



SARA Law Research Center

International Journal of Legal and Social Order, <https://www.ccdsara.ro/ijlso>

ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188

Nº. 1 (2024), pp. 159-171

## **ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS**

**A.-L. LORINCZ**

Received 25.09.2024; accepted 30.10.2024

First online publication 03.11.2024

DOI: <https://doi.org/10.55516/ijlso.v4i1.193>

**Anca-Lelia LORINCZ**

"Dunărea de Jos" University of Galați, Romania, Faculty of Law and Administrative Sciences, Doctoral School of Social and Human Sciences

E-mail address: [lelia.lorincz@gmail.com](mailto:lelia.lorincz@gmail.com)

[Anca.Lorincz@ugal.ro](mailto:Anca.Lorincz@ugal.ro)

ORCID: <https://orcid.org/0000-0002-2297-0652>

### ***Abstract***

*The concept of public safety is also manifested by respecting the fundamental rights of the person during the judicial proceedings, rights among which is the right to resolve the case within a reasonable time.*

*From this perspective, to ensure the speedy resolution of criminal cases, in the regulation of the current Romanian Code of Criminal Procedure, the contestation regarding the duration of the criminal process was introduced, an institution that allows the request to expedite the resolution of the case if the criminal prosecution or trial activity is not carried out in a reasonable time frame.*

*In this context, the present work addresses the institution of the contestation regarding the duration of the criminal process, bringing to attention also some jurisprudential aspects regarding the need for the interpretation and uniform application of the provisions of the Code of Criminal Procedure in the matter of the admissibility of this contestation.*

*Also, using documentation, observation, interpretation and scientific analysis as research methods, this study discusses the consequences of not complying with the term established for the resolution of the case in the situation of admitting the contestation regarding the duration of the criminal process.*

*The paper concludes with a concrete proposal for a ferenda law, regarding the establishment of a processual sanction, which will ensure the effective role of the contestation regarding the duration of the criminal process as a genuine*

*accelerator remedy in case of exceeding the reasonable duration of the procedures.*

**Key words:** *reasonable term, fair trial, criminal case, accelerator remedy, processual sanction.*

## INTRODUCTION

Starting from the fact that public safety also implies the respect of the fundamental rights of the person during judicial proceedings, the present study approaches the institution of the contestation regarding the duration of the criminal process, an institution that seeks to ensure the right to resolve the case within a reasonable time.

The objective of this paper is to highlight the need to ensure the efficiency of the regulation of the contestation regarding the duration of the criminal process, a procedure introduced for the first time in Romanian legislation in 2013, through the normative act implementing the current Code of Criminal Procedure.

Thus, in the first section, which follows the introductory one, the right to the resolution of the case within a reasonable time is presented, as part of the fundamental right to a fair trial, as they are guaranteed both at the international level (Universal Declaration of Human Rights, Covenant international regarding civil and political rights), as well as on European level (the Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union) and nationally (the Constitution of Romania, the Law on judicial organization in Romania, the current Romanian Code of Criminal Procedure).

At the same time, a brief reference is also made to the meaning of the phrase "reasonable term" in the jurisprudence of the European Court of Human Rights, as well as to the obligation of the states party to the European Convention to regulate the way of capitalizing on complaints regarding exceeding the reasonable duration of judicial procedures.

The second section is intended to analyze the way in which, in the Romanian Code of Criminal Procedure, the institution of the contestation regarding the duration of the criminal process is regulated, as a special procedure made up of a complex of norms with a complementary and derogatory character from the usual procedure. Emphasizing the fact that the Romanian legislator conceived this institution as an accelerating remedy in the case of the lack of speed of the judicial bodies, an aspect of different judicial practice is also addressed, which was clarified by the High Court of Cassation and Justice through a recourse in the interest of the law.

In the third section, the issue of the effects of non-compliance with the deadline set for the resolution of the case is dealt with, in the event of the admission of the contestation regarding the duration of the criminal process. It is emphasized that, beyond the disciplinary sanctions that could be applied to the

## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

prosecutor or the judge who does not respect the judicial term established for solving the case, no processual sanction is provided for such a situation.

In the section devoted to final considerations, it is concluded that, in the absence of an express provision regarding a possible sanction of a processual nature to be applied in the event of exceeding the reasonable term for the resolution of the case in the assumption of the admission of the contestation, the role of this institution of acceleration remedy is significantly diminished. Therefore, the paper concludes with a concrete proposal for a *ferenda law*, in order to make the internal regulations more efficient in the matter of ensuring the speed of criminal judicial proceedings and guaranteeing the right to resolve the case within a reasonable time.

### **I. THE RIGHT TO RESOLVE THE CASE WITHIN A REASONABLE TIME – COMPONENT OF THE FUNDAMENTAL RIGHT TO A FAIR TRIAL**

The fundamental right to a fair trial is guaranteed internationally, primarily by the Universal Declaration of Human Rights<sup>1</sup>, which states that "everyone has the right in full equality to a fair and public hearing by an independent and impartial tribunal that will decide either on his rights and obligations, or on the merits of any criminal charge against him".

Also, according to the International Covenant on Civil and Political Rights<sup>2</sup>, "everyone has the right to have his dispute fairly and publicly examined by a competent, independent and impartial tribunal established by law, which shall decide either on the merits of any criminal accusation directed against her, or on the contestations regarding her civil rights and obligations".

At the European level, the right to a fair trial is enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup>: "Every person has the right to a fair trial, in public and within a reasonable time, by a court independent and impartial, established by law, which will decide either on the violation of his civil rights and obligations, or on the merits of any criminal charge against him. [...]". Therefore, in the sense of the European Convention, the notion of a fair trial also includes the requirement to judge the case within a reasonable time.

In the member states of the European Union, the protection of the right to a fair trial has been strengthened by the provisions of the Charter of Fundamental

---

<sup>1</sup> Art. 10 of the Universal Declaration of Human Rights, published in the United Nations Brochure of 10 December 1948.

<sup>2</sup> Art. 14 para. (1) from the International Covenant on Civil and Political Rights of December 16, 1966, published in the Official Gazette of Romania no. 146 of November 20, 1974.

<sup>3</sup> Art. 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded on November 4, 1950, with subsequent amendments and additions, published in the Official Gazette of Romania no. 135 of May 31, 1994.

Rights of the European Union<sup>4</sup> which also expands the meaning of the concept of "right to a fair trial" with reference to the "reasonable term": "Every person has the right to a fair trial, publicly and within a reasonable time, before an independent and impartial court, established in advance by law. [...]".

Internally (of Romanian legislation), provisions regarding the reasonable term of the proceedings are found, first of all, in the Romanian Constitution<sup>5</sup>, in which it is stipulated that the parties have the right to resolve cases within a reasonable term.

The current Law on judicial organization<sup>6</sup> also provides that all persons have the right to a fair trial and to the resolution of cases within a reasonable time.

Last but not least, the current Romanian Code of Criminal Procedure<sup>7</sup> (CCP) enshrines, as a principle of the application of the criminal procedural law, along with fairness, the reasonable term of the criminal process. As it appears from the content of art. 8 CCP, the judicial bodies have the obligation to carry out the criminal investigation and the trial within a reasonable period, so that the facts that constitute crimes are ascertained in good time.

Regarding the meaning of the expression "reasonable term", according to the jurisprudence of the European Court of Human Rights (*Case of Comingersoll S.A. v. Portugal*<sup>8</sup>), the reasonableness of the duration of the proceedings is assessed according to the circumstances of the case and considering certain criteria: the complexity of the case, the plaintiff's behavior (in the sense of judicial behavior, including the exercise of procedural rights), the behavior of the authorities (for example, unjustified delays in resolving the case) and the importance for the plaintiff of the object of the case (the stakes of the judicial case).

Therefore, from a criminal procedural point of view, compliance with the reasonable term implies promptness (operativeness) and speed (celerity) in the activity of collecting and administering evidence, in order to avoid their disappearance or damage, as well as to remove the risk of diminishing the social resonance of deed.

In other words, ensuring celerity by carrying out the criminal process within a reasonable period of time, as a fundamental principle of the application

---

<sup>4</sup> Art. 47 paragraph two of the Charter of Fundamental Rights of the European Union of December 12, 2007, published in the Official Journal of the EU no. C 303/1 of December 14, 2007.

<sup>5</sup> Art. 21 para. (3) from the Romanian Constitution of November 21, 1991, republished in the Official Gazette of Romania no. 767 of October 31, 2003.

<sup>6</sup> Art. 12 of Law no. 304/2022 regarding judicial organization, published in the Official Gazette of Romania no. 1104 of November 16, 2022, with subsequent amendments and additions.

<sup>7</sup> Law no. 135/2010, published in the Official Gazette of Romania no. 486 of July 15, 2010, with subsequent amendments and additions (entered into force on February 1, 2014).

<sup>8</sup>The ECtHR Judgment of April 6, 2000 pronounced in the *Case of Comingersoll S.A. v. Portugal*, document available online at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58562%22%5D%7D>, accessed on 28.08.2024.

## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

of the criminal procedural law, requires the performance of judicial activities and, implicitly, the resolution of criminal cases, in the shortest possible time, in a moment as close as possible to that of the commission of the crime. The fulfillment of this requirement must not, however, affect the quality of the processual and procedural acts carried out, by violating other fundamental principles of the criminal process, such as legality or finding out the truth (*Lorincz, 2015, pp. 83-84*).

Moreover, both the principle of legality and the principle of finding the truth are specific to the disciplines in the branch of criminal sciences, the necessity of their application being obvious in the course of criminal investigation or prosecution (*Iancu, 2019, pp. 459-460*).

In order to ensure compliance with the principle of carrying out the process within a reasonable time, in the jurisprudence of the European Court of Human Rights (*Case of Kudla v. Poland*<sup>9</sup>) it was held that the states party to the Convention for the Protection of Human Rights and Fundamental Freedoms are obliged to make available to litigants a way of attack to capitalize on complaints about exceeding the reasonable duration of the procedure and that a court vested with the disposal of such an appeal should have jurisdiction to at least order the award of damages when it finds that the complaint is well founded (*Bogdan, Selegean, 2005, p. 147*). In this sense, a special procedure was established in the Romanian Code of Criminal Procedure that regulates the possibility of the parties, the main procedural subjects and even the prosecutor in the judgment phase, to file a contestation regarding the duration of the criminal process, requesting the acceleration of the resolution of the case. Regarding the award of damages, according to our legislation, the person whose right to the resolution of the case within a reasonable time has been violated can claim civil damages under the common law (*Ghigheci, 2014, p. 144*).

### II. REGULATION OF THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS, AS AN ACCELERATOR REMEDY IN THE CASE OF EXCEEDING THE REASONABLE DURATION OF THE PROCEEDINGS

Having its origins in the adversarial (accusatory) procedural system, the concept of "reasonable duration of the proceedings" or "reasonable term for the resolution of cases", as well as that of "fair nature of the process", was also translated into the legal systems of inquisitorial inspiration (the continental procedural system, applicable in most states that have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms).

---

<sup>9</sup> The ECtHR Judgment of October 26, 2000 pronounced in the *Case of Kudla v. Poland*, document available online at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58920%22%5D%7D>, accessed on 28.08.2024.

Moreover, the contemporary mixed procedural system combines the notion of "reasonable term" with that of "speediness" or "celerity", specific to the Romano-Germanic family of law (continental law), of which the Romanian law system is also a part. From this perspective, to ensure the operativeness or speed of the resolution of criminal cases, in the regulation of the current Romanian Code of Criminal Procedure, the contestation regarding the duration of the criminal process was introduced, an institution that allows the request to expedite the resolution of the case if the criminal investigation or trial activity is not carried out within a reasonable time frame.

Being proposed, even in the doctrine prior to the adoption of the current Romanian Criminal Procedure Code, as a procedure to ensure an effective remedy in case of lack of speed in the conduct of the criminal process (*Udroiu, Predescu, 2008, p. 647*), the institution of the contestation regarding the duration of the criminal process was introduced, in the Romanian legislation, by the Law for the implementation of the code<sup>10</sup>, by adding some additional articles to the code adopted in 2010 (art. 488<sup>1</sup> – art. 488<sup>6</sup>); the provisions of these articles apply, however, only to criminal proceedings started after the entry into force of the new code (after February 1, 2014).

Conceived as an accelerator remedy, this institution aims both to establish the violation of the right to resolve the case within a reasonable period of time, and to speed up the procedures, by obliging the judicial bodies to resolve the case, either in the criminal investigation phase or in the judgment phase, within a certain period, established by the judge of rights and liberties or by the court (*Volonciu, Uzlaşu et al., 2014, p. 1211*).

In terms of its legal nature, although it is called a contestation, this institution is not regulated in Romanian legislation as an actual way of attack, but as a special procedure (in Chapter I<sup>1</sup> of Title IV of the Special Part of the Code of Criminal Procedure), in the meaning of the way of carrying out judicial activities different from the common procedure, made up of a set of rules with a complementary and derogatory character.

Thus, in the cases in the criminal prosecution phase, the holders of the right to contest and to request the acceleration of the procedure are: the suspect, the defendant, the injured person, the civil party and the civilly responsible party. In the cases in the judgment phase, the contestation can be formulated, in addition to the previously mentioned procedural subjects, also by the prosecutor.

Until the resolution, the contestation can be withdrawn at any time, but in case of withdrawal, it cannot be repeated within the same procedural phase.

The terms after which the contestation can be filed (or the duration that the legislator considered unreasonable for the conduct of the proceedings) differ depending on the procedural phase or stage:

---

<sup>10</sup> Law no. 255/2013, published in the Official Gazette of Romania no. 515 of August 14, 2013.

## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

- at least one year from the start of the criminal investigation, for the cases in the criminal investigation phase;
- at least one year after being sent to court, for criminal cases pending trial in the first instance;
- at least 6 months from the referral to the court with a way of attack, for criminal cases under ordinary or extraordinary ways of attack.

In cases under criminal investigation, the competence to resolve the contestation regarding the duration of the process belongs to the judge of rights and liberties from the court that would have the competence to judge the case in the first instance.

In criminal cases in the judgment phase (including in ways of attack, ordinary or extraordinary), the competence to resolve the contestation rests with the court hierarchically superior to the one before which the case is pending. If the procedure, the duration of which is contested, is pending before the High Court of Cassation and Justice, the resolution competence rests with another panel within the same section of the supreme court.

With regard to the formal and substantive conditions, the contestation filed, both during the criminal investigation and in the judgment phase, must be in writing and include: the name, surname, domicile or residence of the natural person, respectively the name and headquarters the legal person, as well as the capacity in question of the natural or legal person who prepares the request; the name and quality of the person representing the party in the process, and in the case of representation by a lawyer, his name and professional office; mailing address; the name of the prosecutor's office or the court and the file number; the factual and legal grounds on which the appeal is based; date and signature.

The contestation settlement procedure requires the rights and liberties judge or, as the case may be, the court to order the following measures prior to the settlement:

- informing the prosecutor, respectively the court before which the case is pending, regarding the contestation filed, with the mention of the possibility of formulating a point of view related to it;

- transmission within 5 days of the file or a certified copy of the case file by the prosecutor, respectively by the court before which the case is pending;

- informing the other parties in the process and, as the case may be, the other persons who have the right to lodge a way of attack, regarding the contestation formulated and the right to express their point of view within the term granted for this purpose by the judge of rights and freedoms or by the court; if the suspect or defendant is deprived of liberty, either in that case or in another case, the information is also given to his lawyer, elected or appointed ex officio.

Failure to transmit the point of view of the judicial body or the other informed procedural subjects does not prevent the resolution of the contestation.

The deadline for resolving the contestation is no more than 20 days from its registration.

It should be emphasized that the difficulty of adapting an institution of adversarial inspiration to the specifics of a procedural system of continental law led to some criticisms of unconstitutionality, which even determined a legislative amendment of the provisions relating to the contestation settlement procedure. More precisely, one year after the entry into force of these provisions, the Constitutional Court of Romania found that the legislative solution, from that moment, according to which the dispute regarding the duration of the criminal trial is resolved "without the participation of the parties and the prosecutor" is unconstitutional<sup>11</sup>. Therefore, in 2016<sup>12</sup>, the respective provisions were modified, so that according to the current regulation, the appeal is resolved in the council chamber, but with the summoning of the parties and the main procedural subjects and with the participation of the prosecutor. Of course, the non-appearance of legally summoned persons has no consequence, in the sense that it does not prevent the resolution of the contestation.

To resolve the contestation, the judge of rights and liberties or the court checks the duration of the judicial proceedings based on the works and material from the case file and the points of view presented, the elements taken into account for assessing the reasonableness of the duration of the trial being the following:

- the nature and object of the case;
- the complexity of the case, including from the perspective of the number of participants and the difficulties of administering the evidence;
- the extraneous elements of the case, which may attract recourse to some forms of international legal assistance in criminal matters;
- the behavior of the appellant in the procedure the duration of which was contested, including the aspect of exercising his rights and fulfilling his procedural obligations in the respective case;
- the procedural behavior of the other participants in question, including the authorities involved;
- the intervention of some legislative changes with incidence in the analyzed case;
- any other elements likely to influence the duration of the procedure.

In the situation where he considers the appeal to be well-founded, the judge of rights and freedoms or, as the case may be, the court admits it and sets the deadline for the prosecutor to solve the case by one of the solutions of sending or not sending to court, respectively the court to solve the case, as well as the term in which a new contestation cannot be filed.

Under no circumstances, the judge of rights and liberties or the court will not be able to give instructions or provide solutions on factual or legal issues that anticipate the way the case will be resolved or that would affect the freedom of the

---

<sup>11</sup> Decision of the Constitutional Court no. 423/2015, published in the Official Gazette of Romania no. 538 of July 20, 2015.

<sup>12</sup> By Government Emergency Ordinance no. 18/2016, published in the Official Gazette of Romania no. 389 of May 23, 2016 (on which the Parliament has not yet ruled, in terms of approval or rejection by law).



## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

prosecutor to pronounce the solution which he considers legal and well-founded or, as the case may be, the freedom of the judge of the case to decide, according to the law, regarding the solution to be given.

In the case of finding that the reasonable duration of the procedure has been exceeded, a new contestation in the same case will be resolved only by taking into account reasons arising after the previous contestation.

The contestation is settled by a conclusion that is not subject to any appeal, being final from the moment of the pronouncement. Within 5 days of the pronouncement, the conclusion is motivated and communicated to the objector, being transmitted for information to all parties or procedural subjects in the case who have the right to file a contestation regarding the duration of the process.

The formulation of the appeal in bad faith constitutes an abuse of law and, by way of derogation from the general provisions regarding the amount of the fine applicable for such a judicial misconduct<sup>13</sup>, it is sanctioned with a judicial fine from 1000 lei to 7000 lei and with the obligation to pay the legal expenses incurred.

Non-compliance with the dilatory terms provided by law for the formulation of the contestation, respectively the dilatory term, established by the judge of rights and freedoms or by the court, in which a new contestation can no longer be formulated (assuming the admission of the initial contestation), leads to the rejection as prematurely of the contestation filed and upon its restitution by administrative means.

It is worth noting that, in the judicial practice in Romania, different interpretations have been given on the issue of the admissibility of the contestation regarding the duration of the proceedings during the criminal investigation in the case of facts whose perpetrators have not been identified, although the criminal investigation bodies have submitted the necessary diligence to this end. Thus, two jurisprudential guidelines regarding such a situation were outlined:

- according to the first guideline, the judge of rights and liberties should evaluate the reasonableness of the duration of the criminal investigation in relation to the elements provided in the Code of Criminal Procedure, adapted to the particularities of the case, analyzing whether the exceeding of the reasonable duration of the procedure is caused by the inactivity of the criminal investigation bodies and attributable to them. Therefore, in such an interpretation, the contestations formulated in the cases in which the investigation is carried out *in rem*, the authors being unknown, were rejected, to the extent that it could not be noted that the exceeding of the reasonable deadline for solving the case is imputable to the criminal investigation bodies.

---

<sup>13</sup> According to art. 283 para. (4) letter n) CCP, the abuse of law consisting in the exercise of processual and procedural rights in bad faith by the parties is sanctioned with a judicial fine from 500 lei to 5000 lei.

- in the second interpretation, it was considered that the judge of rights and liberties evaluates the reasonableness of the duration of the procedure by the formal application of all the elements provided for in the law, without verifying whether, concretely, the necessary diligence to identify the authors has been carried out and whether the extension the pursuit beyond a reasonable duration is imputable to the criminal investigation bodies.

Resolving the recourse in the interest of the law promoted in order to unify judicial practice in the matter, the High Court of Cassation and Justice established that: "in the cases whose object is contestations regarding the duration of the process in the case of facts whose perpetrators have not been identified (or identifiable), although the criminal investigation bodies have submitted the necessary diligence for this purpose, deadlines are established in order to complete the criminal investigation (which also involves identification of the perpetrators) and, respectively, in which a new appeal cannot be formulated"<sup>14</sup>.

In justifying its decision, the supreme court held that the contestation filed during the criminal investigation *in rem* is admissible, in the conditions where the author is not identified, although the criminal investigation bodies have submitted all the diligence for identification. In other words, the judge of rights and liberties cannot reject such a contestation only on the grounds that the criminal investigation is carried out *in rem*, in the absence of the identification of the authors, in the conditions that the criminal investigation bodies have submitted the necessary diligence for this purpose, not being attributable to exceeding the reasonable duration of the procedure.

Consequently, in order for the institution of the contestation regarding the duration of the criminal process to achieve its goal - that of an effective accelerator remedy in the case of the lack of speed of the judicial bodies, the unified interpretation and application of the provisions of the Romanian Criminal Procedure Code is necessary, as required by the Decision of the High Courts of Cassation and Justice no. 7/2022, in the sense of the admissibility of this contestation including in cases with unknown authors (*Lorincz, Stancu, 2022, p. 61*).

### **III. THE CONSEQUENCES OF FAILURE TO OBSERVE THE DEADLINE FOR THE RESOLUTION OF THE CASE, IN THE SITUATION OF THE ADMISSION OF THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCEEDING**

As we showed previously, if the judge of rights and liberties during the criminal investigation or the court in the procedural phase of the judgment, assesses the contestation as well-founded, admits it and sets a deadline for solving or settling the case.

Not being a statute of limitations, exceeding this judicial term cannot attract procedural sanctions that affect the acts performed or to be performed. In

---

<sup>14</sup> Decision of the High Court of Cassation and Justice no. 7/2022, published in the Official Gazette of Romania no. 484 of May 16, 2022.

## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

other words, from the perspective of the classification of criminal procedural terms, related to their effects, this term established after the admission of the appeal is a recommendation or relative term, the non-compliance of which has no consequences on the validity of the completed acts (*Ristea, 2011, p. 22*), but may attract disciplinary sanctions for the judicial bodies that have the obligation to comply with it.

In this sense, the current law on the status of judges and prosecutors<sup>15</sup> stipulates their obligation<sup>16</sup> to solve the works within the established terms and to decide in the cases within a reasonable time, depending on their complexity.

Also, according to the same statute of judges and prosecutors, their failure to comply repeatedly and for imputable reasons with the legal provisions regarding the speedy resolution of cases or the repeated delay and for imputable reasons in carrying out the works, constitutes a disciplinary offense<sup>17</sup> that may attract the application one of the disciplinary sanctions provided by law<sup>18</sup>: the warning; reduction of the monthly gross employment allowance by up to 25% over a period of one year; disciplinary transfer for an effective period of one to three years to another court or prosecutor's office, even of an immediately lower rank; downgrading to professional grade; suspension from office for a period of up to 6 months; exclusion from the magistracy.

In order to apply, however, a disciplinary sanction against the magistrate prosecutor or judge who would not comply with the deadline set for the resolution, respectively the settlement of the case after the admission of the contestation regarding the duration of the criminal process, the condition of repeatability of failure to comply with such a deadline must be met.

We note, at the same time, that the legislator did not provide a processual sanction for exceeding by the prosecutor or, as the case may be, by the court the term set by the judge of rights and liberties, respectively by the court that admitted the contestation regarding the duration of the criminal process

### CONCLUSION

*It can be said that the non-existence of a processual sanction provided by law for non-compliance with the deadline set for the resolution or settlement of the case in the event of the admission of the contestation regarding the duration of the criminal process considerably reduces the role of this institution, that of an accelerating remedy in case of violation of the reasonable duration of the procedures.*

---

<sup>15</sup> Law no. 303/2022, published in the Official Gazette of Romania no. 1102 of November 16, 2022, with subsequent amendments and additions.

<sup>16</sup> Art. 224 para. (1) from Law no. 303/2022.

<sup>17</sup> Art. 271 letter g) from Law no. 303/2022.

<sup>18</sup> Art. 273 para. (1) from Law no. 303/2022.

We find that, regarding the criminal investigation bodies, in the Code of Criminal Procedure<sup>19</sup> the unjustified failure to comply with the written provisions of the prosecutor, within the deadline set by him, is qualified as a judicial misconduct, sanctioned with a judicial fine. Similarly, for the special contestation procedure regarding the duration of the criminal process to become an effective remedy in the case of the lack of speed of the judicial bodies, we propose by law ferenda the establishment of the procedural sanction of a judicial fine also for prosecutors or judges who do not respect the term established for the resolution of the case in the event of the admission of the contestation regarding the duration of the criminal trial, by adding letter m<sup>1</sup>) to art. 283 para. (4) CCP with the following content: "unjustified non-compliance by the prosecutor or by the members of the trial panel of the term set by the judge of rights and liberties or by the court for the solution, respectively for the judgment of the case, in the situation of admitting the contestation regarding the duration of the criminal process;".

#### BIBLIOGRAFIE

1. Bogdan, Dragoș, and Mihai Selegean. *Jurisprudență CEDO – studii și comentarii [ECtHR jurisprudence – studies and comments]*. Bucharest: National Institute of Magistracy, 2005;
2. Ghigheci, Cristinel. *Principiile procesului penal în noul Cod de procedură penală [The principles of the criminal process in the new Criminal Procedure Code]*. Bucharest: Universul Juridic Publishing House, 2014;
3. Iancu, Elena-Ana. "The Contribution of Forensic Science to Establishing the Truth in Criminal Proceedings." *Athens Journal of Law* 5, no. 4, (October 2019): 457-470. <https://doi.org/10.30958/ajl.5-4-6> ;
4. Lorincz, Anca-Lelia, "The Principle of Ensuring the Fairness of Criminal Proceedings and the Reasonable Time." In *Discourse as a Form of Multiculturalism in Literature and Communication*, edited by I. Boldea, 73-85. Tîrgu-Mureș: Arhipelag XXI Press. 2015. <https://publons.com/wos-op/publon/52139588/>
5. Lorincz, Anca-Lelia, și Adriana Iuliana Stancu, "Admissibility of the contestation regarding the duration of the criminal trial in cases with unknown authors." *Proceedings of 9th SWS International Scientific Conference on Social Sciences - ISCSS 2022* 9, no. 1 (2022): 55-62. DOI: <http://dx.doi.org/10.35603/sws.iscss.2022/s02.007> [https://ssalibrary.at/sgem\\_jresearch\\_publication\\_view.php?page=view&editid1=4879](https://ssalibrary.at/sgem_jresearch_publication_view.php?page=view&editid1=4879) ;
6. Ristea, Ion. *Termenele în procedura penală română [The time intervals in the Romanian criminal procedure]*. Bucharest: Hamangiu Publishing House, 2011;

---

<sup>19</sup> Art. 283 para. (4) letter m) CCP.

## ENSURING THE CELERITY OF THE PROCEEDINGS THROUGH THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL PROCESS

7. Udroi, Mihail, and Ovidiu Predescu. *Protecția europeană a drepturilor omului și procesul penal român [The European protection of human rights and the Romanian criminal process]*. Bucharest: C.H. Beck Publishing House, 2008;
8. Volonciu, Nicolae, Andreea Simona Uzlău (coordinators), Raluca Moroșanu, Corina Voicu, Victor Văduva, Georgiana Tudor, Daniel Atasiei, Teodor-Viorel Gheorghe, Cristinel Ghigheci, and Cătălin Mihai Chiriță. *Noul Cod de procedură penală comentat [The new Criminal Procedure Code commented]*. Bucharest: Hamangiu Publishing House, 2014.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.