

RIGHT TO A COURT

(Art. 6 § 1 ECHR)

A. Principle of the rule of law

ECtHR, 21 February 1975, *Golder v. United Kingdom*, *Publ. Court*, Series A, vol. 18.

B. Right of access to a court

1. Principle

a. Availability of a court

- There should be an avenue with a court that has competence.
- In administrative matters: right to judicial review of administrative acts.

b. Direct access

c. Effective access

i. Free legal aid

- In criminal cases (Art. 6 § 3 c)
 - . Right explicitly recognised in Art. 6 § 3 c ECHR:
 - . Right to legal aid dependent on “interests of justice”.
- In civil cases
 - . No explicit provision in ECHR. ECtHR based requirement on general provisions of Art. 6 § 1 ECHR (right of access to a court; right to a fair hearing).
ECtHR, 9 October 1979, *Airey v. Ireland*, *Publ. Court*, Series A, vol. 32:
 - . Situations in which provision of legal aid may be required:
 - . Complex cases or proceedings
 - . Proceedings for which legal representation is mandatory
 - . Selection of cases qualifying for legal aid
 - Criteria for selection of cases:
 - . Assessment of prospect of success
 - . Importance of what is at stake for the applicant in the proceedings
 - Procedural guarantees

ii. Clarity of procedural rules

ECtHR, 16 December 1992, *de Geouffre de la Pradelle v. France*, *Publ. Court*, Series A, vol. 253-B.

2. Limitations

- Right of access is not absolute, but may be subject to limitations

ECtHR, 28 May 1985, *Ashingdane v. United Kingdom*, *Publ. Court*, Series A, vol. 93.

- Distinction between “substantive” restrictions of a right of action (affect applicability of Art. 6 § 1) and “procedural” restrictions to possibility of bringing a claim before a court (affect right of access)

- ECtHR [GC], 19 October 2005, *Roche v. United Kingdom*, *ECHR*, 2005-X.

- ECtHR [GC], 14 September 2017, *Károly Nagy v. Hungary*.

- Examples of possible procedural limitations

. Formalities and time-limits

- . Aim: a proper administration of justice and compliance, in particular, with the principle of legal certainty

ECtHR, 25 January 2000, *Miragall Escolano and Others v. Spain*, *ECHR*, 2000-I, § 33.

- . However, a too restrictive application of such rules (“excessive formalism”) may result in a disproportionate restriction of the right of access:
 - . Restrictions on the capacity of minors and incapacitated persons to bring an action
 - . Requirement of a personal interest of the claimant
ECtHR, 17 July 2018, Ronald Vermeulen v. Belgium.
 - . Immunities from suit
 - . Lack of jurisdiction of the courts
ECtHR [GC], 15 March 2018, Naït-Liman v. Switzerland.
 - . Court fees
 - . “Ratione valoris” threshold for appeals to a supreme court
ECtHR [GC], 5 April 2018, Zubac v. Croatia.
 - . System of selection of appeals by a supreme court for examination on the merits (“leave for appeal”)

C. Right to a judicial determination of the dispute

- Judicial determination of the dispute covers both questions of fact and questions of law.
- Power of decision
ECtHR, 23 October 1985, Benthem v. Netherlands, *Publ. Court*, Series A, vol. 97.
- Right to challenge the lawfulness of an interference with the exercise of a person’s (civil) rights. Same reasoning with respect to the lawfulness of an administrative sanction that is of a “criminal” nature within the meaning of Article 6.
ECtHR, 23 September 1982, Sporrang and Lönnroth v. Sweden, *Publ. Court*, Series A, vol. 52, § 80.
- Adjudication by non-judicial organs is possible, provided that their decisions can be challenged before a court that has “full jurisdiction” and that meets the requirements of Article 6
 - ECtHR, 10 February 1983, Albert and Le Compte v. Belgium, *Publ. Court*, Series A, vol. 58.
 - ECtHR, 21 September 1993, Zumtobel v. Austria, *Publ. Court*, Series A, vol. 268-A.
 - ECtHR, 22 November 1995, Bryan v. United Kingdom, *Publ. Court*, Series A, vol. 335-A.
 - ECtHR [GC], 25 September 2018, Denisov v. Ukraine.
- On the required scope of jurisdiction with respect to administrative acts :
 - . The court or tribunal should have “full jurisdiction”, that is : provide “sufficient review”
ECtHR [GC], 25 September 2018, Denisov v. Ukraine, § 73.
 - . The Convention is not opposed to:
 - A system of separation of powers between administrative authorities (discretionary power, policy decisions) and courts (control of legality only).
 - A jurisdiction of the courts limited to the power to quash an administrative decision, without being able to substitute its decision for that of the administrative authority.
 - . Should the court be able to review the facts? See Ramos Nunes de Carvalho e Sa v. Portugal, pending before GC (judicial review by Supreme Court of disciplinary sanction imposed by High Council of Judiciary: no jurisdiction to establish facts. Chamber: violation).

D. Respect for the final determination by a court

1. Inalterability of judgments

ECtHR [GC], 28 October 1999, Brumărescu v. Romania, *ECHR*, 1999-VII.

2. Res judicata

- *Res judicata* (in principle only between the parties to the proceedings)
- Opposability of a judgment as a presumption, even vis-à-vis third parties

3. Execution of judgments

- Where a public authority is a party to the proceedings
 - . ECtHR, 19 March 1997, *Hornsby v. Greece*, *Rep.*, 1997-II, p. 495.
 - . ECtHR [GC], 8 April 2004, *Assanidze v. Georgia*, *ECHR*, 2004-II.
- Where the dispute is between private parties