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# Fair trial guarantees under the jurisprudence of the European Court of Human Rights

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## ARTICLE 6 - Right to a fair trial

- 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.
- 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 accusation against him; (b) to have adequate time and facilities for the preparation of his defense; (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.

## General overview

- The legal basis: the text of Article 6 and **the case-law**.
- **The guarantees often apply long before** the formal initiation of judicial proceedings.
- **The guarantees do not stop at the delivery of a judgement.**
- The terms “criminal”, “charge” as well as “civil rights and obligations” have **an autonomous Convention meaning**.
- The States and the **positive obligation to** ensure the rights from Article 6 in practice as well as in theory.

## Case-law of the ECtHR

- The Court's judgments and decisions serve to **elucidate, safeguard and develop** the rules instituted by the Convention, **contributing to the observance by the States of the engagements undertaken by them as Contracting Parties.**
- The mission of the case-law is **to determine issues of public policy in the general interest, raising the standards of protection of human rights and extending human rights jurisprudence.**
- The Court has emphasised the Convention's role as a **"constitutional instrument of European public order"** in the field of human rights.

## Minimum guaranties in civil and criminal procedure

1. a fair and public hearing within a **reasonable time**,
2. by an **independent and impartial tribunal** established by law,
3. **Judgment shall be pronounced publicly.**

**The Court will frequently find no violation of Article 6 because it considers that the proceedings “taken as a whole “ were fair, as a higher court was able to rectify the errors of the lower court.**

## Fair trial in Civil proceedings

The applicability of Article 6 § 1 in civil matters depends on:

- the **existence of a “dispute”**,
- the **“right”** which on arguable grounds, is **recognised under domestic law**,
- the dispute must be **genuine and serious**,
- the result of the proceedings that **must be directly decisive for the “civil” right in question**.

Article 6 **does not apply to a non-contentious and unilateral procedure which does not involve opposing parties** and which is available only where there is no dispute over rights.

Article 6 likewise **does not apply to reports on an investigation** aimed at ascertaining and recording facts which might subsequently be used as a basis for action by other competent authorities – prosecuting, regulatory, disciplinary or even legislative.

## Fair trial in criminal proceedings

- In each case, the Court's primary concern is **to evaluate the overall fairness** of the criminal proceedings.
- Requirements of **a fair hearing are stricter in the sphere of criminal law** than under the civil limb of Article 6
- **A trial of a dead person runs counter to the Article 6 principles**, because by its very nature it is incompatible with the principle of the equality of arms and all the guarantees of a fair trial.
- The concept of a "criminal charge" has an "autonomous" meaning, independent of the categorisations employed by the national legal systems of the member States.
- Criminal charge may be defined as **"the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence"**, a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected".

# Applicability of Article 6 in Criminal proceedings

The applicability of the criminal aspect of Article 6 of the Convention is based on the:

1. classification in domestic law;
2. nature of the offence;
3. severity of the penalty that the person concerned risks incurring.

## **Minimum rights in Criminal proceedings:**

- (a) to be informed in a language which he/she understands** of the accusation against him/her;
- (b) to have adequate time and facilities for the preparation of his/her defence;**
- (c) to defend himself in person or through legal assistance of his/her own choosing** or to be given free legal assistance when the interests of justice so require;
- (d) to examine or have examined witnesses against him**
- (e) to have the free assistance of an interpreter** if he cannot understand or speak the language used in court.

## Length of proceeding

- The complexity of the case
- The conduct of the applicant
- The conduct of the relevant authorities
- What was at stake for the applicant

## Fair trial and institutional requirements: Independent and impartial tribunal

The concept of a “tribunal established by law”, together with the concepts of “independence” and “impartiality” of a tribunal, forms part of the “institutional requirements” of Article 6 § 1. In the Court’s case-law, there is a very close interrelationship between these concepts (Guðmundur Andri Ástráðsson v. Iceland [GC], § 218).

The tribunal organ not established according to the legislation would be deprived of the legitimacy required, in a democratic society, to hear individual complaints

In order to establish whether a tribunal can be considered “independent” for the purposes of Article 6 § 1 of the Convention, regard must be had, inter alia, to:

- the **manner of appointment** of its members
- the terms of office of the members of tribunal,
- the **existence of safeguards against outside pressures** and
- the question whether it presents an **appearance of independence**.

The concepts of independence and objective impartiality are closely linked, and normally, the Court will accordingly consider both issues together (Findlay v. the United Kingdom, judgment of 25 February 1997, Reports of Judgments and Decisions 1997-I, p. 281, § 73,)

## The Independence

- The notion of the **separation of powers** between the political organs of government and the judiciary has assumed growing importance in the Court's case-law (see *Stafford v. the United Kingdom* [GC], no. [46295/99](#), § 78, ECHR 2002-IV),
- Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction. The question is always **whether, in a given case, the requirements of the Convention are met.**

## The Impartiality requirements

The “impartiality” requirement has two aspects:

- **subjective**, that is, endeavoring to ascertain the personal conviction or interest of a given judge in a particular case;
- an **objective**, that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect.

**Under the objective test**, it must be determined whether there are ascertainable facts which may raise doubts as to the judges' impartiality. In this respect even appearances may be of importance.

**The objective test** mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings ... It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal ...

It is the confidence that the courts in a democratic society must inspire in the public and above all in the parties to proceedings (see *Morris v. the United Kingdom*, no. 38784/97, § 58, ECHR 2002-I).

In deciding whether in a given case there is a legitimate reason to fear that these requirements have not been met, is whether this fear can be held to be objectively justified (see, *mutatis mutandis*, *Hauschildt v. Denmark*, judgment of 24 May 1989, Series A no. 154, p. 21, § 48).

## Impartial tribunal

- In maintaining confidence in the independence and impartiality of a tribunal, appearances may be important.
- In this respect, “**justice must not only be done, it must also be seen to be done**”. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86).
- In case of *Brudnicka and others v. Poland*, no. [54723/00](#), § 38, ECHR 2005, the Court pointed that given that the members of the maritime chambers (the president and vice-president) are appointed and removed from office by the Minister of Justice in agreement with the Minister of Transport and Maritime Affairs, they cannot be regarded as irremovable, and they are in a subordinate position vis-à-vis the Ministers. Accordingly, the maritime chambers, as they exist in Polish law, cannot be regarded as impartial tribunals capable of ensuring compliance with the requirement of “fairness” laid down by Article 6 of the Convention. In the Court's view, the applicants were entitled to entertain **objective doubts** as to their independence and impartiality (see, mutatis mutandis, *Sramek v. Austria*, judgment of 22 October 1984, Series A no. 84, p. 20, § 42). There has therefore been a violation of Article 6 § 1 of the Convention.