

RIGHT TO A FAIR TRIAL

(Art. 6 ECHR and Arts. 2 to 4 Protocol No. 7; Art. 14 CCPR)

1. Scope of application of Art. 6 ECHR (and Art. 14 CCPR)

A. Civil matters

1. *Dispute over rights and obligations*

- a. Dispute
- b. Rights and obligations
 - Rights
 - . Not limited to so-called “subjective rights”
 - ECtHR [GC], 5 October 2000, *Mennitto v. Italy*, *ECHR*, 2000-X.
 - . Typology of rights
 - ECtHR [GC], 19 September 2017, *Regner c. Czech Republic*.
 - . Recognition, at least on arguable grounds, of the existence of the right under domestic law
 - ECtHR [GC], 19 October 2005, *Roche v. United Kingdom*, *ECHR*, 2005-X.
 - Obligations
 - ECtHR [GC], 12 April 2006, *Martinie v. France*, *ECHR*, 2006-VI.
- c. Rights or obligations as object of the dispute
 - 1. Disputes over rights (obligations) or over the legality of an interference with rights
 - Dispute over a right (or an obligation)
 - Dispute about an interference with a right
 - ECtHR, 23 June 1981, *Le Compte, Van Leuven and De Meyere*, *Publ. Court*, Series A, vol. 43.
 - ECtHR, 23 September 1982, *Sporrong and Lönnroth v. Sweden*, *Publ. Court*, Series A, vol. 52.
 - 2. Various stages of the proceedings
 - ECtHR [GC], 12 February 2004, *Perez v. France*, *ECHR*, 2004-I.
 - ECtHR [GC], 15 October 2009, *Micallef v. Malta*, *ECHR*, 2009-V.
 - ECtHR [GC] 5 February 2015, *Bochan v. Ukraine* (no. 2).

2. *Civil character of the rights or obligations at issue*

- Enforceable rights are in principle civil rights
 - ECtHR [GC], 16 March 2010, *Oršuš v. Croatia*, *ECHR*, 2010-II.
- Private law features vs. public law features
 - ECtHR, 29 May 1986, *Feldbrugge v. Netherlands*, *Publ. Court*, Series A, vol. 99, and *Deumeland v. Germany*, *o.c.*, vol. 100.
- Excluded:
 - . Tax matters
 - ECtHR [GC], 12 July 2001, *Ferrazzini v. Italy*, *ECHR*, 2001-VII.
 - . Election matters
 - . Entry, stay and deportation of aliens, and nationality
 - ECtHR [GC], 5 October 2000, *Maaouia v. France*, *ECHR*, 2000-X.
 - . Exceptionally: recruitment, career or termination of service of a civil servant
 - ECtHR [GC], 19 April 2007, *Eskelinen v. Finland*, *ECHR*, 2007-IV.
 - . Obligation to serve the military

B. Criminal matters

1. Criminal charge

- ECtHR, 8 June 1976, Engel v. Netherlands, *Publ. Court*, Series A, vol. 22.
- ECtHR [GC], 23 November 2006, Jussila v. Finland, *ECHR*, 2006-XIV.

2. Stages of the proceedings

- ECtHR [GC], 13 September 2016, Ibrahim and Others v. United Kingdom.

2. Right to a court

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
- b. Direct access
- c. Effective access

- ECtHR, 9 October 1979, Airey v. Ireland, *Publ. Court*, Series A, vol. 32.
- ECtHR, 16 December 1992, de Geouffre de la Pradelle v. France, *Publ. Court*, Series A, vol. 253-B.

2. Limitations

- ECtHR, 28 May 1985, Ashingdane v. United Kingdom, *Publ. Court*, Series A, vol. 93.
- ECtHR [GC], 29 November 2016, Lupeni Greek Catholic Parish v. Romania.
- ECtHR [GC], 5 April 2018, Zubac v. Croatia.

C. Right to a judicial determination of the dispute

- Power of decision
 - ECtHR, 23 October 1985, Bentem v. Netherlands, *Publ. Court*, Series A, vol. 97.
- Adjudication by non-judicial organs; subsequent review by a court (full jurisdiction; review of legality)
 - 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.

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

3. Execution of judgments

- ECtHR, 19 March 1997, Hornsby v. Greece, *Rep.*, 1997-II, p. 495.
- ECtHR [GC], 8 April 2004, Assanidze v. Georgia, *ECHR*, 2004-II.

3. Structural and procedural guarantees

A. Tribunal established by law

- Tribunal
- Established by law

B. Independence and impartiality

1. Independence

ECtHR [GC], 23 June 2016, *Baka v. Hungary*.

2. Impartiality

a. Notion

b. Two approaches

- Subjective approach
- Objective approach

c. Applications

1. Previous involvement in the case, in another capacity or at another stage of the proceedings
 - ECtHR, 1 October 1982, *Piersack v. Belgium*, *Publ. Court*, Series A, vol. 53.
 - ECtHR, 24 May 1989, *Hauschildt v. Denmark*, *Publ. Court*, Series A, vol. 154.
 - ECtHR [GC], 27 May 2014, *Marguš v. Croatia*, *ECHR*, 2014-III.
2. Existence of hierarchical or other links between the judge and other actors in the proceedings
 - ECtHR, 9 June 1998, *Incal v. Turkey*, *Rep.*, 1998-IV, p. 1547.
 - ECtHR [GC], 15 October 2009, *Micallef v. Malta*, *ECHR*, 2009-V.
3. Cumulating judicial and advisory functions
 - ECtHR [GC], 6 May 2003, *Kleyn v. Netherlands*, *ECHR*, 2003-VI.
4. Conduct of the judge
 - ECtHR [GC], 15 December 2005, *Kyprianou v. Cyprus*, *ECHR*, 2005-XIII.

C. Public character of the proceedings (hearing and judgment)

ECtHR, 8 December 1983, *Pretto v. Italy*, *Publ. Court*, Series A, vol. 71, and *Axen v. Germany*, *Publ. Court*, Series A, vol. 72.

D. Fair hearing

1. In general

- a. Right to take part in the proceedings
 - ECtHR, 15 February 2005, *Steel and Morris v. United Kingdom*, *ECHR*, 2005-II.
 - ECtHR [GC], 1 March 2006, *Sejdovic v. Italy*, *ECHR*, 2006-II.
- b. Adversarial character of the proceedings
 - ECtHR [GC], 16 February 2000, *Rowe and Davis v. United Kingdom*, and *Fitt v. United Kingdom*, *ECHR*, 2000-II.
 - ECtHR [GC], 27 October 2004, *Edwards and Lewis v. United Kingdom*, *ECHR*, 2004-X.
 - ECtHR [GC], 7 June 2001, *Kress v. France*, *ECHR*, 2001-VI.
- c. Oral hearing
 - ECtHR [GC], 11 July 2002, *Göç v. Turkey*, *ECHR*, 2002-V.
 - ECtHR [GC], 23 November 2006, *Jussila v. Finland*, *ECHR*, 2006-XIV.
- d. Equality of arms
 - ECtHR, 27 October 1993, *Dombo Beheer v. Netherlands*, *Publ. Court*, Series A, vol. 274.
 - ECtHR, 9 December 1994, *Stran Greek Refineries v. Greece*, *Publ. Court*, Series A, vol. 303-A.
 - ECtHR [GC], 19 September 2017, *Regner v. Czech Republic*.
- e. Evidence
 - ECtHR, 12 July 1988, *Schenk v. Switzerland*, *Publ. Court*, Series A, vol. 140.
 - ECtHR [GC], 11 July 2006, *Jalloh v. Germany*, *ECHR*, 2006-IX.
 - ECtHR [GC], 5 February 2008, *Ramanauskas v. Lithuania*, *ECHR*, 2008-I.
 - ECtHR [GC], 10 March 2009, *Bykov v. Russia*.

- f. Reasons of the decision
 - ECtHR [GC], 16 November 2010, *Taxquet v. Belgium*, *ECHR*, 2010-VI.
 - ECtHR [GC], 5 February 2015, *Bochan v. Ukraine* (no. 2).
- g. Consistency of the courts' case law
 - ECtHR [GC], 20 October 2011, *Nejdet Şahin and Perihan Şahin v. Turkey*.
- 2. Specific guarantees in criminal cases**

Guarantees of Art. 6, § 3, ECHR are specific aspects of the right to a fair hearing in Art. 6, § 1, ECHR. Fairness of the proceedings must be assessed in light of the proceedings as a whole.

 - . ECtHR [GC], 16 November 2010, *Taxquet v. Belgium*, *ECHR*, 2010-VI, § 84.
 - . ECtHR [GC], 15 December 2011, *Al-Khawaja and Tahery v. United Kingdom*, § 118, *ECHR*, 2011-VI.
 - . ECtHR [GC], 15 December 2015, *Schatschaschwili v. Germany*.
 - . ECtHR [GC], 13 September 2016, *Ibrahim and Others v. United Kingdom*.
 - a. Right to remain silent, privilege against self-incrimination
 - ECtHR, 8 February 1996, *John Murray v. United Kingdom*, *Rep.*, 1996-I, p. 30.
 - ECtHR, 17 December 1996, *Saunders v. United Kingdom*, *Rep.*, 1996-VI, p. 2044.
 - ECtHR [GC], 29 June 2007, *O'Halloran and Francis v. United Kingdom*, *ECHR*, 2007-VIII.
 - b. Presumption of innocence
 - ECtHR, 10 February 1995, *Allenet de Ribemont v. France*, *Publ. Court*, Series A, vol. 308.
 - ECtHR [GC], 12 July 2013, *Allen v. United Kingdom*, *ECHR*, 2013-IV.
 - c. Information of the nature and the cause of the accusation
 - d. Time and facilities for the preparation of the defence
 - e. Defence in person or through legal assistance
 - ECtHR [GC], 21 January 1999, *Van Geyseghem v. Belgium*, *ECHR*, 1999-I.
 - ECtHR [GC], 27 November 2008, *Salduz v. Turkey*, *ECHR*, 2008-II.
 - ECtHR [GC], 20 October 2015, *Dvorski v. Croatia*.
 - ECtHR [GC], 13 September 2016, *Ibrahim and Others v. United Kingdom*.
 - ECtHR [GC], 12 May 2017, *Simeonovi v. Bulgaria*.
 - ECtHR [GC], 4 April 2018, *Correia de Matos v. Portugal*.
 - f. Examination of witnesses (absent or anonymous witnesses)
 - ECtHR, 26 March 1996, *Doorson v. Netherlands*, *Rep.*, 1996-II, p. 446.
 - ECtHR, 23 April 1997, *van Mechelen v. Netherlands*, *Rep.*, 1997-III, p. 691.
 - ECtHR [GC], 15 December 2011, *Al-Khawaja and Tahery v. United Kingdom*, *ECHR*, 2011-VI.
 - ECtHR [GC], 15 December 2015, *Schatschaschwili v. Germany*.
 - g. Free assistance of an interpreter
 - h. Compensation for wrongful conviction
 - i. Right not to be tried or punished twice
 - ECtHR [GC], 10 February 2009, *Zolotukhin v. Russia*, *ECHR*, 2009-I.
 - ECtHR [GC], 15 November 2016, *A and B v. Norway*.

E. Reasonable time

1. Period to be taken into account

- Starting point
- End of the period

2. Assessment of the reasonableness of the length of the proceedings

- a. Assessment in the light of the circumstances of the case
- b. Criteria

- Complexity of the case
- Conduct of the applicant
- Conduct of the relevant authorities
- What is at stake for the applicant

3. *Consequences of an undue delay*

4. *Remedies against an undue delay*

ECtHR [GC], 26 October 2000, Kudła v. Poland, *ECHR*, 2000-XI.