**CRIMINAL TRIALS: What guarantees does international human rights law offer?**

**Mahmut ERDEMLİ**[[1]](#footnote-1)\*

**İstanbul Anadolu 29. Asliye Ceza Mahkemesi Hakimi**

**ABSTRACT**

The right to a fair trial with certain safeguards concerns the individuals who face the risk of being deprived of liberty or other types of sanctions. As other rights are protected mostly via courts, procedural guarantees and a fair trial are pre-requisites of protection of other rights.

This paper attempts to spell out the general principles of IHRL governing the conduct of criminal trials. Due to its limited space, the examination is principally limited to the legal instruments of general international law, thus excluding the regional legal documents and the work of regional treaty bodies. However, the principles that have been determined by general human rights law supervisory bodies are far from sufficient to answer all the questions. Therefore, where needed, the expansive case law of the European Court of Human Rights will be resorted to.

Coverage is vast, but has been gradually clarified by comments and decisions of HR bodies over the last 50 years. As the case law of HR treaty bodies has developed, state parties to HRT treaties have adjusted their justice systems accordingly, creating substantial improvements in HR in those states.

The ECtHR has largely done its part, but the general IHRL system is underdeveloped in some areas, including requirements for reasoned judgment and judgment within a reasonable period of time. Perhaps it is the non-binding nature of HRC’S decisions that deters individuals from making applications for HR violations, thus limiting clarification of that aspect.

Since jurisprudence of the ECtHR mainly affects states that are members of the Council of Europe, the Human Rights Committee (whose decisions affect 167 states that are parties to the ICCPR) should be more productive of decisions in determining the content of the rights in question. This would serve to unify, at an international level, the criteria for quality administration of justice that is ‘sine qua non’ in safeguarding other HR, especially those minority rights which have constantly been violated by states.

**Keywords:** procedural guarantees, criminal law, fair trial, work of regional and international human rights bodies.

CEZA YARGILAMALARI: Uluslararası İnsan Hakları Hukuku Hangi Garantileri Sunmaktadır?

**Mahmut ERDEMLİ**[[2]](#footnote-2)\*

**İstanbul Anadolu 29. Asliye Ceza Mahkemesi Hakimi**

**ÖZET**

Belirli garantiler sunan adil yargılanma hakkı, özgürlüğünden mahrum olma ya da diğer tür cezalara maruz kalma riski bulunan bireyleri ilgilendirmektedir. Diğer haklar da çoğu kez mahkemeler aracılığıyla korunduğundan, yargılama yöntemine ilişkin garantiler ve adil bir yargılama diğer hakların korunmasının ön şartıdır. Bu makale ceza yargılamalarının yürütülmesine ilişkin uluslararası insan hakları (UİH) hukukunun genel prensiplerini tespite teşebbüs etmektedir. Makalenin kapsamının darlığı nedeniyle, inceleme genel uluslararası hukukun hukuki enstrümanları ile sınırlı yapılacak, bölgesel insan hakları hukuki dökümanları ve bölgesel insan hakları sözleşmeleri denetleyici organlarının çalışmaları inceleme dışı bırakılacaktır. Bununla birlikte, genel insan hakları hukuku denetleyici organları tarafından belirlenen prensiplerin tüm soruları cevaplamaktan uzaktır. Bu nedenle, gerektiğinde, Avrupa İnsan Hakları Mahkemesi’nin (AİHM) içtihat hukukuna başvurulacaktır. İncelenecek hususların kapsamı oldukça geniş olmakla birlikte, geçmiş 50 yıl içinde insan hakları organlarının genel yorumları ve kararları ile kademeli olarak açıklığı kavuşturulmuştur.

İnsan hakları denetleyici organlarının içtihat hukuku oluşturuldukça, üye devletler de kendi hukuk sistemlerini bu doğrultuda düzenlemişler ve insan hakları konusunda esaslı iyileşmeler oluşmuştur. AİHM kendine düşeni büyük ölçüde yapmış olmasına karşın, genel insan hakları sistemi, gerekçeli karar ve kararın makul süre içinde verilmesi gerekliliği hususlarını da içeren bazı alanlarda yeterli gelişmeyi sağlayamamıştır.

Belki, bireyleri insan hakları ihlalleri nedeniyle başvuru yapmaktan alıkoyan İnsan Hakları Komitesi’nin kararlarının bağlayıcı olmayışıtır. Belirtilen yönler bu nedenle açıklığa kavuşmamış olabilir. AİHM içtihat hukukunun sadece Avrupa Konseyi üyeleri olan ülkelere etki etmesi nedeniyle, İnsan Hakları Komitesi (Kararları Medeni ve Siyasi Haklar Sözleşmesi’ne taraf 167 üye ülkeyi etkilemektedir.) incelenen hakların içeriğinin belirlenmesi yönünden daha verimli kararlar vermelidir. Bu, ülkeler tarafından devamlı olarak ihlal edilen azınlık hakları başta olmak üzere, diğer insan haklarının korunması bakımından vazgeçilmez olan, yargının nitelikli yönetiminin kriterlerinin uluslararası düzeyde birliğinin sağlanmasına hizmet edecektir.

**Anahtar kelimeler:** Yargılamaya ilişkin garantiler, ceza hukuku, adil yargılanma, bölgesel ve uluslararası insan hakları organlarının çalışmaları.

**INTRODUCTION**

The right to a fair trial with certain safeguards concerns the individuals who face the risk of being deprived of liberty or other types of sanctions. Setting certain standards of fair trial is an attempt to protect individuals from being abused by the powerful state. As other rights are protected mostly via courts, procedural guarantees and a fair trial are pre-requisites of protection of other rights. Many attempts to regulate international law including international human rights law (IHRL) have been made since the Second World War, as the Charter declares[[3]](#footnote-3), to ensure that future generations be saved from the atrocities of war.

This paper will attempt to spell out the general principles of IHRL governing the conduct of criminal trials. Due to its limited space, the examination will be principally limited to the legal instruments of general international law, thus excluding the regional legal documents and the work of regional treaty bodies. However, the principles that have been determined by general human rights law supervisory bodies are far from sufficient to answer all the questions. Therefore, where needed, the expansive case law of the European Court of Human Rights will be resorted to.

Firstly, the sources of requirements of criminal trials will be explained. The area in which these requirements must be taken into account will be demarcated in the second part. Subsequently, the principles concerning the independence, impartiality and competence of courts will be looked for. Finally, other procedural requirements that are much more detailed will be examined.

**I - SOURCES OF THE REQUIREMENTS**

In order to determine the principles of criminal trials it is necessary to identify the sources of IHRL which are listed in Article 38 of the Statute of International Court of Justice (ICJ)[[4]](#footnote-4), part of the UN Charter. These are as follows: a) international conventions, b) international custom, c) the general principles of law recognized by civilized nations, and d) judicial decisions and teachings. The order of the application of sources was suggested to be as stated in Article 38, but this was rejected.[[5]](#footnote-5) Thus whether there is a superiority between treaties and custom is not clarified under that Article.[[6]](#footnote-6) The only instrument with higher status is given as *jus cogens[[7]](#footnote-7)*

*Chinkin* identifies two additional sources of IHRL: 1-the, work of treaty bodies with their non-binding character, whose main function is to interpret the human rights treaties, 2-the resolutions of international institutions that set standards, some of which are binding such as security council resolutions while others are aspirational.[[8]](#footnote-8)

The adoption of the Charter, which did not contain a catalogue of human rights (HR), apart from isolated attempts in the past, was the starting point of substantial development in the area of international HR (IHR).[[9]](#footnote-9) It was followed by the non-binding Universal Declaration of HR (UDHR) whose provisions are widely deemed to constitute customary international law or at least should be acknowledged as “general principles of law recognized by civilized nations”[[10]](#footnote-10) and the binding treaty, International Covenant on Civil and Political Rights(ICCPR).[[11]](#footnote-11) Regional HR treaties are other developments in the area of IHR. While ICCPR has the HR Committee (HRC)[[12]](#footnote-12), arguably a non-judicial organ with HR experts, other regional HR systems have their courts as supervisory bodies, which have elaborated in greater detail the content of HR since their establishment. In pointing out the breadth and sometimes vagueness of HRT provisions, *Mutua* rightly claims that treaty bodies transcend its interpretative functions and have actually set standards of HR.[[13]](#footnote-13)

**II - SCOPE OF CRIMINAL CHARGES**

A criminal charge required by Article 11(1) of UDHR and Article 14(1) of the ICCPR for an entitlement to rights listed by these provisions is an official notification by the relevant authority to the accused of the alleged crime.[[14]](#footnote-14) However, some judicial proceedings such as search, arrest of the accused, or seizure may imply a criminal charge, thus constituting the starting point for procedural rights.[[15]](#footnote-15) In order to prevent states circumventing, by regulating measures outside criminal proceedings, their procedural guarantees and obligations concerning criminal charges the autonomous meaning of those charges in relation to the administration of criminal justice is defined as follows : ‘Criminal charges relate in principle to acts declared to be punishable under domestic law’.[[16]](#footnote-16) ‘The notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity’.[[17]](#footnote-17) While the HRC held that disciplinary measures are not necessarily regarded as criminal charges unless they are penal in nature,[[18]](#footnote-18) it did not further elaborate the meaning of the phrases “nature of sanctions”, “character or severity”, and “purpose”. More helpful judgments have been provided by the European Court of human rights.[[19]](#footnote-19)

In *Engel,* where the Court also attached importance to the size of the group to which impugned legislation had been applied, the two days’ strict arrest of army members for offences considered disciplinary by domestic law was not sufficient to be considered a criminal offence[[20]](#footnote-20).Unlike the HRC, the Court did not find the seriousness of the sanction relevant when it ruled that 60 ‘DM’sanction imposed for a motoring offence was both discouraging and punitive and therefore was of criminal nature although it was classified as administrative by domestic law.[[21]](#footnote-21) Contrarily, it referred to the severity of the penalty in *Benham*as an established case law requirement for the existence of a criminal charge.[[22]](#footnote-22)

Among disciplinary sanctions, the national court’s imposition of a fine of about £75 on an individual who had made improper statements was non-criminal[[23]](#footnote-23), while tax surcharges imposed on all citizens, convertible to imprisonment on non-fulfilment were regarded as criminal despite the classification by national law as administrative fines.[[24]](#footnote-24) Finally, the court found the national court’s sanction imposed on a complainant for revealing case information to be criminal as it could concern all citizens.[[25]](#footnote-25)

The classification of an offence as outside the criminal sphere is advantageous for individuals: it frees them from the stigma of crime and from traumatic adjudication processes. It increases the quality of judicial service by excluding minor offences from the competence of courts, thereby reducing backlog. However, preserving the notion of justice amongst individuals requires the diligence in the classification of more serious offences, notably those concerning the direct or indirect deprivation of liberty (e.g. the conversion of a fine into imprisonment)

**III - CERTAIN QUALITIES OF JUDICIARY**

Article 14(1) of the ICCPR sets out the qualities of courts through which HR are maintained: impartiality, independence, and competence. Moreover, the independence and impartiality of courts are required by Article 10 of the UDHR. These are absolute requirements with no exceptions.[[26]](#footnote-26)

Independence of judiciary requires the prohibition of interference by both the executive and other parties. States are expected to guarantee and enshrine the principle of independence in their constitutions or ordinary law[[27]](#footnote-27). Courts should be entitled to deal exclusively with issues of judicial character and to decide whether these issues are within the area of their jurisdiction.[[28]](#footnote-28) Judicial review, lawful mitigation and commutation of sentences do not violate the principle of independence[[29]](#footnote-29). Ad hoc tribunals may not be created to remove the established procedures of ordinary courts[[30]](#footnote-30). ‘Clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them’ should be secured by law.[[31]](#footnote-31) The area of competence of judiciary and executive should be clearly defined and control of the latter over the former should be prevented[[32]](#footnote-32). Turkey’s response to that requirement by amending its Constitution is illustrative: the proportion of ministerial officials in the Supreme Board of Judges and Public Prosecutors was reduced from 2 out of 7 to 2 out of 22.[[33]](#footnote-33) Finally, Judges should be protected from conflicts and intimidation to ensure independence.[[34]](#footnote-34)

The principle of impartiality of courts has two aspects: a-judges should neither have personal bias and prejudice, nor act in a way that unfairly affects one of the parties and b-courts should appear impartial to a ’reasonable observer’.[[35]](#footnote-35) The HRC is suspicious of military tribunals. Although these courts are not prohibited by the ICCPR they should only be used in very exceptional circumstances and be designed in a way that provide all the requirements of a fair trial. [[36]](#footnote-36) The HRC found a violation, for instance, when a political party leader was tried by a military court.[[37]](#footnote-37) It specified that a trial by a military court, while exceptional, may be allowed when civilian courts are unable to conduct that trial.[[38]](#footnote-38) A similar violation was found by the ECtHR in the trial of a civilian by a National Security Court which contained military personnel alongside two civilian judges, considering that the military judge may have been ill-motivated.[[39]](#footnote-39) However, any evaluation of consistency with the aforementioned principles must be made with regard to fundamental principles and not merely in a formulaic manner. Therefore, the judgment in Öcalan, finding a violation of Article 6(1) of the ECHR for the same reason was unfortunate.[[40]](#footnote-40) Turkey swiftly changed its law to replace the military judge, and the replacement judge had been involved since the beginning of the case,[[41]](#footnote-41) yet the ECtHR's interpretation of the convention was simplistic, taking into consideration only general principles and not specific and relevant details. Concerning the issue of independence and impartiality, the way judges are appointed, the composition of the institution making those appointments, conditions for promotion and dismissal should be taken into account.

*Janis* provides the following judgments of the ECtHR as examples of situations that violate the principle of impartiality: a) in *Procola v Luxemburg,* previous involvement of four out of five judges of the Council of State reviewing administrative decisions in a panel issuing an advisory opinion[[42]](#footnote-42), b) in *Decubber v Belgium,* involvement of the judge who issued the arrest warrant in a trial who had previously been the investigating judge with extensive pre-trial duties of questioning the accused and hearing witnesses[[43]](#footnote-43), 3) in *Hauschildt v Denmark,* a trial judge who made repeated rulings that required “particularly confirmed suspicion”[[44]](#footnote-44) Nevertheless, in *Hauschildt*theCourtacknowledged that the pre-involvement of a judge with the sole duty of deciding on the existence or absence of reasons for detention was acceptable..[[45]](#footnote-45) Moreover, the ECtHR, in *Nortier v The Netherlands*, clarified that what is decisive is not merely the fact that the judge has been involved in pre-trial proceedings, but the nature and scope of these proceedings.[[46]](#footnote-46) In fact, pre-trial decisions such as detention order, search warrant, examination of personal data, seizure, or confiscation are taken upon a suspicion that is not, in itself, sufficient to decide on the merits of the case. Thus, these decisions do not indicate that the judge making those decisions convinced that the accused has committed a crime.

The competence of the judiciary, inter alia, implies the capability of judges to carry out trials that are fair. Appropriate training and capability of judges are required.[[47]](#footnote-47) The selection process of judges should consider their merits, not improper motives.[[48]](#footnote-48) Investment by the government to increase the efficiency and effectiveness of judiciary is imperative. In-service and pre-service training of judges on the issues of HR is essential. Legal instruments should be adopted to accelerate judicial proceedings as well as to reduce backlog.

**IV - FAIR AND PUBLIC HEARING**

Article 10(1) of the UDHR and Article 14(1) of the ICCPR require hearings by the court to be fair and public. Fair hearing requirements are elaborated in subsequent subparagraphs of Article 14 of the ICCPR.

The term “public hearing” implies those court trials open to the general public. It includes the media and should not be restricted, for instance, to a particular category of persons.[[49]](#footnote-49) The extent of judicial power and the independence of courts, while necessary, make the rights of parties extremely vulnerable in the absence of public scrutiny where courts are ill-motivated. Unjust trials, for example, have been conducted to pressurize “dissident groups” within some jurisdictions[[50]](#footnote-50). The general public should be informed in advance of the time and venue of oral hearings and their participation should be facilitated.[[51]](#footnote-51)

The right to a public hearing is not absolute and may be restricted where: a) it is required by public order, public morality, national security, or in the interests of the parties’ private life, b) in its strictest terms, publicity could prejudice the interests of justice[[52]](#footnote-52), c) public participation is not required in pre-trial or appellate proceedings that merely consist of written submissions.[[53]](#footnote-53) If the appellate court is empowered to review the judgment with factual aspects as well as legal then public access may be required[[54]](#footnote-54). However, even when public access is restricted the judgment made should be available to the public, the only exception being ‘where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.[[55]](#footnote-55)

Public access requirements may present some challenges in certain circumstances. Certain members of the media, for example, may try to distort the facts of trials, or there may have been deliberate provocation of readers in order to obtain some personal benefit, or a particular outcome of the case may be the aim. Moreover, other than in certain circumstances, public access to judgments that identify individual parties may result in violation of their right to privacy.. This drawback should be eliminated by deleting names of the parties or only showing the initials. Finally, in sensitive trials such as those involving terrorists or mafia suspects, large numbers of the public may request trial access. Limited court space may create difficulties in such circumstances. These issues should be dealt with in greater detail by HRT bodies.

**V - PRESUMPTION OF INNOCENCE, RIGHT TO REMAIN SILENT, FREEDOM FROM SELF-INCRIMINATION:**

Article 11 of the Universal Declaration, Article 14(2) of the ICCPR and many other international and national legal documents require that everyone has the right to be presumed innocent until otherwise proven. The right to not be compelled to testify against himself[[56]](#footnote-56) is closely related to that right. It follows that if the prosecution is unsuccessful in proving guilt then the decision should be made in favour of the defendant[[57]](#footnote-57). The widespread acceptance of this principle, and the fact that ‘it can never become necessary to derogate from these rights during a state of emergency’, resulted in the acceptance of the principle as *juscogens[[58]](#footnote-58),* which may not be overridden[[59]](#footnote-59).

The principle requires that judicial bodies as well as other state organs must refrain from any prejudice.[[60]](#footnote-60) The media may not be allowed to publish information detrimental to the presumption of innocence[[61]](#footnote-61). Neither the length of pre-trial detention, nor the denial of bail, nor the outcome of civil proceedings should affect the presumption of innocence.[[62]](#footnote-62) Positive measures should also be taken by the state authorities to ensure the presumption of innocence. The HRC found violation when, for example, a trial room was packed with members of the public shouting that the defendant should have been sentenced to death.[[63]](#footnote-63) However, actions for gathering evidence such as, search, seizure, and examination of DNA samples are consistent with the principle.[[64]](#footnote-64)

Article 14(3)-g of the ICCPR stipulates that everyone has the right not to be compelled to testify against himself or to confess guilt concerning criminal proceedings. Similarly, any direct or indirect physical or improper psychological pressure by investigatory authorities is prohibited.[[65]](#footnote-65) The HRC clarified that statements or confessions obtained by torture must be excluded from the evidence by domestic law.[[66]](#footnote-66) This exclusion is also a clear requirement of Article 15 of the UN Convention Against Torture.[[67]](#footnote-67)

The right to remain silent during a criminal investigation is an inherent requirement of Article 14, deduced from the express right of presumption of innocence.[[68]](#footnote-68) Moreover it is incorporated into many national laws such as Article 114(b)-2 of German and Article 147(1)-e of Turkish Criminal Procedure Code. However, case law of the ECtHR reveals that it is not an absolute right. It allowed deduction of guilt from the silence of the accused when there was other strong evidence of commission of an offence, and he had been warned that silence might be used against him.[[69]](#footnote-69)

The ECtHR gave effect to the right to remain silent and to freedom from self-incrimination in *Saunders v United Kingdom:* there was no violationof that right in that failure to provide answer to the questions from *non-judicial* investigators constituted an offence while it amounts to an infringement of that right when a statement taken under these conditions is used in a criminal trial.[[70]](#footnote-70) However, its judgment in O’Halloran and Francis v United Kingdom was doubtful: it did not find violation when the owner of a vehicle caught by a roadside speed camera was forced to provide the name of a driver, failure to do so constituting an offence.[[71]](#footnote-71) The law was known in advance and only limited information was required.[[72]](#footnote-72) If the former is accepted then governments will be free to enact laws allowing the forceful procurement of self-incriminatory statements when the information which must be given to the authorities is self-incriminatory, thereby breaching the obligation to respect the accused’s right to silence. Acceptance of the latter, given that limited information may be extremely significant, may change the whole case against the accused.

**VI - EQUALITY BEFORE THE COURTS, EFFECTIVE PARTICIPATION OF THE ACCUSED, COMMUNICATION WITH THE COUNSEL**

A fair outcome from a criminal trial inevitably requires high-quality judicial proceedings where the accused: has equal rights with the prosecution and other parties; has the opportunity to have counsel of his own choosing in case justice so requires; may have a counsel assigned free of charge; may, if necessary, have a free interpreter in all stages of the proceedings[[73]](#footnote-73); should be informed promptly of the charges; should have adequate time and facilities to prepare his defence and to make sufficient contribution to the trial by examining witnesses in the same way as the prosecution.[[74]](#footnote-74)

Right to be present may be waived by the accused or will not be the case where a serious attempt has been made by the court to summon that accused[[75]](#footnote-75). Where free counsel is requested the accused’s right to choose his own counsel is restricted although in most serious cases his preference should be given greater weight.[[76]](#footnote-76) However, once appointed, effective representation is required.[[77]](#footnote-77) Therefore, the Committee found violation where the counsel withdrew the appeal without informing the accused in advance.[[78]](#footnote-78) The finding of the ECtHR in *Tripodi v Italy* was contradictory, however: no violation was found where the lawyer of the accused, who did little for his replacement was unable to attend the hearing in the Court of Cassation[[79]](#footnote-79). *White*’s reading of that judgment is that only omissions concerning legal representations which are caused by state authorities, can lead to a violation.[[80]](#footnote-80)

An unbiased atmosphere where a hostile attitude or support for any party is not tolerated should be achieved in the trial room.[[81]](#footnote-81) Direct contact of the court with the accused is required. The HRC found violation of Article 14(1) where trial judges covered their faces for security reasons during the trial of a terror suspect[[82]](#footnote-82). Having equal rights with the other parties is significant in effective participation of the accused and in challenging their arguments. *Weiss v Austria* case is illustrative: the HRC found violation when an appeal right was provided to the prosecution but not to the accused on the grounds that the accused was fugitive[[83]](#footnote-83).

The conviction may not require repayment of interpreter’s expenses by the accused[[84]](#footnote-84). The court is not obliged to provide an interpreter where the accused can adequately speak the language of the court[[85]](#footnote-85).

The obligation for prompt notification about charges starts as soon as the accused is formally charged or is publicly named as charged and can be met orally or in writing[[86]](#footnote-86). All efforts should be exerted to inform even an absent accused of the charges.[[87]](#footnote-87) Adequate time and facilities require defence access to all relevant documents. Where defence counsel is familiar with the language used in such materials translation of the materials into the language of the accused is not required.[[88]](#footnote-88)

The determination of adequate time depends on the volume and complexity of a case. A reasonable defence request for adjournment to prepare the defence must be met where the criminal offence is serious.[[89]](#footnote-89)

**VII - A REASONED JUDGMENT WITHOUT DELAY AND THE RIGHT TO REVIEW BY A HIGHER TRIBUNAL**

The accused has a right to a judgment without delay and to review of that judgment by a higher tribunal.[[90]](#footnote-90) Facing a criminal trial for a long time is considerably stressful, preventing the individual from focusing on more fruitful activities and reducing his or her quality of life. Delayed justice can sometimes become injustice, for example, when a successful businessman loses a considerable confidence owing to a particular trial. This right also serves the interests of justice.[[91]](#footnote-91)Reasonable time requires the consideration of the following: 1-‘the complexity of the case’,2-‘the conduct of the accused’, 3- the way in which the issue was dealt with by administrative and judicial authorities.[[92]](#footnote-92) This guarantee is required both in the first instance, starting from the formal charge, and in the appeal stage. It is also required where the accused is detained pending trial, when the length of the trial should be less than an ordinary trial.[[93]](#footnote-93)

A reasoned judgment is not an express requirement of the ICCPR. However, the right to effectively challenge the first instance court’s judgment and to adequate defence intrinsically requires for the accused to know reasons of judgment. Therefore, treaty bodies found violations when appeal court decisions did not have sufficient reasons.[[94]](#footnote-94)

The HRC held that this requirement also includes preparing the reasoned judgment within a reasonable period of time.[[95]](#footnote-95) Given that an appeal request is allowed only within a limited period of time, if the reasoned judgment is not made within that period then the accused will not have the opportunity to challenge its arguments. Therefore, if there is a delay in the accused receiving the reasoned judgement, so that it arrives outside the period defined for receipt of the appeal petition, an opportunity should be provided for the accused to make a further reasoned appeal petition.

Principles concerning the review by a higher tribunal are put forward by the HRC as follows: 1-the review, including also facts of the case, by a higher court or courts and its conditions must be provided by the law, which is not restricted to most serious crimes, 2-Article 14(5) is violated where the decision of the court of first instance or even the highest court acting as court of first instance is final or a conviction that is final is made for the first time by the higher court upon an appeal against the decision of acquittal.[[96]](#footnote-96)

**VIII - DOUBLE JEOPARDY**

Article 14(7) of the ICCPR prohibits a re-trial or punishment of a person who has previously been convicted or acquitted finally for the same criminal offence in accordance with the law and penal procedure of each country. *Shah* highlights that a case can be re-opened if substantial facts and evidence that has been discovered subsequent to the final decision serves the interests of justice[[97]](#footnote-97). The principle is not applicable in case of different jurisdiction. Thus, The HRC found no violation when the author of the communication was convicted by both Swiss and Italian Courts. In order to prevent any unfairness that may be caused by that exception states should, by law, envisage the reduction of sentence or fine that has been previously served or paid by the convicted.

**IX - PREDICTABILITY OF LAW**

Article 11(2) of the UDHR and Article 15 of the ICCPR prohibits the retroactive application of criminal laws and aggravation of penalty by such laws. The only exception provided by Article 15(2) are acts that constitute criminal offence according to the general principles of law recognized by the community of nations. These include war crimes, crimes against humanity, torture, and slavery.[[98]](#footnote-98) Article 15(1) also requires that if subsequent law provides lighter penalty it is the new law that will be imposed. It is thought that precise definition of crimes is a part of that requirement absence of which leads to a violation.[[99]](#footnote-99)This right is non-derogable even in emergencies.[[100]](#footnote-100)

**X- REQUIREMENT OF SPECIAL DILIGENCE CONCERNING JUVENILE PERSONS**

Article 14(4) of ICCPR requires that cases involving juveniles take into consideration age, insufficient life experience, home environment, and other elements over which they have no control and that may have lead them to commit the crime. Alternatives to prosecution such as mediation, educational programmes, and interviews with the juvenile's family are desirable.[[101]](#footnote-101) If their interests require legal guardians or parents should be included in court proceedings, which should be faster and include a counsel.[[102]](#footnote-102)A minimum age for prosecution should be set by law.[[103]](#footnote-103)

**XI - COMPENSATION CONCERNING MISCARRIAGE OF JUSTICE**

Article 14(6) of the ICCPR requires compensation in cases of miscarriage of justice. The following conditions are required: a-states must secure the right to compensation and that payment is made within a reasonable period of time by law; b-the fault for non-disclosure of newly discovered facts should not be attributable to the accused; c-the judgment in question should be final; and d- the reverse upon an appeal or a pardon for humanitarian, discretionary or other reasons may not give rise to the right to compensation.[[104]](#footnote-104)

**CONCLUSION**

Coverage is vast, but has been gradually clarified by comments and decisions of HR bodies over the last 50 years.  As the case law of HR treaty bodies has developed, state parties to HRT treaties have adjusted their justice systems accordingly, creating substantial improvements in HR in those states. The lack of a central mechanism in this area, however, makes it difficult to clearly determine the principles that must be acknowledged by all states.

The ECtHR has largely done its part although developments in economic, cultural, and social arenas continually call for new case law which responds to new necessities. The general IHRL system is underdeveloped in some areas, including requirements for reasoned judgment and judgment within a reasonable period of time. Perhaps it is the non-binding nature of HRC’S decisions that deters individuals from making applications for HR violations, thus limiting clarification of that aspect.

Since jurisprudence of the ECtHR mainly affects states that are members of the Council of Europe, the Human Rights Committee (whose decisions affect 167 states that are parties to the ICCPR[[1]](http://by153w.bay153.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf" \l "_ftn1" \t "_blank)) should be more productive  of decisions in determining the content of the rights in question. This would serve to unify, at an international level, the criteria for quality administration of justice that is ‘sine qua non’ in safeguarding other HR, especially those minority rights which have constantly been violated by states.

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