

Contents

1 Introduction	1
1.1 Framing the Issue	2
1.2 Purpose of the Book	4
1.3 Delineation and Definitions	6
1.4 Outline	9
References	12
2 Human Rights Framework	13
2.1 Introduction	14
2.2 Protection of the Suspect or Accused	18
2.2.1 Right to a Fair Trial	18
2.2.2 Right to an Effective Remedy	65
2.2.3 Right to Compensation in Case of Unlawful Arrest or Detention	73
2.2.4 Procedural Violations in the Context of Inter-State Cooperation in Criminal Matters	75
2.3 Protection of Others	83
2.3.1 States' Duties in Responding to Serious Human Rights Violations	84
2.3.2 Applicability of States' Duty to Prosecute to International Criminal Tribunals	96
2.4 Conclusion	98
References	101
3 Judicial Responses to Pre-Trial Procedural Violations in the Netherlands	105
3.1 Introduction	106
3.2 Relevant Aspects of the Dutch Legal System	107
3.3 Theoretical Framework: Possible Points of Departure and Specific Rationales	110

3.3.1	The Concept of the Rule of Law	111
3.3.2	The (Protection of the) Subjective Rights of the Accused	119
3.3.3	The Need to Ensure the Accused's Right to a Fair Trial	124
3.3.4	The Primacy of Crime Control	125
3.4	Legal Framework	126
3.4.1	Procedural Violations in the National Context	126
3.4.2	Procedural Violations in an International Context	160
3.5	Synthesis	164
3.6	Conclusion	175
	References	177
4	Judicial Responses to Pre-Trial Procedural Violations in England and Wales	181
4.1	Introduction	182
4.2	Relevant Aspects of the English Legal System	183
4.3	Theoretical Framework: Possible Rationales	185
4.3.1	The Reliability Rationale	186
4.3.2	The Disciplinary Rationale	188
4.3.3	The Protective (or Remedial) Rationale	189
4.3.4	The Integrity Rationale	193
4.4	Legal Framework	197
4.4.1	Procedural Violations in the National Context	197
4.4.2	Procedural Violations in an International Context	244
4.5	Synthesis	247
4.6	Conclusion	257
	References	260
5	Law and Practice of the International Criminal Tribunals—General Overview	261
5.1	Introduction	262
5.2	Features of International Criminal Procedure	263
5.3	Ad Hoc Tribunals	269
5.3.1	Stay of Proceedings	269
5.3.2	Exclusion of Evidence	280
5.3.3	Financial Compensation	298
5.3.4	Sentence Reduction	302
5.3.5	Express Acknowledgement	304
5.4	ICC	305
5.4.1	Stay of Proceedings	305
5.4.2	Exclusion of Evidence	322
5.4.3	Financial Compensation	333
5.4.4	Sentence Reduction	337
5.4.5	Express Acknowledgement	338

5.5	Comparison	339
5.5.1	Stay of Proceedings	339
5.5.2	Exclusion of Evidence	344
5.5.3	Financial Compensation	347
5.5.4	Sentence Reduction	348
5.5.5	Express Acknowledgement	348
5.6	Conclusion	348
	References	350
6	Law and Practice of the International Criminal Tribunals—Specific Contexts	353
6.1	Introduction	354
6.2	Judicial Responses to Procedural Violations Connected to Arrest and Detention	356
6.2.1	Ad Hoc Tribunals	356
6.2.2	ICC	377
6.2.3	Comparison and Analysis	389
6.3	Judicial Responses to Procedural Violations Connected to Disclosure	397
6.3.1	Ad Hoc Tribunals	398
6.3.2	ICC	416
6.3.3	Comparison and Analysis	427
6.4	Conclusion	432
	References	434
7	Assessment of the International Criminal Tribunals’ Law and Practice	437
7.1	Introduction	438
7.2	Evaluation in Light of Human Rights Standards	439
7.2.1	The Right to a Fair Trial	439
7.2.2	The Right to an Effective Remedy	448
7.2.3	The Right to Compensation in Case of Unlawful Arrest or Detention	455
7.2.4	Procedural Violations in the Context of Inter-State Cooperation in Criminal Matters	457
7.3	Comparison to National Law and Practice	460
7.3.1	Exclusion of Evidence	461
7.3.2	Stay of Proceedings	480
7.3.3	Other Responses	498
7.3.4	Procedural Issues	501
7.4	Further Analysis	503
7.4.1	The Most Suitable Rationale for Responding to Procedural Violations	504

7.4.2	The Merits of Judicial Discretion	511
7.4.3	The Distinctive Features of International Criminal Procedure	515
7.5	Concluding Remarks	518
	References	518
8	Conclusion	521
	References	531
	Bibliography	533
	List of Cases	543
	List of Instruments	559
	Index	563



<http://www.springer.com/978-94-6265-218-7>

Judicial Responses to Pre-Trial Procedural Violations in
International Criminal Proceedings

Pitcher, K.

2018, XII, 567 p., Hardcover

ISBN: 978-94-6265-218-7

A product of T.M.C. Asser Press