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The Problem of Being Judged Within a Reasonable Time Under Burundian Law

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Abstract

In the course of a trial, both the speed of justice and its slowness present virtues and vices that are sometimes difficult to reconcile. A dialectical conflict arises between modern currents advocating for celerity and traditionalist currents emphasizing the length and quality of trials, grounded in strict respect for the rights of the defense. In either case, the litigant's interest is not only to obtain a fair legal decision but, above all, to obtain it within a reasonable timeframe, enabling them to fully enjoy the rights enshrined therein. This paper focuses on analyzing how the criteria for assessing reasonable time can help reconcile the demands of the right to defense with those of judicial efficiency_- an issue that often results in delays during case proceedings.. In Burundian positive law, although the Constitution enshrines the principle of the right to be tried within a reasonable time, the notion of reasonable time, as well as its assessment criteria, is not detailed in any legislative or regulatory text, nor is it enshrined in national case law. This gap sometimes leads to unreasonable delays in legal proceedings. Given the advances made by the case law of the Human Rights Committee, the European Court, and the African Court regarding reasonable time, it is more essential than ever for Burundian positive law to foster a "culture of celerity". This would entail accelerating trial proceedings by promoting these criteria for the effective management of judicial time. Furthermore, the article emphasizes the delicate balance between the speed and quality of justice, debunking the common confusion between reasonable time and the hasty administration of justice. Drawing on legal maxims, it

argues that while ‘justice delayed is justice denied,’ ‘justice hurried is justice buried.’ The author introduces the idea of reconciling speed with the rights of the defense, demonstrating that expedited justice is beneficial when combined with fundamental defense rights, such as public debates and the principle of contradiction during the trial process. The article asserts that the expeditious delivery of justice, when managed prudently and reinforced by procedural safeguards, is essential for the survival of judicial proceedings. A rule of law system should prioritize efficiency without compromising quality or the rights of the defense. It criticizes unnecessary delays, advocates for practical measures to expedite civil cases, and proposes a streamlined process for legal proceedings. Ultimately, the narrative underscores the need for reasonable judicial time as a cornerstone of a just and fair society. The results of this research are derived from doctrine, the jurisprudence of the Human Rights Committee, case law of the European Court of Human Rights and the African Court of Human and Peoples' Rights, as well as Burundian case law. The discussion of these results is based on a documentary methodology, analyzing legal texts, books, judgments, and rulings with the force of res judicata, along with national and international case law. This article seeks to examine the challenges and issues associated with the right to be tried within a reasonable time in Burundi. Its objectives is to analyze whether the guarantees proclaimed by the Constitution, the African Charter, and other international instruments ratified by Burundi, specifically those related to reasonable trial time, are effectively being implemented.

Keywords: Reasonable Time For Trial, Rights of the Defense, Speed of Trial, Slowness of Trial, Criteria for Assessing Reasonable Time, Quality of Trial, Case Law

Introduction

“*Justice delayed is justice denied, justice hurried is justice buried*”
(Kalim Arshad Khan, Federal Law Journal, 2023).

In any society built on the rule of law, the legal system can only achieve its goal of ensuring social order if the subjective rights to which individuals are entitled are effectively sanctioned and protected. The ultimate objective of any litigant who brings a case before a court is not only to obtain a fair judgment that respects the rights of the defense but also to have that judgment recognize the validity of their claims within a reasonable time. The latter is one of the essential elements of a fair trial, which, in turn, is a privileged fundamental expression of the rule of law in a democracy (Tulkens, 2006).

In the context of litigants' protection and the efficiency of the judicial system, publicity is an important indicator of the quality and fairness of justice (Milano, L. 2006). Regarding judicial time, the right to public proceedings requires sufficient time to carry out judicial formalities. However, these formalities must be subject to limitations, as publicity may sometimes conflict with other procedural guarantees and interests related to trial duration—namely, the reasonably time requirement. Indeed, this requirement is an essential condition of any judicial system aiming to reconcile the slowness and speed of justice. As Kalim Arshad Khan (2023) aptly stated, "Justice delayed is justice denied, justice hurried is justice buried."

In other words, even though in all legal traditions (Romano-Germanic and Common Law), the primary objective of the trial is to establish the truth (Pradel, J. 2008), the judgment must be delivered without undue delay. The ultimate goal of any litigant who brings a case before a court of justice is not only to obtain a qualitative (fair and equitable) judgment that respects procedural fairness (publicity, contradiction, procedural formalism, and respect for the rights of the defense), but also to have the judgment promptly recognize the validity of the claim within a reasonable time.

As justice is an ideal to be achieved, it must be offered to the litigant as quickly as possible, in real time" (Abikhzer, 2005). According to Hébraud (1936), the principle of celerity is essential in that it drives the current approaches of procedural reformers: "All procedural reform today consists in speeding up the progress of the trial" (Hebraud, 1936).

Criticizing the speed of trial, Montesquieu argues that the temporality of law is not simple or unilateral but complex and plural: the pains, expenses, the length, and very dangers of justice are the price that every citizen pays for his liberty. Procedure signifies prudence, truce, and reflection. On the other hand, it is essential to be aware of the risk of accelerated, hasty, and botched justice (Montesquieu, 1871). Conversely, in criticizing the slowness of legal proceedings, Professor Fabienne Quilleré Majzoub argues that if the conduct of a case does not respect the imperatives of a fair trial, namely, a reasonable time limit, then there can be no true trial (Quillere-Majzoub, 1999). The opposition between the slowness and celerity of justice is thus evident. To resolve the dialectical conflict between these two types of temporality, the concept of a reasonable time provides an excellent solution.

The concept of reasonable time defines the limits of what is socially acceptable (Tulkens, 2006). It also eliminates both excessive slowness and excessive speed by respecting the interdependence of procedural guarantees and reconciling the two extremes of procedural temporality (Cholet, 2006). The concept of reasonable time avoids false dilemmas and strikes a balance between the need and the protection of other guarantees of a fair trial, such

as access to a judge, the exercise of legal remedies, the rights of the defense, equality of arms, and the principle of contradiction (European Court of Human Rights, Melnyk v. Ukraine, judgment of 28 March 2006). The celerity sought through the requirement of reasonable time is not merely aimed at achieving speed but also at ensuring the fairness and quality of judicial procedures that protect the rights of the defense.

Moreover, it requires quality proceedings that are diligent, and capable of reconciling the procedural guarantees of the proper administration of justice to prevent potential infringement on the rights of the defense (Kuty, 2006). It also eliminates both excessive slowness and excessive speed while upholding key principles of fairness: access to an independent and impartial tribunal, adjudicating through an adversarial procedure within a reasonable time, the right to a public trial, respect for equality of arms, the rights of the defense, and the exercise of legal remedies (Cholet, D. 2006). In this regard, Didier Cholet states: “The requirements of a fair trial, such as equality of arms, giving reasons for court decisions, the right to be heard in adversarial proceedings, or the right to a judge, can only be fulfilled over time, within a timeframe that may conflict with the principle of celerity. It is therefore necessary to reconcile celerity with these various requirements” (idem). Assessing the reasonableness of a procedure is not, and should never be, a mechanical process; rather, it must take into account a fair balance to ensure that all the guarantees of a fair trial are respected. This necessity is very important: in the absence of rigid indicators, assessment is often empirical and casuistic. While case law does not provide standards for the ideal length of proceedings, certain assessment criteria, recognized in international case law, are used to determine whether proceedings can be considered reasonable. These include the complexity of the case, the conduct of judicial and state authorities, the conduct of the parties involved, and the stakes of the dispute (African Court of Human and Peoples' Rights, judgement: Alex Thomas v. United Republic of Tanzania, 2015). Such an assessment, aimed at promoting the promptness of proceedings, aligns fully with the decision of the Human Rights Committee. The committee reiterates that the right to a fair trial, as defined in Article 14, paragraph 1, entails several conditions, including the requirement that judicial proceedings be conducted with due celerity (Human Rights Committee, Communication n° 207/1986, Yves Morael v. France, Views adopted on 28 July 1989).Moreover, the right to be tried within a reasonable time has both an objective and a subjective dimension (Tulkens, 2006). The objective aspect ensures that the administration of justice remains effective, as unfair and prolonged trials contribute to a crisis of confidence in the justice system, ultimately undermining the rule of law. The subjective aspect lies in the guarantee that a trial will not exceed a reasonable time, protecting litigants

from arbitrariness of judicial authorities who may disregard the trial temporarily. It also protects individuals from prolonged stress, anxiety, and uncertainty. The guarantee of a trial within a reasonable time is therefore fundamental to the protection of human rights.

Even though the Burundian Constitution refers to the requirement of reasonable time, the procedural provisions governing the administration of justice, along with limited national case, do not specify the criteria that make reasonable time effective, as European and African case law do. Referring to the international case law already recognized by the Inter-American Court and the European Court, the African Court has adopted the four criteria for assessing reasonable time: the conduct of the judicial and state authorities, the conduct of the parties to the proceedings, the complexity of the case, and what is at stake for the applicant (Boddaert v. Belgium, 1987; Union Alimentaria Sanders S.A v. Spain, 1985; Cuscani v. United Kingdom, 1996; Suárez-Rosero v. Ecuador; Scordino v. Italy; Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, 2013). According to this jurisprudence and legal doctrine, the absence of clear criteria for evaluating the temporality of the trials, combined with a lack of a culture of celerity that prioritizes expediting proceedings by applying these criteria, undermines the effective management of judicial time (Amrani-Mekki, 2008). Such is the case in Burundi.

Given that Burundi is bound by the International Covenant on Civil and Political Rights, acceded to by Decree-law n° 1/009 of March 14, 1990, and the African Charter on Human Rights, ratified by Decree-law n°. 1/029 of July 28, 1989, as well as the protocol establishing the African Court since June 27, 2000, is it not essential for the judicial authorities to incorporate these criteria into domestic legislation and recognize the case law already enshrined by the African Court? It is worth considering whether the chronic congestion of court dockets, or the overwork of the courts, and the ensuing backlog of cases stems this lack of jurisprudence on reasonable time. Could systemic deficiencies in procedural rules, leading to repeated adjournments and systematic referrals for reconsideration, be linked to this?

In this analysis, using a documentary methodology, the paper first examines the theoretical framework provided by legal doctrine and instruments regarding the guarantee of a trial within a reasonable time. Next, it outlines the research methodology and presents the findings. The results will then be discussed to assess the causes of the gap between law and practice. Finally, a conclusion will summarize the assessment.

2. The Problematic Nature of the Subject

In Burundi, as in many other countries, the persistent slowness of the justice system remains a long-standing issue that undermines its efficiency

and credibility (Magendie, 2004). To address this challenge, it is often recommended that legal proceedings be conducted within a reasonable timeframe. The right to a trial within a reasonable time is enshrined in Article 14 of the International Covenant on Civil and Political Rights, as well as in several regional instruments inspired by it. These include Article 7 of the African Charter on Human and Peoples' Rights, Article 6 of the European Convention on Human Rights, Article 8 of the Inter-American Convention on Human Rights, and Article 11(b) of the Canadian Charter of Rights and Freedoms. In Burundian positive law, this guarantee is explicitly established in Article 38 of the Constitution.

The right to be tried within a reasonable time has been extensively studied in European legal systems, which have been influential. However, it remains a subject of controversy. From a doctrinal point of view, the temporality of the trial has been explored by various scholars, yet it remains a source of controversy. A fundamental conflict exists between modern proponents of celerity, who advocates for expedited proceedings, and traditionalists, who emphasize the quality of the trial and strict adherence to the rights of the defense.

This tension highlights two competing interest: on the one hand, the need for speed, which prioritizes the swift resolution of cases, and on the other, the competing right to respect procedural formalism (legal formalities, publicity of debates, and observance of the rights of the defense, etc.,) and the quality of the trial. All this must be done while respecting the other guarantees of a fair trial, in this case, the rights of the defense and contradiction. Some scholars argue that judicial efficiency has become so dominant that a new procedural principle—the principle of celerity—is emerging (Guinchard Serges, 2004).). This principle has already gained traction among the architects of transnational procedural rules, which emphasize the need for expeditious trials (Ferrand, 2004). According to Amrani-Mekki Soraya, celerity is now a central concern for procedural reformers, shaping modern approaches to legal reforms that prioritize the acceleration of judicial proceedings (Amrani-Mekki, 2008).

On the other hand, some scholars, including Montesquieu, argue that accelerated justice risks being rushed and poorly executed. According to Montesquieu, the temporality of the trial is neither simple nor unilateral but rather complex and multifaceted. The burdens of justice—its costs, duration, and potential risks—are the price each citizen pays for freedom. He contends that legal procedure embodies prudence, truce and reflection, warning against the dangers of overly rapid, hasty, and flawed justice (Montesquieu, 1871).

Similarly, Morel emphasizes that both litigants and courts must adhere to a minimum set of procedural safeguards essential for fair and

sound justice. Without these, a party could justifiably fear the dishonesty of an adversary or the partiality of a judge. Procedural formalities serve as a necessary framework for discipline and order in the judicial system.

Jacques Normand further reinforces this perspective, asserting that speed should not be the primary concern of justice. Instead, the paramount objective must be the quality of judicial decisions—an outcome achievable only by dedicating the necessary time to each case. While efforts should be made to prevent undue delays caused by court congestion or other factors, the pursuit of speed must not compromise the integrity and fairness of the trial process (Normand, 2003).

Given these divergent perspectives on trial temporality, between a rapid investigation and one conducted slowly and cautiously, legal doctrine does not provide a unified stance on which guarantee should take precedence during proceedings. To bridge this divide, jurisprudence has established the procedural guarantees of "reasonable time" along with criteria for its assessment.

International case law has consistently emphasized that compliance with the reasonable time requirement is essential to ensuring that justice is not undermined by delays that compromise its effectiveness and credibility (European court: Vernillo v. France, Feb. 20, 1991; Moreiro de Azevedo v. Portugal, Oct. 23, 1990; Katte Klitsche de la Grange v. Italy, Oct. 27, 1994). Excessive delays pose a significant threat to judicial proceedings, as the passage of time can erode legitimate interests, dissolve or distort evidence, encourage delaying tactics, disperse witnesses, and weaken the credibility of their testimony—all while increasing costs in terms of time and financial resources.

However, time is also a crucial factor in ensuring the quality of judicial decisions, as it allows for adherence to procedural formalities and the full exercise of the right to defense. These guarantees must be upheld at every stage of the proceedings, particularly during pre-trial and trial phases. Additionally, time is necessary for legal issues to be properly examined, for relations between the parties to stabilize, and for judges to deliberate thoughtfully before rendering a verdict.

Given the ongoing debates surrounding the management of judicial time—balancing both the quality and speed of proceedings—the concept of reasonable time becomes indispensable. Given that Burundian law provides for a guarantee of reasonable time, which in itself is confusing and imprecise in terms of exact time, there is a need to analyze its application. This raises a crucial question: how do Burundian judges reconcile these differing perspectives and manage the issue of judicial time? As Charles de Gaulle once said, "What is written, even on parchment, is only as good as its application" (De Gaulle, 1970). This underscores the need to analyze the

current state of implementation of this fair trial guarantee in Burundi. Such analysis will help determine whether there is a gap between the principles enshrined in law and the lived reality of litigants.

The primary objective is to assess the extent to which judicial practice aligns with the legal framework for reasonable time. After all, what ultimately matters in law is not merely what is written, but how judges apply it in practice.

The concept of reasonable time is inherently imprecise and difficult to grasp. Its scope and assessment criteria have been clarified primarily through international jurisprudence (Guide to article 6 of the European Convention on Human Rights, 2022). The reasonableness of the length of proceedings is evaluated based on the specific circumstances of each case, using four key criteria:

- The conduct of judicial and state authorities
- The conduct of the parties to the proceedings
- The complexity of the case
- What is at stake for the person concerned

These criteria have been established and reaffirmed in various judicial decisions, including Comingersoll S.A. v. Portugal (2000), Frydlender v. France (2000, § 43), Sürmeli v. Germany (2006, § 128), Paroisse gréco-catholique Lupeni et autres v. Roumanie (2016, § 143), and Nicolae Virgiliu Tănase v. Romania (2019, § 209). More recently in 2022, the Bieliński v. Poland judgment (§§ 42-44) provided a comprehensive summary of the applicable legal principles.

In Burundian law, the tension between ensuring procedural quality—rooted in the right of defense—and the need for trial expediency, a common issue in well-established rule-of-law countries, is even more pronounced. This conflict lies at the heart of the challenge in reconciling these two fundamental principles.. A fair trial depends on the balanced implementation of both speed and the right of defense, yet these guarantees often come into conflict, shaped by the differing interests of the parties involved. The key challenges contributing to the slow and often unfair administration of justice in Burundi include:

- The difficulty of balancing procedural speed with the time required for thorough investigation and proper defense.
- The absence of clear criteria for assessing the reasonable duration of judicial proceedings.
- A lack of urgency or a "culture of celerity" among judicial and state authorities, as well as legal practitioners.

  These factors collectively hinder the efficiency of the justice system, leading to delays that ultimately compromise fairness.

Furthermore, there are divergent interpretations of the right to a fair trial within a reasonable time among judges. Some prioritize speed, minimizing delays in the proceedings, while others emphasize thoroughness and quality, ensuring strict adherence to the right of defense and the principle of contradiction, as enshrined in Article 39 of the Constitution. Under Article 147 of the Code of Civil Procedure, a case may be postponed to a later hearing at the request of the parties; with a maximum of two postponements, unless the parties agree otherwise. However, effective compliance with this article becomes challenging when the need to respect the rights of the defense arises. In cases where the parties disagree on postponement, how should judges strike a balance between ensuring a fair defense and maintaining trial efficiency?

Given that two postponements result in three public hearings, can it be assumed that by the third hearing, judges will have gained sufficient clarity to render a fair decision?

In adversarial proceedings, reconciling the quality of the investigation with procedural speed—without exceeding two postponements—remains a challenge. This raises a critical question: Could the integration of reasonable time criteria into Burundian positive law resolve the conflict between procedural safeguards and delays in the judicial process?

Answering this question will help determine whether the right to be tried within a reasonable time is interpreted in a manner that preserves its true essence and whether the lack of clear criteria contributes to prolonged proceedings. It will also reveal the gap between legal provisions ("law in the books") and judicial practice ("law in action"), shedding light on the lived reality of litigants in Burundi public hearings. It can be assumed that by the third hearing, judges will have gained sufficient clarity to render a fair decision. In this regard, the answer can only be determined once the following hypotheses have been tested:

- The problems of reconciling procedural safeguards —those prioritizing thorough investigation and those emphasizing speed— negatively impacts both the quality and timeliness of trials.
- Ignorance of international case law on the criteria for assessing reasonable time and the guarantees of the defense hampers the effectiveness of the reasonable time limit and the fairness of the trial.
- The reconciling procedural guarantees and the implementation of reasonable time criteria by judicial bodies would be the solution to the slowness of legal proceedings.

3. Methods and Methodology

In assessing the reconciliation of the right to a fair and expeditious trial, the analysis focuses on the jurisprudence of the Human Rights Committee, the case law of European Court of Human Rights, the African Court of Human Rights, and Burundian case law. The purpose of using this case law is to situate the conceptual contours of reasonable time and fair trial and to demonstrate the impact of these issues on the reasonable time for trial. The analysis also aims to highlight the significance accorded to these trial guarantees by both international and national case law. To examine how Burundian law is influenced by this jurisprudence, several recent judgments and rulings handed down by the Supreme Court of Burundi and other jurisdictions are evaluated, comparing Burundian and international jurisprudence. The court was chosen because it establishes jurisprudence, and through its substantive case files, the various stages of the trial can be analyzed comprehensively. The selections allow for an assessment of its jurisprudence on the principles of contradiction and the right of defense.

The evaluation criterion is based on Article 147 of the Code of Civil Procedure, which stipulates that the number of postponements of hearings may not exceed two, unless the parties agree otherwise. Another criterion for analysis is the case law of the Commission and the African Court, which have already endorsed the reasonable time criteria enshrined by the European Court in the cases of Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, case 253/02: Antonie Bissangou v. Congo, and case 199/97: Odjouoriby Cossi Paul v. Benin. The assessment is based on a documentary methodology that analyzes legal texts, books, judgments, rulings, national and international case law, and doctrine relating to the concepts of this subject. This methodology for assessing the quality and celerity of trial has revealed international case law that emphasizes the importance of reasonable time as a criterion for resolving cases efficiently and in real time.

4. Presentation of Results

The results of this research focus on the jurisprudence of the Human Rights Committee, the case law of the European Court of Human Rights, the African Commission on Human Rights, the African Court of Human and Peoples' Rights, and national case law in the form of judgments and rulings. Some of the collected judgments will contribute to discussion of the results. The discussion of the research findings focuses on the implementation of the right to defense and the right to a speedy trial, as well as on international case law on the criteria for assessing reasonable time. This involves analyzing criteria (including judicial and state authorities and the parties to the proceedings) and criteria related to the nature of the dispute (such as the

complexity of the case and the stakes for the claimant). Additionally, it examines the impact of implementing reasonable time criteria on the duration of legal proceedings. Furthermore, the research explores the influence of this jurisprudence on the length of legal proceedings and the concept of reasonable time before Burundian courts and tribunals.

5. Discussion of the Results

5.1. Case Law Criteria for Assessing Reasonable Time

Before the Inter-American Court and the European Court of Human Rights, as well as before the African Court, the reasonableness of a procedure is assessed based on the circumstances of the case, assessed as a whole, in light of criteria established in international case law. These criteria date back to the Neumeister judgment of June 27, 1968, and the König judgment of June 28, 1978, and have been consistently applied to both criminal and civil cases. These four criteria are examined for each claim, taking into account the overall duration of the proceedings.

5.1.1. Analysis of Criteria Relating to the Behaviour of the Protagonists in the Legal Debate

a. The Behaviour of Judicial and State Authorities

According to established case law, the conduct of the competent authorities is particularly important, as it is the primary criterion that can lead to a breach of the reasonable time requirement (European Commission for the Efficiency of Justice, 2018). Thus, states must organize their jurisdictions in a manner that ensures compliance with the reasonable time requirement. If delays are due to the structure of the judicial system (Hadjidjanis v. Greece judgment of April 28, 2005), state and judicial authorities have an obligation to organize the system in a way that allows cases to be decided without undue delay. When authorities fail to take sufficient measures, they incur state liability, as chronic court congestion is not a valid justification (Dumont v. Belgium, April 28, 2005).

Indeed, periods of inactivity due to chronic court congestion or a manifest inadequacy of judicial staff will entail the state responsibility. The role of parties in the proceedings does not exempt states from organizing their judicial systems in a way that ensures courts can conduct proceedings with the desired celerity. Judges are obliged to exercise the powers granted to them by law to counteract any delaying tactics employed by a party to the proceedings (Costa Ribeiro v. Portugal case of April 30, 2003). Judges must consistently use all the powers of injunction at their disposal to maintain the pace required by the nature of the proceedings and the litigants' circumstances, set deadlines for the parties in accordance with legal requirements, oversee their enforcement, and, if necessary, impose sanctions

for non-compliance.

In the case of Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania (African Court, Application No. 006/2013 of July 23, 2013), the applicants alleged a violation of Article 7 of the African Charter on account of the prolonged and unjustified delay in the processing of their cases before the Tanzanian national courts, as well as the denial of legal aid. In response to this grievance, Tanzania presented two main arguments to justify the complexity of the case. First, it cited the fact that there were ten accused persons. Second, it pointed to the involvement of additional suspects and accused individuals in extradition proceedings in Kenya, arguing that it was prudent to ensure all accused persons were present before initiating the proceedings.

In its reasoning, the court notes from the outset that there is no fixed time limit considered reasonable that serves as a standard for examining a case. To determine whether the duration of proceedings is reasonable, each case must be dealt with according to its circumstances (Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, 2013). As established in the case law of the European Court of Human Rights, no precise time limit has been set. Regarding the conduct of the Tanzanian judicial authorities, the court noted that before the Resident Magistrate's Court in Moshi, there had been more than fifty-five adjournments. During the first four years of the case, only one witness had given evidence, despite the applicants' consistent efforts to move the case forward.

The reason most frequently given by the Tanzanian authorities for requesting adjournment was that they were still compiling the police file and that investigations were ongoing. In the Court's view, national judicial authorities have a duty to ensure that those involved in proceedings takes all necessary measures to avoid unnecessary delays. Judges also have both the right and the duty to actively ensure that legal proceedings before them comply with the requirement of reasonable time (Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, p.46).

The African Court concluded that there had been a violation of Article 7 (1) (d) of the African Charter, as the requirement of reasonable time had not been respected, not because of the complexity of the case or the action of the applicants, but primarily because of the lack of diligence on the part of the Tanzanian judicial authorities, who had put the case on hold for approximately two years.

b. The Behaviour of the Parties to the Proceedings

The conduct of the parties to the proceedings, particularly that of the plaintiffs, cannot lead to a finding of a breach of the reasonable time requirement, even if the delay is manifestly excessive. This is only true

where no notable inactivity is attributable to the national courts (idem p.19). If the essential cause of the delay is the delaying tactics of the parties to the proceedings, there can be no finding of a breach of reasonable time on the part of the State.

Of course, while the parties to the proceedings play a fundamental role in the judicial process, judges must check, in the light of the evidence in the case file, whether the parties' conduct reveals any abusive or dilatory practice aimed at prolonging the proceedings, without being accused of using the available remedies. In the case of Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania, the African Court ruled that the applicants had not engaged in conduct likely to delay the proceedings. In doing so, it relied on the case law of the European Court of Human Rights in Union Alimentaria Sanders SA C v Spain. The European Court had concluded that the applicant is only obliged to be diligent in carrying out the procedural steps relevant to them, to refrain from dilatory tactics, and to make use of the possibilities offered by domestic law to expedite the proceedings (Union Alimentaria Sanders SA v Spain of July 7, 1989, §.35).

The Strasbourg judges have consistently held that the State is not liable for delays caused by the refusal of witnesses to appear. However, even if a claimant demonstrates bad faith by focusing on minor detail to intentionally drag out and complicate the proceedings, judicial authorities are still obliged to ensure that the trial proceeds at a regular pace and within a reasonable time. Courts have a duty to ensure the smooth running of proceedings by by carefully considering adjournment requests, efficiently managing witness hearings, and monitoring the time required to prepare expert reports. When a defendant's hunger strike and self-mutilation delayed the outcome of the proceedings, the European Court ruled that these circumstances could not be held against the State (Jablonski v. Poland judgment of December 21, 2000). The same principle applies in cases of wrongful referral to an incompetent court (Beaumartin v. France, November 24, 1994). Parties are held liable for delays only when there is clear evidence of bad faith on their part.

5.1.2. Analysis of Criteria Relating to the Nature of the Dispute

a. The Complexity of the Case

The analysis of the complexity of a case is based on a combination of several variables relating to the subject matter and character of the case (Tulkens, 2006). Judges take into account how the facts are presented and the procedural steps required to reach a decision. For example, factors indicating complexity include the need to hear numerous witnesses, difficulty in locating witnesses, the need for expert reports, translation of documents, the use of an interpreter or letters rogatory, and an international dimension

necessitating extradition. Complexity may also arise from the number of parties involved or the volume of evidence to be gathered. Legal complexity can also arise from the scarcity of case law at the national level, making it necessary to refer to a regional court for interpretation of the law. It may also involve the need for scientific analysis or the extensive investigations requiring infiltration, shadowing, or electronic monitoring. Additional factors contributing to complexity include legislative changes, interactions between administrative and judicial proceedings, the expectation of a criminal judgment blocking the outcome of the civil trial, the joining of several cases, the need to reconcile the individuals and community interests, and the involvement of multiple defendants (European Commission for the Efficiency of Justice, 2018).

Nevertheless, the complexity of a case is not always enough to justify the length of a procedure. Other criteria must also be taken into account. Complexity does not rule out the possibility of unreasonable delay in even very complex cases, delays can occur and be sanctioned by taking into account these different criteria for assessing reasonable time. This was the case in Ferrantelli and Santangelo v. Italy, decided on August 7, 1996. The final conviction of the applicants, who were minors at the time, came after sixteen years and two weeks of proceedings. Although the case was considered complex, this delay was deemed unreasonable by the European Court of Human Rights. The court acknowledged the complexity of the case, given the nature of the charges and the jurisdictional issues arising from crimes committed simultaneously by minors and adults. While the various phases of the proceedings were conducted at a regular pace, the court found an inexplicable stagnation of nearly two years during the initial investigation, leading to a finding of unreasonableness.

b. Stake for the Claimant

Some cases require greater speed than others. The nature and importance of the issues at stake may, in certain instances, demand special diligence from judicial authorities. The importance of the case for the claimant means that certain cases, known as priority cases (European Court, Ruiz-Mateos v. Spain judgment of June 23, 1993), require special promptness. The latter is beneficial not only for the claimant but also, in some cases, for society as a whole due to its potential social and economic impact (European Court, Ruiz-Mateos v. Spain judgment of June 23, 1993). For example, in cases concerning alimony, personal status, and legal capacity, the stakes for the claimant is a relevant criterion. Special diligence is also due to the potential consequences of excessive delays, particularly the right for respect for family life (Strasbourg judgment, Laino v. Italy, February 18, 1999).

Similarly, in criminal matters, the need for swiftness is even more critical, and greater diligence is required, particularly when the accused is remanded in custody. The deterrent effect of criminal law is only effective if society can see that the perpetrators of crimes are brought to trial within a short time and, if found guilty, sentenced within a reasonable period. At the same time, innocent suspects undeniably have a very strong interest in having their innocence recognized as quickly as possible.

The African Court has stressed the importance of a speedy judicial process, especially in criminal matters. The maxim often used in this respect is "justice delayed is justice denied". When society realizes that the judicial settlement of disputes is too slow, it can lose confidence not only in judicial institutions, but above all in the peaceful settlement of disputes (African Court, Wilfred Onyango Nganyi and 9 others, p. 40, §127). Particular diligence is also required in cases where the applicants' physical integrity is affected, as well as in cases involving people with reduced life expectancy (Tulkens, 2006, p.7). The same requirement applies to cases involving maintenance, labor, and social security disputes, including pension-related matters (European Court, Toth v. Hungary judgment of March 30, 2004).

5.2. Impact of the Implementation of Reasonable Time Criteria on the Length of Legal Proceedings

In the light of international jurisprudence on the criteria of reasonable time, it should be noted that the implementation of these criteria has made it possible to reconcile the requirements of both length of proceedings and the right of defence with those of speed. It has also helped to reduce downtime and promote reasonable timeframes for legal proceedings. Indeed, European case law, which has influenced the African Court’s jurisprudence, reveals the following standards regarding the length of proceedings (European Commission for the Efficiency of Justice, 2018).

- A total duration of up to two years per level of jurisdiction in normal (non-complex) cases is generally considered reasonable. When proceedings exceed this period, the court examines the case closely to determine whether there are objective factors contributing to its complexity and whether national authorities have exercised due diligence.
- In complex cases, the court may grant additional time but remains particularly attentive to manifestly excessive periods of inaction. However, the longest period granted is rarely more than five years and almost never exceeds a total of eight years.
- In so-called priority cases involving a particular issue, the court may depart from the general approach and find a violation even if the case has lasted less than two years per level of jurisdiction. This is

particularly true when the applicant's life or state of health is at stake, or when a delay could have irreversible consequences for the applicant.

- The only cases in which the court did not find a violation despite the manifestly excessive length of the proceedings are those in which the applicant had contributed principally to the length of the proceedings through his dilatory behaviour.

It should be noted that these are merely guiding standards, and the European Court may deviate from them depending on the specific circumstances of each case. Nevertheless, the implementation of these criteria has significantly contributed to reducing the length of legal proceedings and to advance the reasonable time of trial.

5.3. The Concept of Reasonable Time for Trial under Burundian Law

In Burundian law, the recurring conflict between protecting the rights of the defense and expediting proceedings in the interests of the parties involved mirrors challenges observed in other jurisdictions. Unlike Burundian positive law, States parties to the European Convention on Human Rights and certain African States have adopted case law on reasonable trial time in order to resolve these problems. They have introduced mechanisms into their domestic legislation to monitor and sanction unreasonable delays, thereby reducing procedural delays.

In Burundian legal practice, the emphasis on the rights of the defense sometimes comes at the detriment of celerity, as shown by case law which focuses more on the principle of contradiction, which has no time limit. According to the Cassation Chamber of the Supreme Court of Burundi, in ruling RCC 11063, the principles of adversarial proceedings and respect for the rights of the defense practically overlap and complement each other (RCC 11063, August 31, 2005, pp.19, 20, 21). Regarding the principle of contradiction, the Supreme Court of Burundi, in its RAA 597 ruling of December 30, 2005, declared that its limit lies in the judge's power to halt pleadings when he considers himself sufficiently enlightened (Nouvelle revue de droit du Burundi, April /May 2007, p.7).

In light of this jurisprudential affirmation, a crucial question arises: When can a judge be considered sufficiently informed? Is it by the third hearing?

The absence of a precise timeframe makes it difficult to balance the right to defense with the requirement of a prompt trial.

When a litigant-whether as a delaying tactic or for legitimate reasons-requests a postponement based on the right to defense, such as awaiting legal assistance or the communication of exhibits, the judge faces a dilemma.

Denying the request could risk violating the right to defense, while granting indefinite delays undermines the right to a trial within a reasonable time. Without a fixed deadline for submitting necessary documents, the judge may not receive timely information, and the unrestricted wait for document production can ultimately breach the reasonable time requirement for proceedings.

For instance, in judgment RAC 3922, in the case of KA. GB vs. the State of Burundi, the Administrative Court of Bujumbura granted 17 postponements over six years, all justified by the needs to uphold the right to defense. The case was adjourned for various reasons: to await the appearance of the defendant, to await the production of the reply, to await the appointment of lawyers, to await the consultation of the submissions made on the spot, to await the communication of exhibits and written pleadings between the parties to the proceedings, to await the petitioner, and to await the opinion of the public prosecutor. According to the minutes of public hearings, these delays spanned from April 28, 2008, to March 5, 2014, when the case was finally taken under advisement. Despite being filed on January 30, 2008, a judgment was not rendered until March 31, 2014—more than six years after the initial petition. This illustrates how procedural safeguards can sometimes contribute to excessive delays, challenging the balance between legal guarantees and judicial efficiency

Moreover, the appeal of this judgment before the Administrative Chamber of the Supreme Court of Burundi took place on December 9, 2016, under RAA 1372—two years after the initial judgment due to the losing party’s failure to promptly serve the decision. This underscores the crucial role that litigants' actions play in the overall duration of legal proceedings. The case was finally judged on its own merits and pronounced on December 4, 2020, after nearly 4 years before the Supreme Court and 12 years and 11 months since the motion to institute proceedings in the first instance.

Similarly, case RS 11430, a labor dispute, arising from the claimant's dismissal, which normally requires particular speed, lasted more than 9 years and 6 months. The claimant brought the case before the Labour Court on January 9, 2012, but a final decision was only rendered on July 2, 2021, under RTC 2000 by the Supreme Court’s Cassation Chamber. This was due to multiple appeals and remands before the Bujumbura Court of Appeal. Even more striking is case RC 15063, a family dispute that extended over 14 years and eight months. Initially filed with the High Court of Bujumbura City Hall on August 1, 2005, the case was only resolved on March 4, 2020, under RTC 1635 by the Supreme Court’s Cassation Division, following numerous appeals and remands before the Court of Appeal of Bujumbura.

For all practical purposes, it should be noted that the slowness of these cases stems from various reasons for postponement, primarily out of

respect for the right of defense: waiting for the defendant's submissions and appearance, several times in succession, waiting for the pay slip, waiting for the outcome of the criminal case, waiting to consult the submissions made without delay, waiting for the parties to appear, or even indefinite postponement (sine die) among others. Before the Supreme Court, these cases have been reopened to regularize the seat following the transfer of several judges who had previously presided over them. These cases illustrate the slowness of proceedings due to the problem of reconciling the rights of the defense and the speed of the trial. They also reflect a failure to comply with international jurisprudence, as no speed is given to the handling of social and family cases of a maintenance nature.

In view of this gap in jurisprudence regarding the criteria for reasonable time in Burundian law, the resulting consequence is slowness, which hampers the speed of legal proceedings. There is reason to believe that implementing these criteria would have a positive effect on reasonable trial duration by reducing unnecessary delays. Indeed, according to the report on European jurisprudence, the involvement of states parties to the European Convention in implementing these criteria has promoted reasonable trial times (European Commission for the Efficiency of Justice, 2018, p.5). Statistically, violations of the right to be tried within a reasonable time have fallen considerably. While a previous version of this report indicated that breaches of this right were among the most frequent violations of the Convention—ranking as the second most common out of 24 in 2012 and 2013—these breaches had dropped to the fifth most common cause of violation. This change can be explained primarily by the improvement in judicial procedures due to the reforms introduced by member states to comply with the case law of the European Court.

Taking into account the advances made in this jurisprudence, which has also influenced the African Court, if Burundian judges were to adopt similar principles, the investigation of the trial would significantly reduce the dead time of the trial and the inaction of the courts. It would also make it possible to mitigate the dilatory manoeuvres put forward by tireless litigants who sometimes take refuge behind the requirements of the right of defense. This analysis confirms the hypotheses.

Conclusion and Recommendations

The analysis shows that the problems of reconciling the rights of the defense with the need for a speedy trial under Burundian law lead to unreasonable delays in legal proceedings. International jurisprudence has established criteria for assessing reasonable time, which have influenced the legislation of European and certain African states. This jurisprudence has promoted reasonable trial times, and the efficiency and credibility of the

justice system by reducing delays. In Burundian law, the slowness of trials is a recurring problem, as the right to a reasonable time and its assessment criteria are virtually ignored in practice. The fact that the right to reasonable time is not asserted before Burundian courts by litigants who are the victims of unreasonable delay also contributes to the slowness of trials. The lack of jurisprudence on reasonable time indicates that the judicial system does not fully grasp its essence. The excessive delays observed in some trials serve as clear indicators that this guarantee is not being interpreted or applied at its true value.

Admittedly, Burundi is bound by the international instruments that served as the basis for this jurisprudence-namely, the African Charter on Human Rights, ratified through Decree-Law No. 1/029 of July 28, 1989, and the Protocol establishing the African Court, in effect since June 27, 2000. As a result, Burundian legislators, judicial and state authorities, and legal practitioners, including magistrates and lawyers, should seize the opportunity to optimize judicial time, minimizing unnecessary delays during trials. Civil society and non-governmental organizations working in the field of justice should sensitize and encourage the judicial community to capitalize on this international jurisprudence, which has promoted the celerity of legal proceedings to establish, both in law and in practice, the guarantee of being judged within a reasonable time, which is an essential cornerstone of a fair trial.

Following the example of the European Court, which requires member states to organize their judicial systems in such a way that their courts can guarantee everyone the right to obtain a final decision on disputes within a reasonable time, the African Court should enjoin countries to include reasonable time criteria in their domestic legislation. State and judicial authorities should be aware of the implications and possible sanctions for failing to comply with the reasonable time requirement for trials and should anticipate possible legal action by the victims of unreasonable delay against the state. As Professor Soraya Amrani-Mekki asserts, celerity must not be so fascinating as to disrupt the balance of power within the trial, undermine procedural formalism, or compromise the rights of the defense. It must be pursued with restraint, in concreto, ensuring that the time saved does not translate into a loss of quality. The Burundian judge should maintain control over the investigation process, remaining clear-sighted and serving as the ultimate guardian of both fairness and celerity. This would enable him to remain in harmony with Franc Abikhzer's idea of offering justice to the litigant as quickly as possible. According to this author, time is such a precious commodity, and reasonable delay is a fruit bursting with promise.

In the same vein, Didier Cholet's perspective is valid: "The requirements of a fair trial, such as equality of arms, giving reasons for court decisions, the right to be heard in adversarial proceedings, and the right to a judge, can only be achieved over time, within a timeframe that may potentially conflicts with the principle of celerity. It is therefore necessary to reconcile celerity with these different requirements."

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