

The Right to a Fair Trial in civil proceedings

Field of application

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Article 6 (1) ECHR

“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 (...).”



Field of application of Article 6

Article 6, however, does not provide a definition of ‘civil rights and obligations’, or of what is to be intended as ‘determination’ of them.

The ECtHR has interpreted the term ‘civil rights and obligations’ with an autonomous meaning, which does not necessarily coincide with the one present in national legislations.



Existence of a 'dispute'

- Firstly, in order to apply Article 6 is required the existence of a 'dispute' over rights and obligations at national level.
- The ECtHR has provided for an interpretation of what is to be intended as 'dispute' in the autonomous meaning of the Convention.



Gutfreund v. France, Judgment of 12 June 2003, para 38

“... first of all there must be a ‘**dispute**’ over a ‘**right**’ which is recognized by the domestic law”.

The dispute must be genuine and serious, it may relate not only to the actual existence of a right but to its scope or the manner in which it can be exercised as well, and the outcome of the proceedings must be ‘directly decisive’ for the right in question.

'Determination' of civil rights and obligations

- Civil rights and obligations are being determined when the proceedings before a domestic court have as their main object the recognition of a **private law** right (such as, in tort law or compensation claims).

'Determination' of civil rights and obligations

- Article 6 applies also to proceedings not directly related to the recognition of a civil right or obligations, when the proceedings (even of an administrative nature), are directly 'decisive' for individual civil rights and obligations.

When a right is a 'civil' right?

“Whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the **substantive content and effects of the right** – and not its legal classification – under the domestic law of the State concerned (...)”

(Konig v. Germany, Judgment of 28 June 1978, para 89)



When a right is a 'civil' right?

This is what happens, for example, with regard to social security-related claims, which are treated in some States as matters of public law, whereas they may fall within the category of civil rights, in the autonomous meaning of the Convention.

(See *Feldbrugge v. The Netherlands*, Judgment of 29 May 1986)



When a right is a 'civil' right?

- This interpretation is apparently based on the main distinction between 'private law' and 'public law', so that rights and obligations which originate from relations between private individuals always fall within the meaning of 'civil rights and obligations' as intended by Article 6, whereas such a paradigm is not always valid for rights and obligations which arise from relations between private persons and the State.

When a right is a 'civil' right?

“Article 6 para. 1 (art. 6-1) applies irrespective of the status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (...)”

(Tre Traktörer Aktiebolag v. Sweden, Judgment of 7 July 1989, para 41)

When a right is a 'civil' right?

- Conclusively, proceedings involving 'civil rights and obligations' are not only proceedings pending before 'civil courts', but also proceedings before criminal and administrative courts, constitutional courts and even administrative bodies, as long as they are 'decisive' for private rights and obligations.

When a right is a 'civil' right?

- This principle has been deemed valid by the Court also in cases between private persons and the State, when the dispute in issue is pecuniary in nature (see, for example, *Editions Périscope v. France*, Judgment of 26 March 1992, paragraph 40)



When a right is a 'civil' right?

“The Court reiterates that Article 6 para. 1 (art. 6-1) is applicable where an action is ‘pecuniary’ in nature and is founded on an alleged infringement of rights which are likewise pecuniary rights, notwithstanding the origin of the dispute and the fact that the administrative courts have jurisdiction (...)”

(Procola v. Luxembourg, Judgment of 28 September 1995, para 38)



Existence of a right in national law

The first element to verify is that a civil right exists in the national law of the Contracting State.

Thus, if the national law does not provide for a civil right, the applicant cannot in any case apply to Strasbourg for the guarantees provided for by Article 6.

Existence of a right in national law

“The Court may not create through the interpretation of Article 6 §1 a substantive right which has no legal basis in the State concerned (...). Its guarantees extend only to rights which can be said, at least on arguable grounds, to be recognised under domestic law (...).”

(Rocher v. the United Kingdom, Judgment of 19 October 2005, para 117)



Rights deriving from private persons' relations

Rights and obligations which traditionally belong to the private law, such as the ones deriving from private persons' relations, are certainly covered by the umbrella of Article 6.

Rights deriving from private persons' relations

- The ECtHR has decided in this sense, for example, in *Axen v. Germany* (Judgment of 8 December 1983) and *Guincho v. Portugal* (Judgment of 10 July 1984), concerning claims for compensation related to car accidents, and in *Golder v. the United Kingdom* (Judgment of 21 February 1975), related to a case of defamation, and, more in general, in cases related to negligence.



Rights deriving from relations between Private Persons and Public Authorities

- A number of such cases concerns rights deriving from national social security and health insurance systems, as well as welfare benefits in general, where the domestic proceedings often are run by an administrative body or where anyway the respondent is a public authority.



Rights deriving from relations between Private Persons and Public Authorities

One of the leading cases in the subject matter is *Feldbrugge v. The Netherlands* (Judgment of 29 May 1986), related to a claim against the Netherlands health insurance system, where the Court, after evaluating the specific features of the national insurance system, concluded that Article 6 was applicable.



Rights deriving from relations between Private Persons and Public Authorities

- After the *Feldbrugge* Judgment, the jurisprudence of the ECtHR now recognizes that social security and welfare proceedings fall within the application of Article 6, whenever from such proceedings there derive statutory benefits to private persons.



Rights deriving from relations between Private Persons and Public Authorities

- Many other cases related to claims against the State and other public institutions have been regarded by the ECtHR as private law rights covered by Article 6, be they of pecuniary or non-pecuniary nature.



Rights deriving from relations between Private Persons and Public Authorities

- For instance, the ECtHR has recognized the application of Article 6 to cases concerning contracts for the sale of land, expropriation of land, compensation for damages caused to ‘person and property’ by the issuance of an unlawful arrest warrant or by unlawful detention followed by acquittal, the withdrawal of an authorization to practise medicine, the suspension of the right to practise medicine as result of disciplinary proceedings, the right of a professional to be registered in a Bar Association, etc.



Rights deriving from relations between Private Persons and Public Authorities

- Traditionally, the **right to public education** has not been considered as a ‘civil right’ falling within the scope of Article 6(1), but as a right under the domain of public law.
- The *revirement* in the ECtHR case law came with the Judgment in *Emine Araç v. Turkey* (Judgment of 23 September 2008), where the Court explicitly recognized, for the first time, the civil nature of the right of access to higher education.

Rights which Do Not Fall under the Protection of Article 6

- *Disputes Concerning the Recruitment, Employment and Retirement of Public Servants*
- *Disputes Related to Taxation*
- *Disputes Related to Residence, Nationality, Asylum and Expulsion of Aliens*
- *Disputes Concerning Political Rights*

Applicability of Article 6 to interim measures?

Article 6 does not apply to proceedings in which only interim or provisional measures are taken prior to the decision on the merits, as such proceedings do not, as a rule, affect the merits of the case and thus do not yet involve the determination of civil rights and obligations (...)

(Dassa Foundation and others v. Liechtenstein, Decision of 10 July 2007)



Applicability of Article 6 to interim measures?

However, the ECtHR considered Article 6 to be applicable also to proceedings relating to interim orders or decisions, where an interim decision is already capable to determine the rights of the parties in relation to the final claim.

Applicability of Article 6 to interim measures?

In *Markass Car Hire Ltd v. Cyprus*, No. 51591/99, Decision of 23 October 2001, the ECtHR noted:

- “... It follows that the interim decision of 31 March 1998 partly coincided with the main action and, unless reversed by the appeal court within a short time-limit, was to affect, as it did for a substantial period, the legal rights of the parties resulting from the purported contract ...”

Interim measures

- “In these circumstances, the Court considers that the interim decision in effect partially determined the rights of the parties in relation to the final claim against the applicant in civil action 3315/98, and thereby acquired the character of a ‘dispute’ over a civil right and obligation to which Article 6 of the Convention was applicable...”



Stages of proceedings

Although the wording of the article refers only to the ‘trial’, the guarantees provided by Article 6 also apply to the stages before the trial, such as the investigations (as far as criminal proceedings are concerned), or the administrative stages preceding the filing of a civil claim before a judicial authority, and to the phases after the trial, such as the execution proceedings.

Stages of proceedings

See – ex multis - *Hornsby v. Greece*, Judgment of 19 March 1997, paragraph 40, where the Court stated that:

‘the execution of a judgment given by any court must (...) be regarded as an integral part of the “trial” for the purposes of Article 6’.

Stages of proceedings

Similarly, in *Burdov v. Russia* (Judgment of 4 September 2002, para 34):

“Article 6 §1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (...)

However, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (...)

Execution of a judgment given by any court must therefore be regarded as an integral part of the ‘trial’ for the purposes of Article 6 (...)”



Stages of proceedings

Thus, Article 6 applies – as a general rule -
from the moment civil proceedings are
initiated until the moment they are brought
to an end with a final decision and the time
for an appeal has expired



Stages of proceedings

However, see *W v. the United Kingdom*, Judgment of 8 July 1987, concerning the application of Article 6 (1) also to the administrative procedure (in the subject matter of ‘child care’) prior to the judicial proceedings concerning the determination of parental rights.

Stages of proceedings

- Article 6 does not explicitly grant an individual a right of appeal (which is provided for by Article 2 of Protocol 7).
- However, the case law of the ECtHR has long since recognized that if a State provides the parties with a right of appeal, then Article 6 shall apply to the appeals procedure as well (Cf. *Delcourt v. Belgium*, Judgment of 17 January 1970, paragraph 25)



Stages of proceedings

Stages subsequent to the decision on the merits, such as the decision on the awards of costs, can be included in the meaning of ‘legal proceedings for the determination of civil rights and obligations’

(Cf. *Robins v. the United Kingdom*, Judgment of 23 September 1997, paragraph 28)



Stages of proceedings

The ECtHR also considers Article 6 as applicable in the execution proceedings following the decision on the merits, remarking that the right to a court “would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party”.

(*Hornsby v. Greece*, Judgment of 19 March 1997, paragraph 40)