

# MAKALAH



## **THE RIGHT TO A FAIR TRIAL, DUE PROCESS AND LEGAL SECURITY AGAINST STATE MISUSE OF POWER.**

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**The right to a fair trial, due process and legal security against state misuse of power.**

# ICCPR Article 14

- Wide range of procedural guarantees
- State obligation to facilitate
- Directed towards the judiciary – in particular the Courts
- Why?
  - None innocent should be convicted
  - Transparency and accountability within the Courts
  - Predictability, legal certainty and equality

# Legislative Considerations

- Key element in the protection of Human Rights
- Art. 14 aims at ensuring the proper administration of Justice
- A procedural means to safeguard the rule of law

# Some Important Legal Sources

- ICCPR Art. 14
- General Comment No. 32 replacing No. 13
  - Paragraph 4: “Article 14 contains guarantees that States parties must respect, regardless of their legal traditions and their domestic law.”
- Preparatory works to the convention?
- Domestic Legislation

# The Scope of Art. 14

- General Comment No. 32, paragraph 2
  2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of **criminal charges** against individuals but also to **procedures to determine their rights and obligations in a suit at law**. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

# Two definitions: 1. Criminal Charge

- Criminal Charge
  - 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 purpose, character or severity.

## 2. Procedures to determine their rights and obligations in a suit at law

- (a) judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law.
- (b) equivalent notions in the area of administrative law such as the termination of employment of civil servants for other than disciplinary reasons, the determination of social security benefits or the pension rights of soldiers, or procedures regarding the use of public land or the taking of private property.
- (c) 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.



# ICCPR art. 14, paragraph 1

- 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The press and the public may be excluded from all or part of a trial 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 prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

# Paragraph 2

- 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

## What does this mean?

# Paragraph 3, letter a

- 3. In the determination of any **criminal charge** against him, **everyone 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;

# Paragraph 3, letter b

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(b) To have **adequate time and facilities** for the **preparation of his defence** and to communicate with **counsel** of his own choosing;

# Paragraph 3, letter c

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(c) To be tried without **undue delay**;

# Paragraph 3, letter d

(d) To be **tried in his presence**, and to **defend himself in person** or through **legal assistance of his own choosing**; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where 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;

# Paragraph 3, letter e

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(e) 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;

# Paragraph 3, letter f

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(f) To have the free assistance of an **interpreter** if he cannot understand or speak the language used in court;



# Paragraph 3, letter g

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(g) Not to be compelled to testify against himself or to confess guilt.

# Paragraph 4

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4. In the case of **juvenile persons**, the procedure shall be such as will take account of their age and the desirability of promoting their **rehabilitation**.

# Paragraph 5

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5. Everyone convicted of a crime shall have the right to his **conviction** and **sentence** being **reviewed by a higher tribunal** according to law.

# Paragraph 6

6. When a person has by a **final decision** been **convicted** of a **criminal offence** and when subsequently 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**, the person who has suffered punishment as a result of such conviction shall be **compensated** according to law, unless it is proved that the non-disclosure of the unknown fact in time is **wholly or partly attributable to him**.

# Paragraph 7

## NE BIS IN IDEM/ DOUBLE JEOPARDY

7. No one shall be **liable to be tried** or **punished again** for an offence for which he has already been **finally** convicted **or** acquitted in accordance with the law and penal procedure of each country.

# Comparison with Rome Statutes art.

## Article 17

### Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
  - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
  - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
  - (d) The case is not of sufficient gravity to justify further action by the Court.