RIGHT TO A FAIR TRIAL

(Art. 6 ECHR and Arts. 2 to 4 Protocol No. 7; Art. 14 CCPR)

1. Scope of application of Art. 6 ECHR (and Art. 14 CCPR)

A. Civil matters

1. Dispute over rights and obligations
   a. Dispute
   b. Rights and obligations
      - Rights
         . Not limited to so-called “subjective rights”
           - ECtHR [GC], 5 October 2000, Mennitto v. Italy, ECHR, 2000-X.
           . Typology of rights
             - ECtHR [GC], 19 September 2017, Regner c. Czech Republic.
             . Recognition, at least on arguable grounds, of the existence of the right under domestic law
               - ECtHR [GC], 19 October 2005, Roche v. United Kingdom, ECHR, 2005-X.
      - Obligations
        - ECtHR [GC], 12 April 2006, Martinie v. France, ECHR, 2006-VI.
   c. Rights or obligations as object of the dispute
      1. Disputes over rights (obligations) or over the legality of an interference with rights
         - Dispute over a right (or an obligation)
         - Dispute about an interference with a right
      2. Various stages of the proceedings
         - ECtHR [GC], 15 October 2009, Micallef v. Malta, ECHR, 2009-V.
         - ECtHR [GC] 5 February 2015, Bochan v. Ukraine (no. 2).

2. Civil character of the rights or obligations at issue
   - Enforceable rights are in principle civil rights
     - ECtHR [GC], 16 March 2010, Oršuš v. Croatia, ECHR, 2010-II.
   - Private law features vs. public law features
   - Excluded:
     . Tax matters
       - ECtHR [GC], 12 July 2001, Ferrazzini v. Italy, ECHR, 2001-VII.
     . Election matters
       . Entry, stay and deportation of aliens, and nationality
         - ECtHR [GC], 5 October 2000, Maaouia v. France, ECHR, 2000-X.
         . Exceptionally: recruitment, career or termination of service of a civil servant
           - ECtHR [GC], 19 April 2007, Eskelinen v. Finland, ECHR, 2007-IV.
     . Obligation to serve the military
B. Criminal matters

1. Criminal charge
- ECtHR [GC], 23 November 2006, Jussila v. Finland, *ECHR*, 2006-XIV.

2. Stages of the proceedings
ECtHR [GC], 13 September 2016, Ibrahim and Others v. United Kingdom.

2. Right to a court

A. Principle of the rule of law

B. Right of access to a court

1. Principle
   a. Availability of a court
   b. Direct access
   c. Effective access

2. Limitations
- ECtHR [GC], 29 November 2016, Lupeni Greek Catholic Parish v. Romania.
- ECtHR [GC], 5 April 2018, Zubac v. Croatia.

C. Right to a judicial determination of the dispute
- Power of decision
- Adjudication by non-judicial organs; subsequent review by a court (full jurisdiction; review of legality)

D. Respect for the final determination by a court

1. Inalterability of judgments
  - ECtHR [GC], 28 October 1999, Brumărescu v. Romania, *ECHR*, 1999-VII.

2. Res judicata

3. Execution of judgments

3. Structural and procedural guarantees

A. Tribunal established by law
- Tribunal
- Established by law

B. Independence and impartiality
1. Independence
   ECtHR [GC], 23 June 2016, Baka v. Hungary.

2. Impartiality
   a. Notion
   b. Two approaches
      - Subjective approach
      - Objective approach
   c. Applications
      1. Previous involvement in the case, in another capacity or at another stage of the proceedings
         - ECtHR [GC], 27 May 2014, Marguš v. Croatia, *ECHRR*, 2014-III.
      2. Existence of hierarchical or other links between the judge and other actors in the proceedings
         - ECtHR [GC], 15 October 2009, Micallef v. Malta, *ECHRR*, 2009-V.
      3. Cumulati
      4. Conduct of the judge

C. Public character of the proceedings (hearing and judgment)

D. Fair hearing
   1. In general
      a. Right to take part in the proceedings
         - ECtHR, 15 February 2005, Steel and Morris v. United Kingdom, *ECHRR*, 2005-II.
         - ECtHR [GC], 1 March 2006, Sejdovic v. Italy, *ECHRR*, 2006-II.
      b. Adversarial character of the proceedings
         - ECtHR [GC], 16 February 2000, Rowe and Davis v. United Kingdom, and Fitt v. United Kingdom, *ECHRR*, 2000-II.
      c. Oral hearing
         - ECtHR [GC], 11 July 2002, Göç v. Turkey, *ECHRR*, 2002-V.
         - ECtHR [GC], 23 November 2006, Jussila v. Finland, *ECHRR*, 2006-XIV.
      d. Equality of arms
         - ECtHR [GC], 19 September 2017, Regner v. Czech Republic.
      e. Evidence
         - ECtHR [GC], 11 July 2006, Jalloh v. Germany, *ECHRR*, 2006-IX.
         - ECtHR [GC], 10 March 2009, Bykov v. Russia.
f. Reasons of the decision
- ECtHR [GC], 16 November 2010, Taxquet v. Belgium, ECHR, 2010-VI.
- ECtHR [GC], 5 February 2015, Bochan v. Ukraine (no. 2).
g. Consistency of the courts’ case law
ECtHR [GC], 20 October 2011, Nejdet Şahin and Perihan Şahin v. Turkey.

2. Specific guarantees in criminal cases
Guarantees of Art. 6, § 3, ECHR are specific aspects of the right to a fair hearing in Art. 6, § 1, ECHR. Fairness of the proceedings must be assessed in light of the proceedings as a whole.
- ECtHR [GC], 16 November 2010, Taxquet v. Belgium, ECHR, 2010-VI, § 84.
- ECtHR [GC], 15 December 2011, Al-Khawaja and Tahery v. United Kingdom, § 118, ECHR, 2011-VI.
- ECtHR [GC], 20 October 2015, Schatschaschwili v. Germany.
- ECtHR [GC], 13 September 2016, Ibrahim and Others v. United Kingdom.

a. Right to remain silent, privilege against self-incrimination
- ECtHR [GC], 29 June 2007, O’Halloran and Francis v. United Kingdom, ECHR, 2007-VIII.

b. Presumption of innocence
- ECtHR [GC], 12 July 2013, Allen v. United Kingdom, ECHR, 2013-IV.

c. Information of the nature and the cause of the accusation

d. Time and facilities for the preparation of the defence

e. Defence in person or through legal assistance
- ECtHR [GC], 27 November 2008, Salduz v. Turkey, ECHR, 2008-II.
- ECtHR [GC], 20 October 2015, Dvorski v. Croatia.
- ECtHR [GC], 13 September 2016, Ibrahim and Others v. United Kingdom.
- ECtHR [GC], 4 April 2018, Correia de Matos v. Portugal.

f. Examination of witnesses (absent or anonymous witnesses)
- ECtHR [GC], 15 December 2011, Al-Khawaja and Tahery v. United Kingdom, ECHR, 2011-VI.
- ECtHR [GC], 15 December 2015, Schatschaschwili v. Germany.

g. Free assistance of an interpreter

h. Compensation for wrongful conviction

i. Right not to be tried or punished twice
- ECtHR [GC], 10 February 2009, Zolotukhin v. Russia, ECHR, 2009-I.

E. Reasonable time

1. Period to be taken into account
- Starting point
- End of the period

2. Assessment of the reasonableness of the length of the proceedings
- Assessment in the light of the circumstances of the case
- Criteria
- Complexity of the case
- Conduct of the applicant
- Conduct of the relevant authorities
- What is at stake for the applicant

3. Consequences of an undue delay
4. Remedies against an undue delay

ECtHR [GC], 26 October 2000, Kudła v. Poland, ECHR, 2000-XI.