
Time limitations for intellectual property in criminal and civil litigation: a comparative study of England and Jordan

Mohammad AlKrisheh*

Public Law Department,
College of Law Al Ain University,
Al Ain, UAE
Email: mohammad.alkrisheh@aau.ac.ae
*Corresponding author

Nour Hamed Alhajaya

Private Law Department,
College of Law,
Al Ain University,
UAE
Email: nour.alhajaya@aau.ac.ae

Firas Massadeh

College of Law,
Al Ain University,
UAE
Email: firas.massadeh@aau.ac.ae

Abstract: In this review of Jordanian and English intellectual property laws, it became apparent that there are few legal rules regulating time limitations for civil or criminal cases. In English law, one such rule stipulates a civil limitation of no less than six years; however, there is no statute of time limitation for criminal cases, and therefore criminal offences do not fall under such limitations. In comparison, in Jordanian law the text of Article 272 of the civil law applies in relation to a statute of civil limitations. The aggrieved party may claim compensation arising from a violation of financial and intellectual property rights up to three years from the date of the victim's knowledge of the offence. In all cases, the hearing may not progress 15 years from the date of the offence. The study concluded with some recommendations.

Keywords: intellectual property; time limitations; criminal litigation; civil litigation; crime; civil wrongdoing; criminal liability; civil liability; TRIPs agreement; Jordanian Law; UK and Wales law.

Reference to this paper should be made as follows: AlKrisheh, M., Alhajaya, N.H. and Massadeh, F. (2021) 'Time limitations for intellectual property in criminal and civil litigation: a comparative study of England and Jordan', *Int. J. Private Law*, Vol. 10, No. 1, pp.18–30.

Biographical notes: Mohammad AlKrisheh is an Associate Professor in Criminal Law in Al Ain University. He received his PhD in Criminal Law, Ain Shams University, Egypt. His research interests are general penal law, private penal law, criminal procedure, criminology and the science of punishment, cybercrime, criminal protection of the sanctity of private life. He has many publications in well-respected journals. He has supervised many masters and doctoral theses.

Nour Hamed Alhajaya is a Professor of Private International Law at Al Ain University. He holds a Doctorate in Private International Law from Rouen University in France. He has nearly 30 research papers and books, most of them in Arabic, some in French, and some in English, all of which are scientifically referred. Research interests in the topics of private international law, in particular conflict of laws, international jurisdiction, nationality, enforcement of foreign judgments, international commercial arbitration, international trade, civil law and civil procedure law. He has extensive experience in refereeing scientific research in Arabic and French, and has supervised many masters and doctoral theses.

Firas Massadeh is an Associate Professor in Intellectual Property Law in Al Ain University. He received his PhD in Intellectual property Law from the school of law at the well renowned University of Newcastle in the UK. His research interests are IP law enforcement, TRIPS agreement, copyright law, trademarks law and trade secrets in addition patent law, IP law enforcement and third parties rights. He has many publications in well-respected journals all in English. He co-supervised master students.

1 Introduction

Criminal defendants are protected by Article 6 ECHR for valid reasons, with such protection covering the preparation and preliminary stages before the trial, the trial itself, and the sentence and appeal. However, the main consideration of this right is the second of these phases, the trial, since this is when innocence or guilt is determined. Indeed, a criminal charge is unlikely to be upheld if a decision is made which dismisses the likelihood of a trial, or sentencing, or punishment.

One safeguard for the accused is the presence of a time limit —a limitation or prescription period —after which criminal proceedings may not be instituted or continued after a period of inactivity. Another related safeguard is the right for the criminal proceedings, once instituted, to be concluded within a reasonable time. The application of these time limits needs to reflect the interests of all parties involved – the accused and the victim, as well as the interests of society, in the implementation of justice. In the European draft instrument, maximum sentences of at least four years are proposed for serious intellectual property offences. Unsurprisingly, however, the draft is silent as to time limits, and these therefore fall under the application of national rules.

One preliminary question which arises here is whether time limitations are part of procedural or substantive law.¹ The answer to this seems to depend upon the jurisdiction and nature of the limitation. In the context of civil claims, English law has traditionally regarded limitation or prescription periods as procedural rather than substantive,² although decisions from other common law jurisdictions³ suggest that limitation rules are

substantive. Indeed, the European Court of Human Rights (ECHR) has found it difficult to categorise time limits.⁴ Some time limits are clearly procedural, for example the 60-day period for adducing new claims in administrative proceedings, challenged in *Peterbroek v Belgian State*.⁵ Moreover, Le Seuer has stated that,

National limitation periods cannot be relied upon by a public authority to defeat a claim raising Community rights where what is at issue is the Member State's failure to implement a directive.⁶

Despite the lack of clear cut exemplification of procedural rules concerning fair trials and time limits, as well as the provisions of Art. 6 ECHR or Art. 14 ICCPR for that matter, it might be assumed that time limitations are embodied in the provisions of Art. 6, even though not mentioned explicitly. Indeed, as Zuckerman states, "No reasonable interpretation of ECHR Art 6. can possibly assume that a fair trial is a rule-free trial". Zuckerman expanded on this idea in the context of Art. 6 by saying that,

A system of procedure has to strike a balance between three imperatives: the need to determine the truth, the need to do it within a reasonable time and the need to achieve all this within the available resources. The concrete results of this formative balance are expressed in the detailed rules of procedure, which thereby define the contours of procedural justice, of a fair trial. Accordingly, the time-limits represent a fair allocation of procedural resources.⁷

The Jordanian Court of Cassation, Civil Chamber, has referred to limitation of actions as procedural.⁸ This approach has been adopted in more recent cases, in which the court applied Art. 109 of the Civil Procedures Act 1988, which determines that time limitation status is a procedural safeguard for the accused, and the designated court should determine this matter before viewing substantial matters.⁹ It is probable that this distinction is not crucial, unless there is a conflict of laws. For the purpose of the comparisons made in this article, we assume that time limits are procedural, as criminal proceedings are less often beset by conflict issues than civil proceedings.

In this commentary, we compare the situation in Jordan with the UK jurisdiction¹⁰ of England and Wales and the civil law jurisdiction of the EU.¹¹ Jordanian procedures have mainly been influenced by civil law (especially French law), but also to a certain extent by common law, and moreover the influence of Islamic law is less pronounced in Jordan's criminal procedural system than in its civil system. Jordan has entered a 'Euro-Med' association agreement with the European Community and its Member States,¹² and this agreement has greatly affected Jordan's intellectual property and labour laws. Jordan, England and Wales therefore have a common interest in the protection of defendants and the criminal justice system¹³ by means of time limits for intellectual property prosecutions, and their differing national approaches illuminate certain problems and benefits in this regard.¹⁴ In England and Wales, for many intellectual property crimes, time limits are wholly a matter of the court's discretionary control over its procedures, while Jordan has a statutory system of interlocking time limits with a 'long stop' period between commission of the offence and sentence. The central question which will therefore be considered in this paper is how the procedural aspect of the right to a fair trial plays a role in IP protection and enforcement.

2 Time limits: England and Wales vs. Jordan

2.1 England and Wales

In England and Wales, prosecutions for intellectual property offences can arise from grievances made to the police, although this is not the only reason.¹⁵ Local weights and measures authorities¹⁶ must enforce trade mark law under s93 of the Trade Marks Act 1994, as well as copyright enforcement under s107A of the Copyright, Designs and Patents Act 1988.¹⁷ The three main types of criminal offence in England and Wales can be classed from minor to major. Offences summarily tried in magistrates' courts, known as summary offences, are considered the most minor, while the most serious are tried by judge and jury upon indictment in Crown courts, following committal by the magistrates' courts. The third class of offences falls in between minor and major offences and may be tried either summarily or by indictment.¹⁸ In 1999, a review by the Criminal Courts of England and Wales noted that just under three quarters of magistrates' cases were summary offences, 1% were indictable offences, and one quarter were triable either way.

At present there are substantive offences relating to the copyright and related rights and trademarks. Under the Copyright Designs and Patents Act 1988, s107, some offences are triable either way, for example s107(1)(a), (b), (d)(iv) and (e), for which a ten year maximum sentence of imprisonment was introduced,¹⁹ s107(2A),²⁰ s296ZB,²¹ s297A.²² Other copyright offences are summary, for example s107(5), s201 and s297, and for these the six month period applies.²³ Offences under s92 of the Trade Marks Act 1994 are triable either way, with a maximum term of imprisonment of ten years.²⁴ In the EU, maximum sentences of at least four years are proposed for serious intellectual property offences, and this places such offences beyond the summary range known to English criminal law.

For summary offences, criminal proceedings must begin within six months of the offence, under the Magistrates' Courts Act 1980 s127(1). This does not apply to indictable offences s127(2). As Dennis has put it, "a person's security and settled expectations always yield to a well-founded prosecution of him for a serious offence".²⁵ Neither does the six month time limit apply to offences triable either way.²⁶ Thus, under EU proposals, intellectual property defendants in England and Wales would be at the mercy of courts' application of their discretionary powers, and, indeed, the exercise of the power to stay criminal proceedings has been criticised as unduly restrictive, especially in the context of youth justice.²⁷ However, there is an advantage in having the flexibility to do justice to the circumstances of a particular case. For example, the legislator may have difficulty in setting specific time limits that are short enough to provide adequate security and settled expectations for the accused, but long enough to satisfy the public interest in the prosecution of serious offences.

The question that arises here is how a discretionary approach may be used to ensure that criminal proceedings are instituted, continued and completed within a reasonable time. The classic English technique is to stay, or perhaps dismiss, proceedings where reasonable passages of time have been exceeded. However, as regards the remedy for breach of the right to a hearing within a reasonable time, the House of Lords has held that a stay of prosecution will not automatically be granted;²⁸ this remedy depends upon whether the delay made fair conduct of the trial impossible.²⁹ It may be that any unfairness can be removed by the exercise of the judge's discretion within the trial process itself; in such a case, a stay would undermine the right to be tried.³⁰ In

formulating their conclusions, the majority³¹ in *Attorney-General's Reference (No 2 of 2001)* referred to case law from Canada, the USA and New Zealand.³² This case also dealt with a second issue: “In the determination of whether, for the purposes of Article 6(1) of the Convention, a criminal charge has been heard within a reasonable time, when does the relevant time period commence?” The court’s answer was that, “As a general rule, the relevant period will begin at the earliest time at which a person is officially alerted to the likelihood of criminal proceedings against him”.³³ This formulation was said to give effect to jurisprudence under the European Convention on Human Rights, whilst also being comparatively easy to apply in England and Wales. The purpose of the reasonable time requirement was invoked due to the need “to ensure that criminal proceedings, once initiated, are prosecuted without undue delay; and to preserve defendants from the trauma of awaiting trial for inordinate periods.” The period would ordinarily begin when the accused is formally charged or served with a summons.³⁴ However, the House of Lords applauded the Court of Appeal for declining to lay down any inflexible rule.

The traditional justifications for limitation periods —protecting the defendant and their ‘interest in repose’, the deleterious effect of the passage of time on the quality of evidence and the speedy resolution of disputes —have been criticised by Patten as flawed in the context of personal injury claims.³⁵ Patten’s first two objections are more relevant to the criminal process than the third. In a criminal case, the accused’s interest in repose is balanced by the right to be tried and also the public interest in detecting and punishing crime, including the interests of the victims of crime. The passage of time may or may not be deleterious to the quality of evidence and this is one of the main factors the court considers when deciding whether to proceed with trial or stay the process. However, in the context of youth crime, Jackson, Johnstone and Shapland highlight the especially serious effects on young people of having a potential criminal proceeding hanging over them for prolonged periods.³⁶ Elsewhere, Jackson and Johnstone³⁷ argue persuasively that four principles may justify a stay beyond the basic tenet that a stay should be granted when it is no longer possible to guarantee a fair trial: the principles of legitimacy,³⁸ protection,³⁹ discipline⁴⁰ and finality.⁴¹

Apart from the general remedies of stay or dismissal, the impact of the passage of time on other aspects of prosecuting intellectual property crimes must also be considered, especially regarding whether these would in turn influence the basic time limits. The remedy of delivering infringing articles is not available once the civil limitation period of six years has expired.⁴² There would also probably be reluctance to prosecute after six years, when presumably the mischief of putting infringing articles into circulation is seen as spent. We are not aware of a case in which this has been an issue.

One may also argue that a prosecution should not be brought after the period of limitation for civil proceedings has expired. In *R v Johnstone*, it was held that the criminal provisions of the Trade Marks Act 1994 should not be interpreted to allow a criminal offence in circumstances which did not amount to a civil infringement.⁴³ In England and Wales, the civil limitation period is six years from commission of the specific tort, under the Limitation Act of 1980.⁴⁴ This is despite the fact that criminal and civil proceedings are wholly distinct in England and Wales, being pursued in separate courts. By contrast, as outlined below, in Jordan it is possible for both civil and criminal aspects of infringement to be heard together, leading to a reduction in the usual 15-year prescription period for civil claims to the relevant ten-year period of a criminal procedure.⁴⁵

2.2 *Jordan*

In Jordan, intellectual property proceedings can be civil, criminal or mixed, where a claim for personal compensation on behalf of the victim is filed in coordination with the criminal process. Where a civil claim only is pursued, the limitation period is determined by the Jordanian Civil Act no. 43 of 1976 (JCA 1976). Art. 449 of the JCA 1976 mentions the general provisions that govern time limitations according to the act, and the nature of the civil rights granted by the same.⁴⁶ Note that this involves prescription of actions rather than extinction of obligation. The limitation period runs from the first moment that a claim can be brought. For example, in a claim based on breach of contract, time begins from the breach rather than from the contract date.⁴⁷ The 15-year limitation period is called the 'long limitation period' because, for some substantive claims, shorter limitation periods apply.⁴⁸ For example, claims to rental under oral tenancies⁴⁹ and claims for professional salaries and fees⁵⁰ must be brought within five years. However, if the relationship on which the claim is based is recorded in a written document, then the short limitation period applies and claims for professional salaries and fees must be brought within five years. However, if the relationship on which the claim is based is recorded in a written document, then the long limitation period applies. An even shorter limitation period of two years is applicable to certain disputes involving manufacturers and merchants.⁵¹

For intellectual property enforcement, from a civil law perspective, the time limit is an issue which requires consideration concerning whether the short two-year or long limitation period should be applied. It may be said in general terms that the limitation period applicable to civil intellectual property claims is the long one, because shorter time periods apply only to claims specified in JCA 1976. Careful perusal of the limitation provisions of this act, as amended, shows no mention of intellectual property infringement as qualifying for the shorter limitation periods. The period will therefore be 15 years unless there are special provisions elsewhere governing intellectual property enforcement and claims. However, the intellectual property regime in Jordan does not apply a specialised proceedings system in either civil law or criminal prosecution procedures. Therefore, the general rules on civil procedure, including limitation periods, will be applied by the court hearing a civil-only dispute concerning intellectual property infringement.⁵² It should be noted that the period of limitation may be ended when a legitimate excuse is available.⁵³

The court cannot decide by itself that the law suit is barred by expiration of the limitation period, but any concerned party can file an application asking for the dismissal of the case.⁵⁴ Whoever has such an interest can apply for dismissal of the case at any stage of the law suit, unless the circumstances or conditions of the case prove otherwise, and the party or person has abandoned their right to the dismissal of the case.⁵⁵

Time limits in criminal or other cases involving a criminal prosecution and a claim to compensation are governed by the Jordanian Criminal Procedures Act no. 9 of 1961. Art. 338⁵⁶ deals with time limits in terms both of the expiry date by which to file the civil law suit and the public authority's ability to prosecute a capital crime, as measured from the day the crime was committed.⁵⁷ This provision is extended to misdemeanours by Art. 339.⁵⁸ According to relevant IP laws in the Jordanian legal system, intellectual property infringements that can be criminalised according to the concerned laws or acts will be considered misdemeanours. This is due to the fact that the punishment ranges from between not less than one week and not more than three years for all violations of IPRs.⁵⁹

The Jordanian Criminal Act 1960 sets the rules for what may be considered a misdemeanour from the punishment perspective, and all the IP offences fall within the misdemeanour punishment range.

Art. 339 of JCPA 1961 deals with matters concerning criminal and civil personal remedies related to private compensation of the victim of misdemeanours.⁶⁰ This gives to the accused the benefit of the shorter time period in relation to the civil as well as criminal liability. However, the victim also gains from the mixed procedure in that generally the state has the burden of proof, albeit to the higher criminal standard. In a civil case, this burden would be upon the claimant, but to the lower civil standard. Thus, mixed cases and criminal-only proceedings are governed by the criminal time limits, discussed next.

There are two types of time limit concerning prosecution of crimes in general according to the Jordanian Criminal Procedures Act 1961. One type prevents implementation of the punishment,⁶¹ while the other limits the prosecution process as a whole—commencement, any delays, and conclusion.⁶²

2.2.1 Time limits for punishment

This type of time limitation comes into play once the criminalised infringement has been prosecuted through investigation and trial stages and the suspect or accused has been convicted. The time period starts when the judgment is final, there is no other revision or appeal available, and the defendant for whatever reason has not yet been subject to imprisonment, either because of fleeing from custody or having never appeared at court during the prosecution process.⁶³ In the case of a conviction in the absence of the accused,⁶⁴ the time limit begins according to rules and provisions of the JCPA from the day the sentence is delivered.⁶⁵ The time for punishment is calculated by reference to the length of the sentence. Art. 344 JCPA 1961 deals with time limits concerning misdemeanours, stating that, “1) The time period to prevent the implementation of the punishment of misdemeanours is double the sentence the court has decided, as long as this is not longer than ten years and less than five. 2) The time period that prevents implementation of the punishment for any other misdemeanours is five years.” Once the time expires, the punishment falls, but this does not mean that civil damages fall as well.⁶⁶ If a decision is reached in the absence of the defendant, then the limitation period will in practice be double the sentence, as long as it does not exceed five years.⁶⁷

2.2.2 Time limits that prevent the criminal prosecution process as a whole

Prosecution of crimes in general may not be legally accessible after a certain period of time has passed, and the complainant will lose their right to prosecute the possible accused.⁶⁸ Due to the fact that there are no specific provisions ruling criminal infringements of intellectual property, the normal criminal proceedings under the jurisdiction of the Criminal Procedures Act shall be implemented. Accordingly, IP infringements that may be considered a crime are misdemeanours, and the prosecution time limit is three years from the date the crime (the IP infringement), if the prosecution process never commenced.⁶⁹ The more obvious situation is, also, if three years passed from the last procedure in the prosecution process.⁷⁰ It has to be mentioned that time limits according to the provisions of legislation and judicial practice in the Jordanian legal system are considered a procedural tool, which can be used by either party as an

instrument to prevent any illegal procedures that may occur and affect the interests of those concerned.⁷¹ Therefore, this time limit is not a tool restricted to benefiting the accused by preventing the complainant from seeking what may be their right to gain profit from their assets, or to avert any infringement of intellectual property. In being so, it is one of various means by which to assure legitimacy. As the Court of Cassation concluded, “Therefore, in conclusion the time limits period applies upon the defendant and the punishment is not applicable upon [them], since ten years has passed by from the date of the conclusion of the trial on 30/03/1996”.⁷²

Time limitation is one of five applications the parties involved in the case can apply for before the commencement of the legal procedures according to Art. 109 of the Civil Procedures Act, and the party who does not use such a right to file their application according to the rules and provisions shall lose such a right. As mentioned above, the court elaborated on the significance of time limitations on civil litigation and trial procedures:

Limitation period is a procedural process that has its own conditions and requirements in order to be implemented and the party involved who has legal legitimate cause to apply for time limits procedures must be accordingly that the requirements mentioned in Article (109) from the Civil Procedures Act have been fulfilled; and in this case according to the Act previously mentioned in Chapter Five, Article sub section (1) that the accused has the right before the commencement of the law suit to apply for all the applications as long as [they] file for them all in one individual application; and due to the fact that the applicant (accused) has not done so and the prosecution did not follow the procedural process, therefore the application can only be dismissed.⁷³

3 Conclusions and findings

In conclusion, the significance of the provisions related to time limitation in the legal systems of concern in this study is related to its safeguarding role over the judiciary system and trial process. Time limits are a means to assure the objectivity of the trial as a process in general, and criminally in particular, either in criminal prosecution or the matters related to criminal enforcement of intellectual property. This is due to the reasoning of time limit procedures and the aims and goals intended to be achieved in the protection of the parties involved in the trial or prosecution process in general. Time limitations are considered procedural safeguards, the mission of which is to support the main principles required for fair trial —legitimacy, discipline,⁷⁴ protection, and finality— as seen in the following:

The Court of Cassation found that the lower court did not make sure that the defendant has understood the concept of the crime and its consequences that may affect [them]. And did not implement Article (232) from the criminal procedures Act and overlooked that the defendant clearly understood the meaning of this Article.⁷⁵

Another verdict confirmed this approach:

And due to the fact that the sentence is finalised and the case has not been appealed to the Court of Cassation. The rulings of both the lower courts contained misinterpretations of the law that have been dealt with either by the Court of First Instance and later on by the Court of Appeal.⁷⁶

Hence, there is a need to balance the interests of the parties involved (the accused, complainant and attorney general's department, as a representative of the public interest or society) in either legal/judicial system under study.

4 Comments and recommendations

Based on the findings and conclusion, the following recommendations are made:

- 1 The procedural safeguards could be noted in the most explicit manner in the time limitation periods justifications.⁷⁷ Stability and finality are two significant factors in a proper judicial process, whether criminal or civil litigation. Time limitation periods also provide sufficient guarantees to the parties involved in the trial procedures at all levels. The accused, the claimant, and the personal complainant have steady time limits that safeguard their interests through a fair trial. They provide precautionary procedural measures that preserve the rights of the parties involved as well as the public order in just and fair trial proceedings. Time limitations ensure a fair trial is apparent in that they have significant implications for the outcomes of the trial process as a whole. Time limitation periods as a procedural safeguard to the accuracy of the trial process may be carefully scrutinised during judicial review. Procedural law has a significant function in the implementation of substantive laws and immense value in providing the courts with the ability to perform their duties efficiently. The procedural aspects of time limitations are more explicitly on display in the criminal enforcement procedures in TRIPs, in which the general picture of the enforcement procedures points toward just and fair procedures that can be implemented through the criminal enforcement provisions in TRIPs in a more tangible and realistic fashion.
- 2 Time limitation periods are a tool which, if applied accurately by the parties involved in the judicial procedures, can safeguard the complainant, personal complainant (IP right holders or owners), accused, and/or the attorney general's department, thereby preserving the trial process as a whole and IP rights. A more comprehensive examination of the role and longevity of time limitations is essential for an effective judicial enforcement process for IP infringements. The accused and the attorney general have a major interest in legitimate, speedy and limited trial procedures.
- 3 Provisions should be included in the TRIPs agreement by amending the agreement to include time limitation status that provides minimum safety periods for the civil/commercial and criminal measures of protection, especially Art. 41 and 42 and Art. 61 of the agreement.

Nevertheless, the legal provisions related here do not live up to the theoretical reasoning behind time limitations. The balance between the maximum imprisonment sentence and the time limitation period is unstable and should be examined.

Notes

- 1 On the significance of this distinction, see J.A. Jolowicz On the nature and purposes of civil procedural law [1990] CJK 262, commenting upon Sir Jack Jacob's Hamlyn Lectures *The Fabric of English Civil Justice* (1987).
- 2 A McGee *Limitation Periods* (Sweet & Maxwell 5th revised ed., 2008) []; N Andrews, *English Civil Procedure: Fundamentals of the New Civil Justice System* (OUP, Oxford, 2003) but Foreign Limitation Periods Act 1984.
- 3 E.g. *Maxwell v Murphy* (1957) 96 CLR 261 (Aus); *Bournias v Atlantic Maritime Co* 220 F. 2d 152 (2nd Cir. 1955) (US) cited by Hakeem Seriki *Substantive or procedural: an arbitration perspective* [2006] Int ALR 24. However, in *McKain v R.W Miller Co.* (S.A.) Pty. Ltd. (1991) 66 ALJR. 186 the Australian Court found a South Australian civil limitation period (for personal injury claims) to be procedural, by a majority of four to three. Opeskin regards the majority view as inertial, and commends the reasoning of the minority: Brian R Opeskin *Choice of law in torts and limitation statutes* [1992] LQR 398
- 4 As for example in *Stubbings v. United Kingdom* (1997) 23 EHRR 213; see A Le Sueur *Access to justice rights in the United Kingdom* [2000] EHRLR 457
- 5 [1995] E.C.R. I-4599.
- 6 A Le Sueur *Access to justice rights in the United Kingdom* [2000] EHRLR 457, citing C-208/90, *Emmott v. Minister for Social Welfare and Attorney General* [1991] IRLR. 387.
- 7 Adrian Zuckerman 'Dismissal for disobedience of pre-emptory orders - an imperative of fair trial' [2001] CJK 12.
- 8 See the rules and decisions noted below at *n* (619), *n* (620) *n* (621) and (322).
- 9 (See Jordanian court of cassation decision, appeal no. 152 of 2008, Dated: 23rd Sep 2008) <https://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=1918064>.
- 10 Please note that Scots criminal law and procedure differs from that in England and Wales. These aspects of the law in N Ireland are more similar to England and Wales.
- 11 Warm thanks to Dr. Inmaculada Gonzalez Lopez for information on the Spanish system.
- 12 Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2002] OJ L 129/3.
- 13 As Lord Hope of Craighead commented in *Ruddy v Procurator Fiscal* [2006] UKPC D2 at para 8, "Criminal prosecutions are conducted in the public interest." Thus, the interests of justice must be placed in the balance along with the rights of individuals.
- 14 These three countries have also ratified two important international instruments in this regards – the UN International Covenant on Economic, Social and Cultural rights and the UN International Covenant on Civil and Political Rights.
- 15 Recital 11 of the amended draft states ' To facilitate investigations or criminal proceedings concerning intellectual property offences, these may not be dependent on a report or accusation made by a person subjected to the offence.'
- 16 Often referred to as 'Trading Standards': for a range of links to information about trading standards issues, see: < http://www.tradingstandards.gov.uk/links/links.cfm#Legal_Sites > (accessed 29 April 2008).
- 17 Brought into force along with s198A on 6 April 2007 by the Criminal Justice and Public Order Act 1994. (Commencement No. 14) Order 2007 SI 2007 No 621. Sections 107A and 198A had previously been inserted into the 1988 Act under section 165 of the Criminal Justice and Public Order Act 1994, but not brought into force.
- 18 'Indictable offence', 'summary offence' and 'offence triable either way' are defined in the Interpretation Act 1978, s5 and Sched 1.
- 19 bBy the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002, as from 20 November 2002: SI 2002 No 2749.
- 20 2 years maximum.

- 21 2 years.
- 22 10 years.
- 23 S107(5) CDPA 1988 was amended according to the 2010 Regulation 5 No.2649 the word 'three' substitute 'six' the offence in discussion under s107(5) becomes a triable either way offence rather than a summary offence as it used to be before the amendment.
- 24 Again introduced by the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002 with effect from 20 November 2002: SI 2002 No 2749.
- 25 Ian Dennis Rethinking double jeopardy: justice and finality in criminal process [2000] Crim LR. 933
- 26 *Kemp v Leiberr-GB* [1987] 1 All ER 865; see case comment by C.E. Bazell Offences triable either way - time limit for bringing proceedings [1987] 51(3) J Crim L at 225-227.
- 27 John Jackson, Jenny Johnstone The reasonable time requirement: an independent and meaningful right? [2005] Crim LR. 3-23.
- 28 *Attorney-General's Reference (No 2 of 2001)* [2003] UKHL 68. For criticism of this decision, see J Jackson, J Johnstone The reasonable time requirement: an independent and meaningful right? [2005] Crim LR 3
- 29 This criterion may satisfy all interests concurrently – those of the accused, the victim and society.
- 30 [2003] UKHL 68 at [20]-[22]; “the right of a criminal defendant is to a hearing”.
- 31 “(1) Criminal proceedings may be stayed on the ground that there has been a violation of the reasonable time requirement in article 6(1) of the Convention only if (a) a fair hearing is no longer possible, or (b) it is for any compelling reason unfair to try the defendant.”: [2003] UKHL 68 at [29] per Lord Bingham of Cornhill, with whom Lord Nicholls of Birkenhead, Lord Hobhouse of Woodborough, Lord Millett and Lord Scott of Foscote agreed. Two Scots members of the House dissented. The Scots approach is preferred by J Jackson, J Johnstone *The reasonable time requirement: an independent and meaningful right?* [2005] Crim LR 3. See, also, C Himsworth Jurisdictional divergences over the reasonable time guarantee in criminal trials [2004] Ed. LR 255.
- 32 “In Canada it has been held that in circumstances such as these a stay should be granted: *Rahey v The Queen* (1987) 39 DLR (4th) 481; *R v Askov* [1990] 2 SCR 1199; *R v Morin* [1992] 1 SCR 771. A similar answer has been given in the United States: *Doggett v United States* (1992) 505 US 647. In the face of a long and unjustified delay by a prosecutor, the New Zealand Court of Appeal has allowed an appeal against refusal of a stay: *Martin v Tauranga District Court* [1995] 2 NZLR 419”.
- 33 *Attorney-General's Reference (No. 2 of 2001)*c[2003] UKHL 68cat [27]-[28].
- 34 Thus, arresting or interviewing of a suspect would not start time running, at least until caution were issued. An official warning letter might. Ibid, citing *Fayed v United Kingdom* (1994) 18 EHRR 393, 427-428, para 61; IJL, *GMR and AKP v United Kingdom* (2000) 33 EHRR 225, 258-259, para 131; *Howarth v United Kingdom* (2000) 31 EHRR 861 considered.
- 35 Keith Patten *Limitation periods in personal injury claims - justice obstructed?* [2006] C.J.Q. 349.
- 36 John Jackson, Jenny Johnstone, Joanna Shapland Delay, Human Rights and the Need for Statutory Time Limits in Youth Cases [2003] Crim LR 510.
- 37 John Jackson, Jenny Johnstone The reasonable time requirement: an independent and meaningful right? 2005 Crim LR 3-23.
- 38 E.g. *Darmalingum v Mauritius* [2000] 1 WLR 2303, where proceedings were dismissed in the light of a 15 year delay in
- 39 Protection of society was exemplified by *Flowers v The Queen* [2000] 1 WLR 2396, albeit a decision now discredited. [further ref needed]
- 40 Here Jackson and Johnstone emphasise the need for salutary lessons for tardy prosecutors – they regard *Attorney-General's Reference (No 2 of 2001)* as a lost opportunity to impose such discipline in England and Wales.

- 41 Delays detract from the presumption of innocence by prolonging a cloud of suspicion over defendants. Victims of crime also have an interest in finality, sometimes characterised as 'closure'.
- 42 Copyright, designs and Patents Act 1988, s108(3)(a) referring to s113(4).
- 43 *R v Johnstone* [2003] UKHL 28; [2003] 1 W.L.R. 1736; [2004] E.T.M.R. 2.
- 44 Also in N Ireland. The limitation period for civil actions in Scotland is 5 years rather than 6.
- 45 Jordanian Criminal Procedures Act 1961, Art 338.
- 46 Art 449 Civil Act states "The obligations concerning any rights of the applicant do not fall due time, but the law suit concerning any civil rights cannot be filed or heard if fifteen years pass by without any legitimate excuse, with taking in consideration any other special provisions that deal with this matter".
- 47 Art 454 Jordanian Civil Act no43, 1976.
- 48 According to articles 450, 451, 452 and 453 of JCA 1976.
- 49 For 'repeatable' civil rights such as the rent of house, buildings, agricultural lands and salaries, the limitation period is five years according to article 450(1) JCA1976 as long as this period does not contradict with any specific provisions of other acts.
- 50 For the fees of doctors, pharmacies, attorneys, experts, school teachers and book dealers, the limitation period is five years according to article 451(1) JCA1976 as long as this period does not contradict with any specific provisions of other acts.
- 51 Where the civil law suit is concerning the rights of the merchants and manufacturers and restaurant and hotel owners concerning materials they manufactured for others, it cannot be presented at a court of law after two years in case of denial and the lack of legal evidence: Article (452)JCA1976. This article deals in its second subsection with rights and wages of house servants.
- 52 The limitation period is counted in days from the day after the first day of the beginning of the period, and the period is considered complete when the last day is over unless this day is an official holiday, in which case the limitation period is extended to next working day: Art 456 JCA1976.
- 53 Art 457 JCA 1976.
- 54 Art 464 JCA 1976.
- 55 Article 464(2) JCA 1976.
- 56 Art338 (1) Jordanian Criminal Procedures Act no 9 1961 according to its latest amendments 'The public order case and case for personal compensation is considered as invalid if ten years passed by from the day the capital crime has been committed and no prosecution happened at all'.
- 57 A crime such as murder, abduction, rape for which punishment is the death penalty, or life imprisonment (25 years) article 342 JCPA 1961. There are also lesser capital crimes which attract shorter maximum penalties.
- 58 'The same two suites mentioned above are invalid in ten years from the latest procedure in the whole criminal judicial process'.
- 59 Art 51(A) of the Jordanian Copyright Act no 22 1992 "The punishment for any person who infringes any rights mentioned in articles 810 and 23 or any actions mentioned in sub sections (1 and 2) from this article is not less than three months and not more than three years and a fine not less than 1000 JD and not more than 3000 JD and either both punishments could be applied or both". And also see Article 32(A) of the Jordanian Patent Act no 3)1999, the punishment is not less than three months and not more than one year and/or fine not less than 100 JD and not more than 3000 JD. Art38(1) of the Jordanian Trademarks Act no 33 1952, states that the punishment for counterfeiting a trademark according to the provisions of this Act is imprisonment for a period not less than three months and more than one year or/and not less than 100 JD and more than a 3000 JD fine. And also article 415 which deal with trade secret breach if it criminalised, from the Jordanian Criminal Act 1960 according to its latest amendments.

- 60 Art339 Jordanian Criminal Procedures Act states ‘Both criminal and personal compensation in misdemeanor is considered as if it never existed in the same conditions mentioned in the previous article’.
- 61 Articles 342-344 Jordanian Criminal Procedures Act no. 9 1961.
- 62 Articles 338-340 JCPA no. 9 1961.
- 63 Article 344(1) (2) JCPA no. 9 1961.
- 64 In which a final verdict is delivered as in Art 338 and 341 or final procedural element of prosecution/trial.
- 65 Jordanian Criminal Procedures Act no. 9 1961.
- 66 *Ibid*, Article 341(2).
- 67 *Ibid*.
- 68 Jordanian Court of Cassation Criminal Chamber Case no. (1345/2007) *Time limits Criminal aspect* “The Court of Appeal rightfully decided to dismiss the Attorney General’s appeal on the bases that arrest warrants are not legal actions that could bring to an end the time limitation period according to the provisions of the Criminal Procedures Act.” it could be understood according to the court of cassation that arrest warrants are applicable to be considered reasons to break the continuity procedures of time limits.
- 69 *Time limits/Alia*, Article 339 Jordanian Criminal Procedures Act no. 9 1961.
- 70 *Ibid*, (338, 339).
- 71 Article 109(1)(d) Jordanian Civil Procedures Act no. 24 1988 according to the latest amendments in Act no. 14 2001.
- 72 *Jordanian Court of Cassation Criminal Chamber Case no. (1345/2007) [Time limits Criminal aspect]*.
- 73 *Jordanian Court of Cassation Civil Chamber [Time Limits that prevents Civil Litigation, Applications, Individual applications]* sited at: <<http://www.adaleh.info/>> or at: <<http://www.adaleh.com>> accessed at 02 June 2008; also see decisions (2006/1714) published in 11 July 2007, (2006/618) published in 30/10/2006 and 2304/2005 published in 30/11/2005; Jordanian Court of Cassation Civil Chamber. The website mentioned above is a Jordanian recently formed website that specialises in providing legal and judicial information to the interested legal scholars, judges and solicitors. It provides up to date related information in Jordanian case law and legislation to private users or related ministries and courts.
- 74 Article 291(3) Jordanian Criminal Procedures Act, 1961 states ‘3- If the court- of cassation- validates the conditions it could annul the decision or procedures, and the personal responsible of the violation could be prosecuted if required.’ [This approach has not been active in practice at least on judges] the violations mentioned in in this sub-section is referred to in the previous parts of this article, which deals with the reasoning for judicial review. However even if disciplinary procedures are not activated it could judge could be cautioned on the administrative level [relocation...etc.] One of the reasons is the expiry of appeal due to the finality of the ruling. Such situation mentioned do have an impact on time limitations.
- 75 *Court of Cassation Criminal Chamber Case no. (1143/2008)*, fair trial, Right of defence and the absences of the translator.
- 76 *Court of Cassation Criminal Chamber Case no. 885/2004: [A Cassation according to an order by the minister of justice]* cited www.adaleh.com on 11/10/2019.
- 77 As mentioned in the concluding section of 5.5 time limits f/ns 506-509 pages 168-169 from this thesis. And ns 468-471 in the same section of the thesis.