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# **The Right to a Fair Trial**

## **Article 6(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 interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of 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 Rights

- As a procedural guarantee right to fair trial is subject to its own rules of interpretation
- Constituent Article 6 rights are subject to certain limitations or interpretations
- Any such limitation must not interfere with the right to a fair trial as a whole
- It is also subject to a test of strict necessity and proportionality (*Van Mechelen v Netherlands* (23.04.1997))

# Fair trial in criminal and civil proceedings

- When is Article 6(1) engaged in the criminal process?

Criminal charge

- When is Article 6(1) engaged in civil process?

Civil rights and obligations

# Examples of disputes held to be civil rights

General: weighing public v. private features

*Established examples:*

- Rights of private individuals
- Property rights
- Family rights
- Right to engage in commercial activities
- Right to practise a profession
- Rights to compensation
- Welfare benefits

# Disputes held not to engage civil rights

- Career disputes of civil servants?
- Tax obligations
- Education rights
- Immigration rights
- Right to stand for public office
- Refusal to issue a passport

# What is a “Determination”?

- There must be a dispute or “contestation”, and the proceedings must be “decisive” of the rights or obligations
- A mere investigative report is not a determination
- The requirement that there should be a “*contestation*” should not be taken too far:

*“Conformity with the spirit of the Convention requires that the word ... should not be construed too technically and should be given a substantive rather than a formal meaning”*

# **When a civil right or criminal charge is being determined, Article 6(1) requires:**

- Right of access to a court



# Article 6(1) guarantees

Independent and impartial tribunal

Trial within a reasonable time?

Public hearing

Is there a right to appeal?

# Article 6(1) rights: what is a fair hearing?

- Right to equality of arms
- Right to be present and to an adversarial hearing
- Right to participate in the hearing
- Right to disclosure of evidence
- Right to a public hearing
- Reasons for decisions
- Legal certainty

## **ARTICLE 6(2)& (3)**

*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 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.*

# Specific guarantees in relation to criminal trials

## Article 6(2)

### *The presumption of innocence*

#### **Rights implied into the presumption of innocence**

- The right to silence
- Freedom from self-incrimination

# Specific guarantees in relation to criminal trials

## Article 6(3)

- a) Right to be informed promptly of charge
- b) Adequate time & facilities to prepare defence
- c) Right to legal assistance of choice
- d) Right to examine witnesses
- e) Right to an interpreter