DOI: https://doi.org/10.17816/RJLS624782

Navigating the Uncertainties of Criminal Procedure Deadlines: Legal Ambiguities, Doctrinal Perspectives, and Practical Collisions

Nikolay N. Kovtun

Nizhniy Novgorod academy of the Ministry of Internal Affairs of Russia, Nizhniy Novgorod, Russia

ABSTRACT

This study delves into the intricacies of comprehending, calculating, and applying deadlines within criminal procedure, which serves as a distinct form of guarantee established to uphold the overarching objectives of criminal proceedings in Russia while safeguarding the interests and rights of all involved stakeholders. The author explores the gaps and contradictions present in current normative regulation on this matter, alongside the doctrinal viewpoints and trends within judicial and investigative practices. Concrete examples are employed to illustrate the profound collisions arising from these gaps in practice, prompting an evaluation and the proposition of potential solutions to mitigate, if not eliminate these collisions.

Keywords: procedural deadlines; guarantees; course and calculation of the deadlines; deadlines as the subject of evaluation and verification of the court.

To cite this article

Kovtun NN. Navigating the uncertainties of criminal procedure deadlines: legal ambiguities, doctrinal perspectives, and practical collisions. *Russian journal of legal studies.* 2024;11(1):55–64. DOI: https://doi.org/10.17816/RJLS624782

Received: 19.01.2024 **Accepted:** 27.02.2024 **Published:** 30.03.2024

УДК 343.10

DOI: https://doi.org/10.17816/RJLS624782

Уголовно-процессуальные сроки: неопределенность закона, доктрины, коллизии судебно-следственной практики

Н.Н. Ковтун

Нижегородская академия МВД России, Нижний Новгород, Россия

АННОТАЦИЯ

Предметом внимания в данной работе выступают правила точного понимания, исчисления, применения уголовно-процессуальных сроков как особой разновидности уголовно-процессуальных гарантий, установленных для обеспечения как в целом назначения уголовного судопроизводства России, так и интересов и прав частных заинтересованных лиц — участников процесса. Исследуя пробелы и противоречия действующего нормативного регулирования в этом вопросе, позиции доктрины и закономерности судебно-следственной практики, автор на конкретных примерах показывает, к каким серьезным коллизиям эти пробелы приводят на практике; оценивает и предлагает варианты устранения или минимизации этих коллизий.

Ключевые слова: процессуальные сроки; гарантии; течение и исчисление срока; срок как предмет оценки и проверки суда.

Как цитировать

Ковтун Н.Н. Уголовно-процессуальные сроки: неопределенность закона, доктрины, коллизии судебно-следственной практики // Российский журнал правовых исследований. 2024. Т. 11. № 1. С. 55–64. DOI: https://doi.org/10.17816/RJLS624782

Рукопись получена: 19.01.2024 **Рукопись одобрена:** 27.02.2024 **Опубликована:** 30.03.2024

Criminal procedural terms are critical for ensuring both the overall objectives of criminal proceedings in Russia and the protection of the rights and interests of private parties involved. Consequently, these terms have consistently been a focal point for legislators, the criminal procedural doctrine, and judicial investigative practice. Recognizing the essential role of these terms in fulfilling the goals of criminal proceedings as a branch of state activity, legislators have continuously strived to establish precise time limits for each procedural, the execution of procedural and investigative actions, the application of significant measures of procedural compulsion, and the implementation of crucial acts within the process. For situations where a thorough definition of these guarantees was not feasible, legislators relied on the moral and humanitarian concept of a reasonable period or constitutional principles prioritizing individual rights and legitimate interests within civil society. Concurrently, the law prescribed various sanctions for ignoring or significantly violating established rules, aiming to alleviate tension in legal regulation and ensure a balance of guarantees.

In this work, we will set aside the "routine" discussions about the optimality of specific procedural periods, their differentiation based on various legal grounds, and their historical development. Although these aspects are important and relevant, our focus is on achieving legal certainty through a precise understanding of the rules for calculating each type of procedural time period. This precision truly validates these terms as guarantees. Let us examine the law.

According to Article 128 of the Criminal Code Procedure of the Russian Federation (hereinafter referred to as the RF CCP or CCP), procedural periods are calculated in hours, days, and months. The starting point for these periods is defined relatively precisely only for the unit of measurement "month" and is generally not specified for units such as "minutes", "hours", "24 hours", "days", or "year". Nonetheless, the law not only refers to these time units but also ambiguously defines either the starting moment or the time intervals for their precise calculation. For example, in calculating the detention period of a suspect, which is measured in hours (cl. 11, 15 of Art. 5, 10 of the CCP), it is necessary to account for the exact minutes of actual detention (release) of the detainee, even though the legislator does not explicitly mention this aspect. Similarly, time limits are clearly established for interrogation, physical confrontation, identification, and verification of testimony involving a minor victim or witness under the age of seven. According to Part 1 Article 191 of the CCP (*de rigore juris*), these cognitive actions cannot continue without a break for more than 30 minutes, and in total, for more than 1 hour. The same legal approaches apply to the timing of other investigative actions, as Paragraph 1 of Part 3 of Article 166 of the RF CCP mandates that the place and date of the investigative action, along with the precise time of its beginning and end, must be recorded to the exact minute.

In numerous cases, the precise calculation of a period as a lasting time period raises the question of the initial moment (hour or minute) at the beginning of the calculation. For example:

- The decision to initiate a petition to choose detention as a preventive measure is subject to consideration by a judge <...> within 8 hours from the moment the materials are received by the court (Part 4 of Art. 108 of the CCP).
- Within 48 hours from the receipt of the petition, the judge issues a decision on the temporary removal of the suspect or accused from office or on the refusal to do so (Part 2 of Art. 114 of the CCP).
- A copy of the decision to refuse to initiate a criminal case is sent to the applicant and the prosecutor within 24 hours from the moment it is issued (Part 4 of Art. 148 of the CCP).

The law does not clarify whether the specified period must be calculated using a literal account of the minutes of objectification of the relevant legal facts. Alternatively, it might be assumed that the legislator does not emphasize such precision, as evidenced by the absence of imperative orders to specify minutes in the relevant procedural decisions. Consequently, established practice suggests that there is neither a significant problem nor a violation of the guarantees established by law if the authorized subject of the process calculates the established time interval from the first "whole" hour or if the warranty period is simply ignored. In the latter case, this usually occurs without significant regulatory consequences for the subject conducting the criminal process or the process of proof.

For example, in a cassation appeal, the convicted individual, Sh., indicated that he was detained on August 20, 2006, at 3 o'clock but was not interrogated within 24 hours from the moment of detention, as required by Part 2 of Article 46 of the RF CCP. This, he argued, deprived him of the opportunity to refute suspicions of committing crimes in a timely manner. The court's inspection revealed that the delay in his interrogation did not affect the court's conclusions about Sh.'s guilt and did not warrant a change or cancelation of the sentence. Sh. was provided the opportunity to explain the suspicions and the interrogation was conducted in compliance with the provisions of the RF CCP, with the participation of legal counsel.[1]

Another example is the case of suspect G. who was interrogated 29 hours after the actual arrest, contrary to the requirements of Part 2 of Article. 46 of the RF CCP. The court concluded that the fact that G. was interrogated 29 hours after his arrest on September 16, 2009, does not call into question the legality and validity of the sentence[2].

[1] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated August 30, 2016 No. 1-O16-2, SPS "ConsultantPlus".

[2] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated October 24, 2012 No. 64-O12-1 , SPS "ConsultantPlus".

DOI: https://doi.org/10.17816/RJLS624782

Similarly, the actual detention time of K. did not coincide with the time specified in the detention protocol, which violated the requirements of Part 1 of Article 92 of the RF CCP. The decision to select a preventive measure in the form of detention was made 48 hours after the actual detention. The cassation court concluded that the rights of the convicted person to defense during the preliminary investigation were not violated[3].

According to established practices, the court typically determines the period of actual detention of a suspect starting precisely from the moment the detention protocol is drawn up. Any arguments by the detainee that their freedom of movement was restricted much earlier, such as during a search at their home, and that they were subjected to various investigative actions for several hours before the official detention, are easily dismissed by the courts. The rationale given is that during this period, the suspect was not formally detained; rather, necessary investigative actions were simply conducted with their participation [1, 2]. As a result, detainees have frequently appealed to the Constitutional Court of the Russian Federation to calculate detention according to the norms of the RF CCP, which do not contain ambiguities. It asserts that any "misunderstandings" by judicial or law enforcement agencies regarding these terms fall outside its constitutional competence[4].

Issues also arise concerning the "24-hour" time category. The law clearly explains the end of this period (Part 2 of Art. 128 of the CCP), but not its initial moment. The beginning of this time period should be calculated based on various legal facts explicitly stated in the law. For example:

- When an immediate decision on a petition submitted during the preliminary investigation is not possible, it must be resolved within 3 days from the date of its application (Part 1 of Art. 121 of the CCP). Similarly, the prosecutor or head of the investigative body must consider a complaint within 3 days from the date of its receipt (Part 1 of Art. 124 of the CCP).
- If the prosecutor finds the decision of the head of the investigative body or the investigator to terminate a criminal case or prosecution <...> to be illegal or unfounded, they must cancel it and issue a reasoned decision within 14 days from the date of receipt of the case materials (Part 1 of Art. 214 CCP).
- An accusation must be brought against the suspect within 10 days from the date a preventive measure is applied (Part 1 of Art. 100 of the CCP). Additionally, the completed case materials must be presented to the accused in custody and their defense attorney no later than 30 days before the end of the maximum period of detention (Part 5 of Art. 109 of the CCP).

As a result, despite the known difference in doctrinal judgments on this issue [3, 4], in each of these situations, it is essential to consider and accurately calculate the given time period with which the law associates the implementation of a specific procedural right or the fulfillment of a procedural obligation. To ensure unity in legal application, it would be optimal if this rule were explicitly stated in the norms of Part 2 of Article 128 of the RF CCP. This is particularly important because both the doctrine and investigative and judicial practices are not always clear in these aspects. Consider the following example[5].

Convict T., appealing the decision of March 23, 2011, argued that the court's conclusion that he had missed the time limit for a cassation appeal of the decision of December 6, 2010, was contrary to the law. He requested that the decision of March 23, 2011, be canceled and his appeal be accepted for consideration. The judicial panel annulled the decision of March 23, 2011, and accepted the convict's cassation appeal for consideration, indicating the following:

By virtue of Article 365 of the RF CCP, the period for appealing a decision of the court of first instance that has not entered into legal force for a convicted person in custody is 10 days from the date of delivery of a copy of the court decision to him[6]. In accordance with the provisions of Article 128 of the RF CCP, when calculating procedural time limits, the hour and day at which the period begins are not considered[7]. If the end of the period falls on a non-working day, the last day of the term is considered to be the first working day following it. Since the court ruling of December 6, 2010, was delivered to T. on December 15, 2010, the statutory period for T. to appeal this ruling in cassation expired on December 25, 2010. Considering that this day was a non-working day (Saturday), the last day of the period should have been considered Monday, i.e., December 27, 2010.

However, it is important to object because the period under investigation by the cassation court was established and calculated in days. According to legal rigor (*de rigore juris*), which is also recognized by the cassation instance, this period is calculated from the date of delivery of a copy

[3] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated August 29, 2023 No. 38-UD23-16-A1, SPS "ConsultantPlus".

[4] Constitutional Court determination of the Russian Federation dated June 27, 2023 No. 1777-O "On the refusal to accept for consideration the complaint of citizen Pavel Pavlovich Ushaev about the violation of his constitutional rights by cl. 15 of Article 5 part 3 of Art. 128 of the Code of Criminal Procedure of the Russian Federation".

[5] "Review of the cassation practice of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation for the second half of 2011" (clause 2.4.1.), SPS "ConsultantPlus".

[6] The law (in this case) is cited in the version of the RF CCP in force at the time the court made its decision.

[7] The above judgment of the court is indicated as an error, because the calculation of the term named in the decision according to the norms of Part 2 of Art. 128 of the RF CCP applies to periods measured in months (in our case, the convicted person petitions for the restoration of the period for a cassation appeal, calculated in days, which the court also refers to).

DOI: https://doi.org/10.17816/RJLS624782

of the court decision appealed. In this case, that legal fact was implemented on December 15, 2010. Accordingly, if the specified date was included in the calculation, the 10-day period would have expired at 24:00 on December 24, 2010 (Friday, a working day). As a result, the cassation court had no grounds to cancel the verified (legal) judicial act.

Certain difficulties in interpreting the rules for calculating time periods also arise in legal situations where the law provides vague semantic constructions. For example:

- If the defense attorney, legal representative of the accused, representative of the victim, civil plaintiff, or civil defendant, for good reasons, cannot appear to familiarize themselves with the materials of the criminal case at the appointed time, the investigator postpones the familiarization for a period of no more than 5 days (Part 3 of Art. 215 of the CCP).
- If the defense attorney chosen by the accused is unable to appear to familiarize himself with the materials of the criminal case, the investigator, after 5 days, has the right to invite the accused to choose another defense lawyer or, at the accused's request, take measures for the appearance of another defense lawyer (Part 4 of Art. 215 of the CCP).
- The prosecutor considers the criminal case received from the investigator with an indictment and within 10 days makes one of the following decisions on it (Part 1 of Art. 221 of the CCP).

In these lexical constructions, the problem of determining the "first" countable days as the moment for accurately establishing the generally set time period arises. Currently, both doctrine and practice exhibit wide discretion in this matter. Time limits are calculated both from 00:00 on the following day and by including the day when the corresponding legal fact was objectified. However, there is no reason to make exceptions to the previously discussed rules for these constructions. The period interval, calculated according to the rules of the 24 hours, must be determined strictly from the moment of objectification of the relevant legal facts specified in the law[8]. For example, the prosecutor, according to Part 1 of Article 226.8 of the RF CCP, may have only two days to make a final decision on a case received with an indictment. This is a problem of the law, not a (convenient in advance) circumstance for "free" interpretations of the law. At the same time, this conclusion may not be as unambiguous in relation to the following normative construction:

The submission of the President of the Russian Federation on the presence of signs of a crime in the actions of the Prosecutor General of the Russian Federation or the Chairman of the Investigative Committee of the Russian Federation is considered in a closed court session within 10 days after the relevant submission has been received by the court (Part 2 of Art. 448 of the CCP).

The duration of "after" is not generally clarified by either law or judicial practice. Consequently, there are precedents where courts have not identified legal violations in calculating this period from 00:00 on the next day or in slightly exceeding the period provided by law[9]. Without commenting on the latter, we only express the judgment that such semantic constructions are not entirely appropriate for determining normative guarantees.

It seems even more inappropriate when calculating the period daily, for the legislator to refer to the temporary category "day" (Part 2 of Art. 401.5, 412.4, and 446.3 of the CCP). The use of "day" gives rise to naive semantic illusions that for certain legal situations, only the "day" portion of the established time period is significant, while its "night" interval is absolutely insignificant. However, "day" and "24 hours" for the rules of criminal procedure calculation are originally identical.

The legislator has also not clarified the rules for calculating the period indicated by the time category "month". For this type of time period, the legislator made a reservation that when calculating these periods, the hour and day at which the period begins are not considered, except for cases directly provided for by the criminal procedure law (Part 1 of Art. 128 CCP). In theory, the provisions of the law are unambiguous, stating that a period calculated in months expires on the corresponding date of the last month; if the month does not have a corresponding date, the period ends on the last day of that month (Part 2 of Art. 128 of the CCP).

Nevertheless, difficulties arise both in the grammatical interpretation of these legal regulations and when using other methods of interpretation.[10] It is important to recall the rule that identical formulations within the same regulatory act cannot have different semantic meanings [5]. This inconsistency is even more problematic within the framework of a single regulatory prescription. In Part 2 of Article 128 of the RF CCP, the legislator omitted these points. When explaining the rules for calculating the time unit "month," the law emphasizes twice that the monthly period completed by the calculation must end on the corresponding date. Only in the absence of such a date (in the current month) does it end on the last day of the month. "Corresponding", according to grammatical rules, means containing correspondence with someone or something; equal to something in some

[8] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated August 20, 2020 No. 57-UD20-4; Resolution of the Plenum of the Supreme Court of the Russian Federation dated June 30, 2015 No. 29 "On the practice of application by courts of legislation ensuring the right to defense in criminal proceedings", SPS "ConsultantPlus".

[9] Determination of the Supreme Court of the Russian Federation of June 30, 2005 No. 72-o05-21, SPS "ConsultantPlus".

[10] A.V. Melekhin, Theory of State and Law, textbook, Market DS Corporation, Moscow (2007).

respect[11]; suitable; selected, equivalent, consistent[12]. Hence, in theory, it is reasonable to conclude that the start and end dates of a period calculated in months must be factually identical (except for the legal provision concerning the absence of an identical date in the current month). However, practical interpretation suggests other meanings for this "correspondence".

For example, the appeal ruling of the Supreme Court of the Republic of Sakha (Yakutia) dated November 20, 2015, upheld the prosecutor's appeal, which indicated that the court had incorrectly determined the end date (December 31, 2015) for the period of detention of D.

According to Article 91 of the RF CCP, the suspect was detained on October 31, 2015, at 19:20. Having revised the decision of the Verkhnevilyuysky District Court on November 2, 2015, the Court of Appeal decided to consider that the end date of D.'s two-month period of detention[13] should be December 30, 2015.

As we can see, according to Part 2 of Article 128 of the RF CCP, when the court of first instance selected a preventive measure against D. in the form of detention (for a period of two months), the date corresponding to October 31 should be December 31, 2015. However, the higher court defined the time interval more precisely as the sum of two months, calculated as 30 days plus 31 days. If we literally follow the "corresponding" date specified in the law (and the decision of the court of first instance), then by the time the period expires (December 31, 2015), suspect D. would actually be held in custody for 62 days, which is clearly not the two months established by law. Hence, a period of two months is either a time interval consisting of the sum of 30 days plus 31 days or two months calculated by the rules for January and February (31 + 28 or 31 + 29 days in a non-leap and leap year, respectively). At the same time, the "strictness" of these rules is somewhat violated by two time periods, namely, December to January and July to August, which both include two months of 31 days each. As a result, if a criminal case is initiated on December 1 or July 1, the period of preliminary investigation of two months, according to the rules of Part 2 of Article 128 of the RF CCP, is 62 days. In other months, it is 61 days (or 59 or 60 days for January to February, in a non-leap or leap year). Identical criminal procedural terms should definitely be identical for the same legal situations, without contrived "privileges" during certain periods of the investigation. The norms of Part 2 of Article 128 of the RF CCP, which insists on literal "compliance", did not take these points into account. The Plenum or the Presidium of the Supreme Court of the Russian Federation has not addressed these "interesting" aspects.

The same rational rules should be applied when calculating the monthly period of detention. If the suspect was detained and then taken into custody, as the Presidium of the Supreme Court of the Russian Federation explains, the period in accordance with Part 3 of Article 128 of the RF CCP is calculated from the moment of actual detention. When determining the end date of the period of detention, the courts correctly believed that if a person was detained, for example, on May 3, then the end of the month's period falls on June 2 (the month, as we see, is calculated as 31 days — N.K.)[14].

In several instances, the exact calculation of periods requires the mandatory consideration of specific norms and reservations prescribed for implementing particular measures of procedural compulsion. An illustrative example is provided below:

The period for applying the prohibition stipulated in Clause 1 of Part 6 of Article 105.1 of the RF CCP, as well as house arrest, is calculated from the moment the court makes a decision on the selection of this preventive measure (Part 10 of Art. 105.1 and Part 2 of Art. 107 of the CCP, respectively). Conversely, the period for applying bail is calculated from the moment bail is posted (Part 2 of Art. 106 of the CCP). The preventive measure in the form of detention is considered applied from the moment the court decision is made in accordance with Article 108 of the RF CCP (cl. 29 of Art. 5 of the CCP). However, the actual period of detention is calculated only from the moment the person is actually held (detained) in a pre-trial detention center or other place as determined by federal law (cl. 42 of Art. 5 of the CCP). Consequently, in situations where this preventive measure is chosen for accused persons who have absconded from the investigation (cl. 2, Part 1, Art. 208 of the CCP) or for those in the process of extradition (cl. 3, Part 1, Art. 208 of the CCP), the preventive measure is applied according to the law, but the timeframe for its actual application is not calculated until the arrest of the accused or their extradition to the Russian Federation.

The supreme body of constitutional justice of the Russian Federation has also contributed to the "correct" understanding of the calculation of the periods determined by months. For example, in the legal positions set out in the determination of January 29, 2019, No. 16-O, it is stated: "According to Article 162 of the RF CCP", the supreme body of constitutional justice notes, "the period of preliminary investigation is calculated in months, starting from the day the criminal case is initiated until the day it is sent to the prosecutor with an indictment or <...> until the day the decision is made to terminate the criminal case proceedings.

[11] Dictionary of Russian synonyms and expressions similar in meaning, ed. N. Abramov, Russkiye slovari, Moscow (1999).

[12] *Wiktionary*, URL: https://ru.wiktionary.org/wiki/%D1%81%D0%BE%D0%BE%D1%82%D0%B2%D0%B5%D1%82%D1%81%D1%82%D0%B2%D1%83%D1%8E%D1%89%D0%B8%D0%B9 (access date 12/14/2023).

[13] Review of the practice of courts considering petitions to select a preventive measure in the form of detention and to extend the period of detention (approved by the Presidium of the Supreme Court of the Russian Federation on January 18, 2017), SPS "ConsultantPlus".

[14] Ibid, cl. 3.3 of the Review.

<...> In accordance with Part 1 of Article 128 of the RF CCP, when calculating periods in months, the hour and day at which the period begins are not taken into account, and the calculation of the period of preliminary investigation is no exception to this rule"[15].

Even earlier, these "verified" legal positions were declared, based on accumulated experience, in the "Review of judicial practice of the application of legislation on preventive measures by the courts of the Nizhny Novgorod region...", where the competent court not only formulated similar legal approaches but also provided an example of how procedural time limits should be calculated:

"The criminal case was opened at 9:10 a.m. on March 6, 2014. In accordance with the provisions of Articles 128 and 162 of the RF CCP, the two-month period of preliminary investigation is calculated from March 7, 2014 (from the next day) and expires at 24:00 on May 6, 2014, when calculating this procedural period, the hour and the day when the period begins are not taken into account. In this case, the person was taken into custody at 9:50 a.m. on March 6, 2014. Within the meaning of Article 109 of the RF CCP, the two-month period of detention begins on March 6, 2014 (hours and minutes of detention are not taken into account; the whole day is taken into account), on the day of detention, and expires at 24:00 on May 5, 2014, regardless of whether its end falls on a working or non-working day"[16].

Despite the norms of the Federal Constitutional Law of December 28, 2016, No. 11-FKZ mandating that acts of constitutional justice are imperative for Russian law,[17] there are significant reasons to disagree with both the expressed constitutional and legal positions and the practices of the court. First, the Constitutional Court of the Russian Federation appears to have made an error in its conclusion. According to Part 2 of Article. 128 of the RF CCP, when calculating periods in months, the hour and day when the period begins are not taken into account. However, this norm includes a reservation for cases directly provided for in criminal procedure law. The Constitutional Court referred to Article 162 of the RF CCP, which states that the period of preliminary investigation is calculated in months, starting from the day the criminal case was initiated. Given the clarity of both the general and special norms, it is difficult to justify the imperative to calculate the specified period from 00:00 of the next day.

Furthermore, the Presidium of the Nizhny Novgorod Regional Court is incorrect for several reasons. Firstly, it directs lower courts to calculate the term illegally. Secondly, this guidance leads to clear violations of the law. According to their proposed explanations, in the precedent mentioned, a preventive measure of detention was applied to the suspect illegally, outside the legal period of investigation. The legal consequences of such actions are significant and well-known. Additionally, if urgent investigation actions were performed in the first 24 hours beyond the period of the preliminary investigation, these actions would lack legal force. The positions of the Supreme Court of the Russian Federation on this issue should be more definitive and clear.

Therefore, when calculating the period in months, it is imperative to verify the legal fact with which the law associates the beginning of the calculation of a particular period. This verification is crucial because, according to the norms of the RF CCP, the clause of Part 2 of Article 128 of the RF CCP serves more as a general rule than an exception. This is evident in various parts of the CCP, such as Part 2.2 of Article 27, clauses 1, 2, and 3, Part 10 of Article 105.1, Part 2 of Article 106, Part 2 of Article 107, and Parts 2, 6, 6.1, and 6.2 of Article 162.

The relevance of this "verification" is further underscored by the fact that the procedure for calculating periods determined by the time unit "year" was not explicitly addressed in the provisions of Article 128 of the RF CCP. Judicial practice and legal doctrine have generally applied the rules for calculating this period according to the regulations concerning the unit of measurement "month", including any reservations provided by law for individual legal acts. For example:

- A cassation resentence, reconsideration of a ruling, or court decision on grounds that worsen the situation of a convicted person, acquitted person, or a person against whom the criminal case has been terminated is allowed within a period not exceeding one year from the date they enter into legal force (Part 1 of Art. 401.6 CCP).
- Reconsideration of an acquittal, ruling, resolution to terminate a criminal case, or a conviction in connection with the leniency of punishment or the need to apply a criminal law on a more serious crime to the convicted person is allowed only during the statute of limitations on criminal prosecution established by Article 78 of the RF CCP, and no later than one year from the date of discovery of new evidence (Part 3 of Art. 414 of CCP).

Therefore, *de rigore juris*, the initial moment of calculation of this period is associated with the day of a certain legal fact. The days specified by law for the objectification of this fact are imperatively included in the general time interval

[15] Determination of the Constitutional Court of the Russian Federation of January 29, 2019 No. 16-O "On refusal to accept for consideration the complaint of citizen V.N. Perevyazkin. for violation of his constitutional rights by part 2 of Art. 128, parts 2 and 3 of Art. 162 of the Criminal Procedure Code of the Russian Federation", SPS "ConsultantPlus". URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ARB&n=570973#01101093171985985 1 (access date 12/07/2023).

[16] Review of judicial practice of the application by the courts of the Nizhny Novgorod region of legislation on preventive measures in the form of detention, house arrest, and bail for the fourth quarter of 2014 (approved by the Presidium of the Nizhny Novgorod Regional Court on April 22, 2015), SPS "ConsultantPlus". URL: http://www.consultant.ru/document/cons_doc_LAW_289229/ (access date 11/24/2023).

[17] Federal Constitutional Law of December 28, 2016 No. 11-FKZ "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", SPS "ConsultantPlus".

specified by law. However, as with the calculation period of the "month" category, judicial practice has developed its understanding of the "correct" calculation of this period. An example is provided below.

Circumstances of the case are the following. By resolution, the criminal prosecution against those convicted under Part 4 of Article 291.1 of the RF CCP was terminated based on Part 2 of Article 75 of the RF CCP, a note to Article 291.1 of the RF CCP, and Part 2 of Article 28 of the RF CCP. The determination was left unchanged upon audit because a cassation court cannot decide on *reformatio in pejus* after the expiration of a one-year period.

According to the criminal case material, the resolution of the Central District Court of Chelyabinsk dated March 20, 2020, terminating the criminal case prosecution against B.A.P. and P.E.A., entered into force on June 2, 2020 (the day the decision was made by the appellate court). Considering the provisions of Article 128 of the RF CCP, the one-year period from the date of entry into force of the resolution of March 20, 2020, expired on June 2, 2021[18].

We disagree with this calculation. According to the norms of Part 1 of Article 401.6 of the RF CCP, a cassation review of the specified decision is allowed within a period not exceeding one year from the date it entered into legal force. This means the calculation of the period includes the day (date) the decision entered into legal force (in our case, June 2, 2020). Accordingly, the one-year period associated with the inadmissibility of *reformatio in pejus* in relation to these persons expires at 24:00 on June 1, 2021.

The evidence that public subjects of the law enforcement process have not fully understood the rules for calculating time limits is partly provided by the following wording in the descriptive and motivational parts of the decisions made (within one form of verification or another):

According to the applicant, Article 128 of the RF CCP, without indicating which day the period begins when calculating time limits by day, violates his rights guaranteed by Articles 19, 22, 45 (Part 2), 46 (Part 1), and 55 (Part 2) of the Constitution of the Russian Federation. The Constitutional Court of the Russian Federation, refusing to resolve the applicant's complaint on the merits, "answers" completely different questions that the periods provided for by Article 128 of the RF CCP are calculated in hours, days, and months. When calculating periods in months, the hour and day at which the period begins are not considered <...> and a period calculated in days expires at 24:00 of the last day[19]. This response, while educational, does not address the applicant's principal concerns about the lack of clarity regarding the starting day periods calculated in days.

By virtue of Article 356 of the RF CCP, the period for appealing a decision of the court of first instance that has not entered into legal force for a convicted person in custody is 10 days from the date of delivery of a copy of the court decision. According to Article 128 of the RF CCP, when calculating procedural time limits, the hour and day at which the period begins are not considered. If the end of the period falls on a legal public holiday, then the last day of the term is considered to be the first working day following it. This was applicable in this case[20]. We agree with this interpretation. However, the question arises: what relevance does this have to the rules for calculating the period in months, if the subject of the court's review (in this case) is a period established in days?

The attorney for the defendant, addressing the cassation court, argues that the lower court incorrectly calculated the statute of limitations for criminal prosecution against the convicted person, established in years, and requests to rectify this legal violation. When addressing the rights of the convicted person, the cassation court concludes that according to Article 128 of the RF CCP, the period calculated in days expires at 24:00 on the last day. The verdict was announced on June 14, 2011. Therefore, at the time of sentencing, the statute of limitations for K.'s episode had not expired; it expired after 24 hours, on June 15, 2011. Under such circumstances, K. is subject to release not from criminal liability but from punishment for murder[21]. We disagree with the calculation of the statute of limitations for criminal prosecution starting from the day the crime was committed (Part 1 of Art. 78 of the RF CCP), in our case, from December 14, 2003. On the day the act was committed, K. was a minor, and the period of prescription was 7 years and 6 months. When calculating the required period from the specified date, the prescription periods should be completed by 24:00 on June 13, 2011 (the date "14" does not need to be counted again). The superior authority proposes a fundamentally different date (June 15, 2011), which "is taken" only if the counting method, perhaps from 00:00 on the day following the crime, is unknown to us.

In addition, neither the law nor legal doctrine explains to what extent it should be considered that the years 2004 and 2008 (in the last example given) are leap years, containing 366 days instead of the usual 365. Should these two "extra" days (24 hours) be accounted for in calculating the statute of limitations? Or must we mechanically proceed from the assumption that a "year" is a "year", with no need to "adjust" for leap day? If these two "leap" days are indeed

[18] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated June 17, 2021 No. 48-UDP21-11-K7, SPS "ConsultantPlus".

[19] Determination of the Constitutional Court of the Russian Federation dated March 22, 2011 No. 286-O-O "On refusal to accept for consideration the complaint of citizen Pyotr Mikhailovich Antonov about the violation of his constitutional rights by Art. 128 of the Code of the Criminal Procedure of the Russian Federation", SPS "ConsultantPlus".

[20] "Review of the cassation practice of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation for the second half of 2011", SPS "ConsultantPlus".

[21] Cassation ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation dated January 19, 2012 No. 78-O-11-98sp, SPS "ConsultantPlus".

DOI: https://doi.org/10.17816/RJLS624782

taken into account, the statute of limitations period will differ, altering the end dates and, consequently, the final court decisions. This raises logical questions: firstly, to what extent are these final acts truly just; and secondly, to what extent do they serve as a reference point for practice?

In conclusion, let us consider the time limits provided by procedural law. Here are some examples:

- The decision to recognize a person as a victim is made immediately upon the initiation of the criminal case and is formalized by a resolution of the inquiry officer, investigator, or judge (Part 1 of Art. 42 of the CCP). The applicant must be immediately notified of the decision made on the complaint and the further procedure for appealing it (Part 4 of Art. 124 of the CCP).
- The judge's decision is subject to immediate execution and can be appealed, as established by Part 11 of Article 108 of this Code (Part 5 of Art. 105.1 of the CCP). The administration of the place of detention immediately forwards complaints from the suspect, accused, or those in custody to the prosecutor or the court (Art. 126 of the CCP).
- The petition (of the participant in the process, N.K.) must be considered and resolved immediately after submission (Art. 121 of the CCP).

The time interval for calculating these periods is not defined by criminal procedure law. This gap is partially filled by the positions of criminal procedural doctrine and judicial investigative practice. It is generally accepted that the legal obligation specified by these time periods should be implemented not merely on the first day (according to the generally accepted "custom"), but preferably as quickly as possible, truly immediately (instantly) upon the occurrence of the corresponding legal act[22].

I.V. Maslov, appealing to the practice of the European Court of Human Rights, highlights a slightly different calculation of these time limits. Clause 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, while not establishing a strictly defined period for such detention, requires the immediate delivery of the detainee to a judge. The European Court typically interprets "immediacy" from the standpoint of reasonableness in relation to the circumstances of each case. For example, in the decision dated November 29, 2018, in the case of Brogan and others v. United Kingdom of Great Britain and Northern Ireland, the European Court determined:

- Detention periods of 4 days and 6 hours (102 hours in total) for McFadden and 4 days 11 hours (107 hours in total) for Tracy fully meet the requirements of immediacy.
- Periods of 5 days and 11 hours (131 hours in total) for Brogan and 6 days and 16 hours (160 hours in total) for Coyle did not meet this criterion [6, p. 141].

In almost the same context, courts of the Russian Federation are also increasingly developing "European" standards in the interpretation and calculation of these time limits. Here are examples of the "immediacy" of these court decisions:

In the appeal petition, K. indicated that he did not admit guilt in the incriminated episode but petitioned for the termination of the proceedings to avoid delaying the trial. He noted that the petition was filed on December 5, 2016. However, the court, in violation of the requirements of Article 121 of the RF CCP, examined it after more than 10 months. The higher court stated that the period during which the petition was not resolved does not affect the legality of the decision made <...>[23].

Contrary to the opinion of the authors of the complaints, Articles 121 and 271 of the RF CCP do not oblige the court to decide on each petition immediately (it must be directly!) after its submission. The time limit established by Article 121 of the RF CCP applies only to the preliminary investigation stage, and not to the consideration of cases in the first[24] or appellate instance court[25].

In summary, despite more than 20 years since the adoption of the RF CCP, neither the criminal procedural doctrine nor judicial investigative practice has formed a unified approach to understanding the time limits set by law. This applies to periods calculated in hours, days, months, and other time units. It must be acknowledged that compliance with these procedural guarantees is often declared rather than ensured in practice. Despite numerous violations and the subjective use of discretionary principles in practice, the Plenum remains silent on these issues, asserting that such minor details do not affect the legality of court decisions.

[22] It is in this context that, it seems, the legislator once again clarifies this immediacy in the provisions of Part 9 of Article 166 of the RF CCP.

[23] Appellation decision. Supreme Court of the Russian Federation dated June 17, 2020 No. 3-APU19-10, SPS "ConsultantPlus".

[24] Appellation decision. Supreme Court of the Russian Federation dated July 9, 2020 No. 223-APU20-2, SPS "ConsultantPlus".

[25] Cassation definition. Supreme Court of the Russian Federation dated December 16, 2022 No. 222-UD22-57-A6, SPS "ConsultantPlus".

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AUTHOR INFO

Nikolay N. Kovtun, doctor of law, professor;
eLibrary SPIN: 3167-1176; e-mail: kovtunnnov@mail.ru

ОБ АВТОРЕ

Николай Николаевич Ковтун, доктор юридических наук, профессор; eLibrary SPIN: 3167-1176; e-mail: kovtunnnov@mail.ru