KEY THEME[1]
Article 6 § 1 (criminal limb)
Administration of (unlawfully obtained) evidence

(Last updated: 31/08/2026)

Introduction

Article 6 guarantees the right to a fair hearing. It does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (*Schenk v. Switzerland*, 1988, §§ 45-46; *Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, § 83 and *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, § 302)

It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. Its task under Article 6 § 1 is rather to assess the fairness of the proceedings as a whole, including the way in which the evidence was taken and used, and the manner in which any objections concerning the evidence were dealt with (*Khan v. the United Kingdom*, 2000, § 34; *Jalloh v. Germany* [GC], 2006, § 95; *Bykov v. Russia* [GC], 2009, § 89, and *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, §§ 303 and 310).

Principles drawn from the current case-law

General principles:

- When determining whether the proceedings as a whole were fair, the Court takes into account the following factors (*Jalloh v. Germany* [GC], 2006, § 96; *Bykov v. Russia* [GC], 2009, § 89; *Gäfgen v. Germany* [GC], 2010, § 164; *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, §§ 303, 310, and 324; *Ayetullah Ay v. Turkey*, 2020, §§ 123-130):
  - The nature of the alleged unlawfulness of the evidence in question and, where the violation of another Convention right is concerned, the nature of the violation found;
  - Whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use in circumstances where the principles of adversarial proceedings and equality of arms between the prosecution and the defence were respected;
  - The quality of the evidence and the circumstances in which it was obtained and whether these circumstances cast doubt on its reliability or accuracy;
  - Whether the applicant's challenges to the evidence were properly examined by the domestic courts, that is whether the applicant was truly "heard", and whether the courts supported their decisions with relevant and adequate reasoning;
  - Whether the evidence in question was or was not decisive for the outcome of the criminal proceedings.
- As to the examination of the nature of the alleged unlawfulness in question, this test has been applied in the following cases:

[1] Prepared by the Registry. It does not bind the Court.

- Where evidence used in the proceedings had allegedly been obtained in breach of the defence rights (see, for instance, *Laska and Lika v. Albania*, 2010, §§ 64-71, use of evidence obtained through an identification parade; *Erkapić v. Croatia,* 2013, §§ 79-87; *Dominka v. Slovakia* (dec.), 2018; *Stephens v. Malta (no. 3)*, 2020, §§ 64-67; *Tonkov v. Belgium*, 2022, §§ 64-68; evidence obtained by the exertion of pressure on a co-accused, including the questioning of a co-accused in the absence of a lawyer; see also *Mehmet Zeki Doğan v. Türkiye (no. 2)*, 2024, §§ 79-88, concerning the use of statements of the co-accused in the absence of a lawyer in the reopened criminal proceedings following Court's finding of a violation of Article 6 §§ 1 and 3 (c) in the first application bought by applicant);*Yüksel Yalçınkaya v. Türkiye* [GC], 2023, § 316 use of intelligence information against an accused; or *Ilgar Mammadov v. Azerbaijan (no. 2)*, 2017, § 237, unfair use of incriminating witness statements and material evidence against the applicant);
- Use of evidence allegedly obtained in violation of Article 8, including instances where the Court has found a breach of that provision (see, for instance, *Bykov v. Russia* [GC], 2009, §§ 69-83 and *Dragojević v. Croatia*, 2015, §§ 127-135, concerning unlawful secret surveillance; *Khodorkovskiy and Lebedev v. Russia*, 2013, §§ 699-705, *Prade v. Germany,* 2016, and *Budak v. Turkey*, 2021, §§ 68-90, evidence obtained by search and seizure operations);
- Electronic evidence, which may involve particular difficulties, including distinct reliability issues, does not in the abstract call for the safeguards under Article 6 § 1 to be applied differently, the central point being that it may not be used in a manner that undermines the basic tenets of a fair trial (*Yüksel Yalçınkaya v. Türkiye* [GC], 2023, §§ 312-313);
- The admission of material evidence obtained as a result of an act classified as inhuman treatment in breach of Article 3, but falling short of torture; it being understood, however, that the use of such evidence always raises serious issues as to the fairness of the proceedings (see, for instance, *Gäfgen v. Germany* [GC], 2010, §§ 178-188; *El Haski v. Belgium*, 2012, § 85).

- In making its assessment on the basis of the above test, in particular concerning the last criterion (importance of evidence for the outcome), the Court has stressed that the relevance of the existence of evidence other than the contested matter depends on the circumstances of the case. However, where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (*Khan v. the United Kingdom*, 2000, § 34; *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, § 310; *Prade v. Germany*, 2016, § 40).

Evidence obtained in breach of Article 3 of the Convention:

- The above test for determining whether the proceedings as a whole were fair does not apply to the use in the proceedings of statements obtained as a result of any form of ill-treatment under Article 3 or real evidence obtained as a result of acts qualifying as torture under Article 3 of the Convention. The use of such evidence in the proceedings – irrespective of its probative value and irrespective of whether its use was decisive in securing the defendant's conviction – makes the proceedings as a whole automatically unfair, in breach of Article 6 (*Gäfgen v. Germany* [GC], 2010, §§ 166-167; *El Haski v. Belgium*, 2012, § 85; *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 254). The same concerns the use in criminal proceedings of statements obtained as a result of ill-treatment by private parties (*Ćwik v. Poland,* 2020, §§ 88-89).
- These principles apply not only where the victim of the treatment contrary to Article 3 is the actual defendant but also where third parties are concerned (*El Haski v. Belgium*, 2012, § 85; *Kaçiu and Kotorri v. Albania*, 2013, § 128).

- The absence of an admissible Article 3 complaint does not, in principle, preclude the Court from taking into consideration the applicant's allegations that the police statements had been obtained using methods of coercion or oppression and that their admission to the case file, relied upon by the trial court, therefore constituted a violation of the fair trial guarantee of Article 6 (*Mehmet Duman v. Turkey*, 2018, § 42). Similar considerations apply where an applicant complains about the use of evidence allegedly obtained as a result of ill-treatment, which the Court could not establish on the basis of the material available to it (no substantive violation of Article 3 of the Convention). In such instances, in so far as the applicant made a *prima facie* case about the real evidence potentially obtained through ill-treatment, the domestic courts have a duty to elucidate the circumstances of the case, and their failure to do so may lead to a violation of Article 6 (*Bokhonko v. Georgia*, 2020, § 96).
- In *Sassi and Benchellali v. France*, 2021, §§ 89 and 93, the Court examined the applicants' complaint of a lack of fairness of the criminal proceedings against them in France relating to the use of statements they had given to French authorities on the US base at Guantánamo Bay. While the Court had previously noted allegations of ill-treatment and abuse of terrorist suspects held by the US authorities in this context, in the present case the applicants' Article 3 complaint in respect of the French agents had been declared inadmissible. The Court nevertheless considered that it was required to examine, under Article 6, whether and to what extent the domestic courts had taken into consideration the applicants' allegations of ill-treatment, even though it had allegedly been sustained outside the forum State, together with any potential impact on the fairness of the proceedings. In particular, the Court examined whether the domestic courts had properly addressed the objections raised by the applicants as to the reliability and evidential value of their statements and whether they had been given an effective opportunity to challenge the admissibility of those statements and to object to their use.

Other complaints related to the administration of evidence:

- Outside the specific issues related to evidence obtained in breach of Article 3, the test for the assessment of whether the proceedings as a whole were fair with regard to the manner in which the evidence was obtained and used in the proceedings has a wide scope of application. Thus, whenever a case concerns a general complaint concerning the manner in which the evidence was obtained and used in the proceedings, the Court preferred to examine such complaints from the perspective of the general test of fairness in the administration of evidence (see, for instance, *Szilagyi v. Romania* (dec.), 2013, §§ 24-33; *Arapi v. Albania* (dec.), 2015, §§ 74-82).
- In some instances, it is possible that the evidence is tainted by a breach of Article 3 but that the case does not fall under the category of cases concerning the admission of statements or physical evidence obtained in breach of that provision. For instance, in *Boutaffala v. Belgium*, 2022, §§ 87-88, the Court criticised the approach taken by the domestic courts to give a decisive weight to the statements of the arresting police officers concerning the charges of rebellion brought against the applicant where the Government themselves recognised (in an unilateral declaration) that the circumstances of the arrest had been contrary to the prohibition of degrading treatment under Article 3 (see also *Repeşco and Repeşcu v. the Republic of Moldova*, 2023, §§ 29-33).

Noteworthy examples

- *Gäfgen v. Germany* [GC], 2010 – concerning material evidence obtained as a result of an act classified as inhuman treatment in breach of Article 3, but falling short of torture;
- *Yüksel Yalçınkaya v. Türkiye* [GC], 2023 – concerning the admission as evidence of electronic evidence obtained by the national intelligence agency and the applicant's inability to effectively challenge it;

- *Dragojević v. Croatia,* 2015 – concerning evidence obtained by secret surveillance in breach of Article 8 of the Convention;
- *Prade v. Germany,* 2016 – concerning evidence obtained by search and seizure operations not in accordance with the domestic law;
- *Ilgar Mammadov v. Azerbaijan (*no. *2),* 2017 – concerning the general unfairness in the use of evidence in the proceedings;
- *Ćwik v. Poland*, 2020 – concerning the use in criminal proceedings of statements obtained as a result of ill-treatment by private parties;
- *Sassi and Benchellali v. France*, 2021 – concerning the use of statements given to the authorities of the respondent State in a context of alleged ill-treatment sustained outside the forum State;
- *Macharik v. the Czech Republic*, 2025 – concerning the use of the content of the applicant's email communications with another convict, obtained by the police on the basis of a judicial order to transfer the content of all those messages from the mailbox of a third party to whom they had been forwarded.

Recap of general principles

- *Bykov v. Russia* [GC], 2009 (§§ 88-91);
- *Yüksel Yalçınkaya v. Türkiye* [GC], 2023 (§§ 303, 310, and 324);
- *Dragojević v. Croatia*, 2015 (§§ 127-130);
- *Prade v. Germany*, 2016 (§§ 32-35);
- *Ayetullah Ay v. Turkey*, 2020 (§§ 123-130).

Related (but different) topic

Evidence provided by witnesses cooperating with the prosecution:

- An issue related to the administration of evidence in the proceedings also arises with regard to the admission of evidence provided by witnesses cooperating with the prosecution.
- In this connection, the Court has held that the use of statements made by witnesses in exchange for immunity or other advantages may call into question the fairness of the hearing granted to an accused and is capable of raising delicate issues since, by their very nature, such statements are open to manipulation and may be made purely in order to obtain advantages or for personal revenge. However, use of this kind of statement does not in itself suffice to render the proceedings unfair (*Verhoek v. the Netherlands* (dec.), 2004; *Cornelis v. the Netherlands* (dec.), 2004). In each case, in making its assessment, the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victims in the proper prosecution of the crime and, where necessary, to the rights of witnesses (*Habran and Dalem v. Belgium*, 2017, § 96).
- In this context, the Court will examine, in particular, whether: the defence knew the witness's identity; the defence knew about the existence of an arrangement with the prosecution; the domestic court reviewed the arrangement; the domestic court paid attention to all possible advantages received by the witness; the arrangement was discussed at the trial; the defence had the opportunity to test the witness; the defence had the opportunity to test the members of the prosecution team involved; the domestic court was aware of the pitfalls of relying on accomplice testimony; the domestic court approached the testimony cautiously; the domestic court explained in detail why it believed the witness; untainted corroborating evidence existed; an appeal court reviewed

the trial court's findings in respect of the witness; and the issue was addressed by all the courts dealing with the various appeals (*Xenofontos and Others v. Cyprus*, 2022, § 79).

KEY CASE-LAW REFERENCES

Leading cases:

- *Schenk v. Switzerland*, 12 July 1988, Series A no. 140 (no violation of Article 6 § 1);
- *Bykov v. Russia* [GC], no. 4378/02, 10 March 2009 (no violation of Article 6 § 1);
- *Gäfgen v. Germany* [GC], no. 22978/05, ECHR 2010 (no violation of Article 6 §§ 1 and 3);
- *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023 (violation of Article 6 § 1);
- *El Haski v. Belgium*, no. 649/08, 25 September 2012 (violation of Article 6);
- *Ćwik v. Poland*, no. 31454/10, 5 November 2020 (violation of Article 6 § 1).

Other cases:

- *Khan v. the United Kingdom*, no. 35394/97, ECHR 2000-V (no violation of Article 6 § 1);
- *Jalloh v. Germany* [GC], no. 54810/00, ECHR 2006-IX (violation of Article 6 § 1);
- *Laska and Lika v. Albania*, nos. 12315/04 and 17605/04, 20 April 2010 (violation of Article 6 § 1);
- *Erkapić v. Croatia,* no. 51198/08, 25 April 2013 (violation of Article 6 § 1);
- *Kaçiu and Kotorri v. Albania*, nos. 33192/07 and 33194/07, 25 June 2013 (violations of Article 6 § 1);
- *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, 25 July 2013 (violation of Article 6 §§ 1 and 3 (d) on account of the use of prosecution evidence which was allegedly improperly obtained or unreliable);
- *Szilagyi v. Romania* (dec.), no. 30164/04, 17 December 2013 (inadmissible – manifestly ill-founded);
- *Dragojević v. Croatia*, no. 68955/11, 15 January 2015 (no violation of Article 6 § 1);
- *Arapi v. Albania* (dec.), no. 27656/07, 7 July 2015 (inadmissible – manifestly ill-founded);
- *Prade v. Germany*, no. 7215/10, 3 March 2016 (no violation of Article 6 § 1);
- *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, 16 November 2017 (violation of Article 6 § 1);
- *Dominka v. Slovakia* (dec.), no. 14630/12, 3 April 2018 (inadmissible – manifestly ill-founded);
- *Mehmet Duman v. Turkey*, no. 38740/09, 23 October 2018 (violation of Article 6 §§ 1 and 3 (c));
- *Stephens v. Malta (no. 3)*, no. 35989/14, 14 January 2020 (no violation of Article 6 § 1);
- *Bokhonko v. Georgia*, no. 6739/11, 22 October 2020 (violation of Article 6 § 1);
- *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, 27 October 2020 (violation of Article 6 §§ 1 and 3);
- *Budak v. Turkey*, no. 69762/12, 16 February 2021 (violation of Article 6 § 1);
- *Sassi and Benchellali v. France*, nos. 10917/15 and 10941/15, 25 November 2021 (no violation of Article 6 § 1);
- *Boutaffala v. Belgium*, no. 20762/19, 28 June 2022 (violation of Article 6 § 1);
- *Repeşco and Repeşcu v. the Republic of Moldova*, no. 39272/15, 3 October 2023 (violation of Article 6 § 1);
- *Mehmet Zeki Doğan v. Türkiye (no. 2)*, no. 3324/19, 13 February 2024 (violation of Article 6 § 1);

- *Macharik v. the Czech Republic*, no. 51409/19, 13 February 2025 (no violation of Article 6 § 1);
- *Seppern v. Estonia*, no. 31722/22, 16 September 2025 (no violation of Article 6 § 1).