Distr.
RESTRICTED

CCPR/C/GC/32/CRP.1/Rev.3
28 November 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-eight session

Draft General Comment No 32

Article 14: Right to equality before courts and tribunals and to fair trial

Structure of the general comment:

- General remarks on Article 14: paras 1 – 5
- Paragraph 1, 1st sentence: equality before courts paras 6 – 12
- Paragraph 1, 2nd sentence: Fair and public hearing by a competent, independent and impartial tribunal paras 13 - 26
    - criminal charges and suit at law paras 13 -16
    - competent, independent and impartial tribunal paras 17 - 21
    - fair and public hearing paras 22 - 26
- Paragraph 2 : Presumption of innocence para 27
- Paragraph 3 : Rights of the accused paras. 28 - 38
- Paragraph 4: Juvenile persons paras 39 - 42
- Paragraph 5 : Review by a higher tribunal paras 43 -49
- Paragraph 6 : Compensation in cases of miscarriage of justice paras 50 - 51
- Paragraph 7 : Ne bis in idem paras 52 -54
- Relationship of Article 14 with other provisions of the Covenant paras. 55 – 62

I. General remarks

1. This general comment replaces general comment No. 13 (twenty-first session).,

2. The rights to a fair trial and to equality before the courts and tribunals are key elements of human rights protection and serve by procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights.

3. Article 14 is of a particularly complex nature, combining various guarantees with different scopes of application. The first sentence of paragraph 1 sets out a general guarantee of equality before the courts and tribunals that applies regardless of the nature of proceedings before such bodies. The second sentence of the same paragraph entitles individuals to a fair and public hearing by a competent, independent and impartial tribunal established by law if they face

any criminal charges or if their rights and obligations are determined in a suit at law. In such proceedings the media and the public may be excluded from the hearing only in the cases specified in the third sentence of paragraph 1. Paragraphs 2 – 5 of the Article contain procedural guarantees that are limited to procedures regarding the determination of criminal charges. Paragraph 6 secures a substantive right to compensation in cases of miscarriage of justice in criminal cases. Paragraph 7 prohibits double jeopardy and thus guarantees a substantive freedom, namely the right to remain free from being tried or punished again for an offence for which an individual has already been finally convicted or acquitted. States parties to the Covenant, in their reports, should clearly distinguish between these different aspects of the right to a fair trial.

4. Article 14 contains guarantees that States parties must respect regardless of their legal traditions and their domestic law. While they should report on how these guarantees are interpreted in relation to their respective legal systems, the Committee notes that it cannot be left to the sole discretion of national law to determine the essential content of its guarantees.

5. [] While reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would be incompatible with the object and purpose of the Covenant. While Article 14 is not included in the list of non-derogable rights of Article 4, paragraph 2 of the Covenant, States derogating from normal procedures required under article 14 in circumstances of a public emergency should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation. The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14[1]. Deviating from fundamental principles of fair trial, including the presumption of innocence is prohibited at all times[2].

II. Equality before courts and tribunals

6. The first sentence of Article 14, paragraph 1 guarantees in general terms the right to equality before courts and tribunals. This guarantee not only applies to courts and tribunals addressed in the second sentence of this paragraph of Article 14, but must also be respected whenever domestic law entrusts a body with a judicial task, i.e. with the task of deciding a particular legal dispute between parties[3].

7. The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles of competence, impartiality and independence and of fairness mentioned in the second sentence of paragraph 1, those of equal access and equality of arms, and ensures that parties to judicial proceedings are treated without discrimination.

8. Equality before courts encompasses the very access to the courts. Access to administration of justice must effectively be guaranteed in all cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. A situation in which an individual's attempts to seize the competent courts or tribunals are systematically frustrated runs counter to the guarantee of Article 14, paragraph 1, first sentence.[4] This guarantee also prohibits

[1] General Comment No. 29, *Article 4: Derogations during a state of emergency,* para. 15.
[2] General Comment No. 29, *Article 4: Derogations during a state of emergency*, para. 11.
[3] Communication No. 1015/2001, *Perterer v. Austria,* para. 9.2 (disciplinary proceedings against a civil servant); No. 961/2000, *Everett v. Spain*, para. 6.4.
[4] Communication No. 468/1991, *Oló Bahamonde v. Equatorial Guinea,* para. 9.4.

any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status[5] The reports of States parties should indicate how *de facto* access of women[6], members of minorities, and disadvantaged groups is secured in the country concerned and what measures are taken to safeguard such access.

9. The availability or absence of legal assistance often determines whether or not a person can access the relevant judicial proceedings or participate in them in a meaningful way. While Article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3(d), States are encouraged to provide free legal aid for individuals in other cases, who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so. For instance, where a person convicted to death seeks constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the costs of legal assistance in order to pursue such remedy, the State has to provide legal assistance in accordance with Article 14, paragraph 1 in conjunction with the right to an effective remedy as enshrined in Article 2, paragraph 3[7].

10. Similarly, the imposition of fees on the parties to judicial proceedings that would *de facto* prevent their access to justice might give rise to issues under Article 14, paragraph 1[8]. In particular, a rigid duty under law to award costs to a winning party without consideration of the implications thereof or without providing legal aid may have a deterrent effect on the ability of persons to pursue the vindication of their rights under the Covenant in judicial proceedings available to them[9].

11. [The right to equal access to a court, embodied in Article 14, paragraph 1, does not entail a right to an appeal that would go beyond the right to have one's conviction and sentence reviewed by a higher tribunal (Article 14, paragraph 5) and to an effective remedy (Article 2, paragraph 3(a) of the Covenant)[10].]

12. The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties involved in judicial proceedings unless distinctions are based on law and can be justified on objective and reasonable grounds. There is no equality of arms if only the prosecutor, but not the defendant, is allowed to appeal a certain decision[11], or if the trial judge refuses to order an adjournment to allow the author to have legal representation, when several adjournments had already been ordered when the prosecution's witnesses were unavailable or not ready[12]. If different criminal procedures or

---

[5] Communication No. 202/1986, *Ato del Avellanal v. Peru*, para 10.2 (limitation of the right to represent matrimonial property before courts to the husband, thus excluding married women from suing in court).

[6] See also General comment No. 28, *Article 3: The equality of rights between men and women*, para. 18.

[7] Communications No. 377/1989, *Currie v. Jamaica*, para. 13.4; No. 704/1996, *Shaw v. Jamaica*, para. 7.6; No. 707/1996, *Taylor v. Jamaica*, para. 8.2; No. 752/1997, *Henry v. Trinidad and Tobago*, para. 7.6; No. 845/1998, *Kennedy v. Trinidad and Tobago*, para.7.10.

[8] Communication No. 646/1995, *Lindon v. Australia*, para. 6.4.

[9] Communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, para. 7.2.

[10] Communication No. 450/1991, *I.P. v. Finland,* para. 6.2.

[11] Communication No. 1086/2002, *Weiss v. Austria,* para. 9.6.

[12] Communication No. 223/1987, *Robinson v. Jamaica*, para. 10.4.

specially constituted courts or tribunals apply in particular cases,[13] objective and reasonable grounds must be provided to justify the distinction.

III. Fair and public hearing by a competent, independent and impartial tribunal

13. The right to a fair and public hearing by a competent, independent and impartial tribunal established by law is guaranteed, according to the second sentence of Article 14, paragraph 1, in cases regarding the determination of criminal charges against an individual or of his rights and obligations in a suit at law. Criminal charges relate in principle to acts declared to be punishable under domestic criminal law. 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 character and severity[14].

14. The concept of determination of rights and obligations "in a suit at law" ("de caractère civil"/"de carácter civil") is more complex. It is formulated differently in the various languages of the Covenant that, according to Article 53 of the Covenant, are equally authentic, and the *travaux préparatoires* do not resolve the discrepancies in the various language texts. The Committee notes that the concept of a "suit at law" or its equivalents in other language texts is based on the nature of the right in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights[15]. On the one hand, as is highlighted by its clear language, Article 14, paragraph 1 does not apply where, according to domestic law, the person concerned does not possess any entitlement, e.g. to be promoted to a higher position in the civil service[16], to be appointed as a judge[17] or to have a death sentence commuted by an executive body[18]. Furthermore, there is no determination of rights and obligations in a suit at law where the person concerned is in a position of administrative subordination, such as in situations of disciplinary measures being taken against a civil servant, including disciplinary dismissal[19].

15. On the other hand, the concept is broad: it encompasses (i) not only procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, but also covers (ii) equivalent notions in the area of administrative law such as the termination of employment of civil servants for other than disciplinary reasons[20], the determination of social security benefits[21] or pension rights of soldiers[22], or procedures regarding the use of public land[23] or the taking of private property. In addition, it may (iii) cover other procedures which, however, must be assessed on a case by case basis in the light of the nature of the right in question.

---

[13] ,E.g. if jury trials are excluded for certain categories of offenders (see Concluding Observations, *United Kingdom of Great Britain and Northern Ireland,* A/57/40, vol I (2002), page 36 at para. 75(18) or offenses.
[14] Communication No. 1015/2001*, Perterer v. Austria,* para. 9.2.
[15] Communication No. 112/1981, *Y.L. v. Canada*, paras. 9.1 and 9.2.
[16] Communication No. 837/1998, *Kolanowski v. Poland*, para. 6.4.
[17] Communications No. 972/2001, *Kazantzis v. Cyprus*, para. 6.5; No. 943/2000, *Jacobs v. Belgium*, para 8.7, and No. 1396/2005, *Rivera Fernández v. Spain*, para. 6.3.
[18] Communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, para 7.4.
[19] Communication No. 1015/2001*, Perterer v. Austria,* para. 9.2.
[20] Communication No. 441/1990, *Casanovas v. France*, para. 5.2.
[21] Communication No. 454/1991, *Garcia Pons v. Spain*, para. 9.3
[22] Communication No. 112/1981, *Y.L. v. Canada*, para. 9.3.
[23] Communication No. 779/1997, *Äärelä and Näkkäläjätvi v. Finland*, paras. 7.2 – 7.4.

16. The notion of "tribunal" in Article 14, paragraph 1, second sentence designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in the specific case judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1 guarantees access to such tribunals to everyone who has criminal charges brought against him. This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision. Similarly, whenever rights and obligations in a suit at law are determined, this must be done by a "tribunal" in the meaning of this sentence. The failure of a State party to establish a competent court to determine such rights and obligations or to allow access to such court in specific cases would amount to a violation of Article 14 if such limitations are not based on domestic legislation, are not necessary to pursue legitimate aims such as the proper administration of justice, or are based on exceptions from jurisdiction deriving from international law such as immunities, or if the access left to an individual would be limited to an extent that would undermine the very essence of the right.

17. . The right to be tried by a competent, independent and impartial tribunal is an absolute right that is not subject to any exception[24]. The requirement of independence refers to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing 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[25]. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal[26]. It is necessary to protect judges against conflicts of interest and intimidation. [In order to safeguard their independence, States should ensure that judges' remuneration is commensurate with the responsibilities of their functions.]

18. Judges may be dismissed only for serious and objective reasons in accordance with fair procedures set out in the constitution or the law. A dismissal of a judge by the executive, e.g. before the expiry of the term for which he had been appointed, without any specific reasons given to him and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary[27]. The same is true, e.g. for the dismissal, by the executive, of judges alleged to be corrupt without following any of the procedures provided for by the law[28].

19. The requirement of impartiality has two aspects. First, judges must be free of personal bias or prejudice, not harbour preconceptions about the particular case before them, and not act in ways that promote the interests of one of the parties to the detriment of the other[29]. Second, the tribunal must also be seen to be impartial. A trial flawed by the participation of a judge who,

---

[24] Communication No. 263/1987, *Gonzalez del Rio v. Peru*, para. 5.2.
[25] Concluding Observations on Slovakia, CCPR/C/79/Add.79 (1997), para. 18.
[26] Communication No. 468/1991, *Oló Bahamonde v. Equatorial Guinea*, para. 9.4.
[27] Communication No. 814/1998, *Pastukhov v. Belarus*, para. 7.3.
[28] Communication No. 933/2000, *Mundyo Busyo et al v. Democratic Republic of Congo*, para. 5.2.
[29] Communication No. 387/1989, *Karttunen v. Finland*, para. 7.2.

under domestic statutes, should have been disqualified cannot normally be considered to be impartial[30].

20. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. The Committee notes the existence, in many countries, of military or special courts which try civilians. The jurisdiction of military courts should be limited to military personnel and such jurisdiction over civilians not performing military tasks is normally inconsistent with the fair, impartial and independent administration of justice[31]. The trial of military personnel before military tribunals should relate to offences of an exclusively military nature.[32] The general applicability of Article 14 also becomes relevant where courts based on customary law exist. Here, appropriate measures must be taken in order to ensure that proceedings before of such courts meet the basic requirements of this provision or, if this is the case, cannot hand down binding judgments recognized by the State.

21. Some countries have resorted , to special tribunals of "faceless judges" composed of anonymous judges*, e.g. within measures taken to fight terrorist activities.* Such courts suffer not only from the fact that the identity and status of the judges is not made known to the accused but also from other irregularities, such as exclusion of the public or even the accused or his representative[33] from the proceedings[34]; restrictions of the right to a lawyer of his own choice[35]; severe restrictions or denial of the defendant's right to communicate with his lawyer, particularly when held incommunicado[36]; threat to the lawyers[37]; inadequate time for preparation of the case[38]; severe restrictions or denial of the right to summon and examine or have examined witnesses including prohibitions to cross-examine certain categories of witnesses, e.g. police officers responsible for the arrest and interrogation of the defendant[39]. Tribunals of "faceless judges", in circumstances such as these, do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be, and be seen to be, independent and impartial[40].

22. The notion of fair trial includes the guarantee of a fair and public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with a hostile attitude of the public in the courtroom that is tolerated by the court and impinging on the right to defence[41] or is exposed to other

---

[30] Id.
[31] See Concluding Observations, Peru, CCPR/CO/70/PER (2000), para. 12.
[32] See Concluding Observations, Chile, CCPR/C/79/Add.104, para. 9.
[33] Communication No. 1298/2004, *Becerra Barney v. Colombia*, para.7.2.
[34] Communications No. 577/1994, *Polay Campos v. Peru*, para. 8.8; No. 678/1996, *Gutiérrez Vivanco v. Peru*, para. 7.1; No. 1126/2002, *Carranza Alegre v. Peru*, para. 7.5.
[35] Communication No. 678/1996, *Gutiérrez Vivanco v. Peru*, para. 7.1.
[36] Communication No.577/1994, *Polay Campos v. Peru*, para. 8.8; Communication No. 1126/2002, *Carranza Alegre v. Peru*, para.7.5.
[37] Communication No. 1058/2002, *Vargas Mas v. Peru*, para. 6.4.
[38] Communication No. 1125/2002, *Quispe Roque v. Peru*, para. 7.3.
[39] Communication No. 678/1996, *Gutiérrez Vivanco v. Peru*, para. 7.1; Communication No. 1126/2002, *Carranza Alegre v. Peru*, para.7.5; Communication No. 1125/2002, *Quispe Roque v. Peru*, para. 7.3; Communication No. 1058/2002, *Vargas Mas v. Peru*, para. 6.4.
[40] Communications No. 577/1994, *Polay Campos v. Peru*, para. 8.8 ; No. 678/1996, *Gutiérrez Vivanco v. Peru*, para. 7.1.
[41] Communication No. 770/1997, *Gridin v. Russian Federation*, para. 8.2.

manifestations of hostility with similar effects. Expressions of racist attitudes by a jury[42] that are tolerated by the tribunal, or a racially biased jury selection are other instances which adversely affect the fairness of the procedure.

23. Article 14 guarantees procedural equality and fairness only and cannot be interpreted as ensuring the absence of error on the part of the competent tribunal[43]. It is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality[44]. The same standard applies to specific instructions to the jury by the judge in a trial by jury[45].

24. An important aspect of the fairness of a hearing is its expeditiousness. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3(c) of Article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties are not compatible with the principle of a fair hearing enshrined in paragraph 1 of this provision[46].

25. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information on the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, *inter alia*, the potential interest in the case, the duration of the oral hearing and the time the formal request for publicity was made[47]. The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations[48], or to pre-trial decisions made by prosecutors and other public authorities[49].

26. Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the public in general, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment must be made public, except where the interest of juvenile

---

[42] See CERD, communication No. 3/1991, *Narrainen v. Norway,* para. 9.3.

[43] Communications No. 273/1988, *B.d.B. v. The Netherlands*, para. 6.3; No. 1097/2002, *Martínez Mercader et al v. Spain*, para. 6.3.

[44] Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, para. 7.3; No. 886/1999, *Bondarenko v. Belarus*, para. 9.3; No. 1138/2002, *Arenz et al. v. Germany*, admissibility decision, para. 8.6.

[45] Communication No. 253/1987, *Kelly v. Jamaica,* para. 5.13; No. 349/1989, *Wright v. Jamaica*, para. 8.3.

[46] Communication No. 203/1986, *Mũnoz Hermoza v. Peru*, para. 11.3 ; No. 514/1992, *Fei v. Columbia*, para. 8.4 .

[47] Communication No. 215/1986, *Van Meurs v. Netherlands*, para. 6.2.

[48] Communication No. 301/1988, *R.M. v. Finland*, para. 6.4.

[49] Communication No. 819/1998, *Kavanagh v. Ireland*, para. 10.4.

persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

IV. Presumption of innocence

27. According to Article 14, paragraph 2, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by refraining from making public statements outside the court room as to the guilt of the accused[50]. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media, whether state-owned, state-controlled or private should avoid expressing views prejudicial to the presumption of innocence, e.g. by portraying defendants in handcuffs or with their face covered. However, the denial of bail[51] or findings of liability in civil proceedings[52] do not affect the presumption of innocence.

V. Rights of the accused

28. The right of anyone to be informed promptly and in detail in a language which he understands of the nature and cause of criminal charges brought against him, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of Article 14. This guarantee applies to all cases of criminal charges, including those of persons not in detention, but not to criminal investigations[53]. Notice of the reasons for an arrest is separately guaranteed in Article 9, paragraph 2 of the Covenant[54]. The right to be informed of the charge "promptly" requires that information be given as soon as the person concerned is formally charged with a criminal offence[55], i.e. when, in the course of an investigation, a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally – if later confirmed in writing - or in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based. In the case of trials in absentia, Article 14, paragraph 3 (a) requires that, notwithstanding the absence of the accused, all due notification has been made to inform him about the charges and the proceedings against him[56].

29. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. This provision is an important element of the guarantee of a fair trial and an application of the

---

[50] Communication No. 770/1997, *Gridin v. Russian Federation*, paras 3.5 and 8.3.
[51] Communication No. 788/1997, *Cagas, Butin and Astilerro v. Philippines*, para. 7.3.
[52] Communication No. 207/1986, *Morael v. France*, para. 9.5; No. 408/1990, *W.J.H. v. The Netherlands*, para. 6.2; No. 432/1990, *W.B.E. v. The Netherlands*, para. 6.6.
[53] Communication No 1056/2002, *Khachatrian v. Armenia*, para. 6.4.
[54] Communication No 253/1987, *Kelly v. Jamaica*, para. 5.8.
[55] Communications No 1128/2002, *Márques de Morais v. Angola*, para. 5.4 and 253/1987, *Kelly v. Jamaica*, para. 5.8.
[56] Communication No 16/1977, *Mbenge v. Zaire*, para. 14.1.

principle of equality of arms[57]. What is "adequate time" depends on the circumstances of each case. If counsel feels that the time for the preparation of the defence is insufficient, it is incumbent on him to request the adjournment of the trial[58]. A State party is not to be held responsible for the conduct of a defence lawyer, unless it was, or should have been, manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice[59]. There is an obligation to grant reasonable requests for adjournment, in particular, when the accused is charged with an offence carrying the death penalty and counsel is inexperienced in such cases[60].

30. "Adequate facilities" must include access to documents and other evidence; this access must at a minimum include materials that the prosecution plans to offer in court against him or are exculpatory. If the accused does not speak the language in which the proceedings are held, it may be sufficient that the relevant documents in the case file are made available to counsel who are familiar with the language[61].

31. The right to communicate with his counsel requires that the accused is granted prompt access to counsel. Furthermore, counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications[62]. Lawyers should also be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without any restrictions, influence, pressure or undue interference from any quarter.

32. The right of the accused to be tried without undue delay, provided for by Article 14, paragraph 3 (c), is not only designed to avoid that a person should remain too long in a state of uncertainty about his fate and, 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 but also serves the interests of justice. What is reasonable has to be assessed in the circumstances of each case[63], taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused is denied bail by the court, he must be tried as expeditiously as possible[64]. This guarantee relates not only to the time between the formal

---

[57] Communications No 282/1988, *Smith v. Jamaica ,* para. 10.4; No 226 and 256/1987, *Sawyers, Mclean and Mclean v. Jamaica*, para. 13.6.

[58] Communication No 1128/2002, *Morais v. Angola*, para. 5.6. Similarly communications No 349/1989, *Wright v. Jamaica*, para. 8.4; No 272/1988, *Thomas v. Jamaica,* para. 11.4; No 230/87, *Henry v. Jamaica,* para. 8.2; No 226 and 256/1987, *Sawyers, Mclean and Mclean v. Jamaica*, para. 13.6.

[59] Communication No 1128/2002, *Morais v. Angola*, para. 5.4.

[60] Communications No. 913/2000, *Chan v. Guyana*, para. 6.3; No 594/1992, *Phillip v. Trinidad and Tobago*, para. 7.2.

[61] Communication No 451/1991, *Harward v. Norway*, para. 9.5.

[62] Communication No 1117/2002, *Khomidova v. Tajikistan*, para. 6.4; No 907/2000, *Siragev v. Uzbekistan*, para. 6.3; No 770/1997, *Gridin v. Russian Federation*, para. 8.5.

[63] See, e.g., Communication 818/1998, *Sextus v Trinidad and Tobago,* para. 7.2 regarding a delay of 22 months between the charging of the accused with a crime carrying the death penalty and the beginning of the trial without specific circumstamces justifying the delay. In communication No 537/1993, *Kelly v. Jamaica*, para. 5.11, an 18 month delay between charges and beginning of the trial did not violate Article 14, para. 3 (c). See also Communication No 676/1996, *Yasseen and Thomas v. Guyana*, para. 7.11 (delay of two years between a decision by the Court of Appeal and the beginning of a retrial) and Communication No 938/2000, *Siewpersaud, Sukhram, and Persaud v. Trinidad v Tobago*, para. 6.2 (total duration of criminal proceedings of almost five years in the absence of any explanation from the State party justifying the delay).

[64] Communication 818/1998, *Sextus v. Trinidad and Tobago,* para. 7.2.

charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal[65]. All stages, whether in first instance or on appeal must take place "without undue delay".

33. Article 14, paragraph 3 (d) contains three distinct guarantees. First, the provision requires that the accused is entitled to be present during his trial. This guarantee is limited to the trial court and does not create an entitlement to be present when a court of appeal examines the judgement rendered by the first instance. Proceedings *in absentia* may in some circumstances be permissible in the interest of the proper administration of justice, e.g. when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his right to be present. Such trials, thus, are only compatible with Article 14, paragraph 3 (d) if the necessary steps were taken to summon the accused in a timely manner and to inform him beforehand about the date and place of his trial and to request his attendance[66].

34. Second, the right of everyone accused of a criminal charge to defend himself in person or through legal counsel of his own choosing and to be informed of this right, as provided for by Article 14, paragraph 3 (d), refers to the two types of defence which are not mutually exclusive. Persons assisted by a lawyer retain the right to act on their own behalf, to be given a hearing, and to state their opinions on the facts of the case. At the same time, the wording of the Covenant is clear in all official languages, in that it provides for a defence to be conducted in person "or" with legal assistance of one's own choosing, thus providing the possibility for the accused to reject being assisted by any counsel. This right to defend oneself without a lawyer is, however not absolute. The interests of justice may, in the case of a specific trial, require the assignment of a lawyer against the wishes of the accused, particularly in cases of a person substantially and persistently obstructing the proper conduct of trial, or facing a grave charge but being unable to act in his own interests, or where this is necessary to protect vulnerable witnesses from further distress if the accused were to question them himself. However, any restriction of the wish of the accused to defend himself must have an objective and sufficiently serious purpose and not go beyond what is necessary to uphold the interests of justice. Therefore, domestic laws should avoid excluding any possibility whatsoever to defend oneself in any criminal proceedings without the assistance of counsel.[67]

35. Third, Article 14, paragraph 3 (d) guarantees the right to have legal assistance assigned to the accused whenever the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. The gravity of the offence is important in deciding whether counsel should be assigned "in the interest of justice"[68] as is the existence of some objective chance of success at the appeals stage[69]. In cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings[70]. In contrast, legal aid does not have to be provided where the penalty is a fine[71], unless the accused is unable to defend himself effectively, e.g. because he lacks the

---

[65] Communications No. 1089/2002, *Rouse v. Philippines,* para.7.4; No. 1085/2002, *Taright, Touadi, Remli and Yousfi v. Algeria*, para. 8.5.

[66] Communications 16/1977, *Mbenge v. Zaire*, para. 14.1 ; No 699/1996, *Maleki v. Italy*, para. 9.3.

[67] Communication No 1123/2002, *Correia de Matos v. Portugal*, paras. 7.4 and 7.5.

[68] Communication No 646/1995, *Lindon v. Australia*, para. 6.5.

[69] Communication No 341/1988, *Z.P. v. Canada,* para. 5.4.

[70] Communications No 985/2001, *Aliboeva v. Tajikistan*, para. 6.4; No 964/2001, *Saidova v. Tajikistan*, para. 6.8; No 781/1997, *Aliev v. Ukraine*, para. 7.3; No 554/1993, *LaVende v. Trinidad and Tobago*, para. 58.

[71] E.g. communication No 646/1995, *Lindon v. Australia*, para. 6.5.

required mental capacities. Counsel provided by the competent authorities on the basis of this provision must be effective in the representation of the accused. Unlike in the case of privately retained lawyers[72], blatant misbehaviour or incompetence for example the withdrawal of an appeal without consultation in a death penalty case[73], or absence during the hearing of a witness in such cases[74] may entail the responsibility of the State concerned for a violation of Article 14, paragraph 3 (d), provided that it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice[75]. There is a violation of this provision if the court or other relevant authorities hinder an appointed lawyer to fulfil his task effectively[76].

36. Paragraph 3 (e) of Article 14 guarantees the right of the accused to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and his counsel and thus guarantees to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does, however, not provide an unlimited right to obtain the attendance of any witness requested by the accused or his counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against him at some stage of the proceedings. Within these limits, it is primarily for the domestic legislators of States parties to regulate the admissibility of evidence and how their courts assess it.

37. The right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by Article 14, paragraph 3 (f) enshrines another aspect of the principles of fairness and equality of arms in criminal proceedings[77]. This right arises at all stages of the oral proceedings. It applies to aliens as well as to nationals. However, an accused whose mother tongue differs from the official court language is, in principle, not entitled to the free assistance of an interpreter if he knows the official language sufficiently to defend himself effectively[78]

38. Finally, Article 14, paragraph 3 (g) guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession.[79] The law should require that evidence and statements obtained by means of such

---

[72] Communication No 383/1989, *H.C. v. Jamaica*, para. 6.3.
[73] Communication No 253/1987, *Kelly v. Jamaica,* para. 9.5.
[74] Communication No 838/1998, *Hendricks v. Guyana,* para. 6.4. For the case of an absence of an author's legal representative during the hearing of a witness in a preliminary hearing see communication No 775/1997, *Brown v. Jamaica*, para. 6.6.
[75] Communications 705/1996, *Taylor v. Jamaica*, para. 6.2 ; No 913/2000, *Chan v. Guyana*, para. 6.2; No 980/2001, *Hussain v. Mauritius*, para. 6.3.
[76] Communication 917/2000, *Arutyunyan v. Uzbekistan*, para. 6.3.
[77] Communication No 219/1986, *Guesdon v. France*, para. 10.2.
[78] Communication No 219/1986, *Guesdon v. France*, para. 10.2.
[79] Communications No. 1208/2003, *Kurbonov v. Tajikistan,* paras. 6.2 – 6.4; No. 1044/2002, *Shukurova v. Tajikistan*, paras. 8.2 – 8.3; No. 1033/2001, *Singarasa v. Sri Lanka,* para. 7.4; ; No 912/2000, *Deolall v. Guyana*, para. 5.1; No. 253/1987, *Kelly v. Jamaica,* para. 5.5.

methods or any other form of compulsion are excluded from the evidence and that the burden is on the State to prove that statements made by the accused have been given of his own free will[80].

VI. Juvenile persons

39. Article 14, paragraph 4, provides that in the case of juvenile persons, procedures should take account of their age and the desirability of promoting their rehabilitation. [This provision protects persons below the age of eighteen years unless, under the law applicable to the juvenile, majority is attained earlier or later.[81]]

40. Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 Covenant but, in addition, need special protection. In criminal proceedings they should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians,[82] be provided with appropriate assistance in the preparation and presentation of their defence[83], be tried as soon as possible in a fair hearing in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, his or her parents or legal guardians[84]. Detention before and during the trial should be avoided to the extent possible[85].

41. States should take measures to establish an appropriate juvenile criminal justice system in order to ensure that juveniles are treated in a manner commensurate with age.[86] It is important to establish a minimum age below which children and juveniles shall be presumed not to have the capacity to infringe the penal law; that age should take into account their physical and mental immaturity [87].

42. Whenever appropriate, measures other than judicial proceedings to deal with juveniles alleged to have committed acts prohibited under penal law, such as mediation, counseling or educational programs, should be resorted to, provided they are compatible with the requirements of this Covenant and other relevant human rights standards[88].

---

[80] Communications No. 1033/2001, *Singarasa v. Sri Lanka,* para. 7.4; No. 253/1987, *Kelly v. Jamaica,* para. 7.4.
[81] [See Art. 1 CRC]
[82] [See Art. 40 para. 2(b)(ii) CRC]
[83] [Id.]
[84] [See Art. 40 para. 2(b)(iii) CRC]
[85] [See Article 37(b) CRC. In CCRP/CO/79/LVA para.10 the Committee raised concerns about the length and frequency of pre-trial detention particularly with regard to juvenile offenders]
[86] [CCPR/CO/81/NAM, para.19]
[87] See General Comment 17, para. 2 [In CCPR/CO/80/SUR, para.17, the Committee found a minimum age of 10 to be “unacceptable under international standards”. Similarly CCPR/C/79/Add.62 (Zambia), para.19 where the minimum age was 8. See also Article 40 para.3(a) CRC]
[88] [See Art. 40 para. 3(b) CRC]

VII. Review by a higher tribunal

43. Article 14, paragraph 5 of the Covenant provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. As the different language versions (*"crime"* "*infraction*", "*delito*") show, the guarantee is not confined to the most serious offences[89]. The expression 'according to law' in this provision is not intended to leave the very existence of the right of review to the discretion of the States parties, since this right is recognised by the Covenant, and not merely by domestic law. The term 'according to law' rather relates to the determination of the modalities by which the review by a higher tribunal is to be carried out[90] as well as which court is responsible for carrying out a review in accordance with the Covenant. Article 14, paragraph 5 does not require States parties to provide for several instances of appeal[91]. However, the reference to domestic law in this provision is to be interpreted to mean that if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them.[92]

44. Article 14, paragraph 5 does not apply to procedures determining rights and obligations in a suit at law[93] or any other procedure not being part of a criminal appeal process, such as constitutional motions.[94]

45. Article 14, paragraph 5 is not only violated if the decision by the court of first instance is final but also where a conviction imposed by an appeal court[95] or a court of final instance[96] following acquittal by a lower court cannot be reviewed by a higher court. Where the highest court of a country acts as first and only instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect.[97]

46. The right of appeal established under article 14, paragraph 5, imposes on the State party a duty to review substantially, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the

---

[89] [General Comment No 13/1984, para. 17]
[90] Communications No. 1095/2002, *Gomaríz Valera v. Spain*, para. 7.1; No. 64/1979, *Salgar de Montejo v. Colombia*, para.10.4.No
[91] Communication No. 1089/2002, *Rouse v. Philippines,* para. 7.6.
[92] Communication No. 230/1987, *Henry v. Jamaica*, para. 8.4.
[93] Communication No. 450/1991, *I.P. v. Finland*, para. 6.2.
[94] Communication No. 352/1989, *Douglas, Gentles, Kerr v. Jamaica*, para. 11.2.
[95] Communication No. 1095/2002, *Gomariz Valera v. Spain*, para. 7.1.
[96] Communication No. 1073/2002, Terrón v Spain, para. 7.4.
[97] Communication No 1073/2002, *Terrón v. Spain*, para. 7.4.

nature of the case.[98] A review that is limited to the formal or legal aspects of the conviction only is not sufficient under the Covenant.[99] However, Article 14, paragraph 5 does not require a full retrial or a 'hearing'[100] as long as the tribunal carrying out the review can look at the factual dimension of the case. Thus, e.g., where a higher instance court looks at the allegations against a convicted person in great detail, considers the evidence submitted in the trial and referred to in the appeal, and finds that there was sufficient incriminating evidence to rule out errors in weighing the evidence in the author's case, the Covenant is not violated.[101]

47. The right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgement in the trial court, and at least in the court of first appeal where domestic law provides for several instances of appeal[102] also to other documents, such as trial transcripts necessary to enjoy the effective exercise of the right to appeal.[103] The effectiveness of this right is also affected, and Article 14, paragraph 5 violated, if the review by the higher instance is unduly delayed in violation of paragraph 3(c) of the same provision[104].

48. A system of supervisory review that only applies to already executory decisions and thus constitutes an extraordinary means of appeal does not meet the requirements of Article 14, paragraph 5 regardless of whether such review can be requested by the convicted person or is dependent on the discretionary power of a judge or prosecutor.[105]

49. The right to appeal is of particular importance in death penalty cases. A denial of legal aid by the court reviewing a death sentence to an indigent convict constitutes not only a violation of article 14, paragraph 3(d), but at the same time also of article 14, paragraph 5, as in such cases the denial of legal aid for an appeal effectively precludes an effective review of his conviction and sentence by the higher instance court.[106] The right to have one's conviction

---

[98] Communications No. 1100/2002, *Bandajevsky v. Belarus*, para. 10.13; No. 985/2001, *Aliboeva v. Tajikistan*, para. 6.5; No. 973/2001, *Khalilova v. Tajikistan*, para. 7.5; No. 623-627/1995, *Domukovsky et al. v. Georgia*, para.18.11; No. 964/2001, *Saidova v. Tajikistan*, para. 6.5; No. 802/1998, *Rogerson v. Australia*, para. 7.5; No. 662/1995, *Lumley v. Jamaica*, para. 7.3.
[99] Communication No. 701/1996, *Gómez Vázquez v. Spain*, para. 11.1.
[100] Communication No. 1110/2002, *Rolando v. Philippines*, para. 4.5; No. 984/2001, *Juma v. Australia*, para. 7.5; No. 536/1993, *Perera v. Australia*, para. 6.4.
[101] E.g. communications No. 1156/2003, *Pérez Escolar v. Spain*, para. 3; No. 1389/2005, *Bertelli Gálvez v. Spain*, para. 4.5.
[102] Communication 903/1999, *Van Hulst v. Netherlands*, para. 6.4; No. 709/1996, *Bailey v. Jamaica*, para. 7.2; No. 663/1995, *Morrison v. Jamaica*, para. 8.5.
[103] Communication No. 662/1995, *Lumley v. Jamaica*, para. 7.5.
[104] Communications No 845/1998, *Kennedy v. Trinidad and Tobago*, para. 7.5; No 818/1998, *Sextus v. Trinidad and Tobago*, para. 7.3; No 750/1997, *Daley v. Jamaica*, para. 7.4; No. 665/1995, *Brown and Parish v. Jamaica*, para. 9.5; No. 614/1995, *Thomas v. Jamaica*, para. 9.5; No. 590/1994, *Bennet v. Jamaica*, para. 10.5.
[105] Communications No. 1100/2002, *Bandajevsky v. Belarus*, para. 10.13; No. 836/1998, *Gelazauskas v. Lithuania,* para. 7.2.
[106] Communication No. 554/1993, *LaVende v. Trinidad and Tobago*, para. 5.8.

reviewed is also violated if the appellate court in a capital case does not inform the convicted person of the intention of his counsel not to put any arguments to the court, thereby depriving him of the opportunity to seek alternative representation, in order that his concerns may be ventilated at the appeal level.[107]

VII. *Compensation in cases of miscarriage of justice*

50. According to paragraph 6 of Article 14, compensation according to the law shall be paid to a person who has been convicted of a criminal offence by a final decision and has suffered punishment as a consequence of such conviction if his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice[108]. It is necessary that States parties enact legislation ensuring that compensation as required by this provision can in fact be paid[109] and that the payment it made within a reasonable period of time.

51. This guarantee does not apply if it is proved that that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused; in such cases, the burden of proof rests on the State. Furthermore, no compensation is due if the conviction is set aside upon appeal, i.e. before the judgement becomes final[110], or by a pardon that is humanitarian or political in nature, or motivated by considerations of equity, not implying that there had been a miscarriage of justice.[111]

VIII. Ne bis in idem

52. Article 14, paragraph 7 of the Covenant, providing that no one shall be liable to be tried or punished again for an offence of which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country, embodies the principle of *ne bis in idem.* This provision prohibits bringing a person, once convicted or acquitted of a certain offence, either before the same court again or before another tribunal again for the same offence; thus, for instance, someone acquitted by a civilian court cannot be tried again

---

[107] Communications No 750/1997, *Daley v Jamaica*, para. 7.5; No. 680/1996, *Gallimore v Jamaica*, para. 7.4; No. 668/1995, Smith and *Stewart v. Jamaica*, para.7.3. See also communication No 928/2000, *Sooklar v. Trinidad and Tobago*, para. 4.10.
[108] Communications No. 963/2001, *Uebergang v. Australia*, para. 4.2; 880/1999; *Irving v. Australia*, para. 8.3; 408/1990, *W.J.H. v. Netherlands*, para. 6.3.
[109] [General Comment 13/1984, para. 18]
[110] Communications No. 880/1999; *Irving v. Australia*, para. 8.4; No. 868/1999, *Wilson v. Philippines*, para. 6.6.
[111] Communication No. 89/1981, *Muhonen v. Finland*, para. 11.2.

for the same offence by a military tribunal. [112]. Article 14, paragraph 7 does not prohibit retrial of a person convicted *in absentia* who asks for it, but applies to the second conviction.

53. The prohibition of Article 14(7) is not at issue if a higher court quashes a conviction and orders a retrial.[113] Furthermore, it does not prohibit the resumption of a criminal trial justified by exceptional circumstances[114] such as the discovery of evidence which was not available or known at the time of the acquittal.

54. This guarantee applies to criminal offences only and not to disciplinary measures that do not amount to a sanction for a criminal offence within the meaning of Article 14 of the Covenant.[115] Furthermore, it does not guarantee *ne bis in idem* with respect to the national jurisdictions of two or more States, but only prohibits double jeopardy with regard to an offence adjudicated in the same State.[116]

IX. Relationship of Article 14 with other provisions of the Covenant

55. As a set of procedural guarantees, Article 14 of the Covenant often plays an important role in the implementation of the more substantive guarantees of the Covenant that must be taken into account in the context of determining criminal charges and rights and obligations of a person in a suit at law . In procedural terms, the relationship with the right to an effective remedy provided for by Article 2, paragraph 3 of the Covenant is relevant. In general, this provision needs to be respected whenever any of the guarantees of Article 14 has been violated.[117] However, as regards the right to have one's conviction and sentence reviewed by a higher tribunal Article 14, paragraph 5 of the Covenant is a *lex specialis* in relation to Article 2 when invoking the right to access a tribunal at the appeals level.[118]

56. In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial in which the provisions of Article 14 of the Covenant, in particular the guarantees of a fair trial by a competent, independent and impartial tribunal (paragraph 1), the rights to defence (paragraphs 3[b] and [d]) and the right not to be compelled to testify

---

[112] [See CCPR/C/79/Add.116 (Cameroon, 3 November 1999), par. 21.]
[113] Communication No. 277/1988, *Terán Jijón v. Ecuador*, para. 5.4.
[114] [General Comment 13/1984, para. 19]
[115] Communication No. 1001/2001, *Gerardus Strik v. The Netherlands*, para. 7.3.
[116] Communications No. 692/1996, *A.R.J. v. Australia*, para. 6.4, No. 204/1986, *A.P. v. Italy*, para. 7.3.
[117] E.g. communications No 1033/2001, *Singarasa v. Sri Lanka*,, para. 7.4; No.823/1998, *Czernin v. Czech Republic,* para. 7.5.
[118] Communication 1073/2002, *Terrón v. Spain*, para. 6.6.

against oneself (paragraph 3[g]) have not been respected, constitutes a violation of the right to life (Article 6).[119]

57. To ill-treat a person against whom criminal charges are brought and force him to sign, under duress, a confession admitting guilt violates both Article 7 of the Covenant prohibiting torture and inhuman, cruel and degrading treatment and Article 14, paragraph 3(g) prohibiting compulsion to testify against oneself or confess guilt.[120]

58. If someone suspected of a crime and detained on the basis of Article 9 of the Covenant is charged with an offence but not brought to trial for a prolonged period of time, the prohibitions of unduly delaying trials as provided for by Articles 9, paragraph 3 and 14, paragraph 3 (c) of the Covenant may be violated at the same time.[121]

59. Article 14 does not apply to expulsion proceedings, but the procedural guarantees of Article 13 of the Covenant incorporate notions of due process also reflected in article 14[122] and thus should be interpreted in the light of this provision.

60. The way criminal proceedings are handled may affect the exercise and enjoyment of rights and guarantees of the Covenant unrelated to Article 14. Thus, e.g., to keep pending, for several years, indictments for the criminal offence of defamation brought against a journalist for having published certain articles, in violation of article 14, paragraph 3(c), may leave the accused in a situation of uncertainty and intimidation and thus have a chilling effect which unduly restricts the exercise of his right to freedom of expression (Article 19 Covenant).[123] Similarly, delays of criminal proceedings for several years in contravention of article 14, paragraph 3(c), may violate the right of a person to leave one's own country as guaranteed in Article 12, paragraph 2 of the Covenant, if the accused has to remain in that country as long as proceedings are pending.[124]

61. As regards the right to have access to public service on general terms of equality as provided for in Article 25 (c) of the Covenant, a dismissal of judges in violation of this provision may amount to an infringement of the independence of the judiciary as guaranteed by Article 14, paragraph 1.[125]

---

[119] E.g. communications No. 1044/2002, *Shakurova v. Tajikistan,* para. 8.8; No. 915/2000, *Ruzmetov v. Uzbekistan,* para. 7.6, No 913/2000, *Chan v. Guyana*, para. 5.4; No 1167/2003, *Rayos v. Philippines*, para. 7.3.

[120] Communications No. 1044/2002, *Shakurova v. Tajikistan,* para. 8.2; No. 915/2000, *Ruzmetov v. Uzbekistan,* paras. 7.2 and 7.3; No. 1042/2001, *Boimurodov v. Tajikistan*, para. 7.2, and many others.

[121] Communications No. 908/2000, *Evans v. Trinidad and Tobago,* para. 6.2; No. 838/1998, *Hendricks v. Guayana*, para. 6.3, and many more.

[122] Communication No. 1051/2002 *Ahani v. Canada*, para. 10.9. See also communication 961/2000, *Everett v. Spain,* para. 6.4 (extradition), 1438/2005, *Taghi Khadje v. Netherlands*, para. 6.3.

[123] Communication No. 909/2000, *Mujuwana Kankanamge v. Sri Lanka*, para. 9.4.

[124] Communication No. 263/1987, *Gonzales del Rio v. Peru,* paras. 5.2 and 5.3.

[125] Communications No. 933/2000, *Mundyo Busyo et al. v. Democratic Republic of Congo,* para. 5.2.; No. 814/1998, *Pastukhov v. Belarus,* para. 7.3.

62. Procedural laws or their application that make distinctions based on any of the criteria listed in Articles 2, paragraph 1 and 26, or disregard the equal right of men and women in accordance with article 3 to the enjoyment of the guarantees set forth in Article 14 of the Covenant, not only violate the requirement of paragraph 1 of this provision that "all persons shall be equal before the courts and tribunals" but may also amount to discrimination.[126]

[126] Communication No. 202/1986, *Ato del Avellanal v. Peru,* paras. 10.1 and 10.2.