

## REASONABLE TIME UNDER INTERNATIONAL LAW

### 1. Introduction

- 1.1. This working paper examines what is considered a 'reasonable time' to be tried without undue delay. In international law, 'reasonable time' is a general term, which lacks a consensual definition as various treaties nuance the term in distinct ways. This working paper sets forth what is considered a 'reasonable time' under The International Covenant on Civil and Political Rights ("**ICCPR**"), The European Convention on Human Rights ("**ECHR**") and The American Convention on Human Rights ("**ACHR**").
- 1.2. First, section 2 discusses the notion of 'reasonable time' as provided under the ICCPR. Thereafter, section 3 sets forth 'reasonable time' as outlined in the ECHR. Subsequently, section 4 presents what is considered a 'reasonable time' under the ACHR. Finally, section 5 distinguishes the common aspects of what is considered a 'reasonable time' to be tried without undue delay under the ICCPR, the ECHR and the ACHR.

### 2. International Covenant on Civil and Political Rights

- 2.1. ICCPR Article 14(3) enumerates that "[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality", which includes the right "to be tried without undue delay".<sup>1</sup>
- 2.2. In principle, derogation from this article is possible.<sup>2</sup> However, the principles of legality and the rule of law require that the fundamental requirements of fair trial must be respected.<sup>3</sup> In other words, the right to take proceedings before a court of law to decide on the lawfulness of detention without (unreasonable) delay must not be diminished by *any* derogation from the ICCPR.<sup>4</sup> Additionally, there are elements or dimensions of the right to be tried without delay that cannot be derogated from in any circumstances.<sup>5</sup>
- 2.3. What is considered 'reasonable' when considering the 'without undue delay'
- 2.3.1. The right to be tried without undue delay is designed with several reasons:
- i. to avoid keeping persons too long in a state of uncertainty about their fate;
- and

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<sup>1</sup> ICCPR, Article 14(3)(c).

<sup>2</sup> As it is not listed as a non-derogable right under Article 4(2) of the ICCPR.

<sup>3</sup> Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism, para. 14.

<sup>4</sup> *Idem*.

<sup>5</sup> CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, para. 8.

- ii. if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case;
- iii. to serve the interests of justice.

2.3.2. Therefore, what is reasonable must be assessed in the circumstances of each case,<sup>6</sup> considering mainly (i) the complexity of the case; (ii) the conduct of the accused; and (iii) the manner in which the matter was dealt with by the administrative and judicial authorities.<sup>7</sup> When there is a significant delay, there must be substantial reasons shown to justify such a delay until trial.

2.3.3. For instance, when a person is suspected and charged with an offence and detained based on Article 9 ICCPR, that person must be brought to trial. If the authorities fail to do so which leads to undue delay of trials, this conduct may constitute a violation of Article 9(3) and 14(3)(c) ICCPR at the same time.<sup>8</sup> Moreover, if the accused has to remain in the country in which it is charged as long as proceedings are pending for several years, it may violate the right to a person to leave one's own country.<sup>9</sup>

### 3. The European Convention on Human Rights

3.1. ECHR Article 6(1) stipulates that "[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." This article may also apply to proceedings, which, although not completely judicial in nature, are nonetheless closely linked to supervision by a judicial body.<sup>10</sup>

3.2. For civil proceedings, time normally begins to run from the moment the action was instituted before the competent court.<sup>11</sup> However, it is possible that the time begins to run

<sup>6</sup> See for instance, HRC, Errol Johnson v. Jamaica, no. 588/1994, para. 8.8: "*In the Committee's opinion, a delay of four years and three months in hearing an appeal in a capital case is, barring exceptional circumstances, unreasonably long and incompatible with article 14, paragraph 3 (c), of the Covenant.*"; HRC, Abdool Saleem Yasseen and Noel Thomas v. Republic of Guyana, no. 676/1996, para. 7.11: "*(...) the Committee considers that the delay of two years between the decision by the Court of Appeal to order a retrial and the outcome of the retrial, is such as to constitute a violation of article 14, paragraph 3(c).*"; HRC, Paul Kelly v. Jamaica, no. 253/1987 para. 5.11-5.12; HRC, Siewpersaud, Sukhram, and Persaud v. Trinidad v Tobago, no. 938/2000, para. 6.2; HRC, Rouse v. Philippines, no. 1089/2002, para. 7.4; HRC, Taright, Touadi, Remli and Yousfi v. Algeria, no. 1085/2002, para. 8.5: "*In the Committee's opinion, the arguments put forward by the State party cannot justify excessive delays in judicial procedure. The Committee also considers that the State party has not demonstrated that the complexity of the case and the appeal by the authors on points of law were such as to explain that delay. It therefore finds a violation of article 14, paragraph 3 (c).*"; HRC, Mr. Xavier Evans v. Trinidad and Tobago, no. 908/2000, para. 6.2-6.3; HRC, Hendricks v. Guyana, no. 838/1998, para. 6.3; HRC, Victor Ivan Mujuwana Kankanamge v. Sri Lanka, no. 909/2000, para. 9.2-9.4; HRC, Fei v. Colombia, no. 514/1992, para. 3.2, 5.1, 5.3, and 8.4.

<sup>7</sup> CCPR General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, para. 35.

<sup>8</sup> *Idem*, para. 61.

<sup>9</sup> ICCPR, Article 14(3)(c); Article 12(2).

<sup>10</sup> The right to trial within reasonable time under Article 6 ECHR: A practical handbook, Ivana Roagna, 2018, pg. 16.

<sup>11</sup> *Idem*, pg. 15.

even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute. This shows that the ECHR requires that the latter word should not be construed too technically and should be given a substantive rather than a formal meaning.<sup>12</sup>

- 3.3. For criminal charges, the period to be taken into consideration begins on the day on which a person is 'charged'.<sup>13</sup> The concept of a charge has an autonomous and substantive rather than a formal meaning.<sup>14</sup> Generally, the definition is "*the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence*", but "*it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect*".<sup>15</sup>
- 3.4. This means from the moment that the situation of the accused is "*substantially affected*".<sup>16</sup> Hence, the "*reasonable time*" may start to run prior to the case coming before a trial court,<sup>17</sup> for instance from starting from the time of arrest.<sup>18</sup> Similar to the meaning of reasonable time in civil proceedings, this definition is more flexible and comprehensive than technical.<sup>19</sup> The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, such as in particular the complexity of the case, the applicant's conduct and that of the competent authorities.<sup>20</sup>
- 3.5. The respondent state must "*give satisfactory explanations*" whenever the duration of the proceedings appears excessive or inordinate at first sight. Otherwise, the State would be in breach of the reasonable-time requirement.<sup>21</sup> In such cases, there is certain presumption against the State that the proceedings are unreasonably long. This requires that the State must show that it is not responsible for the lapse of time.<sup>22</sup>

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<sup>12</sup> ECtHR, *Golder v. the United Kingdom*, no. 4451/70, para. 32; Roagna, *supra* note 10, pg. 15.

<sup>13</sup> Roagna, *supra* note 10, pg. 17; ECtHR, *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, para. 44.

<sup>14</sup> ECtHR, *Deweere v. Belgium*, no. 6903/75, para. 44.

<sup>15</sup> ECtHR, *Foti and others v. Italy*, no. 7604/74, para. 52; ECtHR, *Corigliano v. Italy*, no. 8304/78, para. 34.

<sup>16</sup> ECtHR, *Tychko v. Russia*, no. 56097/07, para. 63.

<sup>17</sup> ECtHR, *Deweere v. Belgium*, no. 6903/75 para. 42.

<sup>18</sup> ECtHR, *Wemhoff v. Germany*, no. 2122/65, para. 19.

<sup>19</sup> Roagna, *supra* note 10, pg. 17.

<sup>20</sup> ECtHR, *Kemmache v. France*, no. 20968/92, paras. 59-60.

<sup>21</sup> ECtHR, *Foti and others v. Italy*, no. 7604/74, paras. 5, 68, 69, 72 and 76; *Corigliano v. Italy*, no. 8304/78.

<sup>22</sup> Roagna, *supra* note 10, pg. 23.

3.6. Case Examples:

The period to be considered

- 3.6.1. When reviewing compliance with the reasonable-time requirement the court begins by determining the starting point (*dies a quo*) and the end (*dies ad quem*) of the period to be considered. Applicants usually complain of the total length of judicial proceedings, which may have entailed more than one tier of jurisdiction. Sometimes, however, the court may not consider the entire course of the applicant's proceedings for the simple reason that the applicant is complaining of judicial delay only at a certain stage of the proceedings.
- 3.6.2. In **Portington v. Greece**,<sup>23</sup> the court noted that "*the applicant's complaint concerns the length of the appeal proceedings before the (...) Court of Appeal*", and therefore held that the period to be taken into account began on "*the date on which he lodged an appeal against the judgment of the trial court*" and ended "*when his appeal was finally heard, and judgment delivered by the Court of Appeal*". In this case the appeal proceedings lasted almost eight years, and "*at the time of the Court's consideration of the case the applicant had lodged an appeal on points of law*". A violation was thus established.<sup>24</sup>

Complexity of proceedings determining lengthiness

- 3.6.3. In its **Guillemin v. France** judgment<sup>25</sup> the court found against France on account of the unreasonable length of expropriation proceedings (totalling over fourteen years and mainly due to "*organisational difficulties*" connected with the proceedings).<sup>26</sup> The court pointed out that "expropriation proceedings are relatively complex, in that they come under the jurisdiction of both sets of courts" – the administrative courts in respect of the lawfulness of expropriation measures and the ordinary courts in respect of the transfer of the property in question, the assessing of compensation and, in general, interferences with private property.
- 3.6.4. Furthermore, as in the present case, an administrative court may have to rule on the lawfulness of the initial stage of the proceedings at the same time as an ordinary court has to deal with the consequences of an expropriation order whose lawfulness has been challenged in the other court. Such a situation may give rise to conflicting decisions, and this is a risk which prompt consideration of claims might help to diminish. The respondent government could not therefore rely on the inherent complexity of expropriation proceedings to escape responsibility for their length.<sup>27</sup>

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<sup>23</sup> ECtHR, *Portington v. Greece*, no. 28523/95. para.

<sup>24</sup> Roagna, *supra* note 10, pg. 15.

<sup>25</sup> ECtHR, *Guillemin v. France*, no. 19632/92.

<sup>26</sup>The Court specifically refers to "delays due to organisational difficulties", *Guillemin v. France*, no. 19632/92, para. 43.

<sup>27</sup>Roagna, *supra* note 10, pg. 26.

### Employment disputes

- 3.6.5. It should therefore be borne in mind that “*employment disputes by their nature call generally for expeditious decision*”. In **Zawadzki v. Poland** the Court reaffirmed its view that “*proceedings relating to social issues [were] especially important for the applicant*” and therefore required greater promptness.<sup>28</sup> Specific examples include proceedings to secure a compensatory pension following an industrial accident. Social-security proceedings also come within the category of proceedings relating to social issues.<sup>29</sup> Similarly in **Novović v. Montenegro**, the Court recalled that reinstatement proceedings are of “*crucial importance*” to plaintiffs and, as such, must be solved in an expeditious manner.<sup>30</sup>

### Criminal Proceedings Involving Detention

- 3.6.6. As regards criminal charges the Court has held, since **Abdoella v. the Netherlands** that “*persons held in detention pending trial [such as Mr Abdoella] are entitled to ‘special diligence’ on the part of the competent authorities*”.<sup>31</sup> Similarly, in its **Kalashnikov v. Russia** judgment the Court observed: “*(...) throughout the proceedings the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously*.”<sup>32</sup>

## **4. The American Convention on Human Rights**

- 4.1. ACHR Article 8(1) specifies that “*Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.*”
- 4.2. The Inter-American Commission on Human Rights (IACHR) defines the concept of reasonable time by invoking the points raised by the ECtHR. According to the ECtHR, three points must be considered in determining a reasonable time within which the trial must be conducted:
- i. The complexity of the matter
  - ii. The judicial activity of the interested party

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<sup>28</sup> ECtHR, *Zawadzki v. Poland*, no. 4859/02, para. 101.

<sup>29</sup> ECtHR, *Deumeland v. the Federal Republic of Germany*, no. 9384/81, para. 90.

<sup>30</sup> Roagna, *supra* note 10, pg. 28.

<sup>31</sup> ECtHR, *Abdoella v. the Netherlands*, no. 12728/87, para. 24.

<sup>32</sup> ECtHR, *Kalashnikov v. Russia*, no. 47095/99, para. 132.; as well as, among many other examples: *Portington v. Greece*, no. 28523/95, para. 21.

iii. The behaviour of the judicial authorities.<sup>33</sup>

- 4.3. In addition to the examination of possible delays at the various stages of a proceeding, there must be a “*global analysis of the proceeding*” by the Court.<sup>34</sup>
- 4.4. It is obligatory to have compliance within a reasonable time in order to avoid unnecessary delays that can lead to the deprivation or denial of justice.<sup>35</sup> There should be no negligence on the side of the court, this might lead to a failure of compliance with procedural deadlines described by domestic law and also with international standards developed for determining reasonable time.<sup>36</sup> Although civil litigation has its own requirements, the IACHR notes that the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the victim ineffective.<sup>37</sup> The proceedings must be considered as a whole, with reference to the complexity of the case, the conduct of the complainant and the competent authorities.<sup>38</sup> Systemic delay inherent in the civil system justice system in general can also be qualified as an unreasonable delay of State and must be avoided.<sup>39</sup> Courts are not in a position to provide judicial protection if they do not attend to respective issues in a given case timely or effective.

## 5. Conclusion

- 5.1. The ICCPR, ECHR and ACHR provide that what can be considered as a ‘reasonable time’ must generally be assessed in the circumstances of each case. Nevertheless, three main factors are deemed of particular interest:
- i. the complexity of the case;<sup>40</sup>
  - ii. the behaviour of the judicial authorities<sup>41</sup> or the way the matter was dealt with by the administrative and judicial authorities;<sup>42</sup>
  - iii. In relation to the ICCPR, the conduct of the accused must also be considered. Whereas considering the ECHR and ACHR, the judicial activity of the interested party must be ascertained.<sup>43</sup>

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<sup>33</sup> IACHR, *Genie-Lacayo v. Nicaragua*, no. 10.792, para. 77

<sup>34</sup> *Idem*, para. 81.

<sup>35</sup> IACHR, *Milton García Fajardo et al. v. Nicaragua*, no. 11.381, para. 51

<sup>36</sup> *Idem*, para. 53.

<sup>37</sup> IACHR, *Tomás Enrique Carvallo Quintana v. Argentina*, no. 11.859, para. 74-75

<sup>38</sup> *Idem*.

<sup>39</sup> IACHR, *Maya Indigenous Communities of the Toledo District v. Belize*, no. 12.053, para. 185

<sup>40</sup> ECtHR, *König v. Germany*, no.6232/73 para. 99; IACHR, *Genie-Lacayo v. Nicaragua*, no. 10.792, para. 77; CCPR, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para. 35;

<sup>41</sup> ECtHR, *König v. Germany*, no.6232/73, para. 99; IACHR, *Genie-Lacayo v. Nicaragua*, no. 10.792, para. 77

<sup>42</sup> CCPR, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para. 35.

<sup>43</sup> ECtHR, *König v. Germany*, no.6232/73, para. 99; IACHR, *Genie-Lacayo v. Nicaragua*, no. 10.792, para. 77

5.2. While the ECHR is reluctant to establish definitive rules, arguing that every case must be considered on its own merits, in an analysis and comparison of the ECHR's case law up to 31 July 2011 regarding the length of civil, criminal, and administrative proceedings, the European Commission for the Efficiency of Justice highlighted that:

- i. a total duration of up to 2 years per level of jurisdiction in non-complex cases is generally regarded as reasonable. When proceedings have lasted more than 2 years, the Court examines the case closely to determine whether the domestic authorities have shown due diligence in the process;
- ii. in priority cases (e.g., cases in which the applicant is in custody), the Court may depart from the general approach, and find violation even if the case lasted less than 2 years;
- iii. in complex cases, the Court may allow a longer time, but it pays special attention to periods of inactivity (i.e., the conduct of the authorities) which are clearly excessive. However, this longer period permitted is rarely more than 5 years and almost never more than 8 years in total duration;
- iv. the only cases in which the Court does not find a violation despite manifestly excessive duration of proceedings are cases in which the applicant's behaviour contributed to the delay.<sup>44</sup>

5.3. With regards to criminal proceedings the following conclusions can be drawn:

- i. less than 3 years:

Proceedings lasting 3 years or less are generally considered to be reasonable and any complaint regarding such length is usually rejected by the Court as '*manifestly ill-founded*' and therefore not admissible;<sup>45</sup>

- ii. between 3 and 5 years:

Except in cases where there are significant delays attributable to the authorities and/or the accused is in custody,<sup>46</sup> lengths of less than 5 years for more than one level of jurisdiction are usually considered as reasonable;<sup>47</sup>

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<sup>44</sup> Calvez/Régis, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights* (31 July 2012), 2<sup>nd</sup> ed. (Council of Europe Publishing, 2012), pg.5, pg. 12.

<sup>45</sup> ECtHR, *J.M v Denmark*, no. 34421/09.

<sup>46</sup> The length of the proceedings has not been considered reasonable in: ECtHR, *Jusuf v Greece*, no. 4767/09, (4 years 9 months for 2 levels of jurisdiction – delays attributable to the authorities); ECtHR, *Zafirov v Greece*, no. 25221/09, (4 years 7 months for 2 levels of jurisdiction – delays attributable to the authorities); ECtHR, *Syngayevskiy v Russia*, no. 17628/03, (3 years 8 months for 2 levels of jurisdiction – delays attributable to the domestic authorities and applicant in custody); ECtHR, *Masár v Slovakia*, no. 66882/09, (4 years 5 months for pre-trial proceedings – delays attributable to the domestic authorities).

<sup>47</sup> The length of the proceedings has been considered reasonable in: ECtHR, *Ustyantsev v Ukraine*, no. 3299/05, (3 years 6 months and 3 years 9 months for 3, respectively 2 levels of jurisdiction); ECtHR, *Timoshin v Russia*, no. 41643/04, (3

iii. more than 5 years:

On the other hand, lengths of more than 5 years are rarely considered as reasonable, save where it is considered that the authorities demonstrated sufficient diligence in handling the proceedings, the applicant was responsible for delays, the case was particularly complex or it has been examined at several levels of jurisdiction;<sup>48</sup>

iv. more than 7 years:

- v. In nearly every case when the proceedings have lasted more than 7 years the Court considered that the length of the proceedings was excessive.

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years 5 months for 2 levels of jurisdiction); ECtHR, *Struc v the Republic of Moldova*, no. 40131/09, (3 years 10 months for 3 levels of jurisdiction).

<sup>48</sup> The length of the proceedings has not been considered reasonable in: ECtHR, *Kiryakov v Ukraine*, no. 26124/03, (5 years 5 months for 3 levels of jurisdiction); ECtHR, *Dimitar Vasilev v Bulgaria*, no. 10302/05, (5 years 6 months for 2 levels of jurisdiction); ECtHR, *Lambadaris v Greece*, no. 47112/09, (5 years 9 months for 2 levels of jurisdiction); ECtHR, *Solovyevy v Russia*, no. 918/02, (5 years for 2 levels of jurisdiction); ECtHR, *Mahmut Öz v Turkey*, no. 6840/08, (over 5 years – still pending – for 2 levels of jurisdiction); ECtHR, *Grigoryan v Armenia*, no. 3627/06, (5 years and 3 months – and possibly still pending over 7 years later – for investigation stage); ECtHR, *Kechev v Bulgaria*, no. 13364/05, (over 5 years and 3 years 4 months both for preliminary investigation); ECtHR, *Pimentel Lourenço v Portugal*, no. 9223/10, (5 years 4 months for 2 levels of jurisdiction). See however the following cases in which the length of the proceedings has been considered reasonable: ECtHR, *Horych v Poland*, no. 13621/08, (5 years 6 months for 2 levels of jurisdiction); ECtHR, *Ghiță v Romania* (decision), no. 18817/04, (6 years 5 months for 3 levels of jurisdiction and 2 cycles of proceedings); ECtHR, *Borodin v Russia*, no. 41867104, (5 years 3 months for 2 levels of jurisdiction).