

PARTIALLY DISSENTING OPINION OF JUDGE RAFAË BEN ACHOUR

1. I concur with both the reasoning and operative part of the Judgment in *Chacha Jeremiah and Others v. United Republic of Tanzania* (Applications Nos. 39, 40 and 41/2020), except for the conclusion regarding respect for applicants' right to be heard within a reasonable time, as guaranteed by Article 7(1)(d) of the Charter.
2. The majority held that "the Respondent State did not violate the Applicant's right to be heard within a reasonable time". I cannot agree with this conclusion.
3. Before setting out my observations on the Court's finding in this regard (II), I consider it appropriate to briefly recall the normative framework and jurisprudential foundations of the fundamental human right to be tried within a reasonable time (I).

I. THE FUNDAMENTAL HUMAN RIGHT TO BE TRIED WITHIN A REASONABLE TIME

4. The right to be tried within a reasonable time constitutes a fundamental component of the right to a fair trial. Its purpose is to protect litigants against excessive delays in the administration of justice, which may undermine legal certainty, effective judicial protection, public confidence in the judicial system. This guarantee is enshrined in both universal and regional human rights instruments and has been extensively developed through international jurisprudence.

A. International standards on the right to be heard within a reasonable time

5. Article 10 of the Universal Declaration of Human Rights (UDHR) proclaims the right of every person to a fair and public hearing. Although the requirement of a “reasonable time” is not expressly mentioned therein, it is generally regarded as an inherent element of the right to a fair hearing.
6. The principal treaty provision in this regard is Article 14(3)(c) of the International Covenant on Civil and Political Rights (ICCPR), which provides, in relation to criminal proceedings, that: “Everyone charged with a criminal offence shall have the right to be tried without undue delay.”
7. The same principle also derives from Article 14.1 of the ICCPR which guarantees the right to a fair and public hearing by a competent, independent and impartial court. Paragraph (a) of the Article specifies that the purpose of this guarantee is to ensure that individuals are not left in a prolonged state of uncertainty regarding their legal situation, to safeguard the rights of the defence, and to prevent prolonged pre-trial detention from becoming arbitrary as a result of excessive delay.
8. In its General Comment No. 32 (2007) on Article 14 of the ICCPR, United Nations Human Rights Committee¹ stated, at paragraph 35 that:

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 keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of trial, to ensure that such deprivation of liberty does last longer than necessary in the circumstances of the

¹ Human Rights Committee, Ninetieth Session, Geneva, 9-27 July 2007, General Comment No. 32, Article 14. Right to equality before courts and tribunals and to fair trial.

specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, 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 are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. All stages of the proceedings, whether at first instance or on appeal must take place “without undue delay.”

9. The regional human rights protection systems are consistent with universal standards governing the right to be heard within a reasonable time. Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) provides that: “everyone is entitled to a fair and public hearing within a reasonable time”. This provision has generated a substantial body of jurisprudence and constitutes a leading international reference on the requirement of prompt justice.
10. Similarly, Article 47 of the Charter of Fundamental Rights of the European Union guarantees that “everyone is entitled to a fair and public hearing within a reasonable time”.
11. It should be noted that the Inter-American Charter of Human Rights is as firm as the European Convention in this regard. Article 8.1 of the Charter guarantees the right to be heard “within a reasonable time” by a competent court. The Inter-American Court of Human Rights has developed an extensive and protective jurisprudence linking the reasonable-time requirement to effective judicial protection.

12. The African Court on Human and Peoples' Rights is equally explicit. Article 7(1)(d) of the African Charter on Human and Peoples' Rights guarantees "the right to be tried within a reasonable time by an impartial court or tribunal". In addition, the African Commission on Human and Peoples' Rights in 2003 adopted the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance, which provide that: "Every person arrested or detained on a criminal charge shall be brought promptly before a judicial officer or other officer authority authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or released".

B. International jurisprudence on the right to be tried within a reasonable time

13. In its Judgment of 27 June 1968 in *Wemhoff v. Germany*, the European Court of Human Rights (ECHR) held that:

The specific purpose of this provision [Article 6.1 of the Convention] in criminal matters is to ensure that accused persons do not remain for too long in a state of uncertainty about their fate and that a determination is made on the merits of the charge against them.

There is therefore no doubt that the period to be taken into account in the application of this provision extends, at its very best, until the decision of acquittal or conviction, even if delivered at the appeal stage. Moreover, there is no reason to confine the protection of the parties against judicial delays to the commencement of the trial: unjustified adjournments or excessive delays may equally occur in trial courts.

14. In its Judgment of 27 June 1968 (*Neumister v. Austria*), the European Court reiterated that congestion in the courts cannot, by itself, justify excessive delays in judicial proceedings. The Court stressed that: "Full written proceedings or an oral hearing of the

parties in the examination of appeals would be a source of delays which is important to avoid in this area”.

15. In the Judgment of 13 July 1983 in *Zimmermann and Steiner v. Switzerland*, the European Court criticised the structural delays in the judicial system:

The Court notes first of all that the Convention requires the Contracting States to organise their legal systems so as to enable their courts to comply with the requirements of Article 6 (1), including that of trial “within a reasonable time”. Nevertheless, a temporary backlog of cases does not automatically engage their liability if they take, with due promptness, appropriate measures to address such an exceptional situation.

Among the measures that may be considered on a provisional basis is certainly the adoption of certain order of priority for the handling of cases, based not merely on the date of their filing but on their degree of urgency and importance, particularly on the stakes involved for the parties concerned. However, if such a situation persists and becomes structural in nature, such measures are no longer sufficient, and the State may not further delay the adoption of effective measures.

16. Finally, in its Judgment of 26 October 2000 in *Kudla v. Poland*, the European Court held that States are required to provide an effective remedy for complaints concerning the excessive length of judicial proceedings:

The Court considers that the time has now come to review its jurisprudence, in view of the ever-increasing number of applications brought before it in which the sole or main allegation is a breach of the obligation to hear cases within a reasonable time, within the meaning of Article 6.1.

The increasing frequency of violations in this regard has recently led the Court to draw attention to the “significant danger” that “excessive delay in the administration of justice” poses to the rule of law in national legal systems “where litigants have no domestic remedy in this regard”.

17. The jurisprudence of the Inter-American Court of Human Rights (IACHR) follows the same approach and sets out three key criteria in this regard, namely the complexity of the case, the conduct of the parties, and the conduct of the authorities².

II. THE JUDGMENT IN CHACHA JERIMIAH AND OTHERS v. THE UNITED REPUBLIC OF TANZANIA

18. In its Judgment in *Alex Thomas v. the United Republic of Tanzania* of 20 November 2015, the Court laid the foundations of its jurisprudence concerning the right to be tried within a reasonable time. In *Chacha Jerimiah and Others v. the United Republic of Tanzania*, the Court remains faithful to the principles established in 2015. However, it fails to draw the necessary conclusions from them.
19. The Court correctly observes out that the reasonable-time requirement constitutes a fundamental guarantee of the right to a fair trial. It emphasises that the prompt administration of justice serves, on the one hand, to protect accused persons from prolonged uncertainty and from the physical, psychological and social consequences associated with excessively lengthy criminal proceedings and, on the other hand, to safeguard the proper administration of justice, notably through the preservation of evidence and the reliability of witness testimony.

² See *Genie Lacayo v. Nicaragua*, Judgment of 29 January 1997.
<https://summa.cejil.org/es/entity/k51weuti26ueg66r/references?page=9&file=5943.pdf>

20. This requirement that proceedings be conducted within a reasonable time is not merely a procedural consideration. It forms an integral part of the right to a fair trial and of the confidence that litigants must be able to place in the administration of justice. Delays that exceed what is objectively necessary may, in certain circumstances, amount to a denial of justice.
21. However, having reiterated these principles, the majority adopts, in my view, an unduly permissive approach to the delays that occurred in the domestic proceedings. It finds that the overall duration of five years, three months and fifteen days was justified by the complexity of the case, the conduct of the parties, and the requirements associated with the preparation of the trial.
22. In my view, this assessment is neither sufficient nor convincing. The explanations advanced by the Respondent State do not establish that the competent judicial authorities acted with the diligence required in criminal proceedings involving the liberty and other fundamental rights of the Applicants.
23. First, with regard to the alleged complexity of the case, the Respondent State relies on the duration of the investigations and the scale of the forensic examinations, particularly the DNA analyses. While it is true that the complexity of a matter may, in certain circumstances, justify a longer period of proceedings, such complexity must be demonstrated concretely and must be shown to have rendered the duration of the proceedings objectively necessary.
24. The case file indicates, however, that the investigations were completed on 18 June 2012. However, the Respondent State has not provided any satisfactory explanation as to why the collection and analysis of DNA evidence required almost three years. It has not identified any exceptional circumstances, specific technical

difficulties, or practical impediments capable of justifying such a prolonged period. In the absence of such evidence, the mere reference to forensic investigations cannot, by itself, justify the length of the proceedings in the present case.

25. Furthermore, the file contains neither order extending the investigation nor any judicial decision demonstrating that the competent authorities exercised effective oversight over the duration of investigative phase. The absence of such judicial supervision constitutes further evidence of the domestic authorities' failure to conduct the proceedings with the requisite diligence.
26. Secondly, the Respondent State has provided no explanation for the additional two-year period that elapsed following the commencement of the committal proceedings. During this period, the hearings were repeatedly adjourned at the request of the Public Prosecutor's Office on account of alleged "anomalies" and "irregularities" affecting the indictment.
27. Such adjournments cannot be attributed to the Applicants. On the contrary, they reveal deficiencies attributable to the prosecuting authorities themselves. Any shortcomings or irregularities affecting the indictment fall within the responsibility of judicial authorities and cannot constitute a valid justification for the excessive duration of the proceedings.
28. It is well established in international human rights jurisprudence that, in assessing whether proceedings have been conducted within a reasonable time, consideration must be given not only to the complexity of the case and the conduct of the parties, but also to the conduct of the competent judicial authorities. In the present case, nothing in the record indicates that the domestic authorities handled the matter with the requisite diligence.

29. On the contrary, the cumulative delays, the absence of specific explanations for certain periods of procedural inactivity, and the repeated adjournments of the committal proceeding disclose systemic deficiencies that are incompatible with the guarantees enshrined in Article 7(1)(d) of the Charter.
30. Accepting that criminal proceedings extending over a period exceeding five years remain compatible with the requirement of trial a reasonable time, in the absence of a detailed and convincing justification for each period of delay, would substantially diminish the protective scope of this fundamental guarantee.
31. The effective protection of the right to be tried within a reasonable time requires the Court to subject the conduct of national authorities to careful scrutiny. An unduly permissive approach risks normalising delays and depriving this guarantee of its practical and effective character.
32. For these reasons, I am of the view that the Respondent State violated the Applicants' right to be tried within a reasonable time, as guaranteed under Article 7(1)(d) of the Charter. Accordingly, I am unable to concur with the conclusion reached by the majority on this issue.



Judge Rafaâ BEN ACHOUR

