Volume 11 Issue 1 Articles & Essays

University of Bologna Law Review

https://doi.org/10.60923/issn.2531-6133/21749

Received: 14 Apr. 2025 | Reviewed: 6 Jan. 2026 | Accepted: 10 Jan. 2026 | Published: 17 Aug. 2026

Denial of Justice at the Intersection of Human Rights and International Investment Law: A Case Law Analysis

Eleni Gavriil

Eleni Gavriil is a Lecturer in International Economic Law and Human Rights at the Neapolis University Pafos (Cyprus) and Director of the NUP Human Rights Observatory (Cyprus). She holds a PhD in Law from the European Law and Governance School (Greece). Her research focuses on the intersection of International Economic Law, Human Rights Law, and European Law, with particular emphasis on the relationship between foreign investment protection and human rights. She also conducts research on inclusion and democratic participation through EU-funded projects.

@ e.gavriil.2@nup.ac.cy

0000-0003-4112-8329

ABSTRACT

This article examines the interaction between human rights law and international investment law in the context of denial of justice. Although the two legal fields have different foundations, both emphasise the importance of procedural fairness. The analysis asks whether and how denial of justice operates as a functional bridge between these regimes. It focuses on how investment tribunals address claims of denial of justice by reference to human rights law, particularly Article 6(1) of the European Convention on Human Rights. The case law analysis reveals three main themes: convergence, caution, and resistance. The article also considers the role of parallel proceedings, in which the same facts are litigated before investment and human rights *fora*. Ultimately, the findings suggest that access to justice serves as a bridge between the two fields, illustrating their developing interplay.

KEYWORDS

Denial of Justice; Human Rights; International Investment Law; Foreign Direct Investments; Investor-State Arbitration

TABLE OF CONTENTS

INTRODUCTION

Access to justice lies at the heart of human rights law and international investment law. Despite their distinct frameworks, these legal regimes operate within the broader umbrella of international law, and common foundations emerge. Scholars have become increasingly interested in the points of convergence and divergence between these two normative frameworks, and it is in this context that denial of justice emerges as a particularly significant point of overlap.[1]

This overlap is evident in arbitral practice. In *Loewen v. United States*, the tribunal examined whether deficiencies in domestic court proceedings constituted a denial of justice under international law. Thus, it linked fair trial guarantees under human rights law with the fair and equitable treatment [hereinafter "F.E.T."] standard in investment law. While the tribunal ultimately stressed the need to exhaust local remedies, it nonetheless referenced jurisprudence under Article 6 of the European Convention of Human Rights [hereinafter "E.C.H.R."].[2]

Similarly, in *Chevron v. Ecuador*, the tribunal assessed whether systemic deficiencies in the host state's judiciary constituted a denial of justice. Human rights instruments, including the International Covenant on Civil and Political Rights [hereinafter "I.C.C.P.R."] and the Universal Declaration of Human Rights [hereinafter "U.D.H.R."], were invoked to define due process, judicial independence, and impartiality, alongside references to regional human rights jurisprudence.[3]

These case law developments underscore the need for tribunals to interpret investment treaty standards in light of human rights guarantees, thereby raising questions about the scope of their jurisdiction.

While human rights law derives from universal and regional instruments, the case-law reference point in this study is the European Court of Human Rights [hereinafter "E.Ct.H.R."]. At its core, human rights law comprises a set of norms governing the treatment of individuals and groups by states and, increasingly, by

---

[1] *See generally* Ursula Kriebaum, *Human Rights and International Investment Law*, *in* Research Handbook on Human Rights and Investment 13 (Yannick Radi ed., 2018) (U.K.); *see also* Eric De Brabandere, *Human Rights and International Investment Law*, *in* RESEARCH HANDBOOK ON FOREIGN DIRECT INVESTMENT 619 (Markus Krajewski & Rhea T. Hoffmann eds., 2019) (U.K.); Raymond Yang Gao, *Bridging Separate Worlds: Application of Human Rights Law in Investment Treaty Arbitration*, 42 NW. J. INT'L L. & BUS. 1, 3 (2021); Eleni Gavriil, *Protection of Property Under Human Rights and International Investment Law: A Case-Law Analysis*, LAWS, Feb. 2024, at 1, 6 (Switz.); FILIP BALCERZAK, INVESTOR–STATE ARBITRATION AND HUMAN RIGHTS (2017) (Neth.); Fola Adeleke, *Human Rights and International Investment Arbitration*, 31 S. AFR. J. ON HUM. RTS. 48 (2016) (S. Afr.).

[2] The Loewen Group, Inc. and Raymond L. Loewen v. United States of America, ICSID Case No. ARB(AF)/98/3, Award, 165 (June 26, 2003), 7 ICSID Rep. 442, 467.

[3] Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I), PCA Case No. 2007-02/AA277, Partial Award on the Merits, 166, 244 (Mar. 30, 2010).

non-state actors. In this context, the analysis focuses on the right to a fair trial as protected by the E.C.H.R. and interpreted through the jurisprudence of the E.Ct.H.R.[4] The right to a fair trial encompasses the following: (i) access to a court, (ii) a competent, independent and impartial tribunal established by law, (iii) equality of arms and adversarial proceedings, (iv) publicity of hearings and reasons, and (v) determination within a reasonable time.[5]

International investment law is understood as the field of public international law that governs the commercial activities of multinational enterprises undertaken in foreign states.[6] Its rules are primarily found in bilateral and multilateral investment treaties and in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [hereinafter "I.C.S.I.D. Convention"], which together establish protections for foreign investors. Arbitral tribunals have interpreted the F.E.T. standard as encompassing core elements of due process and procedural fairness. In particular, protection against denial of justice is recognised as a vital element of the F.E.T. standard, ensuring access to an unbiased and procedurally fair dispute settlement mechanism.[7] In international investment law, denial of justice encompasses both the denial of access to courts and the disregard of fair and equitable procedures, and may result not only from judicial misconduct but also from legislative or executive interference.[8]

Accordingly, denial of justice functions as a bridge between the right to a fair trial in human rights law, where it is grounded in Article 6 of the E.C.H.R., and the F.E.T. standard in international investment law, where it is recognised as a core element of investor protection. These concepts are further elaborated upon in Chapter 1.

The central concern of both legal fields is the vulnerability of the individual, either as a human rights holder or as a foreign investor, *vis-à-vis* the state. International investment law, however, did not evolve alongside human rights law.[9] Human rights emerged as a major field of international law in a relatively short period after the Second World War.[10] The establishment of the United Nations in 1945 and the adoption of the

[4] *See* Golder v. The United Kingdom, App. No. 4451/70, 18 Eur. Ct. H.R. Rep. (Ser. A) (1975).

[5] *See* Piero Leanza & Ondrej Pridal, The Right to a Fair Trial: Article 6 of the European Convention on Human Rights (2014) (Neth.).

[6] *See* David Collins, An Introduction to International Investment Law (1st ed. 2017) (U.K.).

[7] *See* Roland Kläger, 'Fair and Equitable Treatment' in International Investment Law (2011) (U.K.).

[8] *See* Roger P. Alford, Ancillary Discovery to Prove Denial of Justice, 53 VA. J. Int'l L. 127 (2012).

[9] *See* Pierre-Marie Dupuy, *Unification Rather than Fragmentation in International Law? The Case of International Investment Law and Human Rights*, *in* Human Rights in International Investment Law and Arbitration 45 (Pierre-Marie Dupuy, Ernst-Ulrich Petersmann & Francesco Francioni eds., 2009) (U.K.).

[10] *See generally* Bonny Ibhawoh, *Commemorating Human Rights: Exploring Origins, Episodes, and Historicity in Constructing a Human Rights Timeline*, 19 Peace & Conflict: J. Peace Psych. 338 (2013).

U.D.H.R. in 1948 marked a decisive turning point, as human rights violations were no longer exclusively domestic matters but matters of international concern.[11] International investment law, by contrast, has deeper roots in the treatment of aliens and the development of state responsibility for injuries to foreigners.[12] With the proliferation of bilateral investment treaties [hereinafter "BITs"], the status of foreign investors improved significantly, granting them greater protection against host state interference.[13] The I.C.S.I.D. Convention, adopted in 1965, reinforced these treaty guarantees by creating an institutional framework for investor-state dispute settlement [hereinafter "I.S.D.S."].[14] Although the two regimes developed separately, their interaction intensified with the rise of I.S.D.S. in the 1990s. At that point, tribunals and investors began drawing on human rights jurisprudence to define standards of judicial conduct, particularly through the concept of denial of justice.

The relationship between international investment law and international human rights law has been examined through their shared substantive guarantees. Both legal regimes contain rules prohibiting the state from discriminating against individuals, which can be explained by their common origins in the protection of aliens and their shared aim of restraining governmental abuse.[15] Alongside non-discrimination and property protection, access to justice constitutes another recognised point of overlap between the two fields.[16] This article focuses on this latter dimension by examining the denial of justice as a point of interaction between human rights law and international investment law.

Denial of justice involves standards that often mirror — and sometimes directly adopt — human rights law guarantees concerning judicial conduct. This dual identity of denial of justice, as both a human right under instruments such as the E.C.H.R. and a treaty-based obligation in I.S.D.S., has given rise to a dynamic interplay between human rights bodies and investment tribunals.[17] As Dupuy points out, there is a deep relationship between denial of justice as part of fair and equitable treatment and the

[11] *See generally* Andrew Truitt, *Ancient Roots and Modern Offshoots: The Development of International Human Rights*, 7 REGENT J. INT'L L. 199 (2009); Elisabeth Kardos Kaponyi, *The Development of the International Human Rights Law with Specific Regard to the European Human Rights System*, 2015 HUNGARIAN Y.B. INT'L L. & EUR. L. 7 (Hung.).

[12] *See* KATE MILES, THE ORIGINS OF INTERNATIONAL INVESTMENT LAW (2013) (U.K.).

[13] *See* MUTHUCUMARASWAMY SORNARAJAH, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT (3rd ed. 2012) (U.K.).

[14] *See* Jeanrique Fahner & Kate Miles, *The Contested History of International Investment Law: From a Problematic Past to Current Controversies,* 17 INT'L CMTY L. REV. 373 (2015) (Neth.).

[15] See Jorge E. Vinuales & Pierre-Marie Dupuy, *Human Rights and Investment Disciplines: Integration in Progress*, in INTERNATIONAL INVESTMENT LAW (M. Bungenberg et al eds., 2012) (Ger.).

[16] *See generally* MARTINS PAPARINSKIS, THE INTERNATIONAL MINIMUM STANDARD AND FAIR AND EQUITABLE TREATMENT 175 (2013) (U.K.).

[17] *See* Rodrigo Polanco Lazo & Rodrigo Mella, *Investment Arbitration and Human Rights Cases in Latin America*, *in* RESEARCH HANDBOOK ON HUMAN RIGHTS AND INVESTMENT 41 (Yannick Radi ed., 2018) (U.K.).

right to a fair trial as part of human rights law, based on the common reference to "equity" inherent in applying the rule of law.[18]

This article investigates how the denial of justice facilitates jurisprudential cross-fertilisation. Both regimes aim to restrain governmental abuse and establish standards for judicial conduct.[19] Through a survey of relevant case law, the article identifies where and how the two regimes align, diverge, and influence each other. On this basis, the main research question is whether and how denial of justice operates as a functional point of interaction between human rights law and international investment law, and how tribunals have addressed this overlap through patterns of convergence, caution, resistance, and the emergence of parallel proceedings.

METHODOLOGY

This study adopts a doctrinal approach. It draws on primary legal sources, including arbitral awards, human rights case law, and treaty provisions such as Article 6 of the E.C.H.R. as well as bilateral investment treaties, supplemented by secondary sources. The analysis focuses on selected arbitral awards examining denial-of-justice claims in which either the parties' arguments or the tribunal's reasoning explicitly refer to human rights norms relating to the right to a fair trial.

The case law is analysed thematically through an inductive process, based on a close reading of the different ways in which denial-of-justice claims have been handled. The analytical categories are selected according to the degree of engagement with human rights norms within the tribunals' reasoning. The analysis examines how tribunals use human rights norms, and how they accommodate or exclude human rights arguments when interpreting denial-of-justice claims.

Accordingly, recurring patterns in arbitral practice are identified and grouped into three analytical categories: convergence, caution, and resistance. These categories reflect different functions that human rights norms perform within arbitral reasoning. Convergence refers to cases in which human rights standards provide substantive interpretive content for assessing denial of justice or procedural fairness. Caution applies to cases where human rights norms are acknowledged as persuasive or analogical

[18] Dupuy, *supra* note 9, at 52.

[19] *See* Stephan W. Schill, *Enhancing International Investment Law's Legitimacy: Conceptual and Methodological Foundations of a New Public Law Approach*, 52 VA. J. INT'L L. 57, 86 (2011).

references but remain secondary to treaty-based reasoning. Resistance refers to cases in which tribunals exclude human rights norms from their analysis. These categories serve as descriptive tools for mapping tribunals' approaches to human rights arguments in denial-of-justice claims and do not constitute an exhaustive classification.

In the context of human rights law, the article does not seek to examine international human rights law as a whole. Instead, the analysis focuses on the jurisprudence of the E.Ct.H.R. This choice is based on three considerations. First, the E.Ct.H.R. has developed an extensive and well-established body of case law on fair trial guarantees. Second, investment tribunals addressing denial-of-justice claims primarily refer to Article 6 of the E.C.H.R. and the relevant case law. Third, several disputes involving denial of justice have been pursued in parallel before the E.Ct.H.R. and investment tribunals. Thus, the emphasis on E.Ct.H.R. is not an assumption that this system is representative of international human rights law as a whole, but rather reflects arbitral practice.

STRUCTURE OF THE ARTICLE

The article proceeds in four main parts. Chapter 1 introduces the foundational principles underlying the denial of justice in human rights and investment law. It examines the core legal criteria defining fair-trial rights and the denial of justice, identifying convergence in standards such as access to courts, judicial independence, and reasonable time requirements. Chapter 2 presents a thematic analysis of case law, examining how tribunals have engaged with human rights arguments through convergence, caution, and resistance. Chapter 3 examines cases involving parallel proceedings before investment tribunals and human rights bodies, reflecting the broader institutional implications of cross-regime interaction. The article concludes by synthesising the main findings and reflecting on the wider impact of the cross-fertilisation between human rights and investment law in the context of denial of justice.

1. CONCEPTUAL AND NORMATIVE FOUNDATIONS

In this article, the conceptual dimension refers to the legal meaning and scope of denial of justice and the human right to a fair trial as developed in the respective legal fields.

The normative dimension refers to the legal standards that govern judicial conduct and procedural fairness as reflected in treaty provisions and case law. The right to a fair trial is enshrined in various legal systems, although it lacks a universally accepted definition. It encompasses several core elements, including the right of access to a court and the right to be heard by a competent, independent and impartial tribunal; the right to equality of arms; the right to a public hearing; the right to be heard within a reasonable time; and the right to legal counsel. In general, the prevailing approach categorises the right to a fair trial into two principal elements: the right of access to court and the right to a fair process. Both elements are safeguarded by a range of procedural safeguards.[20]

The primary focus here is the E.C.H.R., which is widely regarded as the most effective international instrument for safeguarding human rights, due to its strong enforcement mechanisms.[21] Article 6 of the E.C.H.R. establishes the right to a fair trial, which has been subject to extensive judicial interpretation, broadening its scope. This extensive case law of the E.Ct.H.R. provides the necessary basis for understanding the content of the right. Furthermore, it is particularly pertinent to this analysis since investment tribunals predominantly refer to it when addressing human rights concerns. According to Bjorklund, E.Ct.H.R. jurisprudence provides valuable insights for foreign investors alleging denial of justice in investor-state dispute settlement (I.S.D.S.).[22]

Although the explicit wording of Article 6(1) does not guarantee access to court, the jurisprudence of the E.Ct.H.R. has recognised access to court as a vital aspect of the right to a fair trial. Without access to court, the essential protection afforded by Article 6(1) would be ineffective.[23] This principle was crystallised in the landmark case of *Golder v. The United Kingdom*, wherein the Strasbourg Court affirmed that "the principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principles of law". It concluded that international law prohibits any form of denial of justice, holding that Article 6 should be interpreted in light of these principles.[24] Based on *Golder*, Article 6 must be interpreted in light of relevant rules and principles of international law, drawing upon the fundamental prohibition against denying justice.[25] This common principle serves as a vital link between human rights and international investment law, reflecting the overlap between the two fields.

[20] *See* Leanza and Pridal, *supra* note 5.
[21] *Id.*
[22] Andrea K. Bjorklund, *Reconciling State Sovereignty and Investor Protection in Denial of Justice Claims*, 45 VA. J. INT'L L. 810 (2005).
[23] *See* Klaus P. Berger & J. Ole Jensen, *Due Process Paranoia and the Procedural Judgment Rule: A Safe Harbour for Procedural Management Decisions by International Arbitrators*, 32 ARB. INT'L 415 (2016) (U.K.).
[24] Golder v. The United Kingdom, App. No. 4451/70, 35-36, 18 Eur. Ct. H.R. Rep. (Ser. A) (1975).
[25] DOVYDAS VITKAUSKAS & GRIGORIY DIKOV, PROTECTING THE RIGHT TO A FAIR TRIAL UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (Dovydas Vitkauskas ed., 2nd ed. 2017) (Eur.).

Importantly, the right of access to a court is not absolute and may be limited under specific conditions.[26] The E.Ct.H.R.'s case law indicates that limitations on this right are permissible provided that such limitations do not impair the essence of the right itself.[27]

The case law analysis reveals that the doctrine of denial of justice in international investment law often suffers from vagueness and has not been consistently applied by arbitral tribunals.[28] In response to these shortcomings, the right to a fair trial can be invoked to address gaps in international investment law regarding the denial of justice. In particular, the rich jurisprudence of the E.Ct.H.R. concerning Article 6 can further clarify and interpret the concept of a denial of justice.

Fair process emerges as a core principle in international investment law, designed to bind states and protect individuals, particularly foreign investors, from procedural injustice.[29] Historically, the concept of denial of justice under public international law emerged as a mechanism to protect aliens from abuses by host states. This legacy continues to shape investor-state arbitration. As Taton and Croisant observe, this common origin explains the substantive parallels between human rights protections and investment law guarantees.[30]

Because of their foreign status, investors are particularly vulnerable to arbitrary treatment in a host state.[31] Arbitral tribunals regularly address notions of administrative due process and denial of justice, which are well-established in human rights law. These principles are reflected in the E.C.H.R. and have been incorporated into the F.E.T. standard.[32] In international investment law, denial of justice claims typically arise under the F.E.T.[33] Consequently, the right to a fair trial, as protected in human rights law, has been invoked in various I.S.D.S. cases involving the doctrine of denial of justice. As in human rights law, access to unbiased and procedurally fair dispute settlement mechanisms is a fundamental principle of international investment law.[34] The United Nations Conference on Trade and Development [hereinafter "U.N.C.T.A.D."] defines

[26] *Id.*
[27] *See* Bjorklund, *supra* note 22.
[28] *See generally* Vid Prislan, *Investment Tribunals as Courts of Appeal? Determining State Responsibility for Substantive Denial of Justice*, 93 Br. Yearb. Int'l. L. (2023) brad013 (U.K.).
[29] *See* Gus Van Harten, 'Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law' (Osgoode Hall Law School of York University 2010) (Can.).
[30] *See* Xavier Taton and Guillaume Croisant, *Judicial Protection of Investors in the European Union: The Remedies Offered by Investment Arbitration, the European Convention on Human Rights and EU Law,* 7 Indian J. Arb. L. 61 (2018) (India).
[31] *See generally* Carlos A. Hecker Padilla, *Denial of Justice to Foreign Investors*, 3 Cuadernos de Derecho Transnacional 296 (2011) (Spain).
[32] *See* Kläger, *supra* note 7.
[33] *See* Prislan, *supra* note 28.
[34] *See* Todd Weiler, The Interpretation of International Investment Law: Equality, Discrimination and Minimum Standards of Treatment in Historical Context (Martinus Nijhoff Publishers, 2013) (Neth.).

denial of justice as any gross maladministration of justice by domestic courts caused by the dysfunction of the state's judicial system.[35] This definition underscores the shared commitment of both legal regimes to upholding the rule of law, due process, and the effective protection of individuals against systemic judicial failures.

The modern development of denial of justice in investment arbitration jurisprudence can be traced to the North American Free Trade Agreement [hereinafter "N.A.F.T.A."] case *Azinian v. Mexico,* which summarises the main elements of the principle. In this case, the tribunal categorised the potential denial-of-justice claims under the following headings: (a) refusal to entertain a suit; (b) undue delay; (c) administration of justice in a seriously inadequate way; and (d) clear and malicious misapplication of the law.[36]

Recent I.S.D.S. practice shows that denial of justice has evolved beyond a simple refusal of access to courts. It encompasses manifestly unjust decisions and governmental interference with the administration of justice, which can arise from actions taken by either the legislature or the executive. Therefore, both maladministration and misadministration of justice can constitute denial of justice, whether in a judicial or administrative context.[37] The *Azinian v. Mexico* case affirmed that denial of justice may constitute a violation of F.E.T. where domestic courts "refuse to entertain a suit, subject it to undue delay or administer justice in a seriously inadequate way".[38]

Access to justice follows a similar logic in international investment law and human rights law. The violation of both access to the judicial process and access to justice within the judicial process is accepted as the most typical form of denial of justice.[39] This similarity explains the parallel development of the two fields and, thus, the cross-referencing between the different mechanisms.

In this context, tribunals in both legal regimes have acknowledged that access to a court can be restricted by procedural rules such as immunity, privilege, or other defences. In *Mondev v. United States,* the tribunal, which cited E.Ct.H.R. jurisprudence, addressed this issue by assessing whether a domestic court's decision could amount to a denial of justice. It examined whether applying procedural rules such as statutory immunity served a legitimate aim and did not impair the essence of the right to a fair

[35] U.N. Conference on Trade and Development, Expropriation, U.N. Doc. UNCTAD/DIAE/IA/2011/7, U.N. Sales No. E.12.II.D.7 (2012).

[36] Azinian v. United Mexican States, ICSID Case No. ARB(AF)/97/2, Award, 102–103 (Nov. 1, 1999), 5 ICSID Rep. 269, 290 (2002).

[37] *See* Jacob Stone, *Arbitrariness, the Fair and Equitable Treatment Standard, and the International Law of Investment,* 25 LEIDEN J. INT'L L. 77 (2012) (Neth.).

[38] Azinian v. United Mexican States, *supra* note 36.

[39] *See* Berk Demirkol, *Non-Treaty Claims in Investment Treaty Arbitration,* 31 LEIDEN J. INT'L L. 59 (2018) (Neth.).

trial.[40] This approach is similar to the reasoning of the E.Ct.H.R., notably in *Golder*. Both legal regimes thus recognise that procedural barriers are permissible only when they do not undermine fundamental access to justice.[41]

Similarly, both legal regimes accept that undue delay may constitute denial of justice.[42] The E.Ct.H.R. has developed extensive case law that considers several elements when addressing delays in proceedings.[43] In *Chevron v. Ecuador*, the arbitral tribunal considered the conduct of litigants and courts, as well as the significance of the interests at stake.[44] Once again, the tribunal's approach echoes the reasoning of the E.Ct.H.R.

Judicial independence and impartiality are fundamental elements in both legal frameworks. Investment tribunals have accepted that a lack of independence and impartiality is a crucial factor in determining whether denial of justice exists.[45] The importance of judicial independence and impartiality is also established in the E.C.H.R., under Article 6(1).[46] Notably, the E.Ct.H.R. defines independence as a structural attribute and impartiality as a personal attribute of the adjudicator.[47]

Regarding procedural admissibility, a further point of similarity lies in the requirement of exhaustion of domestic remedies. In the human rights regime, the rule of exhaustion of local remedies is enshrined in Article 35 of the E.C.H.R. The Convention requires individuals to exhaust domestic remedies before applying to the Strasbourg Court. Similarly, in international investment law, some tribunals consider exhaustion of

[40] Mondev International Ltd. v. United States of America, ICSID Case No. ARB(AF)/99/2, Award (Oct. 11, 2002), 6 ICSID Rep. 192, 226 (2004).

[41] *See* Roberto Ruoppo, *Common Features of the Right to Property and International Investments: Evidence from the Use of ECtHR Case Law in Investment Tribunals Decisions* https://brill.com/view/journals/iric/2/2/article-p347_007.xml (accessed Oct. 1, 2025) (Ital.).

[42] *See* Jan de Nul N.V. & Dredging Int'l N.V. v. Arab Republic of Egypt, ICSID Case No. ARB/04/13, Award (Nov. 6, 2008); *see also* Victor Pey Casado & President Allende Found. v. Republic of Chile (I), ICSID Case No. ARB/98/2, Award (May 8, 2008); H&H Enterprises Investments Inc. v. Arab Republic of Egypt, ICSID Case No. ARB/09/15, Award (May 6, 2014); Chevron Corporation and Texaco Petroleum Corporation v. Ecuador (II), PCA Case No. 2009-23, Fourth Partial Award on Track III (Nov. 17, 2025).

[43] *See generally* H. v. France, App. No. 10073/82, 162-A Eur. Ct. H.R. (ser. A) (1989); *see also* Dobbertin v. France, App. No. 13089/87, 256-D Eur. Ct. H.R. (ser. A) (1993); Eckle v. Germany, App. No. 8130/78, 51 Eur. Ct. H.R. (ser.A) (1982); Union Alimentaria Sanders SA v. Spain, App. No. 11681/85, 157 Eur. C. H.R. (ser. A) (1989).

[44] Chevron Corporation and Texaco Petroleum Corporation v. Ecuador (II), PCA Case No. 2009-23, Fourth Partial Award on Track III, 250 (Nov. 17, 2025).

[45] *See* Ursula Kriebaum, *Investment Arbitration - Rule of Law Demands of the Domestic Judiciary (Denial of Justice, Judicial Expropriation, Effective Means)*, SSRN Working Paper (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3517195 (accessed Oct. 1, 2025).

[46] *See generally* Beaumartin v. France, App. No. 15287/89, 296-B Eur. Ct. H.R. (ser.B) (1994); *see also* Sramek v. Austria, App. No. 8790/79, 84 Eur. Ct. H.R. ser.A (1984); Lavents v. Latvia, App. No. 58442/00 (Nov. 28, 2002), https://hudoc.echr.coe.int/eng?i=002-5158; Hauschildt v. Denmark, App. No. 10486/83, 154 Eur. Ct. H.R. (ser.A) 24 (1989).

[47] Union Agency for Fundamental Rights [FRA] and Council of Europe [CoE], Handbook on European Law Relating to Access to Justice (2016).

local remedies a requirement of the F.E.T. standard, even though most BITs do not impose such a requirement as a precondition for arbitration.[48]

Finally, due process remains a foundational principle linking denial of justice in international investment law with human rights law. In human rights law, as noted above, judicial due process is a fundamental right, established in universal and regional human rights treaties. In I.S.D.S. case law, Reed identifies four key components of the principle: a party must be given notice of the case against it; the party must have an opportunity to present its case and respond before an impartial and independent tribunal that treats all parties with equality.[49] Investment tribunals have held that a violation of the F.E.T. standard may include a lack of due process. This conception aligns with E.Ct.H.R. jurisprudence.[50]

2. THE INTERACTION BETWEEN HUMAN RIGHTS AND INTERNATIONAL INVESTMENT LAW REGARDING DENIAL OF JUSTICE AND THE RIGHT TO A FAIR TRIAL: A CASE LAW ANALYSIS

Based on the foundational convergence between human rights and international investment law outlined in the previous part, this chapter shifts focus to the phenomenon of cross-fertilisation between the two legal branches. It focuses on how investment tribunals have engaged with access to justice and the right to a fair trial by drawing on human rights standards in interpreting claims of denial of justice. The case law discussed below illustrates that investment arbitration is increasingly invoking human rights standards in addressing claims of denial of justice. For this reason, the case-law analysis focuses only on cases in which denial-of-justice claims were explicitly combined with human rights arguments.

This case law reveals three main themes in the tribunals' approach: convergence with human rights norms, caution in balancing human rights and international investment law, and resistance to the adoption of human rights. **Convergence** identifies cases in which tribunals have directly drawn upon human rights standards to interpret

[48] *See* Martin D. Brauch, *Exhaustion of Local Remedies in International Investment Law* https://www.iisd.org/system/files/publications/best-practices-exhaustion-local-remedies-law-investment-en.pdf (accessed Oct. 1, 2025) (Can.); *see also* Christoph Schreuer, *Interaction of International Tribunals and Domestic Courts in Investment Law*, CONTEMP. ISSUES IN INT'L ARB. MED. 71 (2011).

[49] Lucy Reed, *Ab(Use) of Due Process: Sword vs Shield*, 33 Arbitration International 361 (2017) (U.K.).

[50] *See generally* Waste Management, Inc. v. Mexico, ICSID Case No. ARB(AF)/00/3, Award, 98 (Apr. 30, 2004); S.D. Myers, Inc. v. Canada, UNCITRAL (NAFTA Ch. 11 Arb. Trib.), Partial Award, 134 (Nov. 13, 2000).

the denial of justice. **Caution** reflects a middle path where the relevance of human rights was acknowledged but not fully incorporated. **Resistance** includes cases where tribunals either rejected the applicability of human rights norms or treated them as external to the dispute. These three themes reflect the tribunals' varying levels of openness to integrating human rights principles into I.S.D.S.

As discussed above, the concept of denial of justice has substantial parallels between international human rights law and international investment law. The analogies between the denial-of-justice doctrine and the human right to a fair trial have led tribunals to cite human rights jurisprudence when interpreting this doctrine. Key cases show that acts such as arbitrary detention, unfair trials, or deportation may breach both human rights obligations and investment treaty standards. Investors have thus invoked human rights arguments to strengthen their position in arbitration.[51] Several investment cases have relied on international human rights law, notably Article 6 of the E.C.H.R. and Article 14 of the I.C.C.P.R., to support or substantiate procedural fairness claims.

Foreign investors have presented human rights arguments alongside claims under bilateral investment treaties. Tribunals, in turn, have cited human rights jurisprudence to interpret procedural guarantees and reduce legal uncertainty regarding the standard for the denial of justice. According to Bjorklund, tribunals must be careful when they transfer jurisprudence from the E.Ct.H.R. to investment arbitration. Nonetheless, such decisions offer valuable guidance and can serve as a methodological framework for addressing comparable issues within a more established legal regime.[52] More broadly, the practice of referring to external rules to determine the meaning of vague treaty terms presents a promising way to foster coherence between human rights law and international investment law.[53]

2.1. CONVERGENCE

Convergence occurs when tribunals go beyond cautious borrowing and integrate human rights standards into their reasoning. Based on the case-law analysis, convergence occurs when tribunals cite human rights arguments to interpret the denial of justice in

[51] *See* Filip Balcerzak, Investor-State Arbitration and Human Rights (Brill Nijhoff, 2017) (Neth.); *Fola Adeleke, Human Rights and International Investment Arbitration*, 32 South African Journal on Human Rights 48 (2016) (S. Afr.).
[52] Bjorklund, *supra* note 22.
[53] *See* Julian Scheu, *Trust Building, Balancing, and Sanctioning: Three Pillars of a Systematic Approach to Human Rights in International Investment Law and Arbitration*, 48 Geo. J. Int'l L. 449 (2017).

relation to fair-trial guarantees, such as the right to a fair trial, judicial independence, or the presumption of innocence. In these instances, arbitral reasoning is most closely aligned with human rights law. The pattern shows that when disputes involve core trial rights, human rights standards often provide interpretive tools to define the F.E.T. obligation.

Tribunals have engaged directly with human rights principles to determine whether prolonged or inconsistent proceedings amount to a denial of justice. Particularly in determining the reasonableness of delay, investment tribunals increasingly rely on the jurisprudence of human rights courts.[54] *Pey Casado v. Chile* is illustrative. The tribunal drew on E.Ct.H.R. case law to find that a delay of over seven years in domestic proceedings constituted a denial of justice, aligning its reasoning thus with human rights standards.[55]

A further example of tribunals using human rights instruments as interpretive tools under general international law is *Tulip Real Estate v. Turkey*. In this case, arbitrators engaged in an interpretative exercise under Article 31(3)(c) of the Vienna Convention on the Law of Treaties [hereinafter "V.C.L.T."], bringing external human rights norms into the proceedings.[56] The tribunal affirmed that "provisions in human rights instruments dealing with the right to a fair trial" are "relevant to the interpretation of the concept of a fundamental rule of procedure" under Article 52(1)(d) of the I.C.S.I.D. Convention and that such interpretive cross-referencing does not introduce extraneous obligations.[57] Although careful not to impose external commitments, the tribunal acknowledged that human rights guarantees are relevant to interpreting the meaning of a fair procedure in arbitration.

Convergence also appears in cases in which tribunals accepted independent human rights claims alongside treaty claims. In *Toto v. Lebanon*, the tribunal was asked to consider whether the proceedings had violated the investor's right to a fair trial. Although it concluded that Article 6 of the E.C.H.R. was not directly applicable, the tribunal nonetheless assessed the procedural framework through the lens of general principles of law. It referred to provisions of the I.C.C.P.R. to support its reasoning. In this case, the claimant made an independent human rights claim alleging violations of the right to a fair trial. Notably, the tribunal was more open to engaging with human rights

[54] *See* Vid Prislan, Domestic Courts in Investor-State Arbitration: Partners, Suspects, Competitors (June 27, 2019) (Ph.D. dissertation, Leiden University) (Leiden University Scholarly Publications) (Neth.).

[55] *See supra* note 42.

[56] *See* Tulip Real Estate and Development Netherlands B.V. v. Turkey, ICSID Case No. ARB/11/28, Decisions on Annulment, 86–88 (Dec. 30, 2015).

[57] *See id.* 92.

arguments than in some other cases.[58] It accepted jurisdiction over the dispute and affirmed that the applicable law encompassed the general principles of international law, allowing human rights arguments to be considered within its interpretive framework. While examining the alleged denial of the right to a fair hearing, the tribunal referred to the jurisprudence of the human rights courts. It observed that Article 6 of the E.C.H.R. guides whether lengthy court proceedings may amount to a breach of due process and the right to a fair and equitable trial.[59] However, because Lebanon is not a party to the E.C.H.R., the tribunal concluded that it could not rely on the E.Ct.H.R. case law. Instead, it referred to the I.C.C.P.R., to which Lebanon is a contracting party, and accepted that the views and decisions of the Human Rights Committee were relevant to the dispute.[60] Despite this openness to human rights reasoning, the tribunal ultimately declined jurisdiction because the claimant had failed to present sufficient evidence to substantiate the alleged denial of justice.[61]

Toto is classified as a case of convergence because the tribunal accepted that fair trial standards established in human rights law could inform the assessment of procedural fairness within the applicable-law framework, even though the claim ultimately failed. Unlike in *Pey Casado*, where the tribunal relied on E.Ct.H.R. jurisprudence to find that delay constituted denial of justice, in *Toto v. Lebanon,* the tribunal accepted the relevance of human rights but ultimately dismissed the claim on evidentiary grounds. This comparison shows that convergence may operate effectively when tribunals recognise a jurisdictional basis for engaging with human rights.

Some decisions present a more direct application of human rights law by investment tribunals, relying on instruments such as the E.C.H.R. and I.C.C.P.R. to substantiate claims of denial of justice. A particularly integrated approach that shows convergence can be seen in *Al-Warraq v. Indonesia*. Following a politically charged criminal prosecution of the investor, who was convicted *in absentia*, the claimant alleged that the state's conduct breached the F.E.T. standard under the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference [hereinafter "O.I.C. Agreement"].[62] The claimant relied extensively on human rights law. More precisely, he argued that the phrase "basic rights" of the O.I.C. Agreement refers to fundamental rights, including the right to a fair

[58] *See generally* Vivian Kube & Ernst-Ulrich Petersmann, *Human Rights Law in International Investment Arbitration*, 11 Asian Journal of WTO and International Health Law and Policy 65 (2016) (Taiwan).
[59] *See* Toto Costruzioni Generali S.p.A. v. The Republic of Lebanon, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 157 (Sep. 11, 2009).
[60] *See* id. at 158–160.
[61] *See* id. at 168.
[62] *See* Hesham T. M. Al Warraq v. Republic of Indonesia, UNCITRAL, Final Award, 189-191 (Dec. 15, 2014).

trial as established in Article 14 of the I.C.C.P.R.[63] For its part, the tribunal relied on international human rights law, particularly Article 14 of the I.C.C.P.R., which guarantees due process and the right to a fair trial. It held that the failure to respect these fundamental guarantees constituted a denial of justice and a breach of the F.E.T. obligation.[64] It held that the failure of the state to comply with the basic elements of justice constituted denial of justice. Citing instruments including the I.C.C.P.R., U.D.H.R., and E.C.H.R. to interpret the F.E.T. obligations, the tribunal concluded that the investor "did not receive fair and equitable treatment as enshrined in the I.C.C.P.R."[65] By adopting this reasoning, the tribunal aligned the F.E.T. standard with key procedural guarantees under international human rights law, reinforcing that foreign investors must be treated in accordance with human rights treaties.[66] *Al-Warraq* demonstrates a stronger form of convergence, as the tribunal based its finding of denial of justice on the I.C.C.P.R. and the E.C.H.R., directly aligning the F.E.T. standard with the right to a fair trial.

Similarly, in *Hassan Awdi v. Romania*, the tribunal addressed whether the host state's invocation of the claimant's alleged criminal conduct violated the right to a fair trial and the presumption of innocence. The claimants cited Article 6 of the E.C.H.R. and relevant case law to argue that there was a violation of the right to the presumption of innocence, the right to remain silent and the right to a fair trial.[67] The tribunal affirmed the applicability of such standards, citing Article 6 of the E.C.H.R. and stating that "the presumption of innocence is a rule of public international law under several international treaties to which also Romania is a party and has been applied by international tribunals."[68]

Taken together, these cases demonstrate that convergence is based on the substantive application of human rights standards in investment arbitration. By invoking fair trial guarantees to interpret denial of justice, tribunals have effectively integrated human rights into the content of F.E.T. Accordingly, convergence is not only an overlap but also shows the potential for cross-fertilisation. It supports the argument that the denial of justice can serve as a functional bridge, clarifying the meaning of F.E.T. through fair-trial guarantees.

---

[63] *See id.* at 519.
[64] *See id.* at 558–575.
[65] *See id.* at 621.
[66] Scheu, *supra* note 53.
[67] *See* Hassan Awdi, Enterprise Business Consultants, Inc. & Alfa El Corporation v. Romania, ICSID Case No. ARB/10/13, Decision on the Admissibility of the Respondent's Objection to Jurisdiction and Admissibility, 29 (July 26, 2013).
[68] *Id.* 80.

2.2. CAUTION

Caution arises when tribunals, on the one hand, acknowledge the relevance of human rights law but, on the other hand, restrict its influence on investment treaty interpretation. Based on case law, human rights norms serve as points of reference or analogy, but their role is secondary. To this end, human rights provide guidance. Still, tribunals preserve the autonomy of international investment law by ensuring that their decisions are based on BIT provisions rather than on external standards.

The earliest and landmark example of caution is *Loewen v. United States*. The tribunal addressed the issue of procedural misconduct in domestic courts and its implications under N.A.F.T.A. While emphasising the need to exhaust local remedies before bringing a denial-of-justice claim, it nonetheless cited the jurisprudence of the European Commission on Human Rights. Arbitrators highlighted "there is a body of opinion which supports the view that the complainant is bound to exhaust any remedy which is adequate and effective", indicating the persuasive authority of the standards under Article 6 of the E.C.H.R. even within non-European contexts.[69] Here, human rights standards were acknowledged but framed narrowly within the requirements of investment law.

This cautious approach was also adopted in *Mondev v. United* States, where human rights jurisprudence has been invoked to support claims under the F.E.T. standard. The *Mondev* tribunal acknowledged the potential relevance of human rights norms, specifically, Article 6(1) of the E.C.H.R., as a source of interpretative guidance in assessing the standard for denial of justice. In this case, the investors argued that the actions of U.S. judicial authorities amounted to a denial of justice and breached the F.E.T. standard under Chapter 11 of N.A.F.T.A. In its reasoning, the tribunal referred to the jurisprudence of the E.Ct.H.R., noting that Article 6(1) "can provide guidance by analogy" as to the scope of the F.E.T. under N.A.F.T.A. The tribunal further noted the evolutionary interpretation of the E.Ct.H.R. in assessing the right of access to court, suggesting that this dynamic approach may offer valuable insights into the scope of state obligations under investment treaties.[70]

Nevertheless, the tribunal expressed caution regarding the relevance of referring to the E.Ct.H.R. in the context of N.A.F.T.A.[71] It held that the E.Ct.H.R.'s jurisprudence originates from a distinct regional framework and is not explicitly concerned with the

[69] *Supra* note 2.
[70] *Supra* note 40.
[71] *See* Andreas Kulick, Global Public Interest in International Investment Law (Cambridge University Press 2012).

principles and objectives of international investment law.[72] Ultimately, the tribunal rejected Mondev's claim and found no denial of justice.[73] Even though the claim was dismissed, the case is an essential example of human rights norms being considered in interpreting the F.E.T. standard.

Chevron v. Ecuador reflects a deeper yet cautious engagement. In this case, human rights instruments were used to define the concepts of due process, judicial independence and impartiality and to support the investor's claim of denial of justice. The tribunal undertook a detailed assessment of Ecuador's judiciary, referencing standards under the I.C.C.P.R. and the U.D.H.R. and concluding that the court lacked independence and impartiality.[74] In its reasoning, the tribunal emphasised that the interpretation of BIT provisions, particularly those concerning fair and equitable treatment, should be informed by international law standards on denial of justice. However, it also concluded that Chevron's claims could be determined solely by referencing the relevant BIT, as *lex specialis*, without requiring recourse to general human rights law.[75] To support their claim for denial of justice, the investors emphasised that Ecuador is a party to the American Convention on Human Rights, which guarantees the right to a fair trial.[76] They further cited jurisprudence from international human rights bodies, including the E.Ct.H.R. and the Inter-American Court of Human Rights, highlighting precedents where delays of eight to ten years were found to violate the right to a fair trial.[77] The tribunal referred to international human rights law to interpret due process and impartiality, but ultimately resolved the dispute under the relevant BIT. Thus, human rights law was not decisive, and the autonomy of international investment law was preserved in this case. In contrast to *Mondev*, where human rights jurisprudence was invoked by analogy, *Chevron v. Ecuador* engaged more deeply with instruments such as the I.C.C.P.R. and U.D.H.R., but based its decision on the BIT, showing how tribunals can oscillate between broader references and treaty autonomy.

Caution is also evident in the fact that tribunals themselves are divided on the role of human rights. In *Thunderbird v. Mexico*, the investor invoked the human rights principle, specifically Article 6(1) of the E.C.H.R., to support a claim of denial of justice. The tribunal, however, did not engage substantively with these arguments.[78] In his

[72] *Supra* note 40.
[73] *Id.* at 157.
[74] *Supra* note 42.
[75] *Id.* at 242, 244.
[76] *Id.* at 166.
[77] *Id.* at 169–179.
[78] *See* International Thunderbird Gaming Corporation v. The United Mexican States, UNCITRAL, Claimant's Particularized Statement of Claim, 63 (Aug. 13, 2003).

separate opinion, arbitrator Thomas Wälde offered a more expansive view, arguing that the doctrine of denial of justice had evolved through the influence of human rights treaties and that the E.C.H.R., in particular, represented the closest judicial analogue to investor-state arbitration.[79] Wälde's opinion underscores a deeper convergence between the two fields, which, although not fully embraced by tribunals, continues to influence arbitral discourse to some extent.

Similarly, in *Philip Morris v. Uruguay,* the claimants invoked E.Ct.H.R. case law in the context of Article 6 of the E.C.H.R., arguing that such inconsistency amounted to a denial of justice.[80] The tribunal noted that judicial systems in other national legal systems also allow similar inconsistent results, citing an E.Ct.H.R. decision.[81] In his dissenting opinion, Born opposed this approach, explaining that Article 6 of the E.Ct.H.R. may shed light on the interpretation of the denial of justice. Still, it provides little additional guidance in interpreting the F.E.T. standard.[82] The divergence reveals how human rights may spark a debate within tribunals, reflecting uncertainty about their weight in investment arbitration.

The disagreement between the tribunal and Wälde's separate opinion in *Thunderbird* already revealed uncertainty over the role of human rights in shaping the denial of justice. A decade later, Philip Morris confirmed this uncertainty, as the majority and dissent divided over the influence of Article 6 of the E.C.H.R. Both cases illustrate that caution often reflects internal arbitral disagreement rather than a settled approach towards human rights in investment arbitration.

Other cases confirm the above approach. *Grand River v. United States* was a N.A.F.T.A. case involving Canadian investors and members of First Nations communities. The claimants argued that the host state had violated F.E.T. obligations and denied procedural fairness, citing Article 31(3)(c) of the V.C.L.T. to support the integration of human rights norms into N.A.F.T.A. treaty interpretation. They argued that these norms enriched the meaning of F.E.T. and were relevant interpretive tools.[83] Nonetheless, the tribunal rejected all arguments, emphasising that it does not understand the obligation to import legal elements from other treaties.[84] In *Amco v. Indonesia*, the host state relied

[79] International Thunderbird Gaming Corporation v. The United Mexican States, UNCITRAL, Separate Opinion of Thomas Wälde (Dec. 1, 2005).
[80] Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7, Award, 531 (July 8, 2016).
[81] *Id.* at 8.
[82] Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, *supra* note 80, Concurring and Dissenting Opinion Born, at 44–45.
[83] *See* Grand River Enterprises Six Nations, Ltd., et al. v. United States of America, UNCITRAL, Award, 63-64 (Jan. 12, 2011).
[84] *Id.* at 71.

on E.Ct.H.R. jurisprudence to support its defence. Indonesia claimed that procedural violations do not give rise to damages and cited the E.Ct.H.R. decision in *Sramek*.[85] The tribunal considered this argument carefully, acknowledging that Sramek was decided under Article 50 of the E.C.H.R., which governs "just satisfaction," and thus was not directly applicable under general international law.[86] Fry explains that the tribunal did not reject the relevance of the E.Ct.H.R.; rather, it distinguished the cited cases on their facts.[87] In both instances, human rights were acknowledged, but the tribunals remained cautious in applying them based on doctrinal grounds.

This case-law cluster shows that tribunals often recognise the interpretive value of human rights norms while maintaining the autonomy of investment treaties. Human rights arguments are treated as persuasive but secondary. Caution is the most common arbitral practice in the context of denial of justice. It illustrates the limited cross-fertilisation, where tribunals can be open to human rights law while preserving the autonomy of international investment law, reflecting a balance rather than deep integration.

2.3. RESISTANCE

Resistance emerges where tribunals decline to apply human rights standards as analogies or to treat them as independent sources of law. In such cases, human rights norms may be acknowledged in principle, but are ultimately excluded from the tribunal's jurisdictional or doctrinal framework. Accordingly, this pattern shows the limits of cross-fertilisation when the denial of justice is defined under international investment law.

This approach is exemplified in *Roussalis v. Romania*. The investor alleged that Romania committed a series of malicious and unjustifiable acts, which, *inter alia,* constituted a violation of the F.E.T. and Article 6 of the E.C.H.R.[88] The claimant referred to repeated E.Ct.H.R. decisions against Romania and argued that the E.C.H.R. is indeed a part of international law, as established in Article 10 of the relevant BIT.[89] While the tribunal acknowledged that the E.C.H.R. could fall within the scope of applicable international obligations, it ultimately concluded that the BIT provided a more specific

[85] *See* Amco Asia Corporation and others v. Republic of Indonesia, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding, 125 (Mar. 31, 1990).
[86] *Id.* at 127; *see also* James D. Fry, *International Human Rights Law in Investment Arbitration: Evidence of International Law's Unity*, 18 Duke J. Comp. Int'l L. 77 (2007).
[87] *See* Fry, *supra* note 86.
[88] Spyridon Roussalis v. Romania, ICSID Case No. ARB/06/1, Award, 10 (Dec. 7, 2011).
[89] *Id.* at 156, 309–312.

and higher level of protection.[90] Thus, it denied that human rights law constituted an independent source of rights under the treaty.

A similar outcome is found in *Fraport v. Philippines*, where the tribunal engaged with various human rights principles to examine annulment and due process standards. This case concerned the annulment of the arbitral award because the tribunal had exceeded its power, there was a serious departure from the fundamental rules of procedure, and the award failed to state its reasoning. To support the annulment, Fraport argued that its right to a fair trial had been violated, invoking core principles such *as nullum crimen sine lege* and *in dubio pro reo*, as well as its right to be heard. The ad hoc Committee acknowledged that the principles of *nullum crimen sine lege* and in *dubio pro reo* encapsulate fundamental protections of human rights. However, it found that these maxims are rooted in the context of criminal law and thus cannot be directly transposed into international investment arbitration proceedings.[91] In contrast, the Committee accepted the claim regarding the right to be heard, noting that this right, which is recognised in international human rights instruments as an element of the broader right to a fair trial, was indeed applicable.[92] The decision thus demonstrates a selective resistance: human rights norms are recognised in theory but rejected in practice when deemed inapplicable to investment disputes.

The clearest example of jurisdictional resistance is found in *Biloune v. Ghana*. In this case, the foreign investor alleged violations not only of expropriation and denial of justice but also of fundamental human rights. The dispute arose after the investor was arrested, detained for thirteen days without charge, and deported. The tribunal acknowledged that modern international law recognises individuals' entitlement to fundamental human rights. However, it held that "while the acts alleged to violate international human rights of Mr Biloune may be relevant, the Tribunal lacks jurisdiction to address as an independent cause of action a claim of violation of human rights".[93] This acknowledgement suggests that although human rights considerations may be relevant in I.S.D.S., they do not automatically fall within the tribunal's jurisdictional scope.

The focus on jurisdiction is a crucial factor in arbitral resistance to engaging with human rights claims. The scope of jurisdiction is the first element tribunals must

[90] *Id.* at 312.
[91] *See* Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines, ICSID Case No. ARB/03/25, Decision on the Application for Annulment, 192-194 (Dec. 23, 2010).
[92] *Id.* at 202.
[93] Antoine Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre and the Government of Ghana, Award on Jurisdiction and Liability, 60-61 (Oct. 27, 1989).

determine, and it defines whether human rights arguments can even be considered.[94] Four jurisdictional issues are typically assessed in I.S.D.S.: subject-matter jurisdiction (*ratione materiae*), jurisdiction over the standing of the claimant (*ratione personae*), jurisdiction based on party consent (*ratione voluntatis*), and jurisdiction over time-related issues (*ratione temporis*).[95] In practice, the decisive factor is consent as found in the relevant BIT.[96] Article 25 of the I.C.S.I.D. Convention limits jurisdiction to "legal disputes arising directly out of an investment." This requirement has consistently been interpreted to exclude purely autonomous human rights claims.[97] Some tribunals have interpreted this provision to exclude human rights arguments. As an illustration, the tribunal in *Biloune v. Ghana* held that it lacked jurisdiction to address human rights claims, unless they were directly related to the investment.[98]

The same reasoning has been adopted by other tribunals, which have held that investment treaties do not incorporate the universe of international law.[99] Human rights obligations bind states in other *fora*, but tribunals deal with disputes involving the application of the investment treaty.[100] At the same time, tribunals have acknowledged that human rights considerations can be invoked indirectly in investment proceedings, when they are incorporated into the interpretation of treaty standards, such as the F.E.T.[101] In this sense, jurisdiction acts as a filter: it can block independent human rights claims while leaving space for their use as interpretive guidance.

In light of the above, resistance concerns the limits set by the jurisdictional scope and doctrinal boundaries of tribunals. Tribunals recognise the existence of human rights norms but exclude them from their framework, either by treating investment treaties as self-contained regimes or by rejecting the applicability of rights developed in other legal contexts. *Biloune* shows this most decisively, as it excluded human rights claims on jurisdictional grounds, drawing a boundary between the two legal regimes. Resistance, therefore, reflects the structural limits of cross-fertilisation. While tribunals

[94] *See* Filip Balcerzak, *Investor-State Arbitration and Human Rights* (Brill Nijhoff 2017) (Neth.); Fola Adeleke, *Human Rights and International Investment Arbitration* (2016) 32 South African Journal on Human Rights 48 (S. Afr.).
[95] *See* Sornarajah, *supra* note 13, at 307 (U.K.).
[96] *See* Demirkol, *supra* note 39.
[97] *See* Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159.
[98] Antoine Biloune and Marine Drive Complex Ltd. v. Ghana Investments Centre and the Government of Ghana, Award on Jurisdiction and Liability, 203 (Oct. 27, 1989).
[99] *See* Bernhard von Pezold and Others v. Republic of Zimbabwe, ICSID Case No. ARB/10/15, Procedural Order No. 2, 57–62 (June 26, 2012).
[100] *See* Channel Tunnel Group Ltd. v. France and United Kingdom, P.C.A. Case No. 2003-06, Partial Arbitral Award, 148 (Jan. 30, 2007).
[101] *See* Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic, ICSID Case No. ARB/07/26, Award, 1191, 1204 (Dec. 8, 2016).

recognise the existence of human rights obligations, they prioritise the autonomy of investment treaties.

3. FAIR TRIAL GUARANTEES: PARALLEL PROCEEDINGS BEFORE INVESTMENT TRIBUNALS AND HUMAN RIGHTS BODIES

Building on the analysis in Chapter 2, which examined cases of convergence, caution, and resistance in I.S.D.S., this section turns to the phenomenon of parallel proceedings before investment tribunals and human rights bodies. The previous chapter addressed how tribunals have engaged with human rights arguments. This section examines what occurs when investors simultaneously claim fair trial violations in different *fora*. As already noted, the right to a fair trial intersects with the F.E.T. standard. This overlap has led to situations of parallel litigation and, at times, conflicting outcomes. Examining these points of contact helps address the article's research question: whether the denial-of-justice standard can function as a bridge between human rights and investment law.

Foreign investors' recourse to human rights mechanisms may be appropriate where fundamental rights, such as the right to a fair trial, have been infringed.[102] Before the Strasbourg Court, individuals, whether nationals or foreigners, may directly lodge an application. Indeed, investors may rely on the Convention's protection and, in the absence of a satisfactory remedy at the domestic level, may file a claim before the E.Ct.H.R. The Convention's right to a fair trial is particularly relevant in such cases.[103] This convergence raises significant legal questions about the analogy, interplay, and possible fragmentation of the denial-of-justice standard.

Foreign investors do not necessarily have to choose between investment arbitration and the E.Ct.H.R. Although some international investment agreements [hereinafter "IIAs"] require investors to select a single avenue of relief, arbitral tribunals usually do not prevent investors from using both remedies.[104] Indeed, there are instances in which the conduct of a host state may amount to a breach of both an IIA and the E.C.H.R. Under specific circumstances, investors may initiate parallel proceedings before an arbitral tribunal and the E.Ct.H.R. The Strasbourg Court, for its part, applies a

[102] *See* Ursula Kriebaum, *Parallel Proceedings – Investment Arbitration and the European Court of Human Rights*, 27 Austrian Rev. Int'l & Eur. L. Online 91 (2024) (Austria).
[103] *See* Taton & Croisant, *supra* note 30.
[104] *Id.*

"triple identity" test to determine the admissibility of a claim, assessing whether there is an identity of parties, cause of action, and object of the dispute.[105]

The *Yukos* case is illustrative. The investor brought claims before the E.Ct.H.R. and the arbitral tribunal constituted under the Permanent Court of Arbitration [hereinafter "P.C.A."]. While the two forums addressed different legal instruments, both proceedings raised fundamental issues regarding fair-trial guarantees and the broader contours of the denial of justice.[106] Before the E.Ct.H.R., the applicants claimed that the Russian Federation had violated Article 6 of the E.C.H.R. by denying them a fair trial. Initially privatised through a series of auctions, Yukos had been subjected to aggressive tax inspections. Russian authorities concluded that Yukos owed substantial tax arrears and sought the attachment of its assets. Proceedings moved at a pace that deprived the investor of sufficient time to review the evidence. Requests for extensions were denied, and the domestic courts consistently ruled in favour of the state. Ultimately, Yukos was declared bankrupt.[107] Having exhausted all domestic remedies, the investor appealed to the E.Ct.H.R., arguing that procedural irregularities violated the right to a fair trial. The Court agreed, finding a violation of Article 6. It held that the company was deprived of adequate time and facilities to present its case and that the scheduling of hearings by the appellate court had further curtailed its defence rights.[108] Accordingly, the principle of equality of arms, an essential component of Article 6, had not been respected.[109]

In parallel, the P.C.A. tribunal examined fair trial issues and property expropriation claims. The tribunal found that Russia's actions constituted a de facto expropriation conducted without due process. It referred to the treatment of Yukos' legal counsel and the very pace of legal proceedings as violations of due process.[110]

Another case illustrating parallel recourse is *Rompetrol v. Romania*. Before the E.Ct.H.R., the investor alleged that Romanian authorities had violated Article 6(1) through harassment, arrest, and surveillance during criminal investigations.[111] The

[105]*See* Guillaume Croisant, *Are a Bilateral Investment Treaty Arbitration and a Proceeding Before the European Court of Human Rights Compatible?* (2015) http://arbitrationblog.kluwerarbitration.com/2015/01/27/are-a-bilateral-investment-treaty-arbitration-and-a-proceeding-before-the-european-court-of-human-rights-compatible/ (accessed Oct. 1, 2025) (Neth.).

[106]See Lazo & Mella, *supra* note 17.

[107]*See* Hans-Georg Dederer, *The Yukos Cases: A Comparative Case Note on the E.Ct.H.R.'s Decisions and the P.C.A. Tribunal's Awards*, 10 J. Siberian Fed. Univ. 2062 (2015) (Russ.); *see also* Eleni Gavriil, *Protection of Property under Human Rights and International Investment Law: A Case-Law Analysis* (2024) 13 Laws 6 (Switz.).

[108] OAO Neftyanaya Kompaniya Yukos v. Russia, App. No. 14902/04, Eur. Ct. H.R. 551 (Sep. 20, 2011), https://hudoc.echr.coe.int/eng?i=001-106308.

[109]*See id.* at 538.

[110] Yukos Universal Limited (Isle of Man) v. Russian Federation, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, 1583–1585 (July 18, 2014).

[111]*See* Silvia Steininger, "What's Human Rights Got To Do With It? An Empirical Analysis of Human Rights References in Investment Arbitration", 31 Leiden J. Int'l L. 33 (2017) (Neth.).

Court found that there indeed was a breach of the Convention. During parallel I.C.S.I.D. proceedings, the investor claimed that Romania had failed to respect the F.E.T. standard under the applicable investment treaty, relying on similar factual allegations.[112] Notably, the investor did not rely on the E.Ct.H.R. ruling.[113] Instead, it argued that human rights standards set a "floor" but not a "ceiling" that would limit the level of protection granted under the Treaty so that E.C.H.R. case law can only be of assistance by analogy.[114] The tribunal acknowledged the relevance of the E.C.H.R. Nevertheless, it maintained that it had no competence to decide on matters regarding the application of the E.C.H.R.,[115] adopting a cautious approach to the use of human rights law in investment arbitration — even though the E.C.H.R. bound both parties.

A similar approach was adopted in *Amto v. Ukraine*, where the investor filed claims before the E.Ct.H.R. and an arbitral tribunal under the Energy Charter Treaty. The investor argued that there was a denial of justice and a violation of Article 6(1). The arbitral tribunal rejected the denial of justice claim, concluding that the administrative decision under challenge did not undermine the court's findings.[116] The arbitral tribunal noted that the parallel proceeding before the E.Ct.H.R. did not justify the termination of the arbitration.[117]

The *Le Bridge v. Moldova* case also involved parallel proceedings before I.C.S.I.D. and the E.Ct.H.R. Before the E.Ct.H.R., Le Bridge alleged a violation of the right to a fair trial under Article 6(1) of the Convention. Moldova claimed that the application should be declared inadmissible because the applicant had submitted the same complaints to another international investigation, namely, the I.C.S.I.D.[118] The Court agreed with this claim, stating that Mr Ariff submitted the complaint to both the Court and the I.C.S.I.D. Arbitral Tribunal. Thus, the application is similar to a matter submitted to "another procedure of international investigation or settlement and contains no new information".[119] In contrast, the I.C.S.I.D. tribunal rejected the argument that the parties and claims were identical, emphasising that the legal bases, scope, and nature of the relief sought in the two proceedings differed.[120]

[112]*See* The Rompetrol Group NV v. Romania, ICSID Case No. ARB/06/3, Award, 47 (May 6, 2013).
[113]*See Steininger, supra note* 111.
[114]See The Rompetrol Group NV v. Romania, *supra* note 112.
[115]*Id.* at 172.
[116]*See* Limited Liability Company Amto v. Ukraine, SCC Case No. 080/2005, Final Award, 80 (Mar. 26, 2008).
[117]*Id.* at 71.
[118]Le Bridge Corp. Ltd. S.R.L. v. Moldova, App. No. 48027/10, 22 (Nov. 6, 2018), https://hudoc.echr.coe.int/fre?i=001-182559.
[119]*Id.* 33.
[120]*See* Mr. Franck Charles Arif v. Republic of Moldova, ICSID Case No. ARB/11/23, Award, 14 (Apr. 8, 2013).

The case of *Bozbey v. Turkmenistan*, although not submitted to the E.Ct.H.R. but rather to the United Nations Human Rights Committee, is nonetheless relevant to the present analysis. The foreign investor alleged that Turkmen authorities demanded a bribe, which he refused to pay.[121] Following his refusal, he was imprisoned, and the host state confiscated his assets. He further claimed that the criminal proceedings were not translated, depriving him of the ability to understand the charges and defend himself effectively, and that he suffered mistreatment during his detention.[122] The Committee concluded that Turkmenistan had violated the right to a fair trial, as established in Article 14 of the I.C.C.P.R.[123] In parallel with these proceedings, the investor also initiated arbitral proceedings, but the claim was ultimately withdrawn, and the case was discontinued.[124]

The cases show that denial of justice is a practical intersection between the two legal fields. Arbitral tribunals and human rights bodies both deal with how states handle judicial proceedings. Sometimes their findings support each other; other times, they diverge, but they engage with the same standard of judicial conduct. This demonstrates that denial of justice is one point at which the two regimes interact, even if they interpret and apply it differently.

CONCLUSION

This article has examined the relationship between human rights and international investment law through the lens of denial of justice. Although these legal regimes originate from distinct institutional and normative frameworks, the case law reveals that they are increasingly intertwined in both theory and practice.

The analysis revealed three patterns in the way tribunals approach human rights arguments: convergence, caution, and resistance. First, a trend toward convergence is evident. Tribunals have shown an increasing willingness to refer to human rights, particularly the jurisprudence of the E.Ct.H.R., to interpret fair-trial guarantees and to clarify vague elements of denial-of-justice claims. Second, the analysis revealed caution. Many tribunals remain cautious, acknowledging the relevance of human rights but

[121] *See* Omar Faruk Bozbey v. Turkmenistan, Communication No. 1530/2006, U.N. Doc. CCPR/C/100/D/1530/2006, 2.2 (Oct. 27, 2010).
[122] *Id.* at 2.3-2.5.
[123] *Id.* at 7.2-8.
[124] *See* Farouk Bozbey v. Turkmenistan, UNCITRAL, Discontinuance (Aug. 16, 2013).

without fully integrating them. Third, in other cases, tribunals refused to consider human rights arguments as external to the dispute, referring to jurisdictional limitations. This resistance illustrates the ongoing challenge of reconciling the two frameworks. These three approaches illustrate both the potential and the limits of cross-fertilisation between the two regimes.

The case law analysis also revealed the phenomenon of parallel proceedings. Here, the same set of facts gives rise to claims before investment tribunals and human rights bodies. Sometimes, their findings reinforce one another; at other times, they diverge. Yet both are concerned with the same core issues: access to court, undue delay, judicial independence, and procedural fairness.

The repeated invocation of the human right to a fair trial shows that these norms are not external to investment law. Issues such as access to court, undue delay, judicial independence, and procedural fairness are common to both legal regimes. They are frequently assessed using similar criteria, illustrating a normative alignment in the context of access to justice.

Ultimately, the findings demonstrate that access to justice operates as a functional bridge between human rights and investment protection. As tribunals continue to navigate the interplay, access to justice remains a shared standard and a central point of reference in reinforcing legitimacy.

FUNDING DETAILS

The author declares that no funding was received for the research, authorship, and/or publication of this article.

DISCLOSURE STATEMENT

The author reports there are no competing interests to declare.

DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article as no new data were created or analysed in this study.