RIGHT TO A FAIR TRIAL BY THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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The concept of "civil rights and obligations" cannot be interpreted solely by reference to the respondent State's domestic law; it is an "autonomous" concept deriving from the Convention. Article 6 § 1 of the Convention applies irrespective of the parties' status, the nature of the legislation governing the "dispute" (civil, commercial, administrative law etc.), and the nature of the authority with jurisdiction in the matter (ordinary court, administrative authority etc.) (Georgiadis v. Greece, [1] ; Bochan v. Ukraine (no. 2) [2]).

However, the principle that the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions does not give the Court power to interpret Article 6 § 1 as though the adjective "civil" (with the restrictions which the adjective necessarily places on the category of "rights and obligations" to which that Article applies) were not present in the text (Ferrazzini v. Italy [3]).

The applicability of Article 6 § 1 in civil matters firstly depends on the existence of a "dispute" (in French, "contestation"). Secondly, the dispute must relate to "rights and obligations" which, arguably at least, can be said to be recognised under domestic law. Lastly, these "rights and obligations" must be "civil" ones within the meaning of the Convention, although Article 6 does not itself assign any specific content to them in the Contracting States' legal systems (James and Others v. the United Kingdom, [4]).

Right and access to a court. The right of access to a court for the purposes of Article 6 was defined in Golder v. the United Kingdom [5]. Referring to the principles of the rule of law and the avoidance of arbitrary power which underlie the Convention, the Court held that the right of access to a court was an inherent aspect of the safeguards enshrined in Article 6. The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (Běleš and Others v. the Czech Republic, [6]). Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (Golder v. the United Kingdom, [5]). Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her civil rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or to the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (Z and Others v. the United Kingdom [7]). The refusal of a court to examine allegations by individuals concerning the compatibility of a particular procedure with the fundamental procedural safeguards of a fair trial restricts their access to a court.

The "right to a court" and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired on Article 6 of the Convention – Right to a fair trial (civil limb) European Court of Human Rights.

Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between

the means employed and the aim sought to be achieved (Lupeni Greek Catholic Parish and Others v. Romania [8]). Although the right to bring a civil claim before a court ranks as one of the "universally recognised fundamental principles of law", the Court does not consider these guarantees to be among the norms of jus cogens in the current state of international law. In Baka v. Hungary the Court noted the growing importance which international and Council of Europe instruments, the case-law of international courts and the practice of other international bodies were attaching to procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in respect of every decision affecting the termination of office of a judge. In its decision in Lovrić v. Croatia concerning the expulsion of a member of an association, the Court noted that a restriction on the right of access to a court to challenge such a measure pursued the "legitimate aim" of maintaining the organisational autonomy of associations (referring to Article 11 of the Convention). The scope of judicial review of such a measure may be restricted, even to a significant extent, but the person concerned must nevertheless not be deprived of the right of access to a court.

A right that is practical and effective. The right of access to a court must be "practical and effective" (Bellet v. France). For the right of access to be effective, an individual must "have a clear, practical opportunity to challenge an act that is an interference with his rights". The rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy. The right to bring an action or to lodge an appeal must arise from the moment the parties may effectively become aware of a legal decision imposing an obligation on them or potentially harming their legitimate rights or interests. Otherwise, the courts could substantially reduce the time for lodging an appeal or even render any appeal impossible by delaying service of their decisions. As a means of communication between the judicial body and the parties, service makes the court's decision and the grounds for it known to the parties, thus enabling them to appeal if they see fit or enabling an interested third party to intervene. More broadly, it is the domestic authorities' responsibility to act with the requisite diligence in ensuring that litigants are apprised of proceedings concerning them so that they can appear and defend themselves; notification of proceedings cannot be left entirely at the discretion of the opposing party.

1. *Georgiadis v. Greece*, 29 May 1997, Reports of Judgments and Decisions 1997-III

2. *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, ECHR 2015

3. *Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII

4. *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98

5. *Golder v. the United Kingdom*, 21 February 1975, Series A no. 18

6. *Běleš and Others v. the Czech Republic*, no. 47273/99, ECHR 2002-IX

7. *Z and Others v. the United Kingdom* [GC], no. 29392/95, ECHR 2001-V

8. *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, ECHR 2016 (extracts)