

RIGHT TO FAIR TRIAL



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STARTING POINT

- Right to a fair trial is strictly linked with the effective implementation of all rights and freedoms guaranteed by the ECHR.

□ Article 6.

- 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.

„CIVIL RIGHTS OR OBLIGATIONS”

- The application of Article 6(1) in civil cases:
 - ▣ the existence of a "dispute";
 - ▣ that dispute must relate to "rights and obligations" which can be said
 - at least at the level of debate - to be recognised under domestic law;
 - ▣ such "rights and obligations" must be "civil" within the meaning of the Convention.
 - autonomous understanding of the term.

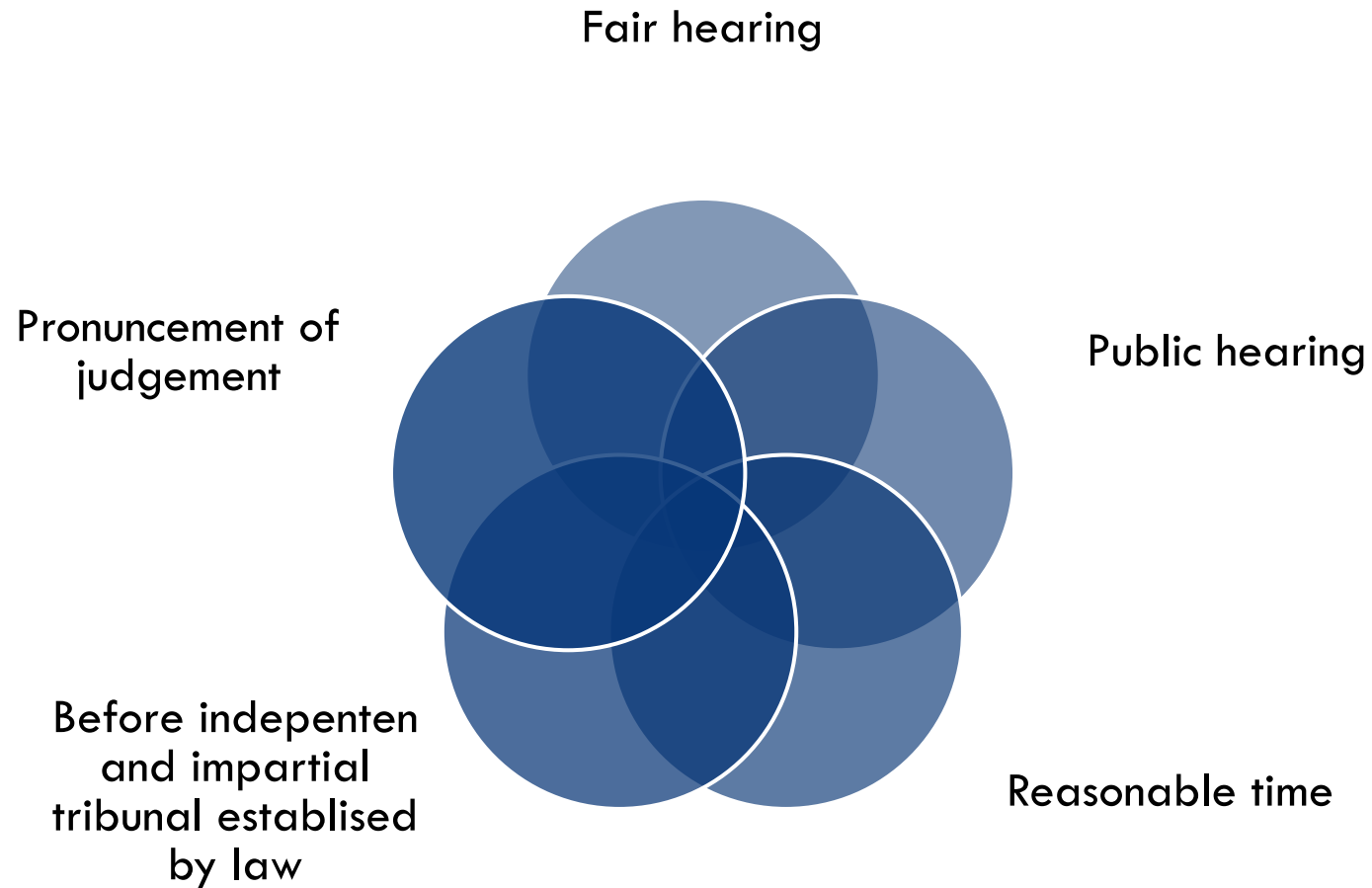
„CRIMINAL CASE”

- Classification of the case according to national law:
 - The ECtHR considers it only as a starting point in determining whether a case is of a 'criminal nature'.
- Nature of the case:
- In ECtHR case law, in order to determine whether a case is in fact of a criminal nature, attention is paid to factors such as:
 - (a) the addressees of the sanctioning provision - if the provision is addressed to the general public, rather than to a clearly limited group of addressees, it will normally have a 'criminal character';
 - (b) the purpose of the provision in question, since an infringement will not be of a criminal nature if the sanction envisaged aims only at the redress of pecuniary damage, whereas it will be of such a nature if its classification serves repressive and preventive purposes;
 - (c) the good protected by the sanctioning national provision, which will be of a criminal nature if its purpose is to protect legal goods, the protection of which is normally guaranteed by criminal law.
- Nature and severity of sanctions:
 - Imprisonment penalties are as such of a criminal nature, and the same is true of financial penalties, the non-payment of which can be translated into a substitute prison sentence or which involve a criminal records.
 - Engel and others v. the Netherlands

Administrative proceedings?



MAIN ELEMENTS – BOTH CIVIL AND CRIMINAL CASES



□ Article 6(3)

□ Everyone charged with a criminal offence has the following minimum rights:

- to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- to have adequate time and facilities for the preparation of his defence;
- 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;
- 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;
- to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

SPECIFIC ASPECT OF FAIRNESS IN CRIMINAL PROCEEDINGS

Presumption
of innocence

Information
about the
charges

Adequate
time for
preparation
of defence

Adequate
facilities for
preparation
of defence

Right to be
present

Right to a
lawyer

Right to
examine and
call witnesses

Right to
interpretation

OVERAL TEST OF ECtHR

“Compliance with the requirements of fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of the isolated consideration of one particular aspect or one particular incident.”

ECtHR, Pishchalnikov v. Russia, No 7025/04, 24 September 2009, § 64; ECtHR, Beuze v. Belgium, No 71409/10, 24 September 2009, § 150.



STARTING POINT

- *“Certainly the primary purpose of Article 6 as far as criminal matters are concerned is to ensure a fair trial by a “tribunal” competent to determine “any criminal charge”, but it does not follow that the Article 6 has no application to pre-trial proceedings (...) The requirements of Article 6(3) may also be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them“*
- *Imbrioscia v. Switzerland*

REASONABLE TIME OF THE PROCEEDINGS

- Starting date
 - civil proceedings - the moment an action is brought before the competent court
 - Judgment ECHR Poiss v Austria, Application no. 9816/82;
 - Judgment ECHR Bock v. Germany, Application no. 11118/84.
 - criminal proceedings - the moment when a party becomes aware that proceedings have been instituted and suffers the effects of such proceedings (in the form of a hearing, information about their initiation, presentation of charges, detention)
 - Judgment of the ECtHR Neumeister v Austria, Application no. 1936/63.
- Final moment
 - the time limit extends to the entirety of the proceedings in question, including the appeal proceedings, and lasts until the final judgment and its execution.
 - Judgment ECHR König v Germany, Application no. 6232/73.
 - Judgment ECHR Poiss v Austria, Application no. 9816/82.

REASONABLE TIME OF THE PROCEEDINGS

- Criteria for determining a reasonable length of proceedings:
 - ▣ the complexity of the case;
 - ▣ the behaviour of the complainant ;
 - ▣ the actions of the relevant authorities;
 - ▣ the importance of the subject matter of the dispute to the complainant.
- **However, assessment depends on the individual circumstances of the proceedings!**

Elements affecting the time of the proceedings

- Long pauses between hearings;
- Hearings without any results;
- Ineffective summoning of witnesses;
- Experts delayed in producing their opinions;
- Hearings adjourned without good reason;
- Proceedings suspended for a trivial reason.

„Independent and impartial tribunal”

- Independence from:
 - ▣ the executive and the legislator
 - ▣ the parties of the proceedings
- Law related to judges
- Practice of the authorities
- Practice of the courts and judges

PRESSUMPTION OF INNOCENCE

- ◆ Applies to suspects or accused persons in criminal proceedings.
- ◆ The privilege against self-incrimination.
- ◆ The right to remain silent.



QUESTIONS

- Media statements influencing courts?
- Statement by public authorities?
- Judges' statement about high probability of guilt?

RIGHT TO PREPARE DEFENCE

- Access to case file
- Possibility to copy case files or to make notes
- Time for reading case files
- Delivery of the first instance decision (with justification)

RIGHT TO BE PRESENT

- Difference – first and second instance
- Exceptions – anonymous witness
- Presence of lawyer?

RIGHT TO A LAWYER

- Civil/criminal cases
- Private lawyer/legal aid lawyer
- Legal aid lawyer:
 - ▣ acceptance of defendand needed?
 - ▣ Possibility of replacement if he/she acts obviously inadequate?

RIGHT TO A LAWYER IN CRIMINAL CASES

- As a general rule, a suspect should be granted access to legal assistance from the moment that a "criminal charge" is brought against him or her criminal case" within the autonomous meaning of the Convention
 - Simeonovi v. Bulgaria [WI], § 110
- A person acquires the status of a suspect, which requires the application of the guarantees set out in Article 6, not when that status is formally granted to the person, but when, when the national authorities have credible grounds to suspect the involvement of that person in a criminal offence
 - Truten v Ukraine, § 66; Knox v Italy

RIGHT TO A LAWYER IN CRIMINAL CASES

- Scope of the right to a lawyer:
 - Suspects must be able to enter into contact with a lawyer from the time when they are taken into custody.
 - Suspect must be able to consult with his or her lawyer prior to an interview
 - The lawyer must be able to confer with his or her client in private and receive confidential instructions
 - The suspect have the right for their lawyer to be physically present during their initial police interviews and whenever they are questioned in the subsequent pre-trial proceedings.

RIGHT TO A LAWYER IN CRIMINAL CASES

- The following restrictions may undermine the fairness of the proceedings:
 - a refusal or difficulties encountered by a lawyer in seeking access to the criminal case file, at the earliest stages of the criminal proceedings or during the pre-trial investigation
 - the non-participation of a lawyer in investigative measures such as identity parades.

ASSESSMENT OF FAIRNESS

- List of factors, which should be taken into account to assess overall fairness of the proceedings (in the event of procedural failings at the pre-trial stage):
 - whether the applicant was particularly vulnerable, for example by reason of age or mental capacity;
 - the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with – where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;
 - whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;
 - the quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;
 - where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;
 - in the case of a statement, the nature of the statement and whether it was promptly retracted or modified;
 - the use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case;
 - whether the assessment of guilt was performed by professional judges or lay magistrates, or by lay jurors, and the content of any directions or guidance given to the latter;
 - the weight of the public interest in the investigation and punishment of the particular offence in issue; and
 - other relevant procedural safeguards afforded by domestic law and practice.

- Beuze v. Belgium, p. 150

EQUALITY OF ARMS

- Reasonable opportunity to present the case before the court
- Access to the case files
- The equal position of the parties' witnesses
- Possibility to submit evidence
- The position of court experts

RIGHT TO INTERPRETATION

- Supervision of the quality of the interpretation - ?
- Scope of the document which must be translated - ?
- Can cost of interpretation be claimed -?

PUBLIC PRONOUNCEMENT

- General rule – announced in the open court
- Questions:
 - ▣ Requirement of making public written justification?
 - ▣ Requirement of making judgements available online?

RIGHT TO A REASONED DECISION

- Applicable to all decisions on merits
 - ▣ The necessity to address all essential arguments
- Not absolute character in relations to procedural decisions



Q & A



THANK YOU VERY MUCH FOR YOUR ATTENTION!

