



## REASONABLE DURATION OF THE TAX PROCESS

### ORIGINAL ARTICLE

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### ABSTRACT

This article aims to see the role of the principle of reasonable duration of the process in the constitutional and procedural tax scope, as well as its interconnection with the field of Human Rights. The principle of reasonable duration of the process is based on several legal diplomas, among them the Universal Declaration of Human Rights and the American Convention on Human Rights. A comparison was made with other legal systems, such as Italian and Spanish, where it was possible to verify that said principle is part of their respective constitutional texts. In Brazil, the principle of reasonable duration of proceedings is supported by the Federal Constitution, as well as by infraconstitutional legislation. Finally, it was possible to verify that, despite the advances, the existing norms combat the tax authorities' slowness, but not the inertia of the Judiciary, leading to constant violations of this fundamental principle in the tax field and in the world of Law as a whole.

Keywords: Human Rights, Tax Law, Reasonable Duration of the Process, *Pro-Persona* Principle, Legal Security.

### 1. INTRODUCTION

The protection of Human Rights has always been a central point in the national legal system. Motively, the Federal Constitution of 1988 (FC/88) inserted, in its text, a series of rights inherent to the human condition, recognizing the importance of defending and fighting for such rights, transforming them into fundamental rights and true stony clauses, always aiming at its due respect and effective fulfillment in the factual world. Being the most important legal norm, and the base of support and reasoning of the Brazilian legal system, the FC/88 posited Human Rights with several objectives,



among them the creation of a support, a justification, a foundation of legal legitimacy, so that they are truly applied and fulfilled in the most diverse interpersonal relationships in Brazilian society, even if coercively.

In the international scenario, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations (UN), aimed, in the post-war context, to establish a series of principles and rights that should be guaranteed to all, regardless of origin or the place where every human being lives. With this, a minimum common denominator was formed, referring to the theme of Human Rights, which should be respected under any conditions, being completely intolerable any type of violation of the existential minimums listed in this document.

In this context, the Brazilian Major Law guaranteed its citizens numerous rights inherent to man. Among the fundamental rights guaranteed to citizens by FC/88, the existence of the principle of reasonable duration of the process stands out, a principle that is directly related both to the principle of legal certainty and also to the principle of due process of law, and which projects to ensure to the jurisdictional, among other extremely important aspects, a real predictability about the procedural duration, of the dispute between parties, avoiding mere arbitrariness, unnecessary and unreasonable extensions of disputes, whether of a judicial or administrative nature and, together with this, avoiding the establishment of a chaotic scenario, of complete legal uncertainty, which would completely threaten the integrity of the Brazilian legal system.

In the context of the defense of Human Rights, the Inter-American System of Human Rights plays a very important role which, through the American Convention on Human Rights (ACHR), signed in San José, Costa Rica, on November 22, 1969, raised to a new level the most basic rights inherent to the human condition, among them the principle of reasonable duration of the process. With this, the ACHR established standards, that is, minimum levels to be respected by all who are submissive to its commands, which aim to certify that these basic rights are respected at the regional level, carrying out a conventionality control so that they are protected in the internal sphere of each State.



Always focused on the *pro-persona* principle, the ACHR, in some of its articles, explicitly and clearly addresses the need for those under jurisdiction to be subject to a process with a reasonable duration, without arbitrariness and without unreasonable delays, demonstrating the importance of such a principle; and how this fundamental right is part of the field of Human Rights. Along with this, it lists, among the rights and obligations linked to the reasonable duration of the process, the rights and obligations of a fiscal nature, that is, those that are within the tax field.

This article, in turn, aims to investigate how international organizations, the Inter-American System of Human Rights, the FC/88 and the infraconstitutional legislation have acted in the protection of the reasonable duration of the process and, more specifically, in the quest to ensure a reasonable duration for the tax process, whether in the judicial or administrative field. The study also verifies how the principle of reasonable duration of the process has been applied in the tax procedural scope of Brazil through its legislation.

Also, as an objective, it seeks to identify the existing problems in the Brazilian legal system, with regard to the principle of reasonable duration of the process in the tax field as a whole; its gaps and what possible improvements could exist to enable a more effective protection of this fundamental right, always looking for a true guarantee to the taxpayer that his right to be a party to a process of adequate duration, whether judicial or extrajudicial, is actually respected.

## 2. METHODOLOGY

As a methodology for carrying out this study, the deductive scientific method was used. First, the concept of the principle of reasonable duration of the process and its direct relations with 2 (two) other principles of great importance were addressed: the principle of legal certainty and the principle of due process of law. Having a clarity of concepts and what the doctrine says about these principles was the starting point, the basis for all subsequent study.



Then, starting from the premises of these concepts, it was verified how documents of international scope and from other legal systems deal with the principle of reasonable duration of the process. Emphasis was given to the UN UDHR, the ACHR, and the Constitutions of other legal systems, such as Italian, Spanish and infraconstitutional legislation.

With this, it was possible to identify failures and gaps in the migration process from the legislative theoretical plan to the factual plan, draw conclusions and allow suggestions for improvements to be made for a greater and more effective application of the principle of reasonable duration of the tax process, in order to that it protects, in a more efficient way, this fundamental right so precious to the national legal system.

### 3. THE PRINCIPLE OF THE REASONABLE DURATION OF THE PROCESS

It is clear that the principle of reasonable duration of the process starts to stand out with the increasing need to ensure greater effectiveness of the judicial protection of rights and of the process itself. As Dinamarco (2013, n.p.) teaches, “the passage of time causes certain rights to be eroded, which is why the swift procedural process becomes too important”.

That is, to prevent rights from perishing over time, and for judicial protection not to become ineffective, a reasonable duration of the process as a whole, from its beginning to its end, becomes a *sine qua non* condition, with the effective fulfillment of the decision arising from the process, whether administrative or judicial.

As mentioned earlier, there is an intrinsic link between the principle of reasonable duration of proceedings, the principle of legal certainty and the principle of due process. These are principles valued to the extreme in the Brazilian legal system. About this very relevant relationship, teaches Carrazza (2023, p. 404-405), a true reference on these topics:

Trata-se, como é fácil perceber, de mais uma manifestação do princípio da segurança jurídica, que não se compadece com a



tramitação desmesurada dos processos. Não negamos que os processos devem observar um tempo mínimo de maturação, idôneo a assegurar a adequada colheita das provas, a oitiva de testemunhas, a realização das necessárias perícias, a manifestação das partes litigantes, a análise percuciente pelo julgador das questões de fato e de direito, e assim avante. Todavia, uma vez assegurada a efetividade da tutela administrativa ou judicial, qualquer procrastinação será juridicamente patológica [...].

It is interesting to note the term used by the author. Carrazza (2023) considers the procrastination of litigation to be a true “legal pathology”. However, this does not mean that the process should skip steps, that it should not observe the necessary maturation, and that it will not go through all the necessary steps so that the appropriate response to the dispute in question is given.

Thus, the relationship between the principle of reasonable duration of the process, the principle of legal certainty and the principle of due process of law is evident. Avoiding “excessive delays” (CARRAZZA, 2023, p. 404) ensures trust in the legal system, predictability of the phases to be followed, and confidence in the effective and adequate response to be given by jurisdiction.

Having made these considerations, it is essential to establish what would be, in practice, the duration of the process that is considered admissible. Otherwise, there is room for absolute subjectivity. How, then, to measure what is considered reasonable and what would be unreasonable? Would there be any parameter to serve as a starting point, treating the acceptable duration of the process as something more objective and less subjective? Or is reasonableness something completely subjective?

Once again, Carrazza (2023, p. 405) measures the reasonable duration of the process quite precisely, solving this imbroglio with a rather simple answer:

Xa – Mas, afinal, que vem a ser *razoável duração do processo*? Numa primeira aproximação, *razoável duração do processo* é aquela estipulada na lei. A ultrapassagem do prazo legal, salvo justificativa plausível, implica, em linha de princípio, dilação irrazoável do processo.



In this way, one moves from subjectivity to greater objectivity. What is the reasonable duration? The one provided for by law. With that, in theory, there should be no room for discussion in the practical field about what would be considered a reasonable duration. The law applies. As a result, the task of reflecting on and elaborating a law that meets society's wishes is transferred to the legislator and, at the same time, allows the process to go through the necessary stages of maturation, respecting the principle of due process of law and the principle of the wide defense.

As if that were not enough, Carrazza (2023) teaches that any overrun of the legal deadline would only be acceptable in the event of an acceptable justification. It will not be discussed here which justifications are considered possible or not, since this is not the purpose of this article. However, any other hypothesis, other than that of a plausible justification, will cause an unreasonable delay in the process and frontal violations of the principle of reasonable duration of the process, the principle of legal certainty and the principle of due process of law.

#### **4. FUNDAMENTAL RIGHT IN THE INTERNATIONAL SCOPE**

Having considered the principle of reasonable duration of proceedings, and its relations with the other precepts mentioned above, we proceed to analyze the foundations of the principle of reasonable duration of proceedings in the international spectrum, its influences exercised in the Brazilian legal system, in addition to its insertion in other legal systems, such as Italian and Spanish.

It can be seen, therefore, that contempt, ignorance and jettisoning of Human Rights can lead to barbarism, as occurred shortly before the proclamation of this important document. The violation of Human Rights had as one of the consequences, during the 2nd World War, the systematic genocide of the Jewish people and other minorities.

In this way, the UDHR appears in a contrary movement, of defense and that sought to guarantee a series of rights to the human being, regardless of the context in which he lived. Among the various rights guaranteed, there is, implicitly, that of procedural celerity, that of reasonable duration of the process. Assert said document:



Art. 2º - Todos os seres humanos podem invocar os direitos e as liberdades proclamados na presente Declaração, sem distinção alguma, [...].

Art. 7º - Todos são iguais perante a lei e, sem distinção, têm direito a igual proteção da lei. Todos têm direito a proteção igual contra qualquer discriminação que viole a presente Declaração e contra qualquer incitamento a tal discriminação. [...].

Art. 8º - Toda a pessoa tem direito a recurso efetivo para as jurisdições nacionais competentes contra os atos que violem os direitos fundamentais reconhecidos pela Constituição ou pela lei.

Art. 10 - Toda a pessoa tem direito, em plena igualdade, a que a sua causa seja equitativa e publicamente julgada por um tribunal independente e imparcial que decida dos seus direitos e obrigações ou das razões de qualquer acusação em matéria penal que contra ela seja deduzida.

Art. 11 - Toda a pessoa acusada de um ato delituoso presume-se inocente até que a sua culpabilidade fique legalmente provada no decurso de um processo público em que todas as garantias necessárias de defesa lhe sejam asseguradas (DUDH, 1948).

In this way, it becomes evident how the principle of reasonable duration of the process is implicitly present in this document of such importance and influence in the global sphere, encouraging other legal diplomas, whether regional or internal in each State, to reinforce and to unravel this principle, always with the objective of seeking an effective fulfillment of the dispositions.

With this, the Inter-American System for the Protection of Human Rights, through the ACHR, addresses the reasonable duration of the process more explicitly than the UDHR, even going so far as to demonstrate the importance of protecting human rights taxes and the reasonable duration of the tax process, object of this study.

Establishes the ACHR:

Art. 7º. Direito à liberdade pessoal [...]. 5. Toda pessoa detida ou retida deve ser conduzida, sem demora, à presença de um juiz ou outra autoridade autorizada pela lei a exercer funções judiciais e tem direito a ser julgada dentro de um prazo razoável ou a ser posta em liberdade, sem prejuízo de que prossiga o processo [...]. 6. Toda pessoa privada de liberdade tem direito a recorrer a um juiz ou tribunal competente, a fim de que este





decida, sem demora, sobre a legalidade de sua prisão ou detenção e ordene sua soltura se a prisão ou a detenção forem ilegais (BRASIL, 1992).

Note 2 (two) words that draw attention in art. 7 of the aforementioned Legal Diploma: “without delay”. However, this expression appears written 2 (twice) times, clearly demonstrating the relevance of procedural speed and obtaining a court decision within a reasonable period.

And continues the article. 8 of the same Legal Standard:

Art 8º. Garantias judiciais 1. Toda pessoa tem direito a ser ouvida, com as devidas garantias e dentro de um prazo razoável, por um juiz ou tribunal competente, independente e imparcial, estabelecido anteriormente por lei, na apuração de qualquer acusação penal formulada contra ela, ou para que se determinem seus direitos ou obrigações de natureza civil, trabalhista, fiscal ou de qualquer outra natureza (BRASIL, 1992).

Here, it was decided to clearly state that a “reasonable period” is necessary to determine the tax rights of each person in the procedural field. There is, therefore, something magnificent: the combination of 2 (two) ideas, one of a procedural nature (reasonable duration of the process) and another of a material nature (substantive tax law), leveraged to the level of basic human rights, necessary for the dignified human existence.

Speaking on this topic, Piovesan (2019, p. 230), former Vice-President of the Inter-American Commission on Human Rights, asserts:

O art. 25.1 da Convenção Americana sobre Direitos Humanos, de 1969, determina que os Estados-membros devem oferecer a todas as pessoas sob sua jurisdição um recurso judicial simples, rápido e efetivo contra atos violadores de seus direitos. Segundo a Corte Interamericana, este dispositivo deve ser interpretado à luz das regras do devido processo (previstas no art. 8º), tudo isso dentro da obrigação geral dos Estados de garantir o livre e pleno exercício dos direitos reconhecidos na Convenção, prevista no art. 1º do mesmo instrumento. [...] Uma leitura sistemática da Convenção Americana, à luz da jurisprudência da Corte Interamericana, demonstra que o art. 25 consagra, em conjunto com o art. 8º, o direito de acesso à justiça e, especificamente, o dever do Estado de garantir acesso à administração da justiça para a tutela de direitos humanos.





It should be noted that Piovesan (2019) writes that Member States' responses must be quick and effective, acting against acts that violate human rights.

Since both legislations were signed and ratified by Brazil, they were effectively incorporated into the Brazilian legal system, and must be complied with internally, even if their origin is outside the Brazilian borders.

By way of comparison, we also point out here 2 (two) examples of European legal systems, in which the principle of reasonable duration of the process is present, positive in the respective constitutional texts, as in the Italian Constitution:

*Titolo IV - La Magistratura - Sezione I - Ordinamento giurisdizionale: Articolo 111 - La giurisdizione si attua mediante il giusto processo regolato dalla legge. Ogni processo si svolge nel contraddittorio tra le parti, in condizioni di parità, davanti a giudice terzo e imparziale. La legge ne assicura la ragionevole durata (COSTITUZIONE ITALIANA)[2].*

*Ipsis litteris*, the Italian Constitution, in its text, is direct in asserting that the law ensures the reasonable duration of the process. For the Italians, this is a basic principle, which goes hand in hand with the adversarial principle and the principle of impartiality of the judge.

In the same tone, the Spanish Constitution points out:

*Artículo 24. [...] 2. Asimismo, todos tienen derecho al Juez ordinario predeterminado por la ley, a la defensa y a la asistencia de letrado, a ser informados de la acusación formulada contra ellos, a un proceso público sin dilaciones indebidas y con todas las garantías, a utilizar los medios de prueba pertinentes para su defensa, a no declarar contra sí mismos, a no confesarse culpables y a la presunción de inocencia (CONSTITUCIÓN ESPAÑOLA)[3].*

The Spanish legislator, by emphasizing the value of full defense, the presumption of innocence rule, and other guarantees, opted to jointly write about the right to a public trial without undue delay.

It is important to mention that, throughout the present study, no judgment of the Inter-American Court of Human Rights (IACHR) was found that directly protected the



reasonable duration of the tax process. However, this is not due to the fact that it is not a right guaranteed by the Inter-American Human Rights System, but rather because the States subordinated to this system commit systematic violations of Human Rights, having to prioritize other violations to be judged.

## **5. THE CONSTITUTIONALIZATION OF THE REASONABLE DURATION OF PROCEEDINGS IN BRAZIL**

Constitutional Amendment No. 45, of December 30, 2004, expanded the scope of fundamental rights present in FC/88, demonstrating the importance of ensuring a reasonable duration for the process, and everything that is necessary to guarantee that the process proceeds fast way:

Art. 5º. Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes:

[...]

LXXVIII - a todos, no âmbito judicial e administrativo, são assegurados a razoável duração do processo e os meios que garantam a celeridade de sua tramitação (BRASIL, 2004).

In this regard, Carrazza (2023, p. 404) writes that the aforementioned Constitutional Amendment “conferred to those subject to jurisdiction lato sensu the right to obtain a decision within a reasonable time, that is, without delays beyond the account”.

It can be seen how meticulous the legislator was when establishing that the reasonable duration of the process and its speed in processing must permeate both the judicial contentious sphere, as well as the administrative field.

Thus, the Constituent Power was cautious in detailing that said principle is not restricted to the world of judicial litigation, but must also be present in the administrative field. With this, any inertia or unreasonable delay of the process is refuted, regardless of where this delay occurs.



It is a pathology that, if not fought in an adequate and efficient manner, can undermine the citizen's confidence in the Brazilian legal system as a whole, since they would not have the guarantee that their rights could be effectively protected by the legal system.

Even so, despite several advances, reality shows that, in practice, this principle continues to be constantly violated, especially in the field of Tax Procedural Law. These practical violations in judicial tax disputes are the subject of a later chapter in this scientific article.

## **6. INFRACONSTITUTIONAL LEGISLATION IN THE FIELD OF TAX LAW**

Following the constitutional command, it was up to the infraconstitutional legislator to adopt the necessary measures for the principle of reasonable duration of the process to materialize in the procedural spheres. Despite the fact that this is an ironclad clause, and is a guiding principle of the legal system, Carrazza's teaching (2023) was previously demonstrated, that the law must establish what this reasonable duration would be.

That is, it is a right that needs to be made possible through legislative measures, establishing what is reasonable, what is unreasonable, in which cases it is permissible to exceed legal limits, and what should happen in the event of this principle be disrespected. Failure to adopt these measures may simply undermine this principle.

Prima facie, it is worth highlighting what the Codex Procedural Civil (CPC) states about the reasonable duration of the process: "Art. 4th The parties have the right to obtain, within a reasonable time, the full solution of the merits, including the satisfactory activity" (BRASIL, 2015).

In addition to reinforcing the FC/88 order, art. 4 of the CPC announces that the reasonable duration of the process is not restricted to one stage or another, but rather to obtain the full solution of the merits, including the satisfactory activity itself. The judicial process, by itself, is a means and not an end. The purpose of the dispute is to obtain a solution based on the merits and to have the activity satisfied. Otherwise, the court process is useless. Thus, the right to a reasonable duration of the process is not



restricted to the medium itself, to one stage or another of the dispute, but reaches even the true solution and the complete satisfaction of the demand therein.

Walking in the same direction, and as a result of the influence of the constitutional commandment, Law nº 11.051/2004 inserted § 4 in art. 40 of Law nº 6.830/80, ensuring, at least in theory, a more reasonable duration for tax foreclosures.

That is, with this insertion, it was possible to verify and enact the intercurrent statute of limitations, avoiding, in several cases, a non-scriptibility of the Tax Execution. Prudent, therefore, to verify, *in verbis*, what went on to dictate said article:

Art. 40. O Juiz suspenderá o curso da execução, enquanto não for localizado o devedor ou encontrados bens sobre os quais possa recair a penhora, e, nesses casos, não correrá o prazo de prescrição.

[...]

§4º Se da decisão que ordenar o arquivamento tiver decorrido o prazo prescricional, o juiz, depois de ouvida a Fazenda Pública, poderá, de ofício, reconhecer a prescrição intercorrente e decretá-la de imediato (BRASIL, 2004).

With this, there is the consecration of a true advance in the search for a judicial process with a reasonable duration, but with several gaps, which will be addressed later. In the words of Costa (2023, p. 120), prescription and decay are expressions of legal certainty, since they are “founded on the idea that inertia in the exercise of a right, for the legally established period, leads to its perishing”.

In the same toar, the National Tax Code (NTC) defines:

Art. 174. A ação para a cobrança do crédito tributário prescreve em cinco anos, contados da data da sua constituição definitiva.

Parágrafo único. A prescrição se interrompe:

I – pelo despacho do juiz que ordenar a citação em execução fiscal;

II – pelo protesto judicial;

III – por qualquer ato judicial que constitua em mora o devedor;



IV – por qualquer ato inequívoco ainda que extrajudicial, que importe em reconhecimento do débito pelo devedor (BRASIL, 1966).

And, similarly, in the administrative field, art. 24 of Law nº 11.457/2007 defined the duration of the administrative process at the federal level: “Art. 24. It is mandatory that an administrative decision be issued within a maximum period of 360 (three hundred and sixty) days from the taxpayer's filing of petitions, defenses or administrative appeals” (BRASIL, 2007).

With that, the taxpayer is not left simply “seeing ships”. He knows that, once a certain petition or appeal is filed, the administrator will have a maximum period of 360 days to assess the petition. Thus, the taxpayers trust in the system, not feeling left out, abandoned by the administrative field, and knowing that their demand will be considered within the period established by the infraconstitutional legislation.

## 7. CONCLUSION

To conclude, the words of Carrazza (2023, p. 405) are necessary, which summarizes that the lack of effectiveness of judicial measures, already adopted for compliance with the principle of reasonable duration of the process, is due to the lack of sanctions in cases of violation of the constitutional norm:

Embora a inovação seja altamente louvável, somos um pouco céticos em relação à sua efetividade na esfera judicial, dada a inexistência de sanção (salvo a sempre improvável decretação de inconstitucionalidade por omissão, no caso de ausência de norma legal regulamentadora deste direito) para o descumprimento da regra constitucional. De qualquer modo, cria um estímulo à celeridade da tramitação dos processos – fiscalizável, em última análise, pelo Conselho Nacional de Justiça (art. 92, I-A, da CF).

That is, the absence of sanctions, as a result of violations of this principle, is one of the main reasons why the said principle continues to be violated. Possibly, if there were a more explicit and direct prediction of sanctions, the reality would be different. It is not enough to say, command, so that the process has a reasonable duration, so that it



does not take time without justification. Unfortunately, it is necessary to predict penalties for cases of violation of the constitutional and infraconstitutional command.

Only with the imposition of sanctions for non-compliance with the principle of reasonable duration of proceedings, and with greater commitment from the Judiciary, will more accentuated changes in the duration of litigation be noticed, guaranteeing, to the taxpayer, the application of the principle of reasonable duration of the process.

Otherwise, it will be ineffective, since the command, by itself, without the provision of sanctions for the hypotheses of violations, simply perpetuates the non-compliance with this principle, so consecrated, frustrating the trust of the taxpayer in the legal system.

Much progress has been made in legislative matters, whether at the international or national level. Guarantees exist and must be met. It lacks, however, the existence of a mechanism capable of transferring the effective defense of the fundamental right to the reasonable duration of the process from the legislative theoretical field to the realistic factual plane. This instrument is the true gap in the principle of reasonable duration of proceedings.

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## APPENDIX - FOOTNOTE

2. Title IV - The Judiciary - Section I - Judicial Organization: Article 111 - Jurisdiction is exercised through a fair process regulated by law. Each process takes place in the contradictory between the parties, under conditions of equality, before a third and impartial judge. The law guarantees its reasonable duration (ITALIAN CONSTITUTION).

3. Article 24. [...] 2. Furthermore, everyone has the right before an ordinary judge predetermined by law, to the defense and the assistance of counsel, to be informed of the charge made against them, to a public trial without undue delay and with all the guarantees, to use the relevant means of proof for their defense, not to incriminate themselves, not to plead guilty and to the presumption of innocence (SPANISH CONSTITUTION).

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