



Article 6 ECHR

The Right to a Fair Trial

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The Council of Europe

46 Member States (most countries in the geographical continent of Europe, excluding Russia, Kazakhstan, Belarus and the Vatican). As a result, 700 million citizens benefit from the protections of the ECHR.

Mission: To promote democracy, human rights and the rule of law across Europe and beyond.

What it does: Sets standards, monitors compliance and works with states to fight crime, and to protect other human rights including the right to privacy, the right to a fair trial and freedom of speech

The European Convention on Human Rights (ECHR)

- What is it? The ECHR is an International Human Rights Treaty adopted by members of the Council of Europe. It was drafted by some of Europe's leading lawyers of the 20th century, including Sir David Maxwell Fyfe, prosecutor at the Nuremberg trials and key Conservative politician and lawyer (variously Attorney General; Home Secretary and Lord Chancellor). The UK was also one of the first signatory states in 1950.
- Why was it adopted? To try to ensure a new regime for human rights protection in the post-WW II era.
- When was it enacted? The ECHR came into force on 3 September 1953.
- How does it work? The ECHR is an instrument of International law. In a dualist state such as the UK, it can only be enforced either: (1) when a claim is made against the state at the level of the European Court of Human Rights (ECtHR) in Strasbourg, or (ii) before a domestic court in the UK (as a result of the enactment of the Human Rights Act (HRA) 1998).

Article 6 ECHR: The Right to a Fair Trial

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.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 6 (continued)

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.

Article 6 in the Criminal Realm

Murray v UK (1996) 22 EHRR 29. Article 6 may apply to the preliminary investigation conducted by the police, where a person is subsequently charged. (Adverse inferences cannot be drawn where a defendant exercises a right to silence, in circumstances where they have been denied access to a lawyer - Art 6 (1) & (3)).

Article 6 in the Civil Realm

(i) Experts

Where an expert has been appointed by a court, the parties must be able to attend the interviews held by him or be shown the documents he has taken into account. Parties should be able to participate properly in the proceedings. The lack of neutrality on the part of an expert can breach Article 6. It may also lead to a breach of the equality of arms principle.

Article 6 in the Civil Realm

(ii) Judicial Reasoning

Courts are required to examine litigants' main arguments. With regard to pleas concerning the rights and freedoms guaranteed by the Convention and its Protocols, the national courts are *required* to examine these with particular rigour and care (*Wagner and J.M.W.L. v Luxembourg* (2007) App 76240/01).

Article 6 in the Civil Realm

(iii) Justice Delayed is Justice Denied

In requiring cases to be heard within a “reasonable time”, the Convention underlines the importance of administering justice without delay, because this may reduce its effectiveness and credibility.

Article 6 (1) requires Contracting States to arrange their legal systems so as to enable the courts to comply with its various requirements.

Case Law on Civil Application of Article 6

- *Airey v Ireland* (1979 - 1980) 2 EHRR 305
- *Gudanaviciene & Others v Director of Legal aid Casework and Lord Chancellor* [2014] EWCA Civ 1622
- *A v the United Kingdom* 36 EHRR 917
- *Steel and Morris v UK* (2005) ECtHR ...

Steel and Morris

Helen Steel

<https://www.theguardian.com/uk-news/2022/may/11/it-was-as-if-he-set-out-to-destroy-my-sanity-how-the-spy-cops-lied-their-way-into-womens-hearts-and-beds>

Dave Morris

<https://www.theguardian.com/uk-news/article/2024/jul/09/spy-cop-who-led-special-branch-admits-wrongly-accusing-activist-of-bomb-plot>

My Clandestine Black Hole (CBH) Theory

Too often, the legal profession has failed in its obligation to uphold the rule the law, or to ensure the proper administration of justice. Through regulatory omission, it has facilitated the hijacking of the legal system for commercial gain. This manifests itself in a toxic organisational culture which systematically abuses the law in the pursuit of profit. Common abuses include evidential and disclosure failures; threatening or bullying behaviours towards These behaviours are akin to 'stacking the deck' They're also potentially Article 6 ECHR breaches.

CBH theory holds that many large organisations have a legal department akin to a CBH. This causes the organisation to malfunction. Unfortunately, this malfunction often manifests itself in increased profitability, in the short and medium term.

Urgent regulatory reform is needed to ensure that CBH Law Departments don't become profitable for their host organisations in the short, medium *and* longterm.

References

European Convention on Human Rights (Council of Europe). Available at: https://prd-echr.coe.int/documents/d/echr/convention_eng

Human Rights Act 1998 Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

A v the United Kingdom 36 EHRR 917

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Guidance on Article 6 - Civil Limb (2013) (Council of Europe) Available at: <https://rm.coe.int/1680700aaf>



? Any Questions?