

THE STUDY ON REASONABLE TIME IN CRIMINAL PROCEEDING

Golshan Fathi¹, Bahram Asgari²

1. MA In criminal and Criminology, Islamic Azad University, Qom Branch, Iran

2. M.A. in Jurisprudence and Law, Islamic Azad university, Lahijan, IRAN.

Corresponding author email: g.fathi15@gmail.com.

ABSTRACT: The right to trial within a reasonable time is an important element of the human rights discourse. This article has been analyzed the manner in which the seriousness of the criminal offence with an accused has been charged which affects jurisprudence on this right. The aim of this study, was to realize a brief review of the regulations concerning the principle of celerity in criminal trials. Also defendants and society alike benefit from protection of this right. For defendants, it "is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay.

Keywords: Fair Trial. Reasonable time, principle of celerity, pre detention

INTRODUCTION

Many bills of rights grant two distinct rights, one being a right to 'either trial within a reasonable time or release pending such trial' with the other being 'the right to trial within a reasonable time'. These rights differ in their goals and objectives, a distinction best illustrated by reference to ECtHR jurisprudence on the Article 5(3) entitlement to 'trial within a reasonable time or to release pending trial' in contrast to the entitlement provided for in Article 6(1) to '...a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' The ECtHR has held that the question of a reasonable time as per Article 5(3) relates to when someone is in detention and the question involves someone's trial or release, and Article 6(1) is when the issue only relates to the right to go to trial and receive a decision on the merits without delay, and must be considered differently.

FAIR TRIAL.

The concept of the fair trial is almost impossible to define because of the way it appeared between the constants of rights and the fundamental rights in the contemporary legal systems.

But the concept of the fair trial is an extremely complex one incorporated into more components, such as: the free access to justice; examination of the case in a fair, public and within a reasonable time; examination of the case by an independent, impartial and

established by law court; the publicity of the sentencing.

The concept of a fair trial is often used by the courts from Strasbourg for appointing the assembly of the rights of the litigants according to art.6 from the European Convention of Human Rights, which means the assembly of the procedural guarantees which enable the value of the rights protected by the Convention. As a guarantee for the human rights, the Convention provides in article 6 (1) the right of any person to a fair trial: "Any person has the right to have his/her trial fairly examine, publicly and within a reasonable time, by an independent and impartial court, established by the law, which will decide either upon the violation of the civil rights and obligations or upon the thoroughly of any criminal charges against him/her. The decision has to be given in public, but the access in the meeting room may be forbidden to media and audience during the entire time or only a certain period of the trial in the interest of morality, public order or national security in a democratic society, when it is necessary for the interests of the minor or the safety of private life of the litigants or when the court consider it is necessary when the publicity may prejudice the interests of the justice, because of some special circumstances." In European law doctrine¹ the right of access to a court is known as a concrete and effective right which means that the litigant benefits by a real and concrete possibility to determine the violation of his/her rights. Article 6 provides that everyone has the right to a fair trial in both civil and criminal cases. A party to

legal proceedings has the right to be heard by an independent, impartial tribunal, in public, and within a reasonable amount of time. Article 6 is not subject to any exceptions, though the procedural requirements of a fair trial may differ according to the circumstances. Article 6 specifies some additional aspects of the right to a fair trial that apply in criminal cases: the accused should be informed promptly about the charges against them in language they understand; they should have sufficient time and facilities to prepare a defense; they should be able to defend themselves in person or through a lawyer of their own choosing; and they should be given legal aid if they cannot afford representation and the interests of justice require it. They should also be able to call and question witnesses in the same way as the defense. The state is obliged to establish courts which give all those accused a fair trial and to ensure that nobody is punished without a fair trial.

REASONABLE TIME

Most human rights bills at both domestic and international law include the right to trial within a reasonable time, often termed the right to be tried without undue delay or the right to a speedy trial.¹

This right is an important element of a criminally accused person's due process rights

that he/she has committed a criminal offence². The running of the period does not begin with the arrest for questioning (placement under *garde à vue*), since this will generally precede the laying of the "charge", even in its "autonomous" meaning. As regards the end of the period, the "time" covers the whole of the proceedings in issue, including appeal proceedings. In other words, there is no "determination" of a "charge" as long as sentence has not been definitively fixed, for example through pronouncement of cumulative sentences³.

The next step is to determine whether the given length of the domestic proceedings may be qualified as 'reasonable'. No set time-limits have

1- Protected at international law in article 14(3)(c) of the International Covenant on Civil and Political Rights, articles 20(4)(c) and 21(4)(c) of the Statutes of the International Criminal Tribunals for Rwanda and for the former Yugoslavia respectively, article 7(1)(d) of the African Charter on Human and Peoples' Rights, article 8(1) of the American Convention on Human Rights and article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

² *Foti v. Italy* (1983) 5 E.H.R.R. 313; [1982] E.C.H.R. 7604/76 .

³ -*Eckle v. Germany* (1983) 5 E.H.R.R. 1; [1982] E.C.H.R. 8130/78.

been laid down in the Court's case-law. Instead, the Court focuses on several criteria: (i) the complexity of the case; (ii) the behavior of the applicant; (iii) the behavior of the national (judicial) authorities; and (iv) whether there is a reason for special diligence.⁴ Although it is difficult to identify a precise practice common to all the courts.

To prevail on a motion to dismiss for violation of this subsection, the defendant must first show that the delay was unreasonable and that the prosecution caused it⁵. What is considered unreasonable will vary with the facts of each case⁶. Clearly, intentional delay for tactical advantage over the defense is an unreasonable explanation; less unreasonable, but still the responsibility of the Commonwealth, is negligence in bringing the case to trial.⁷ The complexity of a case will significantly affect judgment as to whether the prosecutor's delay has been negligent or necessary⁸.

For example, a case in which several defendants have been joined for trial will typically require more preparation time than will a routine prosecution of a single defendant⁹. Institutional factors, such as the need to prosecute custody cases first, may count against the prosecution in circumstances of excessive delay¹⁰.

the right for a fair trial and the right for completion of the procedure within a reasonable time

are both considered to be fundamental constitutional rights. They are not regarded as personality rights, meaning that the violations of this right cannot be the ground for a recovery of

⁴ - KUIJER, Martin, The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), 2013, p4 .

⁵ - *See Commonwealth v. Gore*, 79 Mass. App. Ct. 745, 748-50, *rev. denied*, 460 Mass.

⁶ -*See Commonwealth v. Plantier*, 22 Mass. App. Ct. 314, 318, *rev. denied*, 398 Mass. 1103 (1986) (dismissal not abuse of discretion); *Commonwealth v. Whittier*, 378 Mass. 19, 22 (1979) ("delays that would be excused or considered negligible in the ordinary case may amount to excessive delay when the defendant's right to a speedy trial is made specific by court order")

⁷ -*See Commonwealth v. Gore*, 79 Mass. App. Ct. 745, 748-50, *rev. denied*, 460 Mass.

⁸ - *See Commonwealth v. Lutoff*, 14 Mass. App. Ct. 434, 441 (1982); *Commonwealth v. Underwood*, 3 Mass.

⁹ -*See Commonwealth v. Campbell*, 5 Mass. App. Ct. 571, 585 (1977) (dismissal not warranted in case with numerous charges and codefendants); *Commonwealth v. Dominico*, 1 Mass. App. Ct. 693, 701 (1974) (16-month delay did not violate speedy trial rights in complex multi-defendant case).

¹⁰ *Commonwealth v. Lutoff*, 14 Mass. App. Ct. 434, 439 (1982). *See also Commonwealth v. Johnson*, 16 Mass. App. Ct. 935, 935-36 *rev. denied*, 390 Mass. -

non-pecuniary damages¹. However, one must also mention that there are opinions saying that the right for termination of the procedure within a reasonable time is a personality right². In our opinion the right for conclusion of the procedure within reasonable time is not a personality right. Personality rights have an absolute structure, meaning that they have to be respected by everybody, everybody has to refrain from violating these rights. In contrast the requirement to terminate the trial within a reasonable time imposes obligations on the courts and the parties having a right to action are only the parties of the proceedings. On these grounds, the right for termination of the procedure within a reasonable time has to be considered to be a legal relationship with a relative structure³.

The real goal of any scheme to provide trial within a reasonable time must be to strike a balance between two of the governing principles of criminal procedure: efficiency and fairness. unnecessary delay must be avoided but participants must be given adequate opportunity to protect the interest of both the state and the accused⁴.

PRINCIPLE OF CELERITY

When criminal charges are initially brought months or years after an alleged offense, the hardship imposed on the defendant can be considerable. Beyond inconvenience and anxiety, the defendant may suffer the loss of evidence important to the defense case. The erosion of significant evidence is even more likely to occur when delays precede rather than follow accusation: without notice of a criminal charge or perhaps even an arrest, defendants may have no reason to preserve sources of evidence that can weaken or vanish with age. As Justice Douglas wrote in his concurring opinion in *United States v. Marion*:

The impairment of the ability to defend oneself may become acute because of delays at the pre-indictment stage. Those delays may result in loss of alibi witnesses, the destruction of material evidence and the blurring of memories. At least when a person has been accused of a specific

crime, he can devote his powers of recall to the events surrounding the alleged occurrences. When there is no formal accusation, however, the State may proceed methodically to build its case while the prospective defendant proceeds to lose his.⁵

celerity (efficacy or rapidity) is required, as fundamental principle of the criminal trial, because it assumes the desire that the conduct of the criminal trial and implicitly, the settlement of the criminal cases, should take place as soon as possible, in a moment as closest to the one when the offence was committed. Although it is not legally consecrated together with other fundamental principles of the criminal trial, the principle of efficacy results from other proceedings provisions, first of all even from the content of art. 1 paragraph 1 of the Criminal Procedure Code (the aim of the criminal trial): „*The aim of the criminal trial is to acknowledge in due time and completely the deeds that represent offences, so that any person who has perpetrated an offence is punished according to his/her guilt, and no innocent person is held criminally responsible*. Also, after reviewing the Constitution, article 21 paragraph 3 of the fundamental law provides that the parties are entitled to the settlement of the case within a The principle of efficacy assumes both the quick settlement of the criminal cases and the simplification, when possible, of the criminal proceedings activity. In such a case, the efficacy is prefigured by a series of regulations included in the provisions of the current Criminal Procedure Code such as: the institution of due times in the criminal trial (art.185-188 of the Criminal Procedure Code), extension of the criminal action and extension of the criminal trial, during the trial (art. 335-337 of the Criminal Procedure Code), extension of competence of criminal investigation bodies in emergency cases (art. 213 of the Criminal Procedure Code), the severance of civil action and postponement of the trial for another session, in case the settlement of the civil claims would lead to a delay in settling the criminal action (art. 347 of the Criminal Procedure Code)⁶

PRE DETENTION

The issue of alleged violation of the rights of individuals who are detained for a long time

¹ - Regional Court of Appeal Budapest 5.Pf.20.395/2008/3.

² -Regional Court of Appeal Debrecen No. Pf.I.20.369/2007.

³ - Regional Court of Appeal Debrecen No. Pf. II. 20.312/2008/7.

⁴ - Department of Justice Canada, Trail Within A reasonable Time: A Working Paper Prepared For The Law Reform commission Of Canada, No. J32-1/671994, p1.

⁵ *United States v. Marion*, 404 U.S. 307, 331 (1971) (Douglas, J., concurring).

⁶ -Neagu, I. 1992 *Criminal Proceedings Law. General Part*. vol. I. Bucharest: Euro-Trading pp. 75-76).

before trial has become phenomenal and has raised global concern. One need only think here of the interns in the infamous Guantanamo Bay detention facility. In the *Zambian case The People v John Chisimba* for example, the victim was arrested on a charge of alleged murder in 1994. In 1998, he was examined by a specialist psychiatrist and neurologist to determine whether he was fit to stand trial. It was concluded that he was, and report was sent to the court in May 2004. Despite the report being received, the victim had not yet stood trial by June 2006, when the applicant applied for constitutional bail – which was granted. During the bail hearing, it emerged that the prosecution had misplaced the victim’s file: hence, the delay in trial¹.

Section 103-5(a) of the Speedy Trial Act (Act) provides: Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 day fitness . . . , by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed . . . after a court’s determination of the defendant’s physical incapacity for trial, or by an s from the date he was taken into custody unless delay is occasioned by the defendant, by an examination for allowed . . . after a court’s determination of the defendant’s physical incapacity for trial, or by an interlocutory appeal². Where a defendant is in custody, there is no need for the defendant to make an initial, formal demand for a speedy trial; instead, the 120-day clock “begins to run automatically from the day the defendant is taken into custody³ Yet, a delay thereafter “shall be considered to be by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record⁴.” Moreover, “[t]he 120-day term must be one continuous period of incarceration⁵. In calculating the speedy trial term, a defendant may not combine separate periods of incarceration; thus, “[i]f a defendant is taken into custody a second (or subsequent) time for the same offense, the term will begin again at zero⁶ At issue in *Campa* was whether the time that the defendant spent in the Day Reporting Center program in constituted “custody” for speedy trial purposes. The State asserted that it did not and

argued that a defendant is “custody” for purposes of the Act only when he is confined in a prison or jail⁷. The Illinois Supreme Court, however, ruled that “custody” was an elastic concept that included restraints on one’s liberty in addition to physical incarceration: “[W]e believe that the legislature intended the term ‘custody’ to have a broad meaning and encompass lesser forms of restraint than confinement. The legislature intended that the term ‘custody’ evolve with the changing programs in our correctional institutions.”⁸ Accordingly, because the defendant was in custody for more than 120 days before his trial commenced, his discharge was affirmed⁹.

In *People v. Peco*,¹⁰ the court interpreted the scope of the phrase, “oral demand for trial,” in section 103-5(a)’s language providing that “[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral trial on the record.¹¹” In this regard, the court held that although no magic words are required, “there demand for must be some affirmative statement requesting a speedy trial in the record and Therein, the defense counsel asked the trial court that the matter be set down for trial¹². The reviewing court, however, held that a statement that a defendant is ready for trial is not sufficient to constitute a speedy trial demand, as it is not an affirmative declaration formally invoking one’s speedy trial rights¹³. In addition, in *People v. Exxon*¹⁴, the court addressed whether the State exercised “due diligence” in order to justify the continuance of the trial beyond the statutory time limit. Section 103-5(c) of the Act provides that “[i]f the court determines that the State has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the State for not more than an additional 60 days.¹⁵” In *Exxon*, the State waited until the 119th day of the 120-day speedy trial term to attempt to contact the chemist, a critical witness in its drug possession prosecution¹⁶. The appellate court

¹ - K Amoo ,Sam ,2010,The jurisprudence of the rights to trial within a reasonable time in Namibia and Zambia, Namibia Law Journal,pp3-4.

² - 725 Ill. Comp. Stat. 5/103-5(a) (2006).

³ - *People v. Campa*, 217 Ill. 2d 243, 840 N.E.2d 1157, 1163 (2005).

⁴725 Ill. Comp. Stat. 5/103-5(a) (2006).

⁵ -*Id*

⁶ -*Id*

⁷ - *Campa*, 840 N.E.2d at 1168.

⁸ - *Id.* at 1165.

⁹ - *Id.* at 1174.

¹⁰ -345 Ill. App. 3d 724, 803 N.E.2d 561 (2d Dist. 2004).

¹¹ -725 Ill. Comp. Stat. 5/103-5(a) (2006).

¹² - *Peco*, 803 N.E.2d at 569.

¹³ - *Id.* at 569-70.

¹⁴ - 384 Ill. App. 3d 794, 896 N.E.2d 844 (1st Dist. 2008).

¹⁵ - 725 Ill. Comp. Stat. 5/103-5(c) (2006).

¹⁶ - *Exxon*, 896 N.E.2d at 849.

found that, under the circumstances of the case, the State failed to exercise the necessary due diligence¹. Accordingly, the reviewing court ruled that the trial court abused its discretion in granting the State's request for a continuance of the trial and ordered that the defendant be discharged².

CONCLUSION

The interests which the right to trial within a reasonable time seek to serve are generally more deeply undermined when the allegations against the accused person are serious. Thus where the charges are serious, courts should be less tolerant to delays in trial. Pre-trial detention is more likely in serious matters, but even without such detention, the limitations on liberty and movement incumbent upon serious offences tend to be more pressing. The stress and anxiety of accusation is more serious with serious offences; one is oft faced with a prison sentence that looms and recedes on every court attendance. Matters are worsened due to the limited operation of the presumption of innocence in the social realm as one's integrity and conduct remains the subject of uncertainty and negative speculation during the pendency of the charges. Prejudice to the defence leading to failures of a fair trial – which can rarely be practically shown – will have more devastating effects when the charges are serious. Thus in the primary, faster trials are demanded *because of* the seriousness of the offence concerned.

Also Judicial attitude will be equally important. Judges have the right to actively monitor that judicial proceedings before them comply with the reasonable time requirement. One could even say on the basis of the Strasbourg case-law that they have a *duty* to do so.³⁷ This has already led various national authorities to make greater use of disciplinary sanctions in case the excessively lengthy proceedings are due to the personal conduct of the judge handling the case. In my opinion, one should be extremely cautious using these disciplinary measures although I do not share the opinion of those who have principled objections against the use of disciplinary sanctions from a viewpoint of judicial independence. I do not believe that judicial independence implies a lack of accountability. My hesitations are much more of a practical nature: they could easily be abused. Only if disciplinary sanctions are surrounded by adequate procedural safeguards (such as the imposition by a judicial body) and if the delay is

indeed the result of the personal behavior of a judge (and not due to more systemic problems in the judiciary), could they be justified in my opinion.

REFERENCES

- 345 Ill. App. 3d 724, 803 N.E.2d 561 2d Dist. 2004.
- 384 Ill. App. 3d 794, 896 N.E.2d 844.1st Dist. 2008.
- 725 Ill. Comp. Stat. 5/103-5(a).2006.
- 725 Ill. Comp. Stat. 5/103-5(a).2006.
- 725 Ill. Comp. Stat. 5/103-5(c).2006
- Amoo Sam K. The jurisprudence of the rights to trial within a reasonable time in Namibia and Zambia, *Namibia Law Journal*,2010:1,pp3-4.
- Campa*, 840 N.E.2d at at 1168.
- Commonwealth v. Lutoff*, 14 Mass. App. Ct. 1982: 434, 439 *See also* *Commonwealth v. Johnson*, 16 Mass. App. Ct. 935, 935-36 *rev. denied*, 390 Mass. -
- Department of Justice Canada, *Trail Within A reasonable Time: A Working Paper Prepared For The Law Reform commission Of Canada*, 1994:No,J32-1/67p1.
- Eckle v. Germany* 5 E.H.R.R. 1; [1982] E.C.H.R. 1983: 8130/78.
- egional Court of Appeal Debrecen 2007.o. Pf.I.20.369/
- Exson*, 896 N.E.2d at 849.
- Foti v. Italy* (1983) 5 E.H.R.R. 313; 1982: E.C.H.R. 7604/76 .
- Francois Renucci J. *Treaty of the european law of the human rights*, Publishing Hamangiu 2009: p 267.
- Id.* at 1165.
- Id.* at 1174.
- Id.* at 569-70.
- Id.* at 849-50.
- Id.* at 852.
- KUIJER ,Martin,The Right to a Fair Trial: effective remedy for excessively lengthy proceedings Articles 6 and 13 ECHR, 2013:p4 .
- Neagu I. *Criminal Proceedings Law. General Part.* vol. I. Bucharest: Euro-Trading 1992:pp. 75-76).
- Peco*, 803 N.E.2d at 569.
- People v. Campa*, 217 Ill. 2d 243, 840 N.E.2d 1157, 1163 (2005).¹725 Ill. Comp. Stat. 5/103-5(a) 2006.
- Protected at international law in article 14(3)(c) of the International Covenant on Civil and Political Rights, articles 20(4)(c) and 21(4)(c) of the Statutes of the International Criminal Tribunals for

¹ -*Id.* at 849-50.

² *Id.* at 852.

Fathi and Asgari

Rwanda and for the former Yugoslavia respectively, article 7(1)(d) of the African Charter on Human and Peoples' Rights, article 8(1) of the American Convention on Human Rights and article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

Regional Court of Appeal Budapest 2008:5.Pf.20.395//3.

Regional Court of Appeal Debrecen 2008:No. Pf. II. 20.312//7.

See Commonwealth v. Campbell, 5 Mass. App. Ct. 571, 585 (1977) (dismissal not warranted in case with numerous charges and codefendants); Commonwealth v. Dominico, 1 Mass. App. Ct. 693, 701 (1974) (16-month delay did not violate speedy trial rights in complex multi-defendant case).

See Commonwealth v. Gore, 79 Mass. App. Ct. 745, 748-50, *rev. denied*, 460 Mass.

See Commonwealth v. Gore, 79 Mass. App. Ct. 745, 748-50, *rev. denied*, 460 Mass.

See Commonwealth v. Lutoff, 14 Mass. App. Ct.1982: 434, 441 Commonwealth v. Underwood, 3 Mass.

See Commonwealth v. Plantier, 22 Mass. App. Ct. 314, 318, *rev. denied*, 398 Mass. 1103 (1986) (dismissal not abuse of discretion); Commonwealth v. Whittier, 378 Mass. 19, 22 (1979) ("delays that would be excused or considered negligible in the ordinary case may amount to excessive delay when the defendant's right to a speedy trial is made specific by court order"

United States v. Marion, 1971: (404 U.S. 307, 331 Douglas, J., concurring).