PUBLIC ANNEX A

Table of Authorities

Short Form Citation	Long Form Citation	Relevant passages or comments (non-exhaustive)
Introduction		
Regional Courts		
ECHR	*Geerings v. the Netherlands* (Application no.30810/03) Judgment, 1 March 2007, available at https://www.legal-tools.org/doc/863af1/pdf/	§ 49 '49. In the *Asan Rushiti* judgment (cited above, § 31), the Court emphasised that Article 6 § 2 embodies a general rule that, following a final acquittal, even the voicing of suspicions regarding an accused's innocence is no longer admissible.'
ECHR	*Rushiti v. Austria* (Application no. 28389/95) Judgment, 21 March 2000, available at https://luju.ro/static/files/2015/august/30/CASE_OF_ASAN_RUSHITI_v._AUSTRIA.pdf	§§ 31-32 '31. In any case, the Court is not convinced by the Government's principal argument, namely that a voicing of suspicions is acceptable under Article 6 § 2 if those suspicions have already been expressed in the reasons for the acquittal. The Court finds that this is an artificial interpretation of the Sekanina judgment, which would moreover not be in line with the general aim of the presumption of innocence which is to protect the accused against any judicial decision or other statements by State officials amounting to an assessment of the applicant's guilt without him having previously been proved guilty according to law (see the Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, p. 16, § 35, with further references). The Court cannot but affirm the general rule stated in the Sekanina judgment that, following a final acquittal, even the voicing of suspicions

		regarding an accused's innocence is no longer admissible. The Court, thus, considers that once an acquittal has become final - be it an acquittal giving the accused the benefit of the doubt in accordance with Article 6 § 2 - the voicing of any suspicions of guilt, including those expressed in the reasons for the acquittal, is incompatible with the presumption of innocence. 32. In the present case, the Graz Court of Appeal made statements in the compensation proceedings following the applicant's final acquittal which expressed that there was a continuing suspicion against him and, thus, cast doubt on his innocence. Accordingly, there has been a violation of Article 6 § 2 of the Convention.'
ECHR	*Sekanina v.Austria* (Application no. 13126/87) Judgment, 25 August 1993, available at http://freecases.eu/Doc/CourtAct/4551567	§ 30 '30. […] Despite the fact that there had been a final decision acquitting Mr Sekanina, the courts which had to rule on the claim for compensation undertook an assessment of the applicant's guilt on the basis of the contents of the Assize Court file. The voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation. However, it is no longer admissible to rely on such suspicions once an acquittal has become final. Consequently, the reasoning of the Linz Regional Court and the Linz Court of Appeal is incompatible with the presumption of innocence.'
ECHR	*O. v Norway* (Application no. 29327/95) Judgment, 11 February 2003, available at	§§ 39-40

	https://www.legal-tools.org/doc/ea0649/pdf/	'39. As to the further question whether Article 6 § 2 was complied with in the compensation case, the Court reiterates that this provision embodies a general rule that, following a final acquittal, even the voicing of suspicions regarding an accused's innocence is no longer admissible (see *Rushiti*, cited above, § 31). It observes that, in its decision of 25 January 1995, the High Court summarised the charges of sexual abuse brought against the applicant in the criminal trial, as well as reiterating the jury's verdict and his acquittal by the judges. Then it went on to examine whether the conditions for awarding compensation under Article 444 were fulfilled. Referring to evidence from the criminal case, the High Court found it probable that the applicant's daughter had been subjected to sexual abuse and, "[c]onsidering the case as a whole, ... [did] not find it shown on the balance of probabilities that [he] did not engage in sexual intercourse with [her]" (see paragraph 13 above). In the view of the Court, the High Court's reasoning clearly amounted to the voicing of suspicion against the applicant regarding the charges of sexual abuse on which he had been acquitted. 40. The Court is mindful of the fact that, in upholding the High Court's decision, the Appeals Leave Committee of the Supreme Court had regard to and quoted its previous interpretation of Article 444 in a 1994 decision, in which it had been held that the refusal of a compensation claim did not undermine or cast doubt on the earlier acquittal (see paragraph 14 above). The Court appreciates that a

		deliberate effort was made to avoid any conflict with Article 6 § 2 in the interpretation of the statutory provision concerned. However, it is not convinced that, even if presented together with such a cautionary statement, the impugned affirmations were not capable of calling into doubt the correctness of the applicant's acquittal, in a manner incompatible with the presumption of innocence.'
1. Co-perpetration versus Solicitation and the degree of Mr. Bemba's participation		
Academic Article		
	Conway, Melissa, 'Ordering individual criminal responsibility: proposing a hierarchy of the modes of liability' (2018) 7 CILJ 51 (see Annex B)	p.72
International Tribunal		
ICC	ICC-01/04-01/06-3121-Red, 01 December 2014, *Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction"	§.468 '468. The Appeals Chamber notes that, in so concluding, the Trial Chamber chose an objective criterion to distinguish commission liability from accessorial liability, as opposed to, for instance, a distinction based on the accused person's mental relationship to the crime in question. In the view of the Appeals Chamber, it is indeed appropriate to distinguish between liability as a perpetrator and as an accessory primarily based on the objective criterion of the accused person's extent of contribution to the crime. **This is because the blameworthiness of the person is directly dependent on the extent to which the person actually contributed to the crime in question.'**
2. The Degree of Harm Caused by the False Testimony		
International Tribunals		

ICTY	*Prosecutor v. Dusko Tadic*, IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, available at *http://www.icty.org/x/cases/contempt_vujin/tjug/en/000131.pdf*	§.167 '167. It unfortunately happens that counsel occasionally do abuse those privileges or act dishonestly or improperly. Such cases usually involve conduct on the part of counsel which is intended, for whatever reason, to assist in winning the case for the client whom counsel represents. That is bad enough. In the present case, the Respondent's conduct has been against the interests of his client. That is even worse, particularly where the client is in custody and relies so heavily upon his counsel for assistance. The conduct of the Respondent in this case strikes at the very heart of the criminal justice system. The Appeals Chamber has not considered the extent to which the interests of Tadic may in fact have been disadvantaged by the conduct in question. That is a matter which would require substantial investigation, and no such investigation was either suggested or undertaken in these proceedings. The contempt in this case remains a serious one, no matter what disadvantage was or was not in fact caused to Tadic.'
ICTY	*Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, IT-03-66-T, "Judgment", 30 November 2005, available at https://www.legal-tools.org/doc/4e469a/pdf/	§ 20 'The identification of each Accused as a perpetrator […] is to be determined […] in light of all evidence bearing on the issue of identification, evidence both for and against. In a particular case, this could include, for example, an alibi or whether an identifying witness has a motive which would be furthered by a false identification. Evidence of the

		visual identification of an Accused by a witness is but one piece of what may be the relevant evidence in a particular case’
ICTR	*The Prosecutor v. GAA*, Judgement and Sentence, ICTR-07-90-R77, 4 December 2007, available at https://www.legal-tools.org/doc/62cecb/pdf/	§ 10
ICC	*Prosecutor v. Jean-Pierre Bemba Gombo*, Transcript, ICC-01/05-01/08-T-268-Red2-ENG, 07 November 2012	p.78
ICC	*Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version of "Prosecution’s Response to the Defence Closing Brief"’, ICC-01/05-01/08-3141-Conf, 15 September 2014	§.119 ‘119. Based on the “notice of some specifics” of the related Article 70 case, the Defence had no other choice but to exclude 14 of its witnesses in its Closing Brief - D2, D3, D4, D6, D13, D15, D23, D25, D26, D29, D54, D55, D57, and D64.287 The Chamber should accord very little weight, if at all, to the testimonies of the remaining 20 Defence witnesses who are: (i) witnesses who are extremely close and/or loyal to Bemba and provided biased and unreliable testimony in his favour, including implausible evidence where the reasonable and logical conclusion would have been detrimental to Bemba (D16, D21, D39, D48, D49, D66);288 (ii) witnesses committed to exonerating Bemba to the point where they contradicted the Accused’s own words, which were written at a time when criminal proceedings against him were not contemplated (D18, D19, D21, D39, D36, D48, D49);289 (iii) witnesses who lied under oath (D16, D19, D45, D66);290 (iv) witnesses who provided contradictory versions of the same events (D18, D19);291 (v) a witness who requested a bribe in exchange for his testimony (D18);292 (vi) a witness who attempted

		to testify in line with a pre-planned script, which was brought into the courtroom and covered additional issues that could not have been reasonably foreseen (D45);293 (vii) witnesses who neither saw nor heard about allegations of any crime committed by the MLC troops despite their presence in the CAR during the events (D19, D30, D56, D66);294 (viii) witnesses who had no knowledge of facts critical to this case (D30, D39, D66);295 (ix) witnesses who lacked military knowledge in spite of postulating as former CAR soldiers (D7, D56). 296'
Domestic case		
The U.K	*R v Archer* [2003] 1 Cr.App.R.(S.) 86 (see annex B)	
3. The impact of Mr. Bemba's acquittal on the Article 70 sentence		
a. The length of Mr. Bemba's detention since 23 November 2013		
International Tribunals		
MICT	*Prosecutor v. Florence Hartmann*,"Decision of the President on the Early Release of Florence Hartmann", 29 March 2016, MICT-15-87-ES	§ 19 '19. In this respect, I recall that ICTY convicts, like Hartmann, are considered "similarly situated" to all other prisoners under the Mechanism's supervision and that all convicts supervised by the Mechanism are to be considered eligible for early release upon the completion of two-thirds of their sentences, irrespective of the tribunal that convicted them." However, I note that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for early release and not entitled to such release, which may only be granted by the President as a

		matter of discretion, after considering the totality of the circumstances in each case.’
Regional Courts		
ECHR	*Solmaz v. Turkey* (application no.27561/02) Judgment, 16 January 2007, available at https://www.legal-tools.org/doc/153627/pdf/	§ 24 ‘24. Thus, if an applicant has been detained pending trial under Article 5 § 3, that form of custody would end on the day on which the charge is determined, even if only by a court of first instance (see *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 23 § 9). The Court additionally observes that a person who had cause to complain of continued detention after conviction pending a delayed appeal may not be able to rely on Article 5 § 3 but could possibly allege a breach of the “reasonable time’’requirement of Article 6 § 1 of the Convention (ibid.).’
ECHR	*Kalashnikov v. Russia* (application no.47095/99) Judgment, 15 July 2002, available at http://sutyajnik.ru/rus/echr/judgments/kalashnikov_eng.htm	§ 110 ‘110. The Court first recalls that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, the Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 23, § 9, and *Labita v. Italy* cited above, § 147). Thus, in the present case the applicant's detention on remand began on 29 June 1995, when he was arrested, and ended on 3 August 1999, when he was convicted and sentenced by the Magadan City Court. The further remand on outstanding charges

		did not alter the fact that, as of 3 August 1999, the applicant was serving a sentence after his conviction by a competent court, within the meaning of Article 5 § 1 (a) of the Convention. The total period of the applicant's detention of remand amounted thus to four years, one month and four days.’
ECHR	*Wemhoff v. Germany* (application no.2122/64) Judgment, 27 June 1968, available at https://www.legal-tools.org/doc/e8ac3d/pdf/	§ 9 (p.19) ‘9. It remains to ascertain whether the end of the period of detention with which Article 5 (3) (art. 5-3) is concerned is the day on which a conviction becomes final or simply that on which the charge is determined, even if only by a court of first instance. The Court finds for the latter interpretation. One consideration has appeared to it as decisive, namely that a person convicted at first instance, whether or not he has been detained up to this moment, is in the position provided for by Article 5 (1) (a) (art. 5-1-a) which authorises deprivation of liberty "after conviction". This last phrase cannot be interpreted as being restricted to the case of a final conviction, for this would exclude the arrest at the hearing of convicted persons who appeared for trial while still at liberty, whatever remedies are still open to them. Now, such a practice is frequently followed in many Contracting States and it cannot be believed that they intended to renounce it. It cannot be overlooked moreover that the guilt of a person who is detained during the appeal or review proceedings, has been established in the course of a trial conducted in accordance with the requirements of Article 6 (art. 6). It is immaterial, in this respect,

		whether detention after conviction took place on the basis of the judgment or - as in the Federal Republic of Germany - by reason of a special decision confirming the order of detention on remand. A person who has cause to complain of the continuation of his detention after conviction because of delay in determining his appeal, cannot avail himself of Article 5 (3) (art. 5-3) but could possibly allege a disregard of the "reasonable time" provided for by Article 6 (1) (art. 6-1). In this case, therefore, the period whose reasonableness the Court is called upon to consider lasts from 9 November 1961 to 7 April 1965.'
ECHR	*Isayeva v. Azerbaijan* (application no.36229/11) Judgment, 25 June 2015	§ 77 '77. The Court reiterates that, when determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV, and *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI).'
ECHR	*Labita* v. *Italy* (application no.26772/95) Judgment, 6 April 2000, available at https://www.legal-tools.org/doc/dccaed/pdf/	§ 146-147 '146. As to when the period ended, the applicant and the Commission took the date of the applicant's release (13 November 1994 – see paragraph 24 above). The Government, on the other hand,

		contended that the period ended on 12 November 1994, when the judgment of the court of first instance was delivered (see paragraph 23 above). 147. The Court reiterates that the end of the period referred to in Article 5 § 3 is "the day on which the charge is determined, even if only by a court of first instance" (see the Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9). The applicant's detention pending trial for the purposes of Article 5 § 3 of the Convention therefore ended on 12 November 1994.'
ECHR	<u>*Polonskiy v. Russia*</u> (application no.30033/05) Judgment, 19 March 2009	§ 141-144 '141. The Court observes that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c) with which it forms a whole. It ceases to apply on the day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Solmaz*, cited above, §§ 24 to 26, and *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175). 142. The applicant was remanded in custody on 29 April 2003 on charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder. He has been held in detention pending trial ever since. During part of that period, from 6 April 2004 to 28 January 2006, he was concurrently serving his sentence after conviction in an unrelated criminal case on charges of unlawful possession of arms and forgery of documents. The Court must

		verify which subparagraph of Article 5 § 1 was applicable during that period with a view to determining whether it should be taken into consideration for the purposes of Article 5 § 3. 143. The Court reiterates in this connection that the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and detention may be justified under more than one sub-paragraph of that provision (see, among many others, *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). In particular, in the case of *Eriksen v. Norway*, the Court considered that the applicant's detention was justified under both sub-paragraphs (a) and (c) of Article 5 § 1 and found that Article 5 § 3 was applicable (see *Eriksen v. Norway*, 27 May 1997, § 92, *Reports of Judgments and Decisions* 1997-III). 144. In the present case, on 6 April 2004 the applicant was convicted of unlawful possession of arms and forgery of documents and sentenced to a term of imprisonment which he completed on 28 January 2006. During that period he was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a). At the same time, he was held in custody in connection with an unrelated set of criminal proceedings for the purpose of bringing him before the competent legal authority on suspicion of being a member of an armed criminal gang and having committed robbery, infliction of serious injuries and murder, a situation

		envisaged in Article 5 § 1 (c). It accordingly follows that, from 6 April 2004 to 28 January 2006, the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1. Taking into account that the applicant was detained on the basis of Article 5 § 1 (c), and notwithstanding the fact that his detention was also grounded on Article 5 § 1 (a), the Court considers that this period should be taken into consideration for the purposes of Article 5 § 3. Therefore, the applicant has been continuously detained pending trial on the charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder, since his placement in custody on 29 April 2003 until now, that is for more than five years and ten months.'
Domestic case		
The U.K	*R v Ofili* [1995] Crim LR 880 (see Annex B).	'[…] The applicant sought a writ of habeas corpus. The stipendiary magistrate took the view that the custody time limits provided under section 22 of the Prosecution of Offences Act 1985 did not apply in favour of a person who remains in custody because of inability to meet a condition to be complied with before release on bail. The applicant had been unable to provide a surety in the sum of £4000. *Held*, allowing the application, the respondent prosecutor accepted that the applicant did have the benefit of the custody time limits. In the context of custody time limits section 22(11) of the 1985 Act provided that "custody of a magistrates' court means custody to which a person is committed in

		pursuance of section 128 of the Magistrates Courts Act 1980". The applicant fell within the terms of section 128(1) and (2) of the 1980 Act; the court had fixed a recognizance with a view to its being taken subsequently and had remanded him in custody in the meantime. The applicant was in custody of the magistrates and the custody time limits provisions applied to him. The applicant was ordered to be released on bail subject to reporting and residence conditions.'
Canada	*R. v. Summers*, 2014 SCC 26, 2014 CSC 26, 2014 CarswellOnt 4479 (2014) (see Annex B)	
b. The relevance of the overall length of Mr. Bemba's detention at the ICC		
i. Right to credit for continuous detention periods		
Domestic law and cases		
U.S	*Commonwealth v. Marlon Holmes*, 83 Mass. App. Ct. 737, January 30, 2013 - June 14, 2013, available at http://masscases.com/cases/app/83/83massappct737.html	pp.742-743 'Their importation has led to the converse assumption that the right to dead time credit can only be invoked, regardless of circumstance, if two crimes are "related." This approach has been rejected by the Supreme Judicial Court in Commonwealth v. Milton, 427 Mass. 18 , a case involving pretrial confinement followed by an acquittal, followed in turn by another offense: "In some circumstances, a defendant may be allowed to credit time in an unrelated case if necessary to prevent a defendant from serving 'dead time.' " Id. at 24 (discussion, in dictum, of pretrial confinement credit statutes where "banking" exception to dead time dispositive to outcome). See Commonwealth v. Foley, supra (rejecting argument that defendant not

		entitled to credit for dead time because charges are "unrelated"), overruled on other grounds, Commonwealth v. Amirault, 415 Mass. 112 , 117 n.9 (1993), and Commonwealth v. McLaughlin, 431 Mass. 506 , 519 (2000). [Note 11] The Supreme Judicial Court has made clear that "the better and more humane view" provides credit for time served on an invalidated conviction against a sentence for an unrelated credit. Brown, 336 Mass. at 721. Because the potential variations in sequence and in chronological relation among two or more charges, convictions, confinements, sentences, and reversals are countless, our analysis in a particular case should not be diverted from "the court's evident and overriding concern . . . that a prisoner receives credit as a matter of right for time served under an erroneous conviction." Gardner v. Commissioner of Correction, 56 Mass. App. Ct. 31 , 38 (2002) (noting that "the fundamental principle underlying decisions in this area is 'fair treatment of the prisoner.' Commonwealth v. McLaughlin, [supra at 515], quoting from Commonwealth v. Grant, 366 Mass. 272 , 275 [1974]"). See Lewis v. Commonwealth, 329 Mass. 445 , 448 (1952); Chalifoux v. Commissioner of Correction, 375 Mass. 424 , 427 (1978); Lynch, petitioner, 379 Mass. 757 , 758 (1980); Commonwealth v. Maldonado, 64 Mass. App. Ct. 250 , 251 (2005). [Note 12]

		The majority of other State and Federal courts agree with the general principles enunciated in Brown, 366 Mass. 718 , and Manning, 372 Mass. 387 , [Note 13] namely, a prisoner should receive full credit for time served on an invalidated sentence toward a subsequent, unrelated sentence so long as concerns regarding banking (properly defined) or double counting are not present. [Note 14]
U.S	*Commonwealth* v. *Foley*, 17 Mass. App. Ct. 238, 243 (1983), available at http://masscases.com/cases/app/17/17massappct238.html	pp.243-244 'fairness requires that a prisoner not be penalized or burdened by a denial of credit because he has been acquitted or because the prosecutor has seen fit not to go forward on the charges on which bail has been set.'
U.S	*Commonwealth v. Milton*, 427 Mass. 18, 24-25 (1998), available at https://caselaw.findlaw.com/ma-supreme-judicial-court/1380990.html	
U.S	*Commonwealth v. McLaughlin*, 431 Mass. 506 , 519 (2000), available at http://masscases.com/cases/sjc/431/431mass506.html	
U.S	*Brown v. Commissioner of Correction*, 336 Mass. 718 , 721 (1958), available at http://masscases.com/cases/sjc/336/336mass718.html	
Australia	Azzopardi v The Queen [2011] VSCA 372, available at https://jade.io/article/257028?at.hl=Azzopardi+v+R+%255B2011%255D+VSCA+372	§.61-62 "61. The rationale underlying the principle [Alex: 'principle of totality'] is that a "just measure" of an offender's total criminality is a sentence which satisfies all sentencing objectives applicable to the entirety of that criminal conduct. Only implicitly in all of the statements of the principle of totality in its application is the proposition that a sentencing judge undertaking the adjustment of the sentence does so in order to ensure that the final sentence is no more than is necessary to satisfy the various

		objectives of sentencing. Considerations of mercy may further influence the sentencing judge to increase any downward adjustment. As Wickham J was to recognise in Magee v The Queen the sentence should be no longer "than is necessary to meet the various purposes of criminal punishment". Once the aggregate sentence satisfies both the mitigatory sentencing objectives as well as the punitive principles of just punishment, retribution, denunciation, deterrence and protection of the community, "that it is enough". Wickham J also opined that "[m]ore than enough is wrong because the excess is not only purposeless but might be harmful". Anderson J expressed similar views inHerbert v The Queen." "62. One explanation for why it is ordinarily only necessary to order that the offender serve a portion of each multiple count to produce a proportionate sentence which satisfies all relevant sentencing principles may be that articulated in Fox and Freiberg on Sentencing and by Malcolm CJ in Clinch v The Queen, that the severity of a term of imprisonment is an exponential, not a linear function. The severity of the sentence increases exponentially as it increases in length. Once the sentence satisfies the punitive and mitigatory sentencing objectives for the offender's overall conduct, the sentence is then proportionate to the offender's criminality. No justification then exists for a more severe sentence, proportionality and just deserts defining the outer limits of punishment."

Australia	*R v Barry* [2011] QCA 119, available at at https://jade.io/article/253339?at.hl=R+v+Barry+%255B2011%255D+	§.16 16. "[...] the severity of a sentence increases at a greater rate than any increase in the length of the sentence. Thus, a sentence of five years is more than five times as severe as a sentence of one year. Similarly, while a sentence of seven years may be appropriate for one set of offences and a sentence of eight years [may] be appropriate for another set of offences, each looked at in isolation. Where both sets were committed by the one offender a sentence of 15 years may be out of proportion to the degree of criminality involved because of the compounding effect on the severity of the total sentence of simply aggregating the two sets of sentences. The second matter that is considered under the totality principle is the proposition that an extremely long total sentence may be 'crushing' upon the offender in the sense that it will induce a feeling of hopelessness and destroy any expectation of a useful life after release. This effect both increases the severity of the sentence to be served and also destroys such prospects as there may be of rehabilitation and reform."
Australia	*El Waly v The Queen* [2012] VSCA 184, available at https://jade.io/j/#!/article/269821	§. 110 "c) [t]he *Renzella* discretion permits a sentencing judge to take account of a period which the offender spent in custody which is unrelated to the offence for which the offender is currently being sentenced even if that period is not covered by s 18. d) The *Renzella* discretion was originally exercised in circumstances where, with hindsight, the offender

		should not have spent a period in custody for earlier alleged offences, because he or she has been acquitted of those offences, had the charges withdrawn, or the Crown has entered a nolle prosequi (a period often described as 'dead time'). As noted in *Karpinski*, the discretion has even been exercised in cases where the period on remand which the offender should not have served arose out of conduct unrelated to the offences for which the offender falls to be sentenced and occurred some time in the distant past. e) Where *Renzella* applies the court may take account of the whole period during which the offender was in custody, or some lesser period."
Australia	*Buddle v The* Queen [2014] VSCA 232, available at https://jade.io/j/#!/article/347808?at.hl=Buddle+%255B2014%255D+VSCA+232	§. 42 and 44 44."To our mind, it does not much matter what label one affixes to her Honour's consideration of the detention which preceded the sentence for the current offences (whether it be the exercise of the *Renzella* discretion, or the application of the totality principle). The fact remains that, in a broad and practical way, the judge took the period of pre-sentence detention (so called) into account."
New-Zealand	*Booth v R and Marino v The Chief Executive of the Department of Corrections* [2016] NZSC 127, available at http://img.scoop.co.nz/media/pdfs/1609/BoothvR.pdf	§ 32-34
The U.K	*R. v Taylor* [2008] 2 Cr. App. R. (S.) 83 (see Annex B)	p.7 'It was also urged that the judge should have noted the time spent on remand pursuant to a previous acquittal of this appellant. That is a matter for the judge to consider. In any particular case he is not

		bound to make such a deduction **but might well think in an appropriate case he should reflect it.'**
The U.K	*R. v Roberts* [2000] 1 Cr. App. R. (S.) 569 (see Annex B)	pp3-4 'The consequence of that is that two and a half months was spent serving that sentence which is precluded by section 67(1)(a) paragraph (b)(i) of the Criminal Justice Act 1967 from counting towards the sentence of 42 months' imprisonment in respect of the importation of cannabis resin. But for that, the appellant's earliest release date would have been 21 months after the date of his arrest, on April 12, 1998, namely January 12, 2000. However, because the two and a half months spent serving the sentence imposed by the magistrates does not count towards the sentence of 42 months, the applicant's earliest release date is postponed by two and a half months.This of course was not a point which could have been brought to the attention of *571 H.H. Judge Robbins because, at that stage, the sentence of five months had been served and was undisturbed. […] That was not possible in this case because, when H.H. Judge Robbins passed sentence, the Magistrates' sentence had not been altered. In all these circumstances, the effect of section 67 of the 1967 Act is that the appellant's earliest release date is postponed by two and a half months, by reason of the five-month sentence which he served, but which has been set aside. Accordingly we think the appropriate course is to

		allow this appeal by deducting from the 42 months (a perfectly proper sentence in itself) the equivalent of the two and a half months actually served in respect of the five months, that is the five months. Accordingly, we reduce this sentence to one of 37 months' imprisonment. To that extent this appeal is allowed.'
The U.K	*Regina v Governor of Haverigg Prison Ex Parte McMahon Times*, 24 September 1997; Gazette, 01 October 1997 24 Sep 1997 QBD (see Annex B)	
The U.K	*R (on the application of Galiazia)* v Governor of Hewell Prison, 2014 WL 5312005 (2014) (see Annex B)	
The U.K	Criminal Justice Act 2003(2003 c.44,) adopted on 20 November 2003, available at https://www.legislation.gov.uk/ukpga/2003/44/section/240ZA	'Section 270ZA (9) (9)For the purposes of the references in subsections (3) and (5) to the term of imprisonment to which a person has been sentenced (that is to say, the reference to the offender's "sentence"), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if— (a)the sentences were passed on the same occasion, or (b)where they were passed on different occasions, the person has not been released at any time during the period beginning with the first and ending with the last of those occasions.'
International Tribunal		
ICTY	*Prosecutor v. Jelena Rašić,* IT-98-32/1-R77.2, Written Reasons for Oral Sentencing Judgement, 6 March 2012, available at http://www.icty.org/x/cases/contempt_rasic/tjug/en/120306.pdf	§31
ii. The totality principle		
Regional Courts		
ECHR	*Vinter & Ohers v. United Kingdom* (Applications nos. 66069/09, 130/10 and 3896/10) Judgment, 9 July 2013, available at http://freecases.eu/Doc/CourtAct/4538333	§ 111, 114 & 115

		'111. It is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention. As was recognised by the Court of Appeal in *Bieber* and the Chamber in its judgment in the present case, these grounds will include punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated." [Emphasis added] "115. The Court has already had occasion to note that, while punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence (see, for instance, Dickson v. the United Kingdom [GC], no. 44362/04, § 75, ECHR 2007-V; and Boulois v. Luxembourg [GC], no. 37575/04, § 83, ECHR 2012, with further references therein). In the Council of Europe's legal instruments, this is most clearly expressed in Rule 6 of the European Prison Rules, which provides that all detention shall be managed so as to facilitate the

		reintegration into free society of persons who have been deprived of their liberty, and Rule 102.1, which provides that the prison regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life […].”[Emphasis added]
Domestic law and cases		
Australia	*Mill v The Queen* (1988) 166 CLR 59, available at https://jade.io/j/#!/article/67476	§ 8 ‘8. The totality principle is a recognized principle of sentencing formulated to assist a court when sentencing an offender for a number of offences. It is described succinctly in Thomas, Principles of Sentencing, 2nd ed. (1979), pp 56-57 as follows (omitting references): "The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong('); 'when ... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must

		look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences'." See also Ruby, Sentencing, 3rd ed. (1987), pp 38-41. Where the principle falls to be applied in relation to sentences of imprisonment imposed by a single sentencing court, an appropriate result may be achieved either by making sentences wholly or partially concurrent or by lowering the individual sentences below what would otherwise be appropriate in order to reflect the fact that a number of sentences are being imposed. Where practicable, the former is to be preferred.'
Australia	*Choi v R* [2007] NSWCCA 150 (see Annex B)	§ 157 '157 A third factor is the cumulative effect of the sentences in Korea and that here. Commonly, when a series of offences merits a series of penalties by way of incarceration, sentences are either made wholly or partly concurrent or some reduction is made to one or more of the sentences so that the totality of the punishment does no more than reflect the totality of criminality. In failing to consider this aspect of the appellant's total incarceration Judge Solomon erred.'
Australia	*R v MMK* (2006) 164 A Crim R 481 (see Annex B)	§ 14 '14 There will be cases, of which, in Hidden J's opinion, this was one, where the criminality of offences committed by an offender is so great and the punishment imposed for those sentences is justifiably so harsh in order to reflect that criminality that there is little, or no, room for a

		further penalty to be imposed upon the offender to achieve an appropriate purpose of punishment in the circumstances of the particular case. In the present case those circumstances included the relatively low criminality involved in the offence on the indictment having regard to the relationship between the applicant and the complainant, the age differential between them and the fact that intercourse was consensual. It was also a highly relevant matter than any further actual punishment could not take effect until the expiration of the non-parole period fixed by Sully J some 15 years after the offences were ommitted.'
Finland	Rikoslaki, Penal Code of Finland (39/1889), available at https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf	Chapter VII, Section 6 - *Taking an earlier sentence of imprisonment into account* (751/1997) (1) If a person who has been unconditionally sentenced to imprisonment is charged with another offence committed before the sentence was passed, the earlier sentence of imprisonment may be taken into account, to a reasonable degree, as a mitigating circumstance or as a ground for reducing the punishment. In addition, the sentence of imprisonment passed for the new offence may be shorter than the minimum provided for it or the earlier sentence may be deemed to be a sufficient sanction also for the act which was later taken up for a hearing. (2) The judgment of the court shall indicate which earlier sentence or sentences have been taken into account when sentencing under this section.
The	Penal Code of the Netherlands, Wetboek van Strafrecht, 03 March 1881	"Section 63

Netherlands		If a person, after a punishment has been imposed on him, is again found guilty of a serious offence or of a minor offence committed prior to said imposition of punishment, the provisions of this Part pertaining to the imposition of punishments to run concurrently shall apply. ”
Germany	German Criminal Code of 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] l p.3322	“Section 55 Subsequent fixing of aggregate sentence (1) Sections 53 and 54 shall also apply to a convicted person who has had a sentence imposed upon him by a final judgment which has neither been enforced, barred by the statute of limitations nor remitted, when that person is convicted of another offence which he committed before the previous conviction. That previous conviction shall be the judgment in those proceedings in which the factual findings underlying the new conviction could last have been examined. (2) Confiscatory expropriation orders, ancillary penalties and measures (section 11(1) No 8) imposed in the previous sentence shall be upheld to the extent they have not been rendered moot by the new judgment. This applies also when the amount of the expropriation order imposed in the previous sentence exceeds the value of the offender’s assets at the time of the new sentence.”
iii. The right to an effective remedy for prolonged detention in this case caused by the erroneous Main case conviction		
International Documents and Tribunal		
United Nations	UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 10 July 2015, A/HRC/30/36, available at http://www.refworld.org/docid/55f7d5844.html	§ 64 and Recommendations p.22 ‘64. The duty to comply with international law rests

		on everyone, including domestic authorities and private individuals. International and domestic law must provide remedies to make international law effective. States are under a positive obligation to provide an effective remedy for violations of international human rights law. The remedy for arbitrary detention will regularly be immediate release. In most cases, including those where release is not a remedy, the individual has a right to compensation. This right is firmly grounded in widespread international practice16 and on the *opinio juris* of States; it is also included in a wide range of international instruments. It is found in the domestic law of almost all States, and breaches are denounced. The right constitutes a general principle of international law, based both in domestic law and its application across sectors of international law and treaty regimes.17 Domestic law, whether constitutional or based on legislation or case law, has a particular role in the field of human rights law where the duties are primarily those of States to individuals. Domestic law is scrutinized in the Human Rights Council and its various mechanisms; indeed, many of those mechanisms have as their main aim the review of domestic law and practice. This produces much evidence of State practice and *opinio juris*. In addition, declarations and other statements made by States about their own law and its compliance with international law and further reaching human rights standards, and comments and denunciations of other States, serve as additional sources of *opinio juris*.'

ICC	*Prosecutor v. Thomas Lubanga Dyilo*, Decision on Sentence pursuant to Article 76 of the Statute, ICC-01/04-01/06-2901, 10 July 2012, available at https://www.icc-cpi.int/CourtRecords/CR2012_07409.PDF	§ 91 'The Chamber has, however, reflected certain factors involving Mr Lubanga in the aftermath of the offences, along with his notable cooperation with the Court, as set out below. He was respectful and cooperative throughout the proceedings, notwithstanding some particularly onerous circumstances, which included: a) the prosecution gathered an extensive quantity of evidence under confidentiality agreements (Article 54(3)(e) of the Statute) leading to a failure to disclose exculpatory material, which in turn resulted in a stay of the proceedings and a provisional order to release Mr Lubanga; b) the prosecution repeatedly failed to comply with the Chamber's disclosure orders, leading to a second stay of the proceedings and a second provisional order releasing Mr Lubanga; and c) the prosecution's use of a public interview, given by Ms Beatrice le Fraper du Hellen, to make misleading and inaccurate statements to the press about the evidence in the case and Mr Lubanga's conduct during the proceedings.'
Regional Courts		
ECHR	*Taavitsainen v. Finland* (Application no.25597/07), Judgment, 8 December 2009, available at http://freecases.eu/Doc/CourtAct/4553283	§ 29-37 '29. The Court points out that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his or her status as a victim

		within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see Eckle v. Germany, 15 July 1982, § 66, Series A no. 51, § 66, Beck v. Norway, no. 26390/95, § 27, 26 June 2001 and Cocchiarella v. Italy [GC], no. 64886/01, § 77, ECHR 2006-...). 30. In the present case, while it is true that the District Court stated that it was taking into account the length of proceedings in reducing the applicant's sentence, it is not apparent from its judgment what this reduction was. As the applicant pointed out, the District Court relied on several factors when fixing her sentence. It is clear from that court's reasoning that the applicant's offence was not considered grave. In the absence of any information from the Government on comparable sentencing practices (compare and contrast Beck v. Norway, cited above, §§ 17 and 28), the Court cannot but subscribe to the applicant's view that the appropriate punishment in her case might well have been at the lower end of the sentencing scale, even excluding the length factor. 31. The Court acknowledges the attempt by the District Court to comply with the requirements of Article 6 § 1 of the Convention by affording the applicant redress for the excessive length of the proceedings. It is not, however, satisfied that the reduction of the sentence was measurable and had a

		decisive impact on the applicant's sentence. The Court thus finds that the applicant may still claim to be a victim. 32. As to the Government's argument concerning the alleged failure by the applicant to exhaust domestic remedies, the Court considers it appropriate to examine that issue in connection with the complaint concerning the alleged violation of Article 13 of the Convention. 33. Having regard to the above, the Court notes that the complaint concerning the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible. **B. Merits** 34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, Pélissier and Sassi v. France [GC], no. 25444/94, § 67, ECHR 1999-II). 35. The Government contended that the delay in the proceedings did not result from any inactivity of the District Court but rather from the failure of the witnesses to appear before that court. Several

		attempts were made to bring the witnesses to the hearing, but they proved unsuccessful. As the witnesses were citizens of another State, the court was not able to use coercive measures against them. The hearing could only be arranged after the court was provided with video-conferencing equipment and the witnesses were able to give testimony in their own country. The hearing of those witnesses constituted crucial evidence in the case. 36. The applicant contested the Government's view. If the video-conferencing equipment was the only effective means for the successful handling of cases with international connections, it should be asked why the State did not provide the court with such equipment sooner. 37. The Court finds the applicant's argument justified. It acknowledges the difficulty for the District Court to obtain the attendance of the two witnesses in the absence of the possibility to use coercive measures against them, both being foreign nationals. However, having regard to the District Court's reasoning, as summarised in paragraph 17 above, it seems that the only obstacle to the hearing of those witnesses by means of video conferencing was the lack of suitable equipment. The Court observes that the provision enabling the hearing of a witness by such means came into force on 1 October 2003. Yet the State did not provide the Tampere District Court with video-conferencing equipment until autumn 2008 thus, in practice, hindering the application of the above-mentioned provision. The Government have not claimed that

		there was any other impediment to the hearing of the witnesses via video link, such as lack of co-operation by the Estonian authorities or suitable video-conferencing equipment in that country. On the contrary, it appears that the Estonian authorities acceded to the District Court's request for international legal assistance once it was made, without delay. The Court thus finds that the delay in the proceedings at hand is attributable to the State.'
ECHR	*Cocchiarella v. Italy* (Application no. 64886/01), Judgment (Grand Chamber) 29 March 2006, available at http://unipd-centrodirittiumani.it/public/docs/64886_01.pdf	§ 77 '77. Different types of remedy may redress the violation appropriately. The Court has already affirmed this in respect of criminal proceedings, where it was satisfied that the length of proceedings had been taken into account when reducing the sentence in an express and measurable manner (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). Moreover, some States, such as Austria, Croatia, Spain, Poland and Slovakia, have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see, for example, *Holzinger (no. 1)*, cited above, § 22; *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII; *Fernández- Molina González and Others v. Spain* (dec.), no. 64359/01, ECHR 2002-IX; *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005; and *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-

		IX).’
ECHR	*Beck v. Norway* (Application no. 26390/95) Judgment, 26 June 2001, available at http://freecases.eu/Doc/CourtAct/4535076	§ 27-28 ‘27. The question remains whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of the criminal proceedings against him. In this regard the Court recalls that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see the Eckle v. Germany judgment of 15 July 1982, Series A no. 51, § 66). 28. Applying these principles in the present case, the Court notes in the first place that the City Court expressly upheld the substance of the applicant’s complaint under Article 6 § 1 of the Convention that the proceedings had exceeded a reasonable time.’
ECHR	*Scordino v Italy* (No.1) (Application no 36813/97) Judgment, 29 March 2006	§ 184-188. ‘1. The Court has on many occasions acknowledged that this type of remedy is “effective” in so far as it hastens the decision by the court concerned (see, among other authorities, *Bacchini v. Switzerland* (dec.), no. 62915/00, 21

		June 2005; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; *Fehr and Lauterburg v. Switzerland* (dec.), no. 708/02 and 1095/02, 21 June 2005; *Holzinger (no. 1)*, cited above, § 22; *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX). 2. It is also clear that for countries where length-of-proceedings violations already exist, a remedy designed to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long. 3. Different types of remedy may redress the violation appropriately. The Court has already affirmed this in respect of criminal proceedings, where it was satisfied that the length of proceedings had been taken into account when reducing the sentence in an express and measurable manner (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). Moreover, some States, such as Austria, Croatia, Spain, Poland and the Slovak Republic, have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see, for example, *Holzinger (no. 1)*, cited above, § 22; *Slavicek v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII; *Fernandez-Molina Gonzalez and Others v. Spain* (dec.), no. 64359/01, ECHR 2002-IX; Michalak v. Poland (dec.), no. 24549/03, 1 March 2005; *Andrášik and Others v.*

		Slovakia (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX). 4. However, States can also choose to introduce only a compensatory remedy, as Italy has done, without that remedy being regarded as ineffective (see *Mifsud*, cited above). 5. The Court has already had occasion to reiterate in the *Kudła v. Poland* judgment (cited above, §§154-55) that, subject to compliance with the requirements of the Convention, the Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. It has also stressed the importance of the rules relating to the subsidiarity principle so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court's opinion more appropriately, have been addressed in the first place within the national legal system.'
ECHR	*Kudla v Poland* (Application no.30210/96) Judgment, 26 October 2000, available at https://hudoc.echr.coe.int/eng#{"itemid":["001-58920"]}	§ 157-160 '157. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy

		to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, the Kaya judgment cited above). The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, İlhan v. Turkey [GC], no. 22277/93, § 97, ECHR 2000-VII). The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, the Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 42, § 113, and the Chahal v. the United Kingdom judgment of 15 November 1996, Reports 1996-V, pp. 1869-70, § 145) 158. It remains for the Court to determine whether

		the means available to the applicant in Polish law for raising a complaint about the length of the proceedings in his case would have been "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred. 159. The Court notes at the outset that the Government did not claim that there was any specific legal avenue whereby the applicant could complain of the length of the proceedings but submitted that the aggregate of several remedies satisfied the Article 13 requirements. They did not, however, indicate whether and, if so, how the applicant could obtain relief – either preventive or compensatory – by having recourse to those remedies (see paragraph 145 above). It was not suggested that any of the single remedies referred to, or a combination of them, could have expedited the determination of the charges against the applicant or provided him with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief. That would in itself demonstrate that the means referred to do not meet the standard of "effectiveness" for the purposes of Article 13 because, as the Court has already said (see paragraph 157 above), the required remedy must be

		effective both in law and in practice. 160. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.'
ECHR	*Letellier v France* (Application no.12369/86) Judgment, 26 June 1991, available at http://freecases.eu/Doc/CourtAct/4549887	§ 51 '51. The Court accepts that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises - as in Article 144 of the Code of Criminal Procedure - the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. **In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence. […]**'
ECHR	*Tomasi v France* (Application no. 12850/87) Judgment, 27 August 1992, available at http://opil.ouplaw.com/view/10.1093/law:ihrl/2597echr92.case.1/law-ihrl-2597echr92	§ 91 '91. The Court accepts that, by reason of their

		particular gravity and public reaction to them, certain offences may give rise to public disquiet capable of justifying pre-trial detention, at least for a time. In exceptional circumstances — and subject, obviously, to there being sufficient evidence (see paragraph 84 above) — this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises — as in Article 144 of the French Code of Criminal Procedure — the notion of prejudice to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually prejudice public order. **In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see, as the most recent authority, the Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 25, para. 52).'**
Domestic law and cases		
The U.K	*R v Kerrigan (David Joseph)* [2015] 1 Cr. App. R. (S.) 29 (2014) (see annex B)	p.3 '(viii) a judge retained the discretion to do justice on the particular facts of a case, for example in the case of excessive delay, and could therefore reduce an otherwise appropriate sentence accordingly ([40])'
The U.K	*R (on the application of Galiazia)* v Governor of Hewell Prison, 2014 WL 5312005 (2014) (see	p.5

	Annex B)	‘Where time on remand exceeds the sentence promulgated by the judge, as here, it extinguishes the sentence altogether and requires the immediate unconditional release of the offender.’
The U.K	*R v Daniel William Barrett* [2010] EWCA Crim 365 (see annex B)	pp.1-2 ‘The appellant pleaded guilty to one count of threatening behaviour, three counts of damaging property and one offence of assaulting a police officer in the execution of his duty. Sentenced to a total of 12 weeks’ imprisonment, suspended for 12 months Held: **the maximum total sentence available to the court for the offences concerned could not exceed six months’ imprisonment.** By the time of sentence, the appellant had been in custody on remand for almost four months and there was no reason why, if he was sentenced to terms of imprisonment, the time he had spent on remand would not count towards his sentence. It followed that even if the judge had passed the maximum sentence on the appellant, he would have been released immediately. **By sentencing the appellant to a suspended sentence, the sentencing judge was in practical terms passing a sentence which was more severe in its impact on the appellant than the maximum sentence would have been. That was a course which should have been avoided** and it could have been avoided only by passing sentences of imprisonment of immediate

		effect. Suspending the sentence in those circumstances was wrong in principle. That approach was in line with the approach adopted by the Court in Hemmings [2007] EWCA Crim 2413; [2008] 1 Cr. App. R. (S.) 106 (p.623) where it was said to be wrong in principle to impose a community order on a defendant who had spent more time in custody on remand than he would have spent had he received the maximum sentence. That case followed the reasoning in the earlier cases of McCabe (1988) 10 Cr. App. R. (S.) 134 and Peppard (1990-91) 12 Cr. App. R. (S.) 88 . **Accordingly the suspended sentence would be quashed and the Court would substitute orders of conditional discharge for each of the offences for a period of four months.'**
The U.K	*R v Hemmings (David Christopher)* [2007] EWCA Crim 2413, available at https://court-appeal.vlex.co.uk/vid/-52563345	'The crucial point in this appeal is that the appellant had been remanded in custody between the date of his arrest and the date of sentence for a period of 99 days. As Mr Mathieson, his solicitor who appeared below and appears before us, pointed out to the judge, that was equivalent to a custodial term of six months. It is clear that in practice no longer custodial term could (or in any event would) have been imposed had he been on bail until the trial. In these circumstances, Mr Mathieson submitted, it was wrong in principle that the appellant should receive any further substantial punishment. […] We understand, and to a considerable extent sympathise with, the judge's reasoning. It was no doubt the case that both the appellant and the wider

		community were likely to benefit if he had been obliged to undergo a period of supervision and take the course proposed. **Nevertheless it seems to us that the order is wrong in principle. A sentence of a community order, and all the more so one coupled with requirements which have a real impact on the offender's liberty, is a form of punishment. It does not seem to us to be right that the appellant should receive a substantial further punishment in circumstances where he has already received what was in practice the maximum punishment by way of imprisonment which the law could have imposed.** That reasoning seems to us to be in line with the reasoning in the cases of <u>McCabe</u> and <u>Peppard</u> to which we and the judge were referred. In the result we feel obliged to allow the appeal. In <u>McCabe</u> and <u>Peppard</u> the Court took the course of imposing a conditional discharge. […] **With that in mind we make an order of conditional discharge with a term of four months.'**
The U.K	*R v Lynch* [2007] EWCA Crim 2624 (see Annex B)	
The U.K	*R v Peppard* [1990-91] 12 Cr. App. R. (S.) 88 (see Annex B)	
The U.K	McCabe (1988) 10 Cr.App.R. (S.) 134 (see Annex B)	
The U.K	Crown Court Compendium, Part II Sentencing (September 2016), available at https://www.judiciary.uk/wp-content/uploads/2016/06/crown-court-compendium-pt2-sentencing-20160906.pdf	
4. The appropriate sentence that should be imposed in this case in light of:		
a. Punitive aims of sentencing		

United Nations	UN Office on Drugs and Crime, "Handbook of basic principles and promising practices on Alternatives to Imprisonment", UN Publication Sales No. E.07.XI.2, 2007	
ICC	ICC-01/05-01/13-2166-AnxB3	p.184
collateral consequences		
Domestic law cases		
Canada	*R. v. Pham*, 2013 SCC 15, [2013] 1 S.C.R. 739, available at https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12904/index.do	§ 11-15
Canada	*R v Vujcic* (2010) CarswellOnt 4417 (see Annex B)	§ 27 '27 I must also consider the effects of a conviction in today's social and political climate. It is common knowledge that a conviction and even a conditional discharge can be a bar to foreign travel. It is common knowledge for residents in the Niagara Region, that the American border services will refuse any with a criminal record, absent special permission. In Canada, many employers commonly do annual criminal record checks and will even seek a release from a prospective employee to search for any incidents that the police services may have recorded. Under these circumstances, it can be very difficult to overcome past mistakes. It is reminiscent of Nathaniel Hawthorne's novel, "The Scarlet Letter" the badge of shame can be impossible to remove. In some cases, this is desireable, and even necessary, but that is not always so.'
Australia	Victorian Sentencing Manual (Judicial College of Victoria, 2006-2018), available at http://www.judicialcollege.vic.edu.au/eManuals/VSM/14701.htm	**'5.3.6 - Consequence of conviction** The consequence of a conviction is described in Fox & Freiberg *Sentencing: State and Federal Law in*

		Victoria, 2nd ed [1.504] as follows (footnotes omitted): The recording of a criminal conviction is a significant act of legal and social censure. It is a judicial act by which a person's legal status is officially and, under present Victorian law, irretrievably altered. The alteration effected by a conviction is a diminution of the offender's legal rights and capacities. These follow automatically from the fact of conviction and are not necessarily tied to the particular sanction that follows. The general consequences of conviction are thus in the nature of a penalty, and this should be taken into account when assessing the punishment to be imposed. Where there are particular, identifiable consequences arising from a conviction in the circumstances of the offender, these too should be taken into account. Thus in *Ryan* (2001) 206 CLR 267, McHugh said at [54]: It is legitimate, for example, to take into account that the conviction will result in the offender losing his or her employment or profession or that he or she will forfeit benefits such as superannuation. These consequences should generally be taken into account, both when determining whether or not to record a conviction, and in assessing the appropriate penalty generally. While the sentencer must have

		regard to this consideration, he or she should not overestimate the effective consequence of a conviction as compared to a non-conviction disposition. This is because the greatest practical significance of a conviction may be its impact upon the offender's future employment prospects, and in many cases it is the finding of guilt rather than the recording of a conviction that triggers adverse consequences for an offender. An employer is entitled to enquire not just about convictions but also about findings of guilt. Many occupations are subject to licensing or registration procedures, and an individual's character is generally relevant to these procedures. For the most part, as revealed in the survey below, these schemes are concerned not with conviction, but with either findings of guilt, or character more generally.'
The U.K	Rehabilitation of Offenders Act 1974 ("1974 Act) available at https://dbsdirect.co.uk/resources/Unspent%20Convictions.pdf	
U.S	Federal Guideline Manual (2012) available at https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2012/manual-pdf/2012_Guidelines_Manual_Full.pdf	
b. Deterrence		
Domestic cases		
Canada	*R v Vujcic* (2010) CarswellOnt 4417 (see Annex B)	§§ 11, 17-25
Australia	Boulton, Clements, Fitzgerald [2014] VSCA 342, available at http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSCA/2014/342.html?stem=0&synonyms=0&query=k.%20argiropoulos	§ 123 123. The principle of general deterrence requires the sentencing court to bear in mind, in determining an appropriate sentence, the need to deter others who might contemplate engaging in offending conduct of

		the relevant kind. As a general rule, the effectiveness of an individual sentence as a deterrent depends on two things: *(a) the degree to which the sentence is, and will be perceived by the relevant section of the community to be, punitive in nature; and* *(b) the extent to which the fact of the sentence, and its punitive character, is communicated to those whom it is intended to deter.* Both conditions must be satisfied. Self-evidently, a sentence of which the public are unaware can have no deterrent effect on anyone other than the offender.'
c. Rehabilitation		