

Right to a fair trial (Article 6)

The key provision of Article 6, in the first sentence of paragraph 1, is that **“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”**.

Fair trial is a fundamentally important guarantee in any democratic society, so this article is one of the most important, and most frequently invoked, provisions of the Convention.

Civil proceedings

In principle, Article 6 applies broadly to all civil disputes, with some long-standing exceptions.

In all civil cases to which it applies, Article 6(1) **expressly** requires:

- ▶ **a public hearing**, subject to some exceptions, for example to protect children in family cases;
- ▶ **an independent and impartial tribunal**, i.e. one that is independent of the authorities and parties and is unbiased;
- ▶ **trial within a reasonable time**;
- ▶ **a publicly pronounced judgment**, i.e. publicly available, not necessarily pronounced in open court.

The Court has also **implied into Article 6(1)** the following rights:

- ▶ **access to court** (both physical and procedural);
- ▶ **legal representation** in civil cases;
- ▶ **the right to participate effectively**, e.g. through adversarial proceedings;
- ▶ **the obligation on the court to take both parties' cases fully and equally into account**;
- ▶ **the right to a reasoned judgment/decision**;
- ▶ **the obligation on the State to execute a civil judgment in a timely and effective manner**;
- ▶ **legal certainty**, including the finality of judicial decisions.

The main impact on public officials is to **put those dealing with civil disputes covered by Article 6 on notice that they must ensure the fair trial rights are respected, either at the time of the administrative decision or will be respected later in judicial review.**

Criminal proceedings

The notion of “criminal” has a specific meaning under the Convention and may extend to disciplinary, administrative or fiscal proceedings if they may lead to punishment of the person concerned.

In addition to the rights given by paragraph 1, people charged with a criminal offence have the following further specific rights, set out in paragraphs 2 and 3 a to f:

- ▶ **Presumption of innocence.** A person is innocent until proven guilty according to law. There is a right to silence and not to incriminate oneself.
- ▶ **Prompt and intelligible information of the nature and cause of the accusation against him or her.**
- ▶ **Adequate time and facilities for the preparation of his or her defence.**
- ▶ **The right to defend him/herself in person or through legal assistance of his or her own choice, provided free where the interests of justice so require.**
- ▶ **The right to examine prosecution witnesses and call witnesses in his or her defence.**
- ▶ **The right to an interpreter, provided free, if he or she cannot understand or use the language used in court.**

No punishment without law (Article 7)

This provision **forbids retrospective application of the criminal law**. It includes the right not to be tried or punished for an act which was not a criminal offence at the time it was done. **Police need to be careful to ensure that offences and penalties were in force at the time of the acts in respect of which they arrest and charge people.**



The complete toolkit: <http://echr-toolkit.coe.int>

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