, “it is not

calculated the hour or the day when the time limit begins” (Art 172 Para 4 Italian Code of Criminal Procedure, regulation also found in the Romanian Code of Criminal Procedure – Art 186 Para 2). But, unlike the Romanian legislation, which states that it is not considered the hour or day when the time limit is fulfilled, according to the Italian Code of Criminal Procedure for the calculation of the procedural time limits “is considered the last hour or the last day”.

Also, in the case of time limits calculated per days, “if are fulfilled in a holiday, are considered to be fulfilled the next working day”, according to Art 172 Para 3 of the same code. This provision is also found in the Romanian Code of Criminal Procedure, stated in Art 184 Para 4 “if the final day of a time limit is a non-working day, the time limit will expire at the end of the first next working day”.

Different aspects found in the Italian legislation:

a) Revocation of the time limits only in the conditions stated by the law (Art 21, Art 79, Art 80, Art 85, Art 86, Art 95, Art 175\(^3\), Art 182, Art 309, Art 458, Art 461\(^4\), Art 468, Art 585 and Art 646 of the Italian Code of Criminal Procedure)

b) Prolongation of the time limits, as stated by Art 174 Italian Code, if the residence of the defendant (as resulted from his documents or the domicile declared or chosen, in accordance with Art 161 of the same code) is located outside the city where the judicial authority has competence.

The time limit is prolonged in order to include the number of days necessary for the travel. The time limit is prolonged with a day for every 500 km of distance, when it is possible the use of public transportation means and with a day for every 100 km in all other cases. The same rule is applied both for the imprisoned defendants or who are confined outside the town where is located the competent authority. In all situations, the prolongation is made for no longer than three days.

For the defendant resident abroad, the prolongation is established by the court considering both the distance and the usable means of communication.

The same legal statement is applicable also in the case of the time limit established for the presence of any person for whom the competent authority has issued a warrant or an invitation.

c) Reopening the files. According to Art 175 Italian Code of Criminal Procedure, the public Ministry, the parties and the defenders are restated in the established time limit under the sanction of decay is they could not meet the time limit due to a fortuitous event or a major force. The request for reopening the file is lodged, under the sanction of decay, within 10 days since the fortuitous event or the major force has stopped.

If it was given a decision for conviction, the defendant is restated, at his request, in the legal time limit to lodge an application for a legal remedy, except the cases in which the same person has had a real knowledge of the procedure or the measure and has willingly denied to be present or to request a legal remedy.
The court must proceed with all necessary investigations. In this case, the request for restating the time limit is lodged, under the sanction of decay, within 30 days since the defendant has had a real knowledge of the situations causing the fortuitous case or the major force.

4. The French Code of Criminal Procedure (*Code de procédure pénale*) states the procedural time limits for filling complaints, procedural documents and requesting remedies. For instance, Art 7, 8 and 9 states that the public prosecution is time-barred by the passing of ten years for crimes (robbery, assault, fraud, scam), of three complete years for misdemeanors and one year for petty offences calculated from the day of the commission of the crime. The mentioned time limits are doubled for some offenses committed against a minor and start to run only from the victim’s coming of age (18 years old).

According to Art 380-9 of the French Code of Criminal Procedure (inserted by Art 84 of the Law No 2000-516 of 15 June 2000 in force on 1 January 2000) “an appeal is lodged within ten days of the judgment being pronounced”. The time limit runs from the notification of the judgment to any party who was not present or represented at the hearing when the judgment was delivered, but this being limited to cases where the party or his representative were not informed of the date when the ruling would be made.

Art 552 of the French Code states that “the time between the date when the summons is served and the date fixed for the appearance before the correctional court or police court is at least ten days if the party cited resides in a département of continental France or if, when he is a resident in an overseas département, he is cited before a court of that département”. This period is extended to one month if the party cited resides abroad and is forced to remain on the territory of a European Union’s Member State, and to two months in all other cases.

References


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