

The Right to a Fair Trial

Article 6 of the European Convention on Human Rights
ECHR

Justice and fair trial rights

- As Plato had already remarked over 2,000 years ago, ‘a just society exists only if citizens are born and live in a fair and just way’.
- Such a concept is not dissimilar to the one stressed many centuries later by John Rawls, according to whom the stability of a society depends on whether its members feel that they are being treated justly or not.

The Magna Carta

It is said that the seed of the principles set forth in the European Convention on Human Rights is to be found much earlier in time, probably already in 1215, when the Magna Carta was sealed by King John (on 15 June 1215), granting 'all free men' of his Kingdom a number of rights and liberties, including what is believed to be the archetype of the 'right to a fair trial'.

Clause 39 of the Magna Charta

'Nullus liber homo capiatur, vel imprisonetur, aut desseisetur de libero tenemento, vel libertatibus, vel liberis consuetudinibus suis, sut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terrae'

Clause 39 of the Magna Charta

‘No free man shall be captured, or imprisoned, or disseised of his freehold, or of his liberties, or of his free customs, or be outlawed, or exiled, or in any way destroyed, nor will we proceed against him by force or proceed against him by arms, but by the lawful Judgment of his peers, and or by the law of the land’

The European Convention on Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950 and entered into force on 3 September 1953, after being ratified by eight States.

The European Convention on Human Rights

It was drafted within the Council of Europe some years after the end of World War II (between 1949 and 1950), when Europe was engaged in a laborious work of reconstruction, both of its economy and material infrastructures and the lives of its people.

This was shortly after that the United Nations had adopted the 'Universal Declaration on Human Rights' of 1948.

Article 6 (1) ECHR

- (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 6 (2) ECHR

- (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- (3) Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusations against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Fair trial rights

- The right to a fair trial is explicitly mentioned not only in Article 6 ECHR, but also in Article 10 of the Universal Declaration of Human Rights, in Article 14 of the International Covenant on Civil and Political Rights, in the Sixth Amendment to the United States Constitution, and in many other international Conventions, as well as in national laws.

Fair trial rights

- See, for example, Article 111 of the Italian Constitution, which, at paragraph 1, emphatically states:

‘La giurisdizione si attua mediante il giusto processo regolato dalla legge’

(‘Jurisdiction is implemented through a due process, as regulated by the law’)

Fair Trial Rights

The right to a fair trial, according to the literature, comprises the following basic fundamental rights:

- Right of access to court and, consequently, right to be heard by a competent, independent and impartial tribunal
- Right to 'equality of arms'
- Right to a public hearing
- Right to be heard within a reasonable time
- Right to counsel (defence)

The importance of the activity of the ECtHR

The above mentioned rights have been subject to a laborious activity of interpretation by the European Court of Human Rights (ECtHR), which has led to a copious case law, with consequent expansion of the number of specific rights deserving protection under the general category of the right to a fair trial.

The importance of the activity of the ECtHR

The European Court of Human Rights (ECtHR)
repeatedly affirmed that

‘the right to a fair trial holds so prominent a place
in a democratic society that there can be no
justification for interpreting Article 6 §1 of the
Convention restrictively’

(Moreira de Azevedo v. Portugal, Judgment of 23 October 1990, paragraph 66.6)

The right to a fair trial in practice

- A fair court decision may objectively be defined as such when it has been reached through a fair trial.
- Indeed, a judge cannot draw a substantively fair decision if there has been a gross violation of the right to a fair trial.

The right to a fair trial in practice

In the following presentations we are going to examine the key principles of the right to a fair trial, limited to civil proceedings, as enshrined in Article 6 ECHR and interpreted by the ECtHR.

We will also discuss together how national judges may implement such principles in their daily practice.

More words about the right to a fair trial

- Every judge has his own idea of what a fair trial is, and his own knowledge of Article 6 ECHR
- Of utmost importance is the jurisprudence of the European Court of Human Rights
- The right to a fair trial is a subjective public right towards a state for providing legal protection in a trial, which maximally guarantees a just outcome
- Think outside the box

Examples and Use of RTFT

- Some examples
 - Is it sufficient to file a claim in respective national language
 - Serbian lawyer
 - The right to a decision within a reasonable time
 - Judgment without a hearing
- Practical use of the right to a fair trial
 - Use of line of argumentation where the law is unclear
 - Against improper administration of justice

Examples and Use of RTFT

- Mixed tribunals and hybrid courts, Patent Court
- Unification of civil procedure
- Filing a complaint to the European Court of Human Rights