

THE RIGHT TO A FAIR TRIAL IN THE DYNAMIC INTERPRETATION OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract

The European Court of Human Rights has constantly highlighted the importance of Article 6 of the Convention and by a dynamic interpretation, the jurisprudence of the Strasbourg Court has gradually enriched the content and the practical impact of the treaty text, recognizing various additional guarantees compared to those expressly provided for by the Convention, such as certain specific applications of the equity principle and the national court's obligations of loyalty and compliance with the Convention, which represent essential elements of the general concept of a fair trial.

Keywords: CEDH, fair trial, jurisprudence, article 6.

1. Introduction

According to the International and European procedural law, the guarantee of a fair trial is considered a fundamental right.

However, the concept of this fundamental right is still controversial. Leading specialists in the domain developed three criteria for the protection of fundamental rights: the protection against the executive and legislative power, the protection by the law, by the Constitution and by international or supranational law and the protection by the intervention of ordinary courts, constitutional courts and international courts.

For determined the application field of the guarantee of a fair trial, it is necessary to establish the content of that procedural guarantee of Article 6 of the European Convention on Human Rights. In this context, the question is to know what guarantees good organization and functioning of justice in the context of litigations.

Among each decision, the European Court of Human Rights has highlighted the importance of Article 6 of the Convention, which enshrines the fundamental guarantees of procedure, aiming to strengthen the internal and international mechanisms for safeguarding the rights and freedoms provided in the benefit of litigants.

In a dynamic and purposive interpretation, the case law of the Strasbourg Court has gradually developed the content and the practical impact of the treaty text, recognizing various additional guarantees compared to those expressly provided by the Convention.

Thus, the European Court has established some particular applications of the requirement of equity defined by Article 6 of the Convention, enforcing essential elements of the general concept of a fair trial.

Also, the European Court established the existence of a limited procedural and institutional autonomy in the benefit of Member States, by devoting a positive obligation of loyalty and compliance for the national courts in the application of procedural guarantees provided by the Convention.

1.1. Particular applications of the requirement of equity

The jurisprudence of the European Court of Human Rights has recognized the existence of a more complex content of the right to a fair trial, developing in particular the importance of respecting the right to enforcement of court decisions, the particular implications of the language of proceedings and the right to appear in person to protect the rights of defense or the role of the mass media regarding the fairness of the proceedings.

Regarding the right to the execution of court decision, according to the Strasbourg Court "the execution of a judgment or a decision by any court whatsoever, should be considered as part the trial, under the protection of Article 6 ", " would not be understood by Article 6 paragraph 1 should describe in detail procedural guarantees - equity, public and celerity - granted to the parties and does not protect the setting implement the judicial decision."¹

In the same case - Hornsby v / Greece, the Court indicated that the right to a fair trial "would be illusory if the internal legal order of a Member State allowed a final judicial decision to remain inoperative to the detriment of a party ".

Accordingly, taking into consideration the purpose and spirit of the European Convention, the principle of the supremacy of law requires the execution of court decisions, taking into consideration also the important implications of this procedural step for the right to respect of the property of individuals.

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¹ Hornsby v/ Greece, nr. 18357/91, from 19.03.1997.

However, the implementation of court decisions by state authorities is conditioned to that the decision is final and mandatory. So as a principle, the only decisions that must be executed are those that are not subject to any supervision by higher courts which would have the jurisdiction to review them.²

Regarding the right to the execution of court decisions and the right to free access to remedies, a debate has been created regarding the compatibility of certain domestic laws with the principles mentioned above, concerning the rules which prohibit the exercise of the right of appeal against a judicial decision if the applicant does not justify having performed or having deposited on consignment the amount of money regarding which he has been declared debtor.

Indeed, the Strasbourg Court indicated that these internal rules can be considered compatible with the European Convention, taking into consideration the legitimate aims pursued by that legislation, including the protection of creditors, avoiding dilatory appeals or the necessity to strengthen the authority of judges.³

To fulfill the requirements imposed by the Convention, the Court stated that some positive obligations are imputable to the Member States to perform an adequate execution of a final and mandatory court decision. For example, the Court held the responsibility of the Italian State, in a case involving the expulsion of some tenants, for violation of the right to a fair trial by an extended absence from the state authorities in the execution of 'a Judgement'.⁴

Although the primary responsibility for the breach of a court decision belongs to a private person, the Court gave a horizontal effect to the decision, thus retaining the default of the Member States.

Other essential elements of the general concept of a fair trial such as those provided in the benefit of the accused have been extended by case law of the European Court civil trial, as the right to a fair trial.

Regarding the language of the proceedings, the right to linguistic freedom in justice was not expressly provided for in the Convention. Some rules are embodied only by Article 6 paragraph 3 paragraphs a and e in favor of those accused of criminal offenses.

However, the case law of the European Court considered, in some cases, taking into account the specific circumstances of each case, that the language used in the procedure and related procedures may be taken into account in the assessment of character fair or not of the trial as a whole.

In civil matters, the case law recognizes the right to an interpreter in exceptional cases and under strict conditions. For example, a person who receives a citation in a language that does not understand, must have the necessary time to obtain a translation and can not claim to be a victim of a violation of the fairness of the proceedings. Also, the obligation under domestic legislation to draft a writ of summons in a certain language is not an obstacle to the free access to justice, even if the defendant ignores the respective language.

Similarly, if during the civil trial, if the defendant ignores the language of the proceedings, but he is assisted by a lawyer who understands the language being used and if the personal participation of the defendant is not required, this process respects the established requirements of fairness the Convention.

For the same reasons of existence provided in the benefit of the accused, the Court has sometimes admitted the existence of a right to linguistic freedom also in favor of the plaintiff in a criminal trial, as a requirement of a fair trial.

Another fundamental element of the right to a fair trial is the right to appear in person in the context of judicial proceedings. In civil cases, the warranty is not expressly required by the Convention.

However, taking into consideration the specific circumstances of each case, the case law of the Strasbourg Court recognized in some categories of cases, that the right to a fair trial implies the right of the defendant to appear in person in the trial. So when the judge considers that the personal appearance of the defendant is necessary for the proper conduct of the trial, the national authority must take all appropriate and necessary measures to ensure that the person concerned has a real opportunity to appear before the judge.

Article 6 of the Convention does not provide specific forms or arrangements to ensure the personal appearance of the defendant, but the treaty text imposes Member States the obligation to provide the framework for the establishment of the truth and to protect the right of defense of all parties of a trial.

However, even for a person accused of a crime, this guarantee is not absolute. For example, the right to appear in person is not required if the defendant is represented by counsel or has had a real opportunity to present themselves before the court. Also, taking into account the complexity and technical specificity of a certain case, the written nature of the procedure can be justified. Similarly, a court may have the jurisdiction only to rule on matters of law or to examine an existing file, so the ruling can take place without the presence of the parties. Of course, a

² *Ouzounis and others v./ Greece*, nr. 49144/99, from 18.04.2002.

³ *Pages v. / France*, nr. 50343/99, from 25.09.2003.

⁴ *Scollo v./ Italy*, nr. 19133/91, from 19.03.1997.

person whose absence is attributable to his fault can not claim to be a victim of a violation of procedural fairness.

In accordance with the established case law of the European Court, for the cases in which the litigant's personal conduct has a direct contribution to the formation of the opinion of the judge, the right to a fair trial necessarily implies right to appear in person before the judge handling the case.

A more delicate aspect concerning the right to a fair trial provided by Article 6 of the Convention is represented by the impact of mass media on the trial. Often, case law has considered that certain statements issued by the judicial authorities investigating the case, are violating the confidentiality of records and had adverse consequences with regard to the fairness of the proceedings, affecting also the litigants.

Also, major media campaigns, often with a violent nature, are able to affect the independence and impartiality of the judges through media pressure, affecting also the more general right of the parties to a fair trial.

However, Member States must balance the procedural requirements resulting from the Convention and the public's right to be informed of court proceedings and the curiosity of citizens about the conduct of litigations.

2. The duty of loyalty and compliance with the Convention of the national courts

The jurisprudence of the European Court established a framework of procedural and institutional autonomy of Member States, believing that a positive duty of loyalty and compliance must exist for the national court which is responsible for hearing a particular case, regarding the application of procedural guarantees provided by the Convention.

The obligations of the national courts with regards to the fairness of the proceedings includes the duty to provide adequate reasoning of the judgments, the obligations to establish penalties commensurate with the gravity of the fault of the defendant and the loyal attitude to the defense of the parties.

Regarding the motivation of judgments, according to the case law of the Strasbourg Court, as in a civil trial, as in a criminal trial, the right to a fair trial requires that judgments are motivated with sufficient clarity to allow the defendant to verify if all claims and applications were reviewed by the judge.

The individual must also be able to assess if there are chances for a remedy, examining issues of

law and facts on which the judge based his decision. This requirement of an adequate motivation helps to achieving transparency of justice, a fundamental element of the right to a fair trial.

However, the obligation to motivate the judgments is required only in the assumptions that the treaty text is applicable, especially in the case of a dispute over civil rights or obligations or in the case of a criminal charge.

The right of every individual to receive a reasoned decision is not absolute. According to the jurisprudence of the Court, a decision given in a summary manner may be sufficient; the judge is free to respond only to relevant applications that are likely to influence the final outcome of the case, without being required to analyse the conclusions without relevance in the case.⁵

So this rule is subject to a relative appreciation, some space for interpretation is left to the national court which takes into account the specific circumstances and merits of each case. For example, the Convention does not prohibit judges to base their motivation on arguments proposed by either party to the dispute. Also, individuals do not have the right to require the judge to motivate each arguments or means that have been rejected.

When it comes to statements whose meaning is not clear to the defendants, the Court stated that the requirement to motivate has a special significance. For example, in a case concerning a registration procedure of lawyers, the incident has subordinated the respective legislation to the existence of "exceptional circumstances" and the Court found that it is of "serious difficulty" as to determining the meaning of this requirement. Considering that the legislation does not provide any explanations of the meaning of terms, this requires the judge to provide adequate reasoning for the decision by which the request of the defendant was rejected.⁶

However, the Court made a distinction between a lack of motivation and an error of reasoning, concerning which the judge of Strasbourg is not competent to censure a mistake of judgement of facts or law, with the exception of the situation in which this error is likely to violate the rights and freedoms guaranteed by the Convention.

Regarding some degree of proportionality of sanctions established by the national court, it has been decided that the right to a fair trial guaranteed by Article 6 of the Convention requires national judges the obligation to modulate the sanctions that they decide according to the criminal behavior of the defendant.

Some judges have gone beyond this principle, establishing a just proportion between the incident, sanction and the behavior of the convicted person,

⁵ *HiroBalani v. /Spain*, nr. 18064/91, from 09.12.1994.

⁶ *Malige v. / France*, nr. 68/1997/852/1059, from 23.09.1998.

even in the presence of legislation which does not include such possibility.

On the other hand, some judges would not interpret texts in an extensive manner, considering that in cases where the legislature has chosen to establish a system of automatic sanctions, a review of proportionality has already occurred.

In deciding such a debate, the case law of the European Court decided, in a case concerning a traffic violation, an ancillary penalty resulting from an automatic way of conviction can not be considered disproportionate because "the Act provided some degree of modulation depending on the gravity of the offense committed by the accused."

Another obligation of the national court in the implementation and consistent interpretation of the Convention is the existence of a loyal attitude from his parte against the rights of defense of the parties. The jurisprudence of the Court has already accepted that a careless and unprofessional attitude of the defendant's lawyer is likely to affect his right of having heard equitably by the court.

However, the Convention specifically provides the right to be assisted or represented by a lawyer only in the benefit of a person accused of having committed a criminal offense. But nothing in the treaty text recognizes for the parties to a civil trial the right to have the assistance of a defendant of his choice.

Taking into account the spirit and aim of the Convention, the European institutions have implicitly admitted that the national courts have an obligation to take appropriate measures for the proper administration of justice, guaranteeing litigants the right to a fair trial.

For example, according to a case law of the Strasbourg Court, the fact that a court rejects a party to the dispute either assisted or represented by a defendant of his choice, may constitute a violation of the right to fair trial guarantees the Convention.

However, taking into account the importance for the parties, the European Court considers that in

the civil cases that do not have a complex character, prohibiting the parties of the dispute to be represented or assisted, is not in itself a violation of Article 6 of the Convention.

Also, the European Court accepts compliance to standard text of national law that imposes the obligation on individual specialized assistance in the framework of a certain phase of the procedure, to the requirements of proper administration of justice.

Finally, national jurisprudence often goes beyond the requirements of the Convention, considering that the right of any party to be assisted or represented by a lawyer is a necessary corollary of the benefit of the rights of defense.

3. Conclusions

The European Convention on Human Rights not only proclaims the rights and freedoms for the benefit of individuals, but also establishes practical ways of the enforcement by Member States authorities. Also, the treaty text contains several provisions establishing safeguard duties and functional guarantees of substantial rights and freedoms.

Turnovers of jurisprudence consisting in particular in the development of original and authentic meaning of treaty provisions, have enriched significantly the scope and content of the procedural safeguards any individual can rely on in front of the national courts.

Consequently, taking into consideration "the prominent place the right to a fair trial held in a democratic society" and that "the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights" the use of procedural safeguards in the context of litigation has become widespread, the European Convention on human rights is considered a source of law and an effective instrument that can be invoked by individuals.

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