

Reasonable v. Unreasonable Delays in Bringing an Accused To Trial

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Brief description of the content of this paper

This paper is about how long a detainee may wait for his trial before that time period is determined to be unreasonable. This paper addresses both domestic and international standards. Many countries state that a detainee shall be brought to trial within a “reasonable” time, yet the body of law that addresses what is “reasonable” is not very specific and is always subject to the surrounding circumstances. These circumstances, as well as those that are seen to justify a long detention, are explained hereforth.

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MEMO

TO: Prosecutors of the International Tribunal for
Rwanda

FROM: Rian Kovarik

Date: December 19, 2003

RE: Reasonable v. unreasonable delays in bringing an
accused to trial.

I. INTRODUCTION

Prolonged detention of those who are awaiting trial and/or a judgment may violate international human rights norms and can also contribute to the overcrowding and inhumane conditions of the prisons.¹ With a discussion of reasonable delay in bringing an accused to trial, there come many other issues that are related, such as receiving a fair trial as well as the consequence of long detainment. Each case may be fact specific and depend on the circumstances that surround it, but such issues are necessary to be examined when the topic of reasonable delay is being discussed. This paper addresses the issues that detainees are faced with while they await a judgment. There have been numerous domestic and international doctrines that have attempted to protect the rights of such prisoners, however, most have only been somewhat effective.

II. FACTS

¹ Jonathon L. Hafetz, *Pretrial Detention, Human Rights, and Judicial reform in Latin America*, 26 Fordham Int'l L. J. 1754, 1759 (2003)

Numerous defendants in international war crime cases are awaiting their trial. Many of these defendants have been faced with long delays due to numerous reasons. For those being detained during this wait, they are faced with possible violations of their human rights' guarantees provided them under international doctrines. The issue now becomes whether there is a "reasonable" or "unreasonable" delay in bringing an accused to trial under international standards.

III. DISCUSSION

Many international bodies of law attempt to protect detainees from unreasonable lengths of pretrial holding. Many individual countries also have statutes discussing this issue, some of which will be discussed below. Human rights advocates have challenged instances of prolonged pretrial detention and have won significant victories, such as the Inter-American Commission of Human Rights.² In some cases, a prolonged detention before trial may also violate the presumption of innocence itself.³

A. What constitutes delay.

Articles five and six of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention") explicitly preclude "unreasonable" delays.⁴ The Convention addresses both the length of the pretrial detentions and the length of actual judicial proceedings. Article 5, section 3 states "Everyone...detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought

² Hafetz, *supra* n. 1,1759.

³ *Id.*

⁴ Suzanne Galand-Carval, *The European Court of Human Rights Declares War on Unreasonable Delay*, 1996 STLWTLJ 109, (1996).

promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.”⁵ Article 6, section 1 states, “In 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.”⁶ Citizens of the states that are parties to the Convention therefore can be seen to have been granted not only the right to a speedy trial, but also the right not to be detained for an unreasonable length of time.⁷

The European Court of Human Rights (“ECHR”) was created by the Convention and has developed, through its case law, a doctrine on the reasonableness of delays.⁸ The ECHR will weigh not just the conduct of the detainee, but will also take into account the conduct of the national authorities.⁹ It has done so with reference to Article 5 and 6 of the Convention.¹⁰ To determine whether a particular detention violates Article 5(3) of the Convention, the ECHR asks two questions: What is the justification for the detention and its continuation, and is the detention reasonable?¹¹ The ECHR has declared that each case must be examined "according to its special features" when determining whether the time has been reasonable.¹² Therefore, courts must determine whether, given the circumstances of the case and whether the length of detention has, at some stage, exceeded a reasonable limit.¹³ One must therefore look at the circumstances of the case,

⁵ *Id.* at 110.

⁶ *Id.*

⁷ Galand-Carval, *supra* n. 4, 110

⁸ *Id.* at 110.

⁹ *Id.* at 112.

¹⁰ *Id.* at 110.

¹¹ Julie V. Mayfield, *Prosecuting War Crime...*, 9 *Emory Int'l L.J.* 553, 578 (1995).

¹² *Id.* at 578.

¹³ *Id.*

the length of detention has imposed a greater sacrifice than could reasonably be expected of a person presumed to be innocent.¹⁴

The International Covenant on Civil and Political Rights (“ICCPR”) demands a trial without “undue delay”.¹⁵ Article 9 of the ICCPR lays out what may be a reasonable delay when bringing an accused to trial. Article 9(3) states, “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”¹⁶ Article 14(c) guarantees a right to be tried without undue delay.¹⁷ The United Nations Human Rights Committee has suggested that Article 9(3) of the ICCPR means that accused persons should be detained prior to trial only to prevent flight, interference with evidence, or the recurrence of a crime, or where the person constitutes a clear and serious threat to society which cannot be contained in any other manner.¹⁸ In *Carballal v. Uruguay*, the U.N. Human Rights Committee found a violation of the first part of Article 9(3) when the petitioner had not been brought before a judge until four months after being detained and forty- four days after the Covenant came into force for Uruguay¹⁹

The Statute of the International Tribunal for the former Yugoslavia (“Statute”) touches on the issue of delay in bringing an accused to trial. This court guarantees the defendant to a fair, speedy and public trial.²⁰ Article 21 (which is Article 20 of the Statute for Rwanda) states:

¹⁴ Mayfield, *supra* n. 11, 577

¹⁵ *Id.* at 579.

¹⁶ *Id.* at 577.

¹⁷ *Prosecutor v. Milan Kovacevic*, IT-97-24 (1998).

¹⁸ *Id.*

¹⁹ Mayfield, *supra* n. 11 at 577.

²⁰ Mercedeh Momeni, *Balancing the Procedural Rights of the Accused Against a Mandate...*, 41 HOWLJ

“In the determination of charges against the accused pursuant to the Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to be tried without undue delay.²¹

In domestic jurisdictions, bail or other forms of release would usually be granted where it is clear that the length of that pretrial detention may well exceed the length of any sentence to be imposed upon conviction.²² This, however, may be inapplicable in international war crimes tribunals, due to the nature of the crimes. In *Bowdoin and Talic*, the International Criminal Tribunal for the Former Yugoslavia (ICTY) explained how the tribunal has no power to execute its own arrest warrant in the event that the defendant does not appear for trial so pretrial detainment is necessary.²³ Also, the nature of the crime charged in the Tribunal would be very unlikely to produce sentences of such a short duration.²⁴ The Tribunal explained that the reasonable length of pretrial detention must be interpreted against the circumstances in which it has to operate.²⁵ Therefore, the limited resources the court has can be taken into account. The ICTY has been faced with numerous challenges, such as lengthy delays resulting from inadequate resources, the burdens of language translation, and bureaucratic hurdles cause.²⁶ For example, in 1998, the ICTY had been operating for almost five years and had indicted over seventy-five war

155, 160 (Fall 1997).

²¹ *Id.*

²² *Prosecutor v. Brdanin and Talic*, IT-99-36 (2000).

²³ *Brdanin and Talic*, *supra* n. 22.

²⁴ *Id.*

²⁵ *Kovacevic*, *supra* n. 17.

²⁶ Daniel J. Rearick, *Innocent until Alleged Guilty: Provisional Release at the ICTR*, 44 Harv. Int'l. L. J. 577.

criminals.²⁷ However, only one war criminal had been fully tried by that point and only twenty of those indicted were actually in Tribunal custody.²⁸

Latin America also has addressed the issue of “reasonable delay.” While international human rights norms limit the lawful length of detention before trial, excessive detention continues to be problematic in Latin America.²⁹ Between seventy to ninety percent of inmates in Latin American prisons have never been convicted of a crime but are being held pending trial.³⁰ Venezuela, which has had one of the most severe pretrial detention problems in Latin America, has instituted reforms to its criminal procedure code. The new code, the *Codigo Organico Processal Penal* (“COPP”), limits the time police may detain persons without charges and places investigations under the supervision of prosecutors.³¹ The COPP states that under no circumstances may an accused person be detained longer than the possible minimum sentence for the alleged crime, nor may the detention exceed two years.³² An important goal of these changes is to create a speedy, open public trial process in the place of the old, closed inquisitorial process.³³ These reforms appear to have had some success in reducing rates of pretrial detention although excessive detention is still an issue.³⁴

In 1994, Guatemala initiated reforms of its criminal procedure code, which established a presumption of innocence. These reforms limit pretrial detention to

²⁷ Anne L. Quintal, *Rule 61: The “Voice of the Victims” Screams Out For Justice*, 36 *Colum.J.Transnat’l.L.*723 (1998).

²⁸ *Id.*

²⁹ Hafetz, *supra* n. 1, 1756.

³⁰ *Id.*

³¹ *Id.* at 762.

³² *Id.* at 1763.

³³ *Id.*

³⁴ *Id.*

exceptional circumstances and specific conditions such as reasonable risk of flight.³⁵ In no case may detention last for more than one year or for a longer period of time than the accused could have been incarcerated had he been convicted of the crime charged.³⁶ However, even with these reforms, the actual changes in the criminal justice system has been modest and problems like pretrial detention remain severe.³⁷

In Ireland, the presumption of innocence is taken literally, which is consistent to Article 6 of the Convention.³⁸ Under Irish law, no one can be denied bail for any offense, including murder, unless it can be proven that the prisoner will attempt to escape or interfere with the course of justice.³⁹ Irish law would regard the denial of bail as a breach of the presumption of innocence.⁴⁰ Irish Law believes that the denial of bail presumes that the person has committed the offense and therefore should only be denied under particular circumstances.⁴¹

Under the Sixth Amendment of the United States Constitution, the accused enjoys the right to a speedy trial.⁴² Whether a delay in completing the prosecution amounts to an unconstitutional deprivation of the right to a speedy trial depends upon the surrounding circumstances.⁴³ The factors that determine whether an accused has been deprived of the right to a speedy trial are (1) the length of the delay, (2) the reason for the delay, (3) the accused's assertion of the right, and (4) the prejudice to the accused from the delay.⁴⁴

³⁵ Hafetz, *supra* n 1, 1763.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Brian Walsh, *International Human Rights before Domestic Court*, 70 St. John's L. Rev. 77, 89 (1996).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 89-90.

⁴² Federal Procedure, Lawyers Edition, *How to determine whether constitutional rights...*, 9 Fed. Pro. L. Ed. 22:1205 (August 2003).

⁴³ Walsh, *supra* n. 39, 89..

⁴⁴ 9 Fed. Proc., L. Ed. §22:1203 (October 2003).

Courts must determine whether, given the circumstances of the case, the length of detention has, at some stage, exceeded a reasonable limit.⁴⁵ Given the circumstances of the case, the length of detention should not impose a greater sacrifice than could reasonably be expected of a person presumed to be innocent.⁴⁶ The U.S. system is based upon human rights but is also seeing overcrowding and long pretrial detention. Here, the problem stems from lack of resources as well.

Under U.S. law, the government may not negligently delay its prosecution to gain some impermissible advantage at trial.⁴⁷ Negligence is not automatically tolerated simply because the accused cannot demonstrate exactly how it has prejudiced him.⁴⁸ Negligence is, however, an unacceptable reason for delaying a criminal prosecution once it has begun. Under the U.S. Federal Rules of Criminal Procedure, the attorney for the government is to make bi-weekly report to the court listing each defendant who has been held in custody pending indictment, arraignment, or trial for a period in excess of ten days, including a statement of the reasons why each defendant is still held in custody.⁴⁹ U.S.C.A §3161(c)(1) sets out that a trial shall be commenced within seventy days of the indictment. The statute reads:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to

⁴⁵ Mayfield, *supra* n. 11, 578.

⁴⁶ *Id.* at 579.

⁴⁷ 9 Fed. Proc, *supra* n. 42.

⁴⁸ 9 Fed. Proc, *supra* n. 44.

⁴⁹ F.R.Crim.P. 46(g).

be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.”⁵⁰

If the government pursues an accused with reasonable diligence from the indictment to the arrest, the speedy trial claim will fail however great the delay, so long as the accused cannot show specific prejudice to her defense.⁵¹

The Criminal Procedure Scotland Act 1995 protects an accused from being held without trial.⁵² Section 65(4) of the Act lays down rules for the protection of the accused so that there is no “undue delay” in the progress of proceedings.⁵³ The time limits imposed by that section are: (1) an indictment must be served on the accused person (if he is detained in custody) within 80 days of the date of his full committal; and (2) his trial must commence (if he is in custody) within 110 days of his full committal.⁵⁴ Normally these time limits are regarded as favorable to the defense, particularly because most accused persons wish to spend as little time in custody pending trial as possible.⁵⁵ Section 65(5) of the act has different tests to apply as to the basis on which the 80-day period may be extended to the rules found in Section 65(7), which relates to the 110-day rule.⁵⁶ While it is possible to have the 80 days extended "for any sufficient cause" the 110 days can only be extended on very restrictive grounds, namely: (a) the illness of the accused or a judge; (b) the absence or illness of any necessary witness; (c) any other sufficient cause which is not attributable to any fault on the part of the Prosecutor.⁵⁷

Scotland’s Criminal Procedure Act shows that they are attempting to set up a guideline

⁵⁰ 18 U.S.C.A. §3161.

⁵¹ *Id.*

⁵² Alistair Bonnington, *Scot’s Criminal Procedure and the Lockerbie Trial*, 11 Int’l Legal Persp. 11, 15 (1999).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Mayfield, *supra* n. 582..

for pretrial detaining, yet there are still justifications for departing from these guidelines under certain circumstances.

B. How is “reasonableness” measured?

1. When does a reasonable delay begin?

A delay of bringing an accused to trial may be seen in two ways. One legal system may consider the delay beginning from the point of arrest until the beginning of the trial, while another considers the delay from the point of the arrest until the entire judicial proceeding is concluded, including the appeal. Others, however, argue that the delay begins as soon as an investigation begins.

The ECHR states that the commencement of the period to be considered, in order to determine the reasonableness of the delay is the charging of the person.⁵⁸ According to the ECHR, this includes the date of arrest, not just the date the individual is charged with a particular offense.⁵⁹ The ECHR has held that it is unrealistic to translate reasonable delays into a fixed number of days, weeks, months or years, or various periods depending on the seriousness of the offense.⁶⁰ Article 5 declares that, when determining reasonableness, the time period that must be evaluated is the period of detention before judgment.⁶¹ This period begins on the day that the individual is deprived of his freedom or the day he is arrested.⁶² The exception to this is when the detainee has been

⁵⁸ Galand-Carval, *supra* n. 4, 582.

⁵⁹ *Id.* at 115.

⁶⁰ Galand-Carval, *supra* n. 4, 117; citing *Stogmuller v. Austria*, 9 Eur. Ct. H.R. (ser. A) at 40.

⁶¹ *Id.*

⁶² *Id.*

extradited.⁶³ Here, the time starts running from the day he is received by the state that demanded extradition.⁶⁴

2. When is the period of delay determined to have ceased?

The ECHR has held that the length of detention should be measured from the point detention begins to the point at which judgment is rendered.⁶⁵ It has therefore determined that the detention period ends on the day the detainee receives a ruling on the validity of the charges by a court.⁶⁶ Article 6 of the Convention then pertains to the length of the trial itself.⁶⁷ This will evaluate the time that the proceeding begins and measures up until the date of a judgment. When deciding whether the delay was reasonable, the court will examine factors such as "the complexity of the case, the applicant's conduct and ... the manner in which the matter was dealt with by the administrative and judicial authorities."⁶⁸

C. The justifiable bases for delay.

A long delay in trial may be justified, but detention until trial in the same case may become unreasonable at some point, either due to lack of justification or because the government has not given the case its due priority.

The European Court evaluates justifications in extensive delay due to risk of flight. Here, the Court stated that "such a danger cannot be gauged solely on the basis of

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Mayfield, *supra* n.11, 578.

⁶⁶ Galand-Carval, *supra* n. 4, 116.

⁶⁷ *Id.* at 109.

⁶⁸ Galand-Caval, *supra* n. 4, 109

the severity of the probable sentence, it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial.”⁶⁹ The Court goes on to explain that these factors are the accused’s profession, and his financial and family situation.⁷⁰ According to the European Court's decisions, “if bail for the remaining detainees would assure their presence at trial...the detention would have lost its reasonableness, and thus its lawful character....”⁷¹

Some investigations are so complex and require so much evidence that it only makes sense that the pretrial period would last longer than normally. The American judicial system recognizes justifiable delay from factors such as the unavailability of a key prosecution witness and the slowness of the appellate process for review of pretrial orders.⁷² The charges of genocide, crimes against humanity, and war crimes are complex with a large amount of evidence, witnesses and experts, it is almost unavoidable in some cases to avoid a long delay.⁷³ These delays, therefore, are seen as reasonable based on the circumstances and are justified. Other situations arise that require a delay that is deemed to be justified, such as when a codefendant requests a continuance which is necessary for the parties to adequately prepare for trial.⁷⁴

The ECHR also takes the complexity of an investigation and/or trial into consideration when determining the reasonableness of a delay. The ECHR determined that a seven-year delay for trial was not unreasonable due to the complexities of the case,

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Mayfield, *supra* n. 11, 579.

⁷² Fed. Pro. *Supra* n. 42.

⁷³ *Id.*

⁷⁴ *Id.*

which involved twenty-two defendants charged with fraud.⁷⁵ The investigation required the Austrian authorities to reconstruct business transactions that took place over the course of several years and to request assistance from authorities in various foreign countries to interview witnesses and conducting other forms of investigation.⁷⁶ According to the court it was the investigation required to prosecute the crime, rather than the charge, that was highly complex. The ECHR distinguishes between permissible judicial delays based on case complexity and necessary accommodation of the parties, and impermissible delays that result from inept case management or lack of judicial resources.⁷⁷ Therefore, although a case may be complex, the ECHR is stating that it is not the fault of the defendant for lack of judicial resources, and if this is the reason for their delay of going to trial, it will not be justified.

The United States system also allows such justifications such as the danger of the defendant's flight, risk of further offense, suppression of evidence, finding witnesses and illness of the prosecutor or judge.⁷⁸ Courts may also look to reasons such as negligence, overcrowded courts, or the accused's attempts to avoid arrest following indictment.⁷⁹ The government, however, may not intentionally delay the proceeding in order to gain an impermissible advantage at trial.⁸⁰ In the case of *People v. Vernace*, the Supreme Court upheld a fourteen-year delay of prosecution.⁸¹ The court concluded that the defendant's constitutional due process right to a speedy trial was not violated by the fourteen-year

⁷⁵ Mayfield, *supra* n. 11, 584.

⁷⁶ *Id.*

⁷⁷ Rearick, *supra* n. 29, 587.

⁷⁸ Mayfield, *supra* n. 11, 579.

⁷⁹ Fed. Pro. *Supra* n. 42.

⁸⁰ *Id.*

⁸¹ Steven J. Stonitsch, *The Effect of People v. Vernace...*, 76 St. John's L. Rev. 657, 664 (2002).

delay by prosecution for the sake of witness safety.⁸² The court held that there was a justifiable delay because the prosecutors acted in good faith, there was virtually no pretrial incarceration, the defendant enjoyed significant freedom with no public suspicion, and the delay benefited the defendant by impairing the prosecution's ability to prove the charges beyond a reasonable doubt.⁸³ The court concluded that the delay was due to fear of witnesses and therefore was in good faith.⁸⁴ The court also stated that this was not an attempt for a tactical advantage by the prosecution, and instead was inadvertently an advantage to the defendant.⁸⁵ Due to these circumstances the delay was declared reasonable.⁸⁶

The case of *The Prosecutor v. Pauline Nyiramasuhuko and Arsene Shalom Ntahobali* is an example of when the European Convention has decided that the delay was justified, despite the fact that the defendants had been in custody for two years and there had still been no trial date established.⁸⁷ The issue came into discussion when the prosecutor sought to amend the defendant's indictment after the already long delay.⁸⁸ The prosecutor deemed that new evidence would prove that the accused participated in a conspiracy to gain political control over Rwanda by eliminating the Tutsi population, and that such an amendment was important.⁸⁹ The Chamber declared that the defense had not demonstrated that undue delay would be caused if the defendant's indictment was amended and stated that the length of the accused's pre-trial detention would violate neither international standards nor provisions of Article 20(4)(c) of the Statute for

⁸² *Id.*

⁸³ *People v. Vernace*, 96 N.Y. 2d 886, 888 (2001).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Vernace*, *supra* n. 83.

⁸⁷ 56 Eur. Ct. H. R. (ser A) 6 (1999).

⁸⁸ Rearick, *supra* n. 30, 587.

⁸⁹ *Id.*

Rwanda.⁹⁰ The Chamber explained how in the interests of the justice, the Tribunal may balance any possible scope of available evidence, the complexity of the trial and the investigations related to the alleged crimes, the capital importance of the charges, as well as the length of pretrial detention of the accused.⁹¹

D. When a delay is determined to be unreasonable, what actions the government shall take.

States are divided on the question of what violations to apply to violations of the reasonable delay rule of the ECHR. Some countries have chosen the general philosophy of the ECHR to lean towards protection of the rights of the individual.⁹² For example, German courts seem to agree that a violation of Article 6, section 1, warrants immediate recognition and redress.⁹³ Belgian and Dutch jurisdictions accept that while a single violation of reasonable delay may be inconsequential, in certain instances it might be possible to consider acquittal or a reduction of sentence.⁹⁴ French courts have adopted a much more tolerant attitude, holding that violation of reasonable delay is not enough to nullify a criminal or civil proceeding.⁹⁵ French courts only affords the victim a claim for damages before a national court or right to submit his claim to the European Commission on Human Rights for further remedy.⁹⁶ U.S. courts will dismiss and entire case if a defendant's right to a speedy trial is determined violated.

E. Significance of detention on the detainee.

⁹⁰ 56 Eur. Ct. H. R. *supra* n. 87, 4.

⁹¹ 56 Eur. Ct. H. R. *supra* n. 87, 4.

⁹² Galand-Carval, *supra* n. 4, 125.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Galand-Carval, *supra* n. 4, 125.

Being detained for a prolonged period before a trial can be detrimental to the defendant's case. Unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired by those forgetting what occurred and loss of exculpatory evidence.⁹⁷ Article 9 of the ICCPR addresses the right to liberty and security of person and actions, such as arrest and detention, which might violate that liberty and Article 14 is concerned with a person's rights at their trial.⁹⁸ The issue here is whether or not the defendant can have a fair trial after being in pretrial custody for an extreme period. It most certainly is something that is determined on a case-to-case basis, but it seems that there is an injustice being done by detaining such defendants for extensive periods of times.

Not only are prisoners held at times for long periods, but also they are unable to work or be with their families. This, in and of itself, can be a very serious human rights violation if the detainees are deemed to be innocent. Detention prevents employment, meaning that such detainees would have otherwise been able to work to earn money for their families. Not only are their families faced with financial difficulty, but also the country itself does not benefit from their productivity.⁹⁹ Also, the public is forced to pay for their detention through taxes, etc. In the case of a detainee who would otherwise have been gainfully employed, the governments lose the income tax revenues that the person

⁹⁷ Grady Toombs, *The United States Solution to the Extradition Problem*, 3 J. Int'l L & Prac. 571, 773 (1994)

⁹⁸ Mayfield, *supra* n. 11, 575.

⁹⁹ Mayfield, *supra* n. 11, 575.

would have provided and might even incur the cost of public assistance for their families.¹⁰⁰

There is also the issue of whether the detainee may prepare an adequate case while being detained for so long. Once detained, a person ordinarily experiences diminished access to counsel, interpreters, and documentary evidence.¹⁰¹ If detained for a significant time, a person then faces the challenges of locating witnesses as well. These are all important aspects of a fair trial and they are all burdened once detained. The significance of this problem only grows stronger with time. For those who have been detained for six years before their trial, one must ask if they really have any chance at having a fair trial.¹⁰²

Other issues arise in countries where they are not entitled to certain rights during their detention regarding self-incrimination. In contrast to the United States' pretrial emphasis on procedural justice for the accused, the pretrial focus of the Japanese criminal justice system is to find the substantive truth.¹⁰³ Japanese police and prosecutors heavily utilize pretrial interrogation to gather relevant information for prosecution, therefore the detainee is not warranted a fair trial.¹⁰⁴

IV. CONCLUSION

There are numerous doctrines that could be a good base when setting up what the International courts may declare reasonable when delaying a defendant's trial. There are

¹⁰⁰ Stephen H. Legomsky, *The Detention of Aliens...*, 30 UMIAIALR 531, 542 (1999).

¹⁰¹ *Id.*

¹⁰² Legomsky, *supra* n. 100, 542.

¹⁰³ Jean Choi Desombre, *Comparing the Notions of the Japanese and the U.S. Criminal Justice...*, 14 UCLA Pac. Basin L.J. 103, 107 (1995).

¹⁰⁴ *Id.*

always going to be exceptions due to the surrounding case that will make a timely delay not possible. Although there are numerous barriers to bringing an accused to trial within a “reasonable time,” there is also the severe issue of human rights’ violations. No matter what the reason for the delay, there should never be a violation of any international human rights standard. Once that happens, the international justice system itself will be impaired.

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