

## Original Paper

# The Right to a Fair Trial before The European Court of Human Rights

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### **Abstract**

*Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial, applies to disputes relating to civil rights and obligations as well as to criminal charges. The right to a fair trial includes, inter alia, the right of access to a court, the right to be heard and the equality of arms between the parties. This challenging new work elucidates the meaning of the fair trial and looks at the fair trials jurisprudence of the ECHR.*

*Article 6 of the European Convention on Human Rights has become the defining standard within Europe for determining the fairness of criminal proceedings. Its success has been attributed to the fact that it is not based on a particular model of criminal procedure.*

### **Keywords**

*fair trial, equality of arms, human rights, Impartiality, the European convention on human rights, the European court of human rights*

### **1. Introduction**

Signed at Rome on 4 November 1950, and entered into force on 3 September 1953, the European Convention for the protection of Human rights and fundamental freedoms has so far been ratified by 43 states. It guarantees the right to a fair trial in article 6, and established, by its articles 19 to 51, a permanent judicial mechanism, composed at the origin of a Commission and a court, and, since the entry into force of Additional Protocol N° 11, of the Only court, organized differently. These bodies are responsible for ensuring that the rights set out in the Convention by the signatory States are respected in respect of their litigants (E.C.H.R., 2018).

Through the decisions of these bodies, the Convention has had on the national rights of the signatory states an influence which is now no longer to be demonstrated. This is particularly the case with regard to the organization and functioning of the judicial systems (Note 1): Article 6 has for several years been the source of quantitatively (Note 2) and qualitatively important European jurisprudence (Batjom B., 1995, p. 11).

The court was led to clarify the scope of this article. In particular, it adopts its own definition of the terms “civil nature” and “criminal Matters”: European concepts are defined autonomously in relation to the qualification given to different disputes by the internal rights of the Member States, and are not identical to that of the internal homonymous concepts. This autonomy of notions is a fundamental aspect of the European protection of the fair trial: the civil nature or of the procedure governing the application of article 6, it is not conceivable to allow the internal qualification of the procedure to define this nature, under the penalty of seeing article 6 giving rise to a fair trial “with varying geometry” according to the State concerned. Only the adoption of autonomous concepts makes it possible to ensure a uniform application of the right to a fair trial, thereby subtracting the definition of the scope from domestic rights. In its definition of “civil nature”, the Court attaches particular importance to the consequences of the envisaged procedure, and has brought into the scope of article 6 § 1, in addition to “classical” private law, a part of the litigation Considered administrative in several internal rights “Litigation of liability administrative (Note 3), pensions (Note 4) or wages disputes (Note 5)...”.

Similarly, with regard to the European definition of “criminal matter”, the court, using a method close to the cluster of evidence, uses three criteria to determine the criminal nature of a charge: the internal qualification of the sanction, the severity of the Factor behavior and the purpose and severity sanction, which led it to include certain disciplinary sanctions, including penitentiary (Note 6), military (Note 7) or ordinal (Note 8).

It should be noted that, if it has long been thought that autonomy was one-way, i.e., it was used by the court only when it allowed the scope of article 6 to be extended in relation to domestic law (the European concept The internal qualification, plus the elements added by the court, can now be asked whether this is still the case (Note 9). A large number of matters, non-criminal within the meaning of internal law, have been entered into the scope of article 6; but, also, the European Court was able to consider that a sanction which was criminal in domestic law did not fall within the meaning of article 6 of criminal matters (Note 10).

But the study of the right to a fair trial is not exhausting in the examination of the application of article 6 of the Convention made by the European Court or in the identification of the obligation imposed by the Court on the signatory States to the Convention (Note 11). By creating bodies responsible for ensuring the proper application of guaranteed rights, the Convention has also created an autonomous judicial system, which is obedient to a number of procedural rules, and thus likely to be subject to the requirement of fair trial: because it is the body that ensures a good and uniform application of the

Convention, because it is at the origin of rules imposing on States, it is obviously necessary for the Court to respect the “standards” which considers the author (Flecheux, 2000, Oct. 25).

This is undoubtedly one of the main originalities of the protection of this right in the European order: the right to a fair trial acquires double dimensions. First, the quality of the procedure the European Court imposes on the States. Second, it is the quality of the European procedure itself. And if this article will be essentially devoted to the first of these dimensions, the richest in developments and frictions of the systems, but also the most conducive to a possible standard voyage, the second will also be mentioned, in the part devoted to the originality of the space.

## **2. Generic Concepts of a Fair Trial in the Normative Space Concerned**

The generic concept in the European order is, of course, the “right to a fair trial”, which is the title of article 6 in the official text of the Convention.

The analysis of the guarantee cannot be stopped there: the text of article 6 is made up of different elements, and the court has also considerably enriched this text, either by providing a definition of these elements or by deducting Guarantees “implicit”. This text therefore has a “pullout” type of construction: some of its terms have given rise to several rights or principles, defined and delineated by the court, and that internal procedures must respect (Beignier & Blery, 2001).

Therefore, only a somewhat precise observation of these elements makes it possible to identify exactly the fair trial which the Convention and the European Court of Human Rights protect (Genevois, 2001).

### *2.1 Identification*

The very structure of article 6 identifies two sets of elements of the right to a fair trial: the first paragraph sets out the guarantees enjoyed by any individual in the context of a civil or criminal procedure; the second paragraph is devoted to the special guarantees enjoyed by any person prosecuted in criminal proceedings (Note 12).

Our part dedicated to identifying the elements of the fair trial will take over this structure.

#### **2.1.1 The General Guarantees of a Fair Trial in Civil or Criminal Matters**

##### **2.1.1.1 The Right to a Court Established by Law**

The legality of the Court is a little problematic in the Member States of the Council of Europe, and is therefore subject to little development in the jurisprudence of the Court, which simply states that the words “established by law” are understood as “in accordance with the law”, in particular with regard to the composition of the Tribunal (Note 13).

On the other hand, it should be noted that the judicial-type trial is not exclusive in the meaning of article 6 § 1 as interpreted by the E.C.H.R. The court initially clarified that «the term tribunal only implies that the authority to adjudicate must be judicial in nature, i.e., independent of the Executive power as the parties involved; It does not relate in any way to the procedure to be followed» (Note 14), then, in a second time, that «no matter (...) the nature (...) of the competent authority (General Court, administrative body, etc.)» (Note 15), this authority is a “court” within the meaning of article 6 § 1

because «it is independent of the executive as the parties involved, its members shall be appointed for five years and the procedure before it shall provide the necessary guarantees» (Note 16). It is now clearly established that “by” a “court”, article 6 § 1 «does not necessarily mean a classic type of court, integrated with the ordinary judicial structures of the country» (Note 17).

Considering that, for the purposes of article 6 § 1, [the regional authority] is a “tribunal” «in the material sense of the term: it is for the court to decide, on the basis of norms of law and at the end of an organized procedure, any matter within its competence» (Note 18), the Court adopts finally rather classical criteria of the Court, and therefore a definition which has as its essential characteristic (unique?) not to take over the internal qualification: on this point there is the question of the autonomy of the concepts referred to Above, and attachment to a substantive definition of the Tribunal ultimately confirms the tendency to consider that the scope of the fair trial is not enclosed within strict limits defined, a priori, by the States. In any case, this excludes that a criterion *Ratione Personae* limits the scope of article 6: It is not because the body making the decision is not a court “Classical”, i.e., in the sense of domestic law, which it is not subject to the European requirements of the fair trial (Note 19).

The question of access to the Tribunal was also raised. The court states that «the right of access is an inherent element of the right set forth in article 6 § 1», which «guarantees everyone the right to have a court know of any challenge relating to its civil rights and obligations. It thus devotes the “right to a court”, who’s right of access, namely the right to bring the court in civil matters, is only one aspect» (Note 20).

It subsequently clarified that any possible waiver of this right to a court (e.g., by setting a fine or paying amicable settlement) must be made without constraint and unequivocally, emphasizing «that “the right to a court” is (...) Too much importance in a democratic society (...) for a person to lose the benefit by that alone that he or she has subscribed to a prejudicial arrangement»; «Among the conditions to be fulfilled [by such a prejudicial arrangement, in this case, the payment of a lump-sum fine] is in any case the absence of coercion» (Note 21).

The right to a court includes, to a certain extent, the right to appeal: If Article 6 does not guarantee the double degree of jurisdiction “protected by Article 7 of Protocol No. 4” (Sudre, 2001), the Court has nonetheless considered that by depriving individuals of the exercise of A remedy, the state had deprived them of access to a court (Fabre, 1998).

Access to the Tribunal has an obvious financial aspect and raises the question of legal aid. As regards «protest against civil rights and obligations», the Convention does not oblige states to organize a system of legal aid, but to make effective the right of access to the court: «Article 6 § 1, if it guarantees to litigants an effective right of access to the courts for decisions relating to their “civil rights and obligations”, leaves to the state the choice of means to be used for this purpose»; «However, [...] Article 6 § 1 May sometimes compel the state to provide assistance to a member of the bar when it proves indispensable to effective access to the judge, either because the law prescribes representation by a lawyer, as the national legislation of certain Contracting States does for various categories of

litigation, either because Complexity of the procedure or cause» (Note 22).

In criminal matters, free assistance by a lawyer is expressly provided for in article 6 § 3 (c), “where the interests of justice so require”.

#### 2.1.1.2 The Fairness of the Procedure

The term “fairly” gave rise to several principles, kinds of “implicit” procedural guarantees in article 6 (Sudre, 2001). Let’s note, before detailing these different principles, that this is a perfect example of the mechanism of article 6: A multi-level source concept, this guarantee is a set of sub-guarantees, which constitute as many Subsets, and which, themselves, group together other “sub-sub-guarantees”; all can be detailed and developed at will...

Thus, it is the principle of equality of arms, a fundamental guarantee of fair trial, which arises from the requirement of article 6 § 1 that the case be “heard fairly”. This principle requires that «any party to a [civil or criminal] action shall have a reasonable opportunity to expose its case to the court under conditions which do not in any appreciable way disadvantage the opposing party» (Didier, & Melin-Soucramanien, 1993). In criminal terms, this principle imposes a balance between the person prosecuted and the crown, but also between the accused and the civil party (Harris, O’Boyle, & Warbick, 2009).

Also arise from the requirement of fairness of the procedure, the principle of the contradictory, which requires the judge to ensure that all the elements of the dispute are the subject of a debate between the parties, and which the court says is «one of the main guarantees of judicial proceedings» (Note 23), and the obligation to motivate decisions of justice, on which the court points out that «article 6 § 1 obliges the courts to motivate their decisions, but it cannot be understood as requiring a detailed answer to each argument. Similarly, the European Court is not called upon to investigate whether the arguments have been adequately addressed» (Note 24).

The same applies to the right to appear in person, which, if it is particularly concerned with the criminal trial, is not wholly absent in civil matters when the character or behavior of one of the parties strongly contributes to forming the opinion of the Court, and That the principle of fairness of evidence: the Law of Evidence (burden, probative force, Admissibility...) is in principle a matter for the assessment of States (Note 25), but the court considers that it «must, however, seek whether the evidence relating to the prosecution against the claimants had been collected in a manner that would ensure a fair trial» (Note 26). If the European Court is not in favor of fraudulent or illegal evidence, this illegality is not necessarily (Mole & Harby, 2006), a violation of the guarantees of article 6, if the element so proved was otherwise corroborated by other elements regularly collected (Calvo-Goller, 2006, p. 46): «The court cannot therefore, exclude in principle and in abstract to the admissibility of evidence collected in an illegal manner, of the kind in question. It is only up to the court to find out whether the trial [...] has generally presented a fair character » (Note 27); «The court also attaches weight to the fact that the telephone registration was not the only means of proof to motivate the conviction » (Note 28).

### 2.1.1.3 Publicity of the Procedure

The publicity of the proceedings (debates and pronouncements of the decision) is «a fundamental principle enshrined in Article 6 § 1. The said advertisement protects litigants against a secret justice beyond the control of the public; It is also one of the ways to help maintain confidence in the courts and tribunals. By the transparency it gives to the administration of justice, it helps to achieve the purpose of article 6 § 1: The fair trial, the guarantee of which is one of the principles of any democratic society within the meaning of the Convention» (Note 29).

The principle of publicity of the procedure may have certain limitations, provided for in article 6 § 1, second sentence, which concerns the conduct of proceedings before the judge. These flexibilities to the principle of publicity of the debates were admitted by the Court also with regard to the pronouncement of the public decisions: either that the judgments of the courts inferior to the image of the revision were made publicly (Note 30), or that access of the public to this decision was ensured by other means, such as the possibility of requesting a copy of the Judgment at the Court Registry and its subsequent publication in an official compendium of jurisprudence (Note 31)...

In any event, there may be a waiver of the publicity of the proceedings on the part of the litigant, provided once again that this renunciation is made unequivocally: «Neither the letter nor the spirit of [Article 6 § 1] precludes a person from voluntarily waiving it in an express or tacit manner, but such renunciation must be unequivocal and shall not be subject to any significant public interest» (Note 32).

### 2.1.1.4 The Reasonable Time

The Court appreciates the reasonableness of the delay in terms of the complexity of the case, the conduct of the applicant and the attitude of the public authorities (Note 33).

It should be noted that, with regard to “civil rights and obligations”, the time limit is taken into account from the referral of the judge to the end of the proceedings, including remedies. As far as “criminal charges” (Flauss, 1991) are concerned, the time limit runs from the day on which suspicions of the litigant have an effect on his or her legal situation, namely from the moment a person is “accused”; this may be a date prior to the referral of the Court of Judgment [...], including the arrest, indictment and initiation of preliminary investigations [...]. The “accusation” within the meaning of article 6 § 1, may be defined as “the official notification, emanating from the competent authority, of the reproach of having carried out a criminal offence”, an idea which also corresponds to the concept of “significant impact on the Situation of the suspect” (Note 34). «Article 6 § 1 also indicates as a final term the judgment on the merits of the charge, which may extend to a decision of a court of appeal when it decides on the merits of the charge» (Note 35).

### 2.1.1.5 The Independence of the Court

Independence is appreciated in relation to executive power as to the parties involved. The Court’s method of assessment is clearly stated: «in order to establish whether an organ can be considered as independent, it Chet to take into account, inter alia, the method of appointment and the duration of the mandate of its members, the existence of protection against external pressures and whether or not there

is the appearance of Independence» (Note 36). For an illustration of the lack of independence: «Once a court counts among its members a person who is, as in this case, in a state of subordination of functions and services in relation to one of the parties, litigants may Legitimately doubt the independence of that person (Lambert, 1991). Such a situation seriously underscores the confidence that the courts must inspire in a democratic society» (Note 37).

#### 2.1.1.6 The Impartiality of the Tribunal

The European judge draws a distinction between objective and subjective impartiality (the terms of personal and functional impartiality have been proposed) (Koering, 1998, p. 1). Subjective, or personal, impartiality corresponds to what the judge may think in his or her interior; she's presumed (Frison-Roche, 1999). Objective or functional impartiality leads to the question of the objective indices suggesting that the judge has *a priori* on the dispute that he must decide (Autin & Sudre, 1996). It is appreciated on a case-by-case basis, but in an almost constant way through the prism of the appearance of justice, the Court applying a principle of English law: «Justice must not only be done, it must also be seen to be done». A doctrine directly flows from the English jurisprudence (Note 38).

Among the objective indices of impartiality is the question of the cumulating of different functions in the same procedure: cumulating of the functions of prosecution and instruction, prosecution and judgment, instruction and judgment, or Consultative and adjudicative... Such cumulating is in principle prohibited (Note 39), but certain flexibilities are allowed because of the minimal role of the magistrate in exercising one of the cumulative functions (Spielmann, 1996): «The fear that the trial court may not have been impartial is based on the fact that one of the judges interviewed witnesses during the pre-trial. Undoubtedly, such a situation may arouse doubts in the accused about the impartiality of the judge, but they cannot be regarded as objectively justified only according to the circumstances of the case; that a trial judge had already had to deal with the case before the trial could not in itself justify apprehensions as to his impartiality» (Note 40). Or, «that a trial judge or a court of appeal, in a system such as Danish, has already made pre-trial decisions, in particular with regard to remand detention, cannot, therefore, be able to justify apprehensions of impartiality in itself» (Note 41), «Except, as in the case at bar, if the decision on pre-trial detention involved ensuring the existence of particularly strong suspicions» (Note 42).

In addition to the problem of cumulating of duties, the requirement of impartiality also raised the issue of the deliberate participation of bodies or persons involved in the proceedings, but without being qualified, within the meaning of their domestic law, as “party to the procedure” (Goyet, 2001). We are, of course, considering the case of the government commissioners before the French Council of State, which was the subject of the so famous and commented judgment *Kress v. France* rendered on June 7, 2001 (Flauss, 2001). The court condemned France for lack of impartiality of the tribunal, believing it conceivable «that a litigant might experience a sense of inequality if, after hearing the Commissioner's conclusions in a way unfavorable to his thesis at the end of the hearing Public, he sees him withdraw with the judges of the judgment formation in order to attend the deliberate in the secret of the Chamber

of the Council» (Note 43).

This after having found, however, in the immediately preceding sentence, that «an unbroken litigant in the arcane of administrative justice may quite naturally tend to regard as an adversary a government Commissioner who for the dismissal of his appeal (Chabanol, 2002). On the contrary, it is true; a litigant who would see his thesis supported by the Commissioner would perceive him as his ally» (Note 44). If one can only praise the will of the Court to strengthen «the confidence that the courts inspire to litigants in a democratic society» (Note 45), it is possible, on reading this paragraph, to question the limits it sets to this requirement of objective impartiality, and the repository it uses to assess its infringement (Rolin, 2001).

### 2.1.2 Specific Safeguards for Criminal Matters

Article 6, in paragraphs 2 and 3, specifies the guarantees enjoyed by “Any accused person” (§ 2) or “Any accused” (§ 3).

The presumption of innocence, article 6 § 2, implies that the burden of proof weighs on the charge. It is necessary for the judge (all litigants must have the possibility to explain themselves and possibly provide counter-evidence), but also to some extent to private persons (especially journalists). The right to be informed, as soon as possible, of the nature and cause of the accusation, is provided for in article 6 § 3 (a). The right to have the time and facilities necessary for its defense, article 6 § 3 (b), implies a right of access to the file, through a lawyer or directly by the accused directly if he has chosen to defend himself (Note 46).

The Convention also provides for the right to defend itself, oneself or with the assistance of a lawyer of his choice, article 6 § 3 (c), and the right to witnesses, article 6 § 3 (d), the right to summon, interrogate or interrogate witnesses at a charge or a discharge.

The right to an interpreter, provided for in § 3 (e), «includes, for any person who does not speak or understand the language used at the hearing, the right to be assisted free of charge by an interpreter without being able to be claimed after the payment of the costs resulting from that assistance» (Note 47).

Finally, the court, without specifying what part of article 6 it is based on, nevertheless stresses that «there is no doubt that, even if article 6 of the Convention does not expressly mention it, the right to remain silent during police interrogation and the right to not contributing to its own incrimination are generally accepted international norms which are at the heart of the concept of a fair trial enshrined in article 6» (Note 48), thus incorporating the right to silence in the guarantees protected by article 6.

### 2.2 Sanction

The transgression here is a violation of the requirements of article 6 by the internal courts of the Member States and found by the European Court.

This litigation is, in the first place, essentially declaratory: the Court has before any vocation to observe the violation of a right guaranteed by the Convention or one of its additional protocols (Matscher, 1997). But the Convention also imposes on States the obligation to draw the consequences of a

conviction for their internal order, and to erase, for the applicant (and for him alone), the consequences of a violation of a right guaranteed by the Convention (Moderne, 1997). Article 41 (former article 50) providing that “if domestic law [...] Only imperfectly erases the consequences of this breach, the court grants to the injured party, where appropriate, a fair satisfaction”, this litigation also acquires a large indemnity dimension, the applicants obtaining then Financial compensation for the damage suffered as a result of the violation (Commaret, 1998).

It should be noted that a conviction or the extreme likelihood of a conviction effectively often leads states to change their right or internal practices (Note 49).

Nevertheless, a conviction pronounced by the European Court may have another consequence: it should be noted that many signatory States to the Convention have “or have had to” (Lambert, 1999) established procedures for the review of trials following a Conviction by the court for violation of a right guaranteed by the Convention. Thus, a conviction handed down by the internal courts at the end of a procedure judged then unfair by the European Court could then be re-examined in the context of a new procedure, at the request, most often, of the litigant concerned.

One can therefore, wonder about the real value of the decisions of the European Court of Human Rights in the matter of fair trial, and whether the European litigation, at least in this area, does not evolve from a relief role towards litigation of the Validity of the sanction...

It should be noted that the right to a fair trial is not a right to a particular model of the trial. The European fair trial is limited to an obligation on the part of the national authorities to allow litigants to benefit from a fair trial, it does not oblige States to adopt procedural mechanisms whose structures and Operation would have been defined in Strasbourg (Bonichot & Abraham, 1998).

### **3. Origin of Concepts in Space and Time**

#### *3.1 Reception*

It is not possible to identify “reception” in the proper sense with regard to the right of the European Convention on human rights. There are some influences in the text of the Convention, and the interpretations made by the Court are often reminiscent of concepts in a particular legal order, but this is never a pure and simple transfer to the European order of human rights. This is much more a source of concepts (and especially in the matter of fair trial, for which it seems even to have become a “order-reference”) than a reception order.

The study of the preparatory work of the Convention reveals the extent to which its elaboration was a work of confrontation (and negotiation) between legal systems and very different concepts, which probably limited the possibility (or temptation?) for a system or a right to impose beyond its own designs. Similarly, the concepts developed by the court, even though they sometimes seem to be strongly influenced by a particular influence, are equally imbued with autonomy: it is impossible for the court to reconcile often very different systems and concepts, Either willingness on its part to mark its autonomy, each of the elements of the fair trial is interpreted by the court in a largely independent

way from internal definitions and conceptions.

Thus, if one can sometimes talk about the influence of a right (internal or international) on the European human rights law, or similarities between this or that internal conception of the fair trial and the European definition, the terms “source of inspiration” seem to us to be closer to what actually translates into the decisions of The court that the idea of reception. The influences in question will therefore, be studied as buckles and not as receptions (Lambert, 1996).

### 3.2 *Warping*

#### 3.2.1 With Regard to the Text of Article 6 E.C.H.R.

It should be noted that there is a strong similarity between the text of article 6 of the Convention and two other international texts: article 10 of the Universal Declaration of Human Rights (Note 50) and article 14 of the International Covenant on Civil and Policies.

The reference to article 10 of the Universal Declaration is present at the first session of the Council of Europe Consultative Assembly. The work of elaborating a convention was initially entrusted to the Legal and Administrative Affairs Committee of this House. In his draft report, submitted to the Commission at its meeting on 5 September 1949, Mr. Teitgen cites article 10 of the Declaration as part of the rights and freedoms to be guaranteed in full: The same draft report stresses that «the Commission considered that it was appropriate (both for the sake of coordinating the action of the Council of Europe and that of the United Nations, that because of the moral authority and the technical value of the document in question) to use as much as possible the definitions Provided by the Universal Declaration of Human Rights». But, immediately thereafter, it «was clarified, however, that by referring to a particular article of the United Nations Declaration, in order to better define such or such freedom, the resolution adopted by the Commission did not intend to refer to all Provisions of the article concerned, but only to those which set the content of the freedom referred to in that resolution» (Council of Europe, 2003).

The first reference to the work on the elaboration of the International Covenant on Civil and Political Rights, now underway at the O.U.N, intervenes in 1950, in the preparatory report of the General Secretariat for a preliminary draft Convention.

Although it has often been said that the Convention is directly inspired by the Universal Declaration of Human Rights, the parallel with the Covenant must not be neglected. The drafters of the European Convention had, at the very time they were working on the drafting of the Convention, knowledge of the work in progress at the O.U.N. for the elaboration of this pact. It should be noted that, however, in relation to article 14 of the Covenant, the general reference to “reasonable time” (present in the Covenant in respect of only those accused of a criminal offence, § 3 (c).

#### 3.2.2 On the Definition of the Elements of the Fair Trial

Beyond the influences that the text of article 6 may have undergone, the jurisprudence of the Court is also marked by various influences, most often difficult to identify (Weissbrodt, 2001).

Here, the migration sought is then a migration of an internal right to European law. In particular with regard to article 6, although the influences are unclear, there is a kind of consensus (at least in France) to consider that this text is imbued with English (Note 51) concepts. Several clues seem to support this idea (Kriegk, 2000).

In the first place, it should be noted that many elements of the fair trial (in the European sense), as studied in the first part, are much more familiar and older in the English system than in other internal systems. It is thus clear that there are similarities between the European system and the English system, similarities which are not found, at least in relation to article 6, the equivalent with the Romano-Germanic systems (Renucci, 2002, p. 480).

That is the case with the definition of the Tribunal. Beyond the necessary autonomy of the European definition, it can only be seen that the material conception adopted by the European Court is closer to the Anglo-Saxon conception which envisages the trial as any contentious procedure initiated before an authority, whatever it may be. Similarly, these elements are found in the Anglo-Saxon logic which does not generally distinguish between the “trial” (*process* or *procedure*), in order to apply to them the guarantees of fair trial, depending on whether they fall within the concept of natural justice or fair procedure (Flauss, 1995).

This kind of similarity is also found with regard to the fairness of the procedure, and the very approach which governs this principle: the pullout construction of this principle in the jurisprudence of the European Court is done by virtue of a very close argument of that of the British judges. Like the European fair trial, *natural justice* is a concept-source. If in France there has been a question of general principles of law, this notion is not confused with the previous ones. The pullout construction devoting the idea of multiplicity of a single principle is less openly apparent in the French theory of the general principles of jurisprudential origin. The Anglo-Saxon influence thus seems very probable, to simply consider the very model of formation of the rule of law at *common law*. The idea of progression of the right by incrementing implies the emergence of various rules, constituting a single principle surviving the time-consuming and thus finding application in each case (Compernelle, 1994).

More than a concept with varying content, the fair trial, in the image of *natural justice*, presents itself as a concept of potential content, and therefore progressive.

In the European system, as in the English system, the main merit of the text is the designation; It is then up to the judge to specify the contents. Since the principle of permissible enunciation is rational, the judge will have to abide by the rules of Reason and intelligibility; in other words to the only rule of coherence (Treichsel, 2005). According to this theory, the fair trial as well as the *natural justice* is only expanding over the course of the cases. They only make themselves clear even if they expand and occupy new fields. The only constraint being of the logic of rational nature, the constitutive rules gradually specifying the content of the fair trial should not contradict each other. Admitting that the fair trial of the E.C.H.R. evolves in the context thus described, one can understand the notion as developed (it is the term commonly used!) by the judge of Strasbourg as the continuation of the novel begun many

centuries ago by the British judge. This may be an interpretation that explains the heavy kinship between section 6 § 1 E.C.H.R. and the *common law*, which is so difficult to get out of. This kinship would therefore go so far as to form the constitutive rules of the general principle itself (Velu & Ergeç, 1990, p. 701).

Finally, there is again a kinship with regard to the independence and impartiality of the court: In its assessment of these two elements, the European court openly, and almost systematically, reiterates the English adage already quoted which wants “Justice Must not only be done, it must also be seen to be done” (Benoit-Rohmer, 1997).

At the same time, certain aspects of the right to a fair trial in Europe seem entirely new to the French Law (taken here as an example of Romano-Germanic law): This is the case for example of the principle of equality of arms: it is a novelty in law French. The same goes for the question of the reasonable time, unknown in French criminal law before the development of the law of the European Convention (Note 52), or the right to silence, now enshrined in certain procedural guarantees (Note 53).

It should also be noted that, without any mention of transfer, but always and at the most influential or inspiring, the court sometimes consults, in its work of defining an element of the fair trial, other international instruments. More often than not, it proceeds to enrich or clarify a particular element of the fair trial. Therefore, these instruments, if they are not directly at the origin of the standard so defined, nevertheless participate in its elaboration (Pettiti, Decaux, & Imbert, 1999, p. 340).

Thus, in the *Golder case v. the United Kingdom*, and on the particular point of access to Court, the court refers to the Vienna Convention in order to draw a kind of general principle of law (Le Gloan, 1999): «The thesis presented to the court focused first on the method to be followed for the interpretation of the Convention and in particular article 6 § 1. The Court is prepared to consider, with the government and the Commission, that it is appropriate for it to draw inspiration from articles 31 to 33 of the Vienna Convention of 23 May 1969 on the Law of Treaties. This Convention is not yet in force and it states in article 4 that it does not be retroactive, but its articles 31 to 33 lay down, for the most part, the rules of international law commonly accepted and to which the Court has already resorted. As such, they are taken into account for the interpretation of the European Convention, subject, where appropriate, to “any relevant rules of the Organization” in which it was adopted, the Council of Europe (article 5 of the Vienna Convention)» (Note 54).

Another example is provided by the *John Murray case against the United Kingdom*, in which the court, on the right to silence, cites an argument developed by Amnesty International, which is based itself on instruments International: «Amnesty International argues that allowing unfavorable conclusions to be drawn from the silence of the accused is an effective means of coercion that drags the burden of proof of the charge on the accused and is inconsistent with the right not to be obliged to confess guilt or testify against oneself; The accused, in effect, would not be left with any reasonable choice between being silent—which will be considered a testimony to be charged—and testifying. The organization stresses that article 14 § 3 g) of the United Nations International Covenant on Civil and Political Rights

expressly provides that the accused “cannot be compelled to testify or confess guilty”. It also refers, on the one hand, to article 42 (a) of the Rules of Procedure and evidence of the international Tribunal for the former Yugoslavia, which expressly provides that the suspect has the right to remain silent and, on the other hand, to the draft statute of a court Criminal law, submitted to the General Assembly of the United Nations by the International law Commission which, in draft article 26 § 6 a)i), clarifies the right to silence: “Without such silence being taken into account in determining [the] Guilt or innocence of the suspect”» (Note 55).

#### **4. The Originality of the Normative Space: The Double Problem of the Fair Trial in the European Human Rights Area**

The main characteristic of the European Order of human rights, especially with regard to the protection of the fair trial, is of course its referential dimension. The guarantee defined by the Convention and the court, which is comprehensive, complex and constantly evolving, has become the essential reference for any study on the fair trial. It may even be asked to what extent it has not become the standard measure of the “evenness” of the trial (Canivet, 2001). In addition to the resistance of national systems and the reluctance to deal with certain decisions in sometimes sensitive areas, it must be noted that European reflection is self-imposed in terms of procedural rights, to the point of Become a reflex. So much so that it now seems difficult to conceive the guarantees of a fair trial without making this reference, and especially without being absorbed by European definitions and conceptions (Guinchard, Bandrac, Lagarde, & Douchy, 2001, p. 620).

But another aspect is also very specific to the European guarantee of fair trial, it is its double dimension: the European Court of Human Rights can condemn States whose internal procedures would not conform to the European guarantee of the fair trial, but it does so at the end of a decision-making process which itself is a procedure. It is therefore not pointless to try to assess the extent to which this European procedure is itself in conformity with the guarantee laid down by the Convention, or, in other words, to what extent the Court itself is subject to the requirements which it imposes on respect to the states (Note 56).

Title 2 (Note 57) of the Convention is entirely devoted to the court, and certain procedural elements are specified therein. Article 21 § 2 provides that «Judges sit in the court on an individual basis. During their term of office, they may not exercise any activity incompatible with the requirements of independence, impartiality or availability required by a full-time activity (...) » (Note 58). Article 27 provides that «the judge elected in respect of a State party to the dispute shall be a member of the Law of the Chamber and the Grand Chamber; In the event of the absence of that judge, or where he is unable to sit, that State Party shall designate a person who sits as a judge». Finally, section 40 provides that «the hearing shall be public unless the court decides otherwise by reason of exceptional circumstances», and that «the documents filed in the registry are accessible to the public unless the President of the court decides otherwise» (Marston, 1993).

But it is in the court's rules of procedure that we find the most precise rules relating to the conduct of the proceedings. This regulation is adopted by the Court, meeting in plenary (article 26 (d) of the Convention). It is thus the Court itself which adopts the procedural rules which it will then have to submit to. The first rules of procedure were adopted in 1960 and then renewed in 1977 and 1983. The current regulations have been in force since 1<sup>st</sup> November, 1998. There is a great deal of dynamism in the evolution of the rules of the court: It has become increasingly concerned to frame its own procedure in principles similar to the constituent elements of the fair trial studied in the first part, and The regulations were therefore more and more complete and precise (Kastanas, 1996, p. 130).

This dynamism was sometimes integration into this text of practices initiated by the Commission. Thus, in the face of the inability of the applicant to be associated with the hearing before the court, the Commission's use was to rely on article 61 of the Rules of Procedure (of 1977) to communicate to the applicant his report, yet in principle confidential, and to Invite him to comment (Autin & Sudre, 1996). It was based in parallel on article 29 § 1, first sentence, which provided that the delegates of the Commission could, if they so wished, "be assisted by any person of their choice", in order to intervene in the proceedings before the court Representative of the applicant (Note 59), sometimes the applicant himself (Note 60). These two processes, which were intended to correct the absence of contradictory in the European procedure, were the object of protests by the Governments concerned, but were authorized by the court. It even incorporated them into its regulation of 1983, article 33 of which provided that the Registrar of the Court should communicate any introductory document and a copy of the Commission's report to the "natural person, non-governmental organization or group of Persons who had seized the Commission, and invited him to indicate whether he wished to "participate in the proceedings pending before the court" and, if so, "the names and addresses of the person designated by him" to represent him (Canivet, 1995).

After a series of such additions to the regulations, the one entered into force on 1<sup>st</sup> November, 1998 presents a relatively complete inventory of a fair trial guarantees (Note 61).

The regulation provides for a system of judicial assistance in Chapter 10 (Art. 91 to 96), which, as we have seen in the first part, participates in the access to the Court and therefore the right to the court. Such assistance shall be granted by the President of the Chamber, either by office or at the request of the applicant (Art. 91), if it is found that «the granting of such assistance is necessary for the proper conduct of the case before the chamber» and that «the applicant does not have Sufficient financial means to deal with all or part of the costs it is required to expose» (Art. 92).

There are a number of rules which are similar to those which would fall within the scope of article 6 of the Convention as a fair procedure.

With the entry into force of protocol No. 11, the question raised above the applicant's participation in the court hearing, which had been partially settled with the 1983 regulation, does not even seem to arise: once the Commission's filter deleted, and the court is now seized directly, it would have been relatively strange that this participation still raises the question (Quillere-Majzoub, 1999, p. 118). And, as well,

his principle now seems to be admitted once and for all. Thus article 36 organizes directly the representation of the applicant at the hearing before the court, even providing, in paragraph 2 (c), that «in exceptional circumstances and at any time of the proceedings, the President of the House may Consider that the circumstances or conduct of the Council (...) warrant it, that such lawyer or person may no longer represent or assist the applicant and that he must seek another representative»; this is not to allow the court interference with the representation of the applicant, but to guarantee the quality of the representation of the petitioner (Haim, 1999).

The publicity of the procedure is the subject of article 40 of the Convention, several sections of the regulation.

Article 33: first, it contains the provisions of article 40 of the Convention. It states in its first paragraph that «the hearing shall be public, unless, under paragraph 2 of this article, the Board decides otherwise by reason of exceptional circumstances, either by office or at the request of a party or Any other interested person», a number of exceptions are immediately provided for in paragraph 2: «Access to the room may be prohibited to the press and the public during all or part of the hearing, in the interest of morality, public order or security In a democratic society, where the interests of minors or the protection of the privacy of the parties so require, or to the extent deemed strictly necessary by the House, when, in special circumstances, advertising is to nature to undermine the interests of justice» (Jacob, 1996). Perfect identity between the grounds for restriction of the advertisement in this text and those provided for in article 6 § 1 of the Convention...

The rules relating to the procedure before the Court, contained in paragraph 3 of that article, even organize wider publicity than doesn't article 6 of the Convention. It is indeed stated that: «all the documents filed in the registry in the case, with the exception of those submitted in the context of negotiations to reach a settlement (...) shall be accessible to the public, unless the President of the House decides otherwise for the reasons given in paragraph 2 of this article, either by office or at the request of any party or any other person concerned».

Finally, section 76 provides that «the court shall make all its judgments in either English or French unless it decides to make a judgment in both official languages». Once pronounced, the judgments are accessible to the public», the publication taking place, in principle, «in the two official languages of the Court, section 77 specifying that a “judgment” may be read in a public hearing by the Speaker of the House or by another judge Delegated by him».

The independence and impartiality of judges is also the subjects of several provisions.

Article 3 § 1 requires each judge, when taking office, to take the oath, or solemn declaration, that he shall perform his duties as a judge «with honor, independence, and impartiality». This article is supplemented by article 4, which reproduces Article 21 § 3 of the Convention in order to provide that «judges may not exercise during their term of office any political or administrative activity or any professional activity incompatible with their duty of independence and impartiality (...). Each judge shall declare to the President of the Court any additional activity. In case of disagreement between the

latter and the person concerned, any question raised shall be decided by the Court of First Instance» (Grotian, 2007).

Paragraph 2 of article 28 provides that «no judge may participate in the examination of a case in which he is personally interested or has previously intervened either as an agent, counsel or adviser to a party or a person with an Interest in the matter, either as a member of a tribunal or a commission of inquiry, or to any other title», and in paragraph 3 that «if the President of the House considers that there is a reason for deportation in the person of a judge, he confronts his views with those of the Party concerned; In case of disagreement, the Chamber shall decide».

### **5. Second Effects of the Fair Trial**

With the application of the safeguards of article 6 to areas which were not considered, in domestic law, as falling within “civil rights and obligations” or “Criminal charges”, certain areas of procedure, considered at the national level as non-contentious, have entered into force in the scope of article 6 § 1 “see, for example, proceedings before the administrative authorities Independent” (Rolin, 1998, p. 1).

Accordingly, the rules of the fair trial of article 6 of the Convention apply to them, although they were not necessarily respected (publicity of the proceedings with regard to the ordinal procedures; impartiality of the court “in Report in particular with the participation of the reporter in the deliberate procedure) in the procedures for sanctioning independent administrative authorities...” (Pretot, 1995).

It is often argued that this application of the requirements of the fair trial has as a first consequence a risk of lengthening the time limits: by depriving the “jurisdiction” of certain technical skills acquired during another phase of the case (the reporter or the government Commissioner, familiar with the technical aspects of the case, were likely to bring this knowledge to the judge upon their participation in the deliberations), the Court obliges it to acquire itself these which slows down the judgment, even though the reasonableness of the delay is an element of the fair trial.

Moreover, there is a development of a “litigation of litigation”: the procedure itself becomes the subject of a procedure, within a procedure on a substantial right, which further lengthens the first procedure...

### **6. Conclusion**

The Court of Strasbourg behaves as an additional degree of jurisdiction, at least as a body for controlling the decisions of the internal judge, and by inviting (a request), if it deems it to do so, it inflicts on the latter repudiation. According to the court, the right to a “fair trial” is only the procession translation of the principle of rule of law contained in the preamble to the Convention, and as such it is inserted “among the fundamental principles of any democracy”.

Thus promoted to the rank of standard of reference of a democratic society, article 6 became the provision whose violation is most often alleged. However, “the formula used by article 6-1 which is far from perfectly clear (and which is not absolutely identical in English and French)...” has generated extensive commentary and complex jurisprudential developments.

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## Notes

Note 1. The term “jurisdictional” must be heard here in the sense, which will be clarified further, as given by the European court.

Note 2. The summary tables of business objects, established each year since 1999 by the services of the Court, show that in the last 3 years the vast majority of judgments pronounced by the court concerned art. 6: A violation of the provisions of this article was alleged in 131 of the 177 cases decided in 1999, or in 74% of the court’s decisions that year; It was invoked in 81% of cases decided in 2000 (565 decisions out of 695), and in almost 70% in 2001 (615 decisions on 888).

Note 3. E.C.H.R., *König v. Germany*, 28 June 1978, series A no. 27; E.C.H.R., *Ringeisen v. Austria*, 16 July 1971, Series A No. 13.

Note 4. E.C.H.R., *Lombardo v. Italy*, 26 November 1992, Series A no. 249-C.

Note 5. E.C.H.R., *Scuderi v. Italy*, 24 August 1993, Series A no. 265-A.

Note 6. E.C.H.R., *Golder v. United Kingdom*, 21 February 1975, Series A no. 18; *Boulois c. Luxembourg*, [GC], no. 37575/04, E.C.H.R. 2012.

Note 7. E.C.H.R., *Engel v. the Netherlands*, 8 June 1976, Series A no. 22.

Note 8. E.C.H.R., *Albert and Le Compte v. Belgium*, 10 February 1983, Series A no. 58.

Note 9. E.C.H.R., *Moulet v. France*, no. 27521/04, 13 September, 2007.

Note 10. E.C.H.R., *Escoubet v. Belgium*, 28 October 1999, reports of Judgments and decisions 1999-VII.

Note 11. E.C.H.R., *Suküt v. Turkey*, No. 59773/00, 11 September 2007.

Note 12. E.C.H.R., *A. Menarini Diagnostics S.R.L. v. Italy*, no. 43509/08, 27 September 2011, §§ 63-67.

Note 13. E.C.H.R., *Zubac v. Croatia* [GC], no. 40160/12, 5 April 2018, § 76 ; Le GALL J.-P., «A quel moment le contradictoire?», *Gaz. Pal.*, 1996 (4 juill.), doct., pp. 691-696.

Note 14. E.C.H.R., *Neumeister v. Austria*, 27 June 1968, Series A no. 8, § 24.

Note 15. E.C.H.R., *Ringeisen v. Austria*, 16 July 1971, Series A no. 13, § 94.

Note 16. Same case, § 95 of the judgment.

Note 17. E.C.H.R., *Campbell et Fell c. Royaume-Uni*, 28 juin 1984, série A no. 80 § 76.

- Note 18. E.C.H.R., *Sramek v. Austria*, 22 October 1984, Series A no. 84, § 36.
- Note 19. EISSEN M.-A., «La Cour européenne des droits de l’homme», *R.D.P.*, 1986, pp. 1539-1598.
- Note 20. E.C.H.R., *Golder v. United Kingdom*, 21 February 1975, *prev.*, § 36.
- Note 21. E.C.H.R., *Deweert v. Belgium*, 27 February 1980, Series A no. 35, § 49.
- Note 22. E.C.H.R., *Airey v. Ireland*, 9 Oct. 1979, Series A no. 32, § 26.
- Note 23. E.C.H.R., *Feldbrugge v. The Netherlands*, 29 May 1986, Series A no. 99, § 44.
- Note 24. E.C.H.R., *Van de Hurk v. the Netherlands*, 19 April 1994, Series A no. 288, § 61.
- Note 25. See for example the cases *Colozza v. Italy*, 12 February 1985, Series A no. 89, and *F.C.B. v. Italy*, Series A no. 208-B, 28 August 1991.
- Note 26. E.C.H.R., *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, Series A no. 146, § 83.
- Note 27. E.C.H.R., *Schenk v. Suisse*, 12 juillet 1988, Série A no. 140, § 46.
- Note 28. Same case, § 48.
- Note 29. E.C.H.R., *Werner v. Austria*, 24 November 1997, ECR 1997-VII, § 45.
- Note 30. E.C.H.R., *Axen v. Germany*, 8 December 1983, Series A no. 72, § 32.
- Note 31. E.C.H.R., *Sutter v. Switzerland*, 22 February 1984, Serial A no. 74, § 34.
- Note 32. E.C.H.R., *Häkansson and Sturesson v. Sweden*, 21 February 1990, Series A no. 171-A, § 66.
- Note 33. The term “criteria” is often used in relation to the method that the court uses to assess the reasonable time. This is, however, more of an assessment by “cluster of clues” than criteria in the strict sense.
- Note 34. E.C.H.R., *Eckle v. Germany*, 15 July 1982, Series A no. 51, § 73.
- Note 35. E.C.H.R., *Neumeister v. Austria*, 27 June 1968, *prev.*, § 19.
- Note 36. E.C.H.R., *Langborger v. Sweden*, 22 June 1989, Series A no. 155, § 32.
- Note 37. E.C.H.R., *Sramek v. Austria*, 22 octobre 1984, série A n° 84, § 42.
- Note 38. See in particular, E.C.H.R., *Delcourt v. Belgium*, 17 January 1970, Series A no. 11 (in which this adage is quoted about the independence of the Court), E.C.H.R., *De Cubber v. Belgium*, 26 October 1984, Series A no. 86.
- Note 39. See for example, E.C.H.R., *De Cubber v. Belgium*, *prev.*, about the President of a court of Assizes having participated in the training; or E.C.H.R., *Procola v. Luxembourg*, 28 September 1995, Series A no. 326, on the duality of consultative and judicial functions within the Luxembourg State Council.
- Note 40. E.C.H.R., *Bulut v. Austria*, 22 February 1996, ECR 1996-II, § 33.
- Note 41. E.C.H.R., *Hauschildt v. Denmark*, 24 May 1989, Series A n° 154, § 50.
- Note 42. *Id.* § 52.
- Note 43. E.C.H.R., *Kress v. France*, 7 June 2001, § 81.
- Note 44. E.C.H.R., *Hauschildt v. Denmark*, *prev.* § 50.
- Note 45. Classic formula in European jurisprudence, which explains the importance attached to the

theory of appearance, see in particular the case of *Piersackv. Austria*, 1<sup>st</sup> October 1982, Series A no. 53, § 30.

Note 46. E.C.H.R., *Kamasinski v. Austria*, 19 December 1989, Series A no. 168; E.C.H.R., *Foucher v. France*, 18 March 1997, ECR 1997-II, § 36.

Note 47. E.C.H.R., *Luedicke, Belkacem and Koç v. Germany*, 28 November 1978, Series A no. 29, § 46.

Note 48. E.C.H.R., *John Murray v. United Kingdom*, 8 February 1996, ECR 1996-I, § 45.

Note 49. Examples of the impact of court decisions (see the court's Internet site, <http://www.echr.coe.int> section "Impact of Judgments"):

– *Campbell and Fell v. United Kingdom*, 28 June 1984 (series A no. 80): «In a letter dated 12 July 1984 to the presidents of the visitors committees, the prisons directorate announced the establishment of judicial assistance before the said committees and an advertisement of decisions of the latter (resolution DH (86) 7 of 27 June 1986)».

– *Airey v. Ireland*, 9 October 1979 (Series A no. 32): «A system of judicial assistance and consultation in civil matters has been instituted; its management was entrusted to an independent body, the Judicial Assistance Council, whose first centres were opened on 15 August 1980 (resolution DH (81) 8 of 22 May 1980)».

– *Golder v. United Kingdom*, 21 February 1975 (Series A no. 18): «The settlement of the prisons of 1964, in force in England and Wales, has been amended. According to the new rules, the authorization requested by an inmate to initiate a civil procedure or to consult a lawyer for this purpose is always granted. In the case of an action against the *Minister of the Interior*, the authorization is granted only after an internal investigation of the complaint. Instructions were given to apply the new rules to the penitentiary institutions in Scotland and Northern Ireland (resolution (76) 35 of 22 June 1976)».

– *Diennetv. France*, 26 September 1995 (Series A no. 325-A): «Art. 13, 15 and 26 of the decree of 26 October 1948 were amended by Decree no. 93-181 of 5 February 1993. From now on, hearings before a body of the order of physicians, pronouncing themselves in disciplinary matters, are public, the president being able, however, at the request of one of the parties or the complainant, to prohibit public access to the room; Decisions are also public. Finally, in its judgment of 14 February 1996 in the *Maubleu* case, the Council of State accepted the applicability of article 6 to the ordinal disciplinary courts (resolution DH (97) 352 of 11 July 1997)».

– *Findlay v. The United Kingdom*, 25 February 1997 (ECR 1997-I): «The Armed Forces Act of 1996 entered into force on 1<sup>st</sup> April 1997. Henceforth, the various functions of the Convenor officer are assumed by three separate bodies. In addition, each court martial has a judge advocate whose opinion on the points of law binds the court. Finally, the role of confirming officer is abolished and a right to appeal against the penalty to the court martial has been introduced (resolution DH (98) 11 of 18 February 1998)».

Note 50. «Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him».

Note 51. It should be noted in particular that no explicit reference to the French conception of the trial is apparent in art. 6. This surely because of the weakness of the generic concepts in French criminal procedure. There would be a vice originating from the French tradition. By default of a global view of the trial, that is, bringing together both the procedural institutions and mechanisms and the rights of individuals, the French criminal procedure would have difficulty in exceeding the model stage (inquisitorial then mixed) and Propose concepts that could form a standard with others.

Note 52. This provision has, inter alia, been integrated, explicitly and with all the criteria adopted by the Court, in the litigation of State responsibility for defective functioning of the judicial service through the concept of denial of justice (L 781 COJ). It appears since the law of 15 June 2000 in the preliminary article of the French Code of Criminal Procedure (FCCP), but without the formula “right to”.

Note 53. It is one of the rights set out by the police officer to the person in custody—art. 63-1 FCCP.

Note 54. E.C.H.R., *Golder v. United Kingdom*, 21 February 1975, prev., § 29.

Note 55. E.C.H.R., *John Murray v. United Kingdom*, prev. § 42.

Note 56. E.C.H.R., *Al Nashiri v. Poland*, no. 28761/11, 24 July 2014, §§ 565-569.

Note 57. Art. 19 to 51. N.B.: The titles and articles are quoted here according to the numbering resulting from the entry into force of Protocol no. 11.

Note 58. Provision added to the original text of the Convention by Additional Protocol no. 8 of 19 March 1985, Entered into force on 1<sup>st</sup> January 1, 1990.

Note 59. E.C.H.R., *De Wilde, Ooms and Versyp v. Belgium*, 18 November 1970, Series A, no. 12.

Note 60. See in particular, the cases of *Schmidt and Dahlström v. Sweden*, 6 February 1976, Series A, no. 21; *Klass et al. v. Germany*, 6 September 1976, Series A no. 28; *Van Oosterwijck v. Belgium*, 6 November 1980, Series A, no. 40.

Note 61. These elements shall, as far as possible, be studied in accordance with the order adopted in the first part for the constituent elements of the fair trial within the meaning of art. 6 of the Convention. In order to facilitate the implementation parallel to the two procedural models: that which the court imposes on States, within the framework of respect for art. 6, and that which it imposes on itself within the framework of its rules of procedure.