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**European Human Rights Law Essay
on
“The Right to a Fair Trial”**

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I. Introduction

Article 6 is by far the most popular provision of the European Convention of Human Rights in terms of juridical implementation. It embodies a number of rights which are summarized as the right to a fair trial, which enshrines the principle of the rule of law in the pillar of any democratic society. With regard to principles of its interpretation, the European Court of Human Rights (the "Court") has the tendency to adopt a broad approach with a teleological orientation concerning the scope of applicability of article 6 and its sub-rights. As the Court itself has stated, it attempts to give a practical effect to the purpose of article 6 in order to protect rights that are practical and effective rather than theoretical and illusionary (*Sakhnovskiy v. Russia* §§99–107). Furthermore, the aforementioned provision should be interpreted in accordance with other international engagements and rules of international law applicable to relations between the contracting parties (*Demir and Baykara v. Turkey* §§76–84) and, of course, after taking into consideration of the current social and economic conditions of the respondent state. From this point of view, there is no doubt that the Court has contributed to a significant extent to the harmonization of the legal systems of the contracting states, indicating also that the Convention is a living organism (*Kress v. France*).

Article 6 of ECHR safeguards first and foremost a body of procedural rights and not substantive ones, provided that the decision of the national court is not arbitrary or obviously unfounded. Consequently, the Court has no authority to act as a court of fourth instance and to re-establish the facts of the case or re-examine any possible breaches of the domestic law. In addition, the Court recognises the states with a wide margin of appreciation regarding the structure of the proceedings, as long as the fair trial is guaranteed.

Another point that it is essential to be highlighted in advance is the fact that the provision of article 6 holds a considerable amount of autonomy within the national law of the contracting states concerning not only its substantive but its procedural provisions as well (*Khan v. United Kingdom*). Thus, a procedural breach in terms of domestic law does not undoubtedly constitute a violation of article 6. On the other hand, there are some aspects of this provision that enjoy less autonomy within the national law and the Court has referred to a violation of the domestic law in order to support its argument regarding a breach of article 6.

The right to a fair trial embodies procedural rights (article 6 §1) which are applicable in every trial within the scope of protection of article 6. It also guarantees particular rights of the defendant (accused suspect) in criminal cases (article 6 §§2,3). In fact, it becomes obvious while examining the whole structure of this provision that - due to his vulnerable

position – the protection of the defendant's rights is one of the vital purposes of article 6. The settled case-law of the Court, though, indicates that these rights in criminal proceedings are perceived as more specific aspects of the general right to a fair trial as it is guaranteed in paragraph 1 of article 6 and, hence, they should be interpreted in the light of the above principle. It is also crucial to address that although other participants (victims, witnesses) in the criminal trials have no protection under the provision of article 6, their rights are gradually taken into consideration by the Court.

The present essay focuses on the determination of the scope of protection of article 6 and on the analysis of its first paragraph, in order to examine the sub-rights that are guaranteed in all cases on which the applicability of the aforesaid provision is established.

II. Scope of protection and applicability

Article 6 of ECHR applies to disputes over civil rights and to criminal charges as well, in the light of the principle of its autonomous interpretation which is adopted by the Court. Namely – as it has been mentioned before - the European Court of Human Rights gives to the aforementioned terms a broad sense according to its own criteria – that might differ from the ones used in domestic law of the states – in order to ensure the harmonious interpretation and application of the provision. The scope of applicability also includes several stages of the procedure, as it will be analysed below.

a. Disputes over civil rights and obligations

To begin with, the dispute should concern a right or an obligation that finds a basis in domestic law. Moreover, since the EU law and the ECHR consist integral parts of the national law, the right or the obligation might have a basis exclusively in these specific legal areas. Only the in abstracto existence of the right per se, though, does not meet this prerequisite, as the plaintiff's claims should be recognised in terms of national law at least on arguable grounds under the specific circumstances. The character of the legislation that governs the disputed right or obligation and the competent authority, as well, are not of great importance.

Regarding the notion of *dispute* the Court sets certain prerequisites¹ which are known as the "Bentham criteria" (*Bentham v. The Netherlands*, §§32-36). First of all, a dispute is conceived by the Court in a substantive rather than a formal meaning. The object of the dispute may be not only the existence of the right per se, but it might refer to its scope of protection or the manner in which it could be exercised, as well, and it could concern questions of fact or law. It is also essential that the dispute is genuine and serious, in the

¹ *Vitkauskas Dovydas and Dikov Grigoriy*, Protecting the right to a fair trial under the European Convention on Human Rights - Council of Europe human rights handbooks, 2012, p.11

sense that the existence of a stake needs to be indicated by the plaintiff and, thus, the claims should be based on a significant amount of proof. The request might concern reparation for either property or moral damages. Last but not least, the application of article 6 requires that the decision of the national court is directly decisive for the disputed right or obligation. A rather tenuous connection or remote consequences cannot fulfill the above requirements (Le Compte, Van Leuven and De Meyere v. Belgium).

Defining the autonomous notion of the *civil nature* of the right or obligation is one of the most complicated and constantly evolving matters of interpretation. Neither the status of the parties nor the character of the legislation that governs the dispute and the authority invested with jurisdiction are crucial. Undeniably, cases concerning actions that entail exercise of public authority in its core, e.g. tax disputes, fall outside the scope of article 6. However, the provision applies in disputes over imposition of fines or sanctions due to tax infringements under the condition that they are characterized as criminal charges.

In any case, the decisive criterion, according to the Court, is the character of the disputed right or obligation as civil and whether the result of the whole legal process would cause a direct effect on the private law rights and obligations. In order to conclude to such a characterization, the economic nature of the right is of paramount importance. Namely, the Court underlines that the action itself must be at least pecuniary in nature and be founded on an alleged infringement of rights which are likewise pecuniary rights (Procola v. Luxembourg) and, therefore, there is a presumption of applicability of article 6. Exceptions to this rule are gradually decreasing throughout the Court's jurisprudence, broadening the scope of the aforesaid provision. More specifically, it applies to cases regarding property rights, even though they might concern disputes over a public body's action, such as compulsory expropriation or any other deprivation of property. From the same point of view, claims for damages caused by unlawful actions of public servants are also included in the scope of protection of article 6 due to the fact that the economic nature of the right is predominant. Moreover, disputes concerning ordinary labour matters such as salaries, unlawful dismissal or reinstatement of public officials who occupy their functions as depositaries of state power are considered over the last decade by the Court as civil (Vilho Eskelinen and others v. Finland).

b. Criminal charges

In order to interpret the autonomous notion of the criminal charges, which consist the second category of cases falling within the scope of article 6, the Court sets certain prerequisites known as the Engel criteria (Engel v. the Netherlands), requiring their non-cumulative presence.

a) Characterization in domestic law: The first criterion concerns the characterization of the offence as criminal, disciplinary or concurrent. Since the offence is categorised as criminal in terms of domestic law, the case is automatically brought within the ambit of article 6. However, if the national prohibition which defines the offence is not clear enough, it is essential to proceed with the examination of the second and the third criteria.

b) Nature of the offence: The second Engel criterion has not been extensively analysed through the Court's jurisprudence. It relies upon the comparison between the domestic provision defining the offence and other similar criminal or disciplinary provisions within the same legal system. If the purpose of the crucial provision is punitive, the offence is, in principle, criminal. Nevertheless, the aim of the punishment might co-exist with the aim of the deterrence, since the two of them are not mutually exclusive. According to the Court, when the provision defining the offence is directed to a specific group or category of the population (e.g. soldiers, prisoners) it is more likely that it will be characterised as disciplinary and, theretofore, the applicability of article 6 is not established. By contrast, offences concerning the general population are probably classified as criminal. Another crucial parameter attesting in favour of the criminal nature of the offence is its extreme gravity. However, minor offences may also be criminal in nature. Thus, the criminal character of the offence does not require a certain amount of gravity, although it remains an important indicator.

c) Nature and severity of penalty: The third criterion is either used cumulatively where no safe conclusion can be reached on the basis of the first and the second criteria or as an alternative criterion establishing the criminal nature of the charge, even though the nature of the offence is not necessarily criminal. At this point, it is essential to highlight that the penalty taken into consideration is the in abstracto defined by the provision penalty and not the one that is actually imposed in the specific case. The penalty should have a punitive and not only a deterrent nature in order to be characterised as criminal. Moreover, if the penalty entails deprivation of freedom, its criminal nature is, in principle, established irrespectively of its duration. For instance, a three-days "administrative detention" for contempt of court was classified as criminal (*Zaicevs v. Latvia*).

Finally, based on the second and the third criteria the Court has confirmed the criminal nature of fines and other similar sanctions imposed due to violation of tax obligations (*Jussila v. Finland*, *Janosevic v. Sweden*).

c. Stages of the procedure

The applicability of article 6 to disputes over civil rights and obligations and to criminal charges is undeniable regarding the procedure before the trial court. In addition, its protection is guaranteed in other several procedural stages, safeguarding in a more sufficient way the applicant's rights. Article 6 does not oblige the contracting states to set up courts of appeal and cassation or constitutional courts. However, if the above procedural stages are included in the structure of the domestic legal system, the sub-rights defined in article 6 must be safeguarded. Consequently, even if the higher court has jurisdiction to decide exclusively on questions of law - and can either quash or confirm the decision of the lower court - article 6 applies. In any case, all guarantees of this provision do not apply before the court of appeal or cassation to the same level as they do before the trial court.

Moreover, when the Court examines any alleged violations of article 6, it takes into consideration the entirety of the proceedings established within the national legal system. Hence, any procedural defects taking place at one stage could be substituted through the procedure of another stage. For instance, if the presence of a party was secured before the trial court, then his / her absence at the appellate stage might not reach to a breach of article 6, under the condition that the applicant is represented by a lawyer and there is no need for the higher court to re-examine facts or to decide on matters regarding his / her character and personality (Sobolewski v. Poland No.2).

In criminal proceedings in particular, article 6 applies since the crucial point of prosecution or even at a previous stage when practical measures are imposed, such as search or preliminary investigation that have actual consequences to the suspect's status.

Article 6 is inapplicable to proceedings taking place after the conviction, such as the request for reduction of sentence or the determining of the prison in which the sentence is going to be served.

On the contrary, the procedure concerning the decision upon a request for re-open of the case falls out of the ambit of protection of article 6. However, if the case is re-opened the applicability of the provision is established. Inapplicability of article 6 is found in principle before constitutional courts, as long as the decision regards exclusively the in abstracto compatibility of the legislation, while the procedure is covered by article 6 when the decision of the constitutional court might effect the outcome of the dispute falling within the scope of the aforementioned provision.

III. Sub-rights under 6 §1 ECHR

1. Right to a court

Although it is not explicitly defined in article 6 §1, the right to a court is the first sub-right that draws source from the general right to a fair trial. However, the Court, under the light of teleological interpretation and in harmony with the principles of international law and the common heritage of the contracting states, underlines that the right to a court is inevitably safeguarded in 6 §1 in order to ensure the effective – and not only theoretical - protection of all the other procedural guarantees defined in the aforesaid provision (Golder v. United Kingdom). The right of access to a court is interpreted in a broad sense by the European Court of Human Rights. However, it is subject to procedural restrictions under certain circumstances.

1a. Access to a court

The very essence of access to a court lies in the right to submit a claim to a competent tribunal of full jurisdiction on the dispute, in order to adopt a binding decision. It is worth

mentioning that the claim must have a basis in domestic law and the claimant should show a personal interest in regard to the outcome of the proceedings. This principle guarantees a right to obtain a court decision and is applicable to both civil and criminal proceedings. Namely, the Court has highlighted that when a decision causes consequences on the status of civil rights or a criminal charge is made by an administrative, disciplinary or executive body there should be a procedural structure within the domestic law that will allow the exercise of the right to appeal against this decision for at least one stage of court review – so that the plaintiff's rights and obligations would be defined in a sufficient manner – stating, also, that this principle consists an autonomous requirement of article 6 (Alber and Le Compte v. Belgium). As it has been mentioned above, article 6 does not entail an obligation for the states to establish two or more stages of court review. Thus, a right to appeal to a higher court is not guaranteed under article 6, but if the domestic procedural structure provides such a court of appeal or cassation, the procedure in these stages as well should be implemented in accordance with the principles of article 6.

1b. Timely enforcement of a final decision

This right is also an aspect of the right to a court, given the fact that a final decision which is not timely enforced results in a Pyrrhic victory of the plaintiff and is incompatible with the principle of effectiveness and the fundamental principle of the rule of law (Hornsby v. Greece)². Thus, the states are obliged to foresee and organise a system that will sufficiently ensure the enforcement of national courts final judgments. According to the Court, lack of funds cannot justify the failure to enforce a final decision against a state authority, while it might be accepted as a reason of non-enforcement against a private individual or company.

The guarantee of the execution of the decision enjoys autonomy from the requirements of domestic law. As a consequence, a breach of the deadlines which are determined within the national law does not necessarily lead to a violation of article 6. A delay could be justified under the condition that it does not violate the very essence of the right to a court. The criteria upon the assessment for the delay is based are not equivalent to the more strict requirements of *reasonable time*. However, the elements of complexity of the case and the conduct of parties are also taken into account in terms of assessing the timely execution of a final judgment.

1c. Restrictions of the right to a court

The right of access to a court is qualified³ and is subject to restrictions imposed by the states in terms of their wide margin of appreciation. However, in order to be compatible with article 6, the imposed restrictions should pursue a legitimate purpose and meet the

² *Vitkauskas Dovydas and Dikov Grigoriy* , Protecting the right to a fair trial under the European Convention on Human Rights - Council of Europe human rights handbooks, 2012 , p.32

³ *Sisilianos Linos*, European Convention of Human Rights - Interpretation per article, 2013, p. 212

requirements of the proportionality principle and must also be not so wide – ranging as to impair the very essence of the right to a court.

Namely, the procedural restrictions might concern the jurisdiction, immunity of the defendant in civil cases or the time-limits for appeal. Thus, it is vital that the plaintiff shows considerable diligence in order to comply with the procedural requirements of the domestic law. A detained criminal defendant, especially, might also be required to act diligently and quickly in order to find out the reason of the court decision that he/she intends to appeal against.

Furthermore, the imposition of paying court fees (e.g. stamp duty) as a procedural requirement in civil cases is found to be in compliance with the guarantees of article 6, under the condition that the very essence of the right to a court is not destroyed. The requirement of pre-paying a considerable amount of fee by the claimant in civil cases is considered to be a proportionate restriction of the right to a court when the defendant is a private person and a link is established by law between the court fee and the amount of a claim for pecuniary damages (*Jankauskas v. Lithuania*). On the contrary, a high fee might be incompatible with article 6 if the defendant is a state authority or it is imposed on claims for non-pecuniary damages.

2. Independent and impartial tribunal established by law

The fundamental tribunal guarantees of independence, impartiality and establishment by law are closely connected and, therefore, they often overlap each other. The above requirements are applicable only to judicial bodies. On the other hand, prosecution authorities and police fall out of this ambit, but in cases where an institution of investigating judge exercises competence within the structure of the criminal legal system these requirements apply.

The requirement of *establishment by law* is the only provision of article 6 which explicitly refers to national law and guarantees to a certain extent a search of lawfulness in terms of national law by the Court, examining whether a disciplinary or administrative body is in essence a tribunal or court according to an assessment based on the autonomous criteria of article 6, even if it is not defined as such in terms of domestic legislation. The primary aim of this provision is to ensure that the organisation of the legal system does not depend on the unfettered discretion of the administration or the judicial bodies themselves, but it is regulated by law emanating from the parliament, in compliance with the fundamental principles of precision and foreseeability⁴. The functions of the tribunal should be in each and every case in accordance with the domestic legislation regulating the hierarchical and territorial jurisdiction, competence and composition of the bench.

⁴ *Lorenzmeier Stefan*, (University of Augsburg), *The Right to a Fair Trial in Europe? – Procedural Guarantees under the European Convention of Human Rights*, Address to the Miscarriages of Justice Conference: Current Perspectives, University of Central Missouri, February 20, 2007.

The *independence* of the tribunal is examined, first and foremost, in regard with the procedural guarantees that separate the judiciary authority from the others and especially from the executive⁵. Elements to which the Court gives prominence as criteria in order to assess the independence of the tribunal are, inter alia, the procedure of appointing the composition of the bench, the term of the judicial office, the actual existence of guarantees against external interferences and, also, the appearance of independence of the tribunal, as perceived by an objective observer⁶.

Moreover, a legislative interference with the intention to regulate the dispute by law, while the case is still in litigation, consists a violation of the independence of the tribunal and of the equality of arms, as well. The principle of independence is furthermore examined – except for interventions by other branches of power - within the terms of the judicial authority itself, given the fact that article 6 §1 protects the judges from internal influences, especially originated by judges who also exercise administrative duties within the structure of the legal system.

According to the Court, an outstanding aspect of the principle of rule of law is reflected in the *impartiality* of the national tribunal as the lack of bias or prejudice towards the parties, which is tested on both subjective and objective level. Namely, subjective impartiality regards the will of the judge and requires a non-existence in advance of a formed opinion either for or against one party. The Court presumes, in principle, the existence of subjective impartiality, which requires strong evidence of personal bias by any member of the tribunal. For instance, a lack of subjective impartiality has been found in cases, in which public statements were made by a judge of the bench, consisting an assessment of the quality of the defense and the prospects of the outcome of the criminal case or a statement was made by judges in the courtroom that they were «deeply insulted» and, also, finding the applicant's lawyer guilty of contempt of court. On the basis of the criterion of objective impartiality, it is examined whether other facts - apart from the judge's behavior - can give rise to an ample reason for legitimate doubts as to impartiality, especially from the standpoint of the parties. Intertwining of functions in separate stages of the same procedure, e.g. prosecutorial or inquisitorial and judicial duties that are performed by the same person, might be a sufficient reason to disqualify the judge as biased⁷.

3. Personal presence and publicity

⁵ *Sisilianos Linos*, European Convention of Human Rights - Interpretation per article, 2013, p. 221

⁶ . The permanence of their office, notably, is considered to be the capstone of the judges` independence and is, consequently, included among the guarantees of article 6 §1. The power of the executive to alter a court decision or suspend its enforcement or even the ability to remove members of the tribunal during their term of office deprives the body of the characteristic of independence.

⁷ A personal acquaintance between one of the litigants and a member of the tribunal or an affiliation with a social group or association are not per se sufficient to sustain the legitimacy of the doubts, but a stronger causal link is required and is assessed based on the certain circumstances of a specific situation.

The predominant aim of this principle is to protect the litigants in civil proceedings and the defendant in criminal cases from the danger of secrecy of the process and to preserve their trust to judicial procedure.

According to the Court, the principle of publicity entails a *right to physical presence* before the court which, of course, presupposes a *right to an oral hearing*. However, not every oral hearing must necessarily be in public. Furthermore, in cases where only one instance is foreseen or where the issues under examination are not purely legal and also facts are about to be examined an oral hearing is required, while written proceedings are not acceptable. On the contrary, before the appeal court written proceedings are sufficient and an oral hearing might not be essential in cases where facts are not contested, the parties are given adequate opportunities to elaborate on their arguments and issues with the credibility of witnesses do not arise. In the light of this interpretation, it becomes obvious that the principle of publicity aims, also, to reinsure the *right of effective participation* in the trial.

In order to safeguard the *public nature of the decision*, the Court recognises that the publishing in writing is sufficient, while a public reading of the decision is not always essential. In any case, the decision must be available in the court's registry.

Furthermore, the *right of attendance by third parties and the media* aims to ensure greater visibility of justice, but is certainly a qualified right, since exceptions⁸ to it are explicitly foreseen in article 6§1.

4. "Fair" trial

Throughout its case-law the Court has given prominence to the general notion of "fairness" which consists of several procedural principles that are briefly mentioned below:

a) The "*adversarial*" principle lies in the right to know and comment on the arguments or the evidence brought by the other party, which presupposes that the relevant material is made available to both parties. In a criminal trial, the requirement of "adversarial" proceedings under article 6 §1 usually overlaps with the defence rights under article 6 §3, such as the right to question witnesses. Consequently, any violations of these provisions are usually examined in conjunction.

b) *Equality of arms* entails an equal ability to state the case, which mainly stands for a procedural "balance" between the parties.

⁸ The aim of this provision is, obviously, to solve the conflict between the right to a public hearing and attendance by third parties and the right to protection of private life or even the interests of justice. *Brems Eva, Conflicting Human Rights: An Exploration in the Context of the Right to a Fair Trial in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Human Rights Quarterly, February 2005 27, 1, ProQuest Central, p.299.*

c) *The legitimacy of evidence is inseparably connected with the right to a fair trial under article 6⁹. However, the national courts are competent to judge on the admissibility and the legitimacy of evidence, whereas according to the principle of subsidiarity the Court examines the procedure in its entirety. It has been steadily pointed out that inculpatory judgement cannot be based on evidence obtained under compulsion. Moreover, the Court has even stressed that the admission of supplementary or non-essential evidence obtained by ill-treatment in breach of article 3 ECHR might reach to the overall discredit of the notion of fairness of the proceedings (Levinta v. Moldova §§101-106).*

d) *The right to remain silent and not to incriminate oneself constitutes one of the keystone notions of a fair trial in criminal charges. It prevents the authorities from obtaining evidence by defying the will of the accused not to testify against himself/herself¹⁰. It has been repeatedly stressed that a conviction solely or mainly based on the accused's silence or denial to provide the authorities with evidence would be incompatible with these rights. However, the court is not prevented to assess the accused's silence, especially when the circumstances demand an explanation. Hence, these rights are qualified and restrictions could be justified in terms of a proportionality test.*

e) *Entrapment defence: The Court defines the notion of entrapment or police incitement as a state-agents practice of not confining themselves to the investigation of criminal activity in an essentially passive manner but exerting such an influence on the subject as to incite the commission of the offence that otherwise would not have been committed, in order to provide evidence and institute a prosecution. Such a method would in principle deprive the accused from a fair trial¹¹.*

f) *The right to a reasoned decision protects the parties from any alleged arbitrariness of the national courts. Every judgement should mention sufficient reasons to reply to the essential aspects of the factual or legal –substantive and procedural- arguments. However, a detailed answer is not required to every argument raised by the parties. Moreover, a lack of reasons of the first-instance decision might be remedied by the appeal court.*

g) *The danger of flagrant denial of a fair trial abroad imposes to the states the obligation not to extradite or expel a criminal suspect. Simple infringements of article 6 within the domestic legal system are not sufficient to justify the existence of this danger, but the right to a fair trial must be harmed to its very essence.*

5. Trial within a reasonable time

Another fundamental guarantee that sources from article 6 and from the principle of effectiveness, as well, is the reasonable time requirement. However, the problem of long-

⁹ *Papadamakis Adam*, Evidence prohibitions and fair trial, Criminal Justice, June 2016

¹⁰ This right is uninterruptedly connected with the presumption of innocence under article 6 §2. However, the Court interprets this guarantee in the light of article 6 §1.

¹¹ Nevertheless, the Court considers this method as legitimate under certain circumstances, with the aim to obtain evidence in cases of organised crime or corruption.

duration trials exists in the legal system of several contracting states. The notion of *reasonable time* is autonomous in terms of interpretation and is defined on the basis of the following Court's case-law criteria¹²: a) *Nature and complexity of the case*, b) *Conduct of the applicant* c) *Conduct of the authorities*, d) *Stake of the case for the applicant*¹³.

As for the period of time taken into account, in civil cases the date of the claim submission is considered as the starting point. In criminal cases the crucial date is, in principle, when the case is notified and a person is found as the accused. However, in cases where a suspect's situation is substantially affected before the formulation of the charge the date of opening the investigation is taken into account. Finally, end of the period is considered to be the date of notification of the final national decision determining the case by a higher court.

IV. Case-law

Below it is indicatively analysed a decision of the Court concerning article 6 §1 ECHR and more specifically regarding a breach of the *right of access to a court*.

Liakopoulou v. Greece

In order to complete the work of the ring road, the administrative authorities of Thessaloniki had proceeded to the expropriation of certain areas, which included property of the applicant's ownership.

The national court of cassation rejected her request and, according to the applicant, it restricted her right of access to a court up to the extent that it harmed its very essence, claiming that she had put forward clearly and in every detail her grievances concerning the legal defects of the administrative decision.

The Court highlights that it has no authority to replace the role of national courts which are in principle competent for the interpretation of domestic legislation. In any case, the right of access to a court - as a more specific aspect of the right to a court - is subject to restrictions. Namely, the states enjoy a wide margin of appreciation concerning the admissibility requirements of a claim that is submitted to a tribunal. However, the statutory restrictions should not prevent the access to a court up to a point that the aforesaid right is harmed to its very essence. Furthermore, these restrictions can also reach to a breach of article 6, if they do not pursue a legitimate purpose or they do not meet the requirements of the proportionality principle.

¹² In any case, the assessment of reasonable time may vastly differ depending on the circumstances.

¹³ In more detail *Karatzas S.*, The importance of a fast and fair trial, the criteria of its «reasonable time» according to the European Convention of Human Rights – The Greek systematic problem, Theory and Practice of Administrative Law, Issues 3-4, March – April 2013, p. 331

The Court, also, underlines that article 6 does not oblige the contracting states to establish stages of appeal or cassation. However, if such structures are foreseen within the domestic legal system, the guarantees of this provision ought to be safeguarded, with due emphasis on the sub-right that entails the access to a court on a practical level, in order to appeal against decisions that affect civil rights or obligations. Moreover, the compliance of the domestically foreseen restrictions with article 6 depends on the specific characteristics of a certain procedure, thus, the trial within the domestic law should be examined as a whole, recognising the paramount role of the highest court, since the requirements of cassation admissibility might be more stringent than the ones which are foreseen for the appeal. Moreover, the Court stresses that these provisions aim to service the proper function of the legal system and, especially, to comply with the principle of safety in law.

In the case under examination the court of cassation rejected as inadmissible two of the applicant's arguments owing to the fact that she had failed to clarify them and the facts upon the appeal court based its decision.

The Court, therefore, examines, whether the provision applied by the highest national court was concrete, accessible and predictable and whether the foreseen restrictions to the right of access to a court pursues a legitimate aim and complies with the proportionality principle. Furthermore, it ascertains that this restriction does not source from a specific and explicit procedural provision, but it is a principle that can be found throughout the case-law of the court of cassation and is inspired by the singularity of its role which only lies in the examination of the legal part of each case. The Court, also, recognises that this principle is compatible with the notions of the safety in law and the proper function of the legal system. If the grievance which was brought before the court of cassation regards a false assessment of the facts at the appellate stage, it is essential that these facts are analysed before the court of cassation, otherwise, the latter should re-examine the case on the merits, which would fall out of the scope of its authorities. However, in this case such need did not occur, since the applicant concisely outlined in the introduction of her application these facts and, also, enclosed the administrative decision that had appealed against.

Consequently, the Court conceives the rejection of this application by the national court of cassation as an extremely stringent approach and reaches to the conclusion that the imposed restriction to the right of access to a court has been disproportionate to the purposes of the safety in law and the proper function of the legal system. Thus, a breach of article 6 §1 ECHR has been found by the Court.

It is, also, worth mentioning that this formalistic perception of the admissibility requirements which eventually violates the right of access to a court has been criticized by several Greek jurists¹⁴.

¹⁴ Indicatively, *Anthymidis Pavlos*, The formalistic approach to the rule of law as a barrier to the right of access to a court, *Theory and Practice of Administrative Law*, Issue 5, May 2013, p.398

V. Conclusion

As it has been indicated with the foregoing analysis, the Court has applied article 6 §1 ECHR in a significant amount of its case-law and has broadened its scope of applicability through its wide interpretation, highlighting its paramount value for the legal system of ECHR and for the national legal systems of the contracting parties, as well, strengthening the ECHR system of lodging individual complaints and confirming its characterization as « the crown jewel of the world`s most advanced international system for protecting civil and political liberties¹⁵». Unfortunately, the high number of decisions in which the Court holds that there has been a violation of article 6 §1 proves the existence of the procedural lack in the structure of the domestic legal systems and stresses the urgent need for establishing ameliorative procedural provisions and, also, guaranteeing their enforcement on a practical level.

Numbers of words including footnotes: 5,951

¹⁵ *Helper R. Laurence* , Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime, *European Journal of International Law*, Volume 19, Issue 1, 1 February 2008, Pages 125 – 159.

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