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HUMAN RIGHT TO COURT IN THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

*An infringement of individual rights is an
infringement of the rights of all people*
(Georges Clemenceau)

ABSTRACT

The right to a fair trial has become a right of a universal nature. The idea of human rights is closely related to universal and equal treatment of all people, which means respecting the personal dignity of man. This dignity, as a condition for the individual to belong to the human species, constitutes the foundation, the basis for human rights, and the purpose, the culmination of the construction of these rights. The right to a fair trial is a subjective right of the individual, understood as an idea that any intervention in civil rights must depend on a ruling issued by an independent and impartial judicial body. On the other hand, the material scope of the right to court covers penal, civil and administrative rights decided upon by different courts according to their statutorily determined extent of jurisdiction.

Although human rights are the rights of a particular human being, their protection is also an obligation of the State. It is the State which is obligated to ensure that the core of a specific human right is protected. This protection must be effective, thus not only does it apply to the content of the human right concerned, but it also comprises the procedure necessary to protect it so that the right is not illusory. The unique nature of the right to court makes it essential that the administration of justice in accordance with the principle of the right to a fair trial should be the subject of adjudication by courts and tribunals.

KEYWORDS: *personal dignity, human right to court, fair trial, guarantees for the accused*

INTRODUCTION

The human right to court, also referred to by scholars in the field as the right to legal protection (Garlicki, 1990, p. 59), the right to judicial protection (Mądrzak, 1997, p. 188), the right to justice (Czeszejko – Sochacki, 1999, p. 5), the right to defence before court (Pietrzykowski, 2005, p. 39) or the right to a fair trial, has currently become a right of a universal nature. It is a subjective right of the individual, understood as an idea that any intervention in civil rights must depend on a ruling issued by an independent and impartial judicial body (Gołaczyński, Krzywonos, 2002, p. 725). On the other hand, the material scope of that right covers penal, civil and administrative rights decided upon by different courts according to their statutorily determined extent of jurisdiction (Przybyszewska – Szter, 2006, p. 127).

Human rights are the rights of a particular human being, but their protection is also an obligation of the State. It is the State which is obligated to

ensure that the core of a specific human right is protected. This protection must be effective, thus not only does it apply to the content of the human right concerned, but it also comprises the procedure necessary to protect it so that the right is not illusory (Gronowska, 2001, p. 100).

UNIVERSAL STANDARDS OF THE HUMAN RIGHT TO A FAIR TRIAL

The idea of human rights is closely related to universal and equal treatment of all people, which means respecting the personal dignity of man. This dignity as a condition for the individual to belong to the human species constitutes the foundation, the basis for human rights, and the purpose, the culmination of the construction of these rights (Orzeszyna, 2020, p.221; idem, 2013, p. 7; idem, 2021, p. 165-176). Although human rights standards with respect to fair trial (right to a fair trial) can be applied and invoked directly before national courts, it is not international standards that form the direct basis of action for national courts. Courts operate under norms of national law. International norms regarding the right to a fair trial are, on the other hand, review patterns (Balcerzak, 2017, p. 166). The human right to court is one of the fundamental rights of citizens. It embodies the idea of giving every human being the right to present their case before the authorities of the State, which provides guarantees that the decisions to be made will be fair, objective and equitable. As a negative right, it is a *conditio sine qua non* and the key element for ensuring other human rights stemming from the first generation of human rights. At the same time, it is a directive, addressed to national authorities, which sets a minimum level of obligations for the State in the area of the possibility to pursue claims for infringement of rights and freedoms (Orzeszyna, Skwarzyński, Tabaszewski, 2023, p. 344). The fundamental standard of the right to a fair trial is contained in Article 10 of the Universal Declaration of Human Rights, according to which everyone is entitled to a fair and public hearing by an independent and impartial tribunal, Article 11 of the Declaration contains the right to presumption of innocence (*presumptio innocentiae*) and Article 8 of the Declaration relates

to the right of every person to an effective remedy. The right to a fair trial is enshrined as a civil right in Article 14 of the International Covenant on Personal and Political Rights (ICCPR, 16.12.1966, UNTS 999, p. 171). The right to a fair trial is a procedural human right, i.e. a right that is to allow the pursuit of other human rights. The requirement of fairness is a logical consequence of granting everyone the capacity to be a party in judicial proceedings and capacity to perform procedural actions as a result of recognizing the legal subjectivity of each person (Orzeszyna, Skwarzyński, Tabaszewski, 2022, p.367). According to the Human Rights Committee, this right should be considered *inuncto* with respecting the principle of equality before the law (HRC, 2007). The right to court is included in personal rights and freedoms (Jabłoński, Jarosz – Żukowska, 2004, 52). It is classified as a first-generation human right. It operates in a twofold manner. It is, first, about the judicial procedure, and second, the organization of the judiciary (Sykulska – Przybysz, 2010, p. 427). The norm contained in Article 6 of the European Convention sets out a right, not a freedom (ECHR, , 4.11.1950, ETS.005), but it is not of an absolute nature, since pursuant to the standards mentioned in Article 6 ECHR there are possible certain limitations to this access, provided that they are designed in accordance with the principle of proportionality and do not undermine the essence of the guarantee provided for therein (Judgment of the ECtHR, 21.02.1975, par. 38; Hafmański, Wróbel, 2010, p. 306). In view of this, the normative status of the right to court in the ECHR is high, but not the highest, and the norm under Article 6 ECHR may also be derogated in a situation of war or other public danger threatening the life of a nation, as stipulated in Article 15 ECHR (Pettiti, Decaux, Imbert, 1999, p. 259; Mik, 1996, p. 49).

ESSENTIAL ELEMENTS OF THE HUMAN RIGHT TO A FAIR TRIAL

In the European system of the promotion and protection of human rights, the right to court, which in the case-law of the European Court of Human Rights is also referred to as the right to a fair trial, is governed in Article 6 (1) ECHR. The concept of a fair trial was developed during the era of Enlightenment as a *conditio sine qua non* and a due guarantee of the division and balance of powers, and was developed within the framework of customary international law. It is currently a guarantee of full implementation of the rule of law and the principle of a democratic state ruled by law (Judgment of the ECtHR, 6.11.1980, and Judgment of the ECtHR, 19.06.2001). Pursuant to this article, everyone has the right to a fair and public hearing within a reasonable time by an independent and statutorily established impartial tribunal in determining his civil rights and obligations, or the validity of any criminal charge brought against him. The rule determined in Article 6 (1) ECHR is composed of guarantees regarding criminal accusation, the right of access to court, independence and public nature of the proceedings, trial within a reasonable time (Nowicki, 2009, pp. 262-309). The provision of Article 6 (1) ECHR is a set of fair trial guarantees, constituting a general rule of wide application, and then, in paragraphs 2 and 3 points to a number of detailed guarantees for criminal trial (Hofmański, Wróbel, 2010, p. 246). These guarantees are: the principle of the presumption of innocence, the right to be promptly informed on the nature and cause of the accusation, the right to adequate time and the opportunity to prepare a defence, the right to defend oneself in person or through a lawyer appointed by oneself, the right to question witnesses and the right to be provided free assistance by an interpreter. The concept of *civil rights and obligations* used in Article 6 (1) ECHR is of key importance here. According to the European Court of Human Rights, the scope of Article 6 ECHR covers any procedure, the outcome of which has a decisive impact on civil rights and obligations. On the other hand, the branch of law, which determines the method of resolving the case, e.g. civil law, administrative law, and the type of body that is to make the decision, is of lesser importance (Judgment of the ECtHR, 16.06.1971, par. 94). The classification is therefore not determined by the name of the proceeding adopted by

the respective legislation, but by the content of the decision towards which the proceeding is to lead Pettiti, Decaux, Imbert, 1999, p. 257; Hofmański, 1998, p. 55.

The function of the right to court is to ensure that the claimant has a legally effective option to apply to a judicial body for hearing and deciding a case in accordance with the results of the evidentiary proceedings conducted and based on the rules of substantive law (Mądrzak, 1997, p. 197). Article 6 ECHR creates a legal principle understood as a model of due process, which allows the right of access to court in an ever-increasing number of cases relating to the human being and strengthens the guarantees of his/her position as a party to the proceedings by the principles of: independence and impartiality of the court, the respect for equality of the parties, public hearing, presumption of innocence, determination of substantive truth and justification of the judgment, as well as the right: to have the case heard within a reasonable time, to information, to a defence in the material and formal sense, to use the assistance of an interpreter (Redelbach, 2000, p. 295).

The European Court of Human Rights has stated that the ECHR Signatory States, pursuant to Article 6 (1), are obliged to organise their judiciary so that courts can meet all the requirements under this provision (Judgment of the ECtHR, 6.5.2003, par. 63; judgment of the ECtHR, 30.10.1998, par. 38; judgment of the ECtHR, 17.12.1996, par. 55). The judicial system should be of a closed nature, covering with the jurisdiction of courts all categories to be protected under the right to court (Zieliński, 2003, p. 21). Thus, the systemic guarantee for the right to court is to entrust the administration of justice to bodies, in the proceeding before which the individual will be guaranteed due representation and protection of his or her rights Łazarska, 2012, 170). This means that justice must be administered by courts of law, not administrative bodies, executive authorities, or officials (Bigler, 2018, p. 377; Bojarski, 1998, p. 32). As the ECHR points out, the concept of court is understood by its judicial function, i.e. the settlement of cases falling within its jurisdiction under the law and the conduct of proceedings in the legal manner. It must also meet a number of additional requirements: be independent, in particular from the executive authority, impartial, there must be a term of office specified for the panel member, and it must fulfil procedural guarantees of its operation (Judgment of the ECtHR, 29.4.1988, par. 64).

In the meaning of the ECHR, the court does not have to be a court in the classical sense, i.e. affiliated with the standard judicial structures in a specific

country. Recognition that a given institution meets the characteristics of court within the meaning of Article 6 ECHR is made according to the substantive criteria that are strictly defined by the ECHR, which in practice excludes any possible margin of discretion of the signatory state (Renucci, 2013, pp. 320-321; Hofmański, Wróbel, 2010, p. 309). It is permissible for certain types of cases, e.g. disciplinary, administrative and order cases, to be first resolved by bodies that do not have the characteristics of a court. However, there must always be subsequent judicial review, which must be of a thorough nature. Therefore, the reviewing court must have the competence to verify the decision in terms of factual findings and legal qualification (Garlicki, 2008, pp. 143-144).

In the system of the European Convention, the substantive scope of this right has been defined very broad. The right to a fair trial is vested in everyone, to the same extent, without any subjective exemptions, as well as without any discrimination. The rights deriving from Article 6 (1) ECHR have been guaranteed without distinction to each individual, i.e. natural persons and juridical persons, citizens and foreigners, including stateless persons. Thus, the right of everyone to court means that nobody can be deprived of the opportunity to pursue their case in court (Szmulik, 2008, p. 71). In view of the above, everyone in both criminal and civil proceedings is to be guaranteed the opportunity to present their case in an appropriate manner to the court in circumstances which do not put him or her in a clear disadvantage in relation to the opposing party (Judgment of the ECtHR, 18.6.2002, par. 40; judgment of the ECtHR, 27.10.1993, par. 33). Moreover, in Article 34 ECHR, the entity entitled to apply to the ECHR has been specified. According to this provision, any person, non-governmental organisation or group of individuals may file an application, and the ECHR understands the concept of non-governmental organisation very broadly as all the collective entities mentioned above, if these do not belong to public authority, such as the governing party or a governmental organisation (Jasudowicz, 2010, p. 112).

In Article 6 (1) ECHR, the right of any person to present to the court for consideration any claims relating to *civil rights and obligations* or any criminal prosecution and the resulting aspect of the right of access to the court has been guaranteed (Harris, O'Boyle, Warbrick, 2014, pp. 459-460; Nowicki, 2001, pp. 30-31). It is understood as an opportunity to apply to the court

as an authority acting on behalf of the State for the examination of a case, intended to clearly determine the legal situation of the parties, and the ruling, once final, is binding on the parties and any other entities, including courts and public authorities (Młynarska – Sobaczewska, 2009, p. 403).

The right to an open and public consideration of the case by an impartial and independent court has two aspects: the right of parties and other proceeding participants to be subjects in those proceedings and a directive addressed to the national authorities and, more specifically, to the court. The right to have one's case recognised in a public hearing is an important feature of any democratic state and constitutes one of the guarantees of justice (Borkowski, 2014, p.8; Pettiti, Decaux, Imbert, 1999, p. 266). Owing to this, the administration of justice is visible, contributing to the objective of Article 6 (1) ECHR, namely the fairness of proceedings.

CONCLUSION

Human rights stem from human dignity, which is enjoyed by everyone regardless of their background, social status or nationality. The right to court is particularly important compared to other human rights, as it guarantees everyone the possibility of having one's case presented for examination by an impartial and independent judicial body, separate and independent from the legislative and executive branches of government. The rights deriving from Article 6 (1) ECHR have been guaranteed without distinction to each individual, i.e. natural persons and juridical persons, citizens and foreigners, including stateless persons. Thus, the right of everyone to court means that nobody can be deprived of the opportunity to pursue their case in court. Everyone, in both criminal and civil proceedings, is supposed to be guaranteed the opportunity to present his or her case properly to the court in circumstances that do not put him or her at a clear disadvantage in relation to the opposing party. This particularly important nature of the right to court makes it essential that the administration of justice in accordance with the principle of the right to a fair trial should be the subject of adjudication by courts and tribunals.

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