KEY THEME[1]
Article 6 § 1 (civil limb)
Constitutional Court proceedings

(Last updated: 31/08/2026)

Introduction

Article 6 § 1 of the Convention is applicable to Constitutional Court proceedings, under its civil limb, if they relate to "the determination of civil rights and obligations" (*Pierre-Bloch v. France*, 1997, § 48; *Voggenreiter v. Germany*, 2004, §§ 30-33; *Albuquerque Fernandes v. Portugal,* 2021, § 54; *Xero Flor w Polsce sp. z o.o. v. Poland*, 2021, §§ 192-209; *Pinkas and Others v. Bosnia and Herzegovina*, 2022, §§ 37-38; and more recently, *Lorenzo Bragado and Others v. Spain*, 2023, § 106, concerning an amparo appeal by magistrates on final candidate list regarding the Parliament's continuous failure to pursue appointment process of a new General Council of the Judiciary). However, considering that these proceedings may significantly differ from ordinary court proceedings, the Court had to adapt the principles developed under its Article 6 § 1 case-law, as well as establish new principles. These principles are generally applicable, even though the Constitutional Courts' jurisdictions may vary from state to state.

Please note that this key theme does not relate to other superior court proceedings such as Supreme Courts' proceedings or Appellate Courts' proceedings.

Principles drawn from the current case-law

Access to court:

- Article 6 § 1 guarantees include the right to have a final determination on a matter submitted to a court including a decision on the admissibility and/or merits of a constitutional complaint (*Marini v. Albania*, 2007, § 120).
- A Constitutional Court that can inquire into the contested proceedings only from the point of view of their conformity with the Constitution without examining all the relevant facts is not considered to have full jurisdiction within the meaning of Article 6 § 1 (*Malhous v. the Czech Republic* [GC], 2001, § 62; *Zumtobel v. Austria*, 1993, § 30).
- Article 6 does not guarantee a right of access to a court with power to invalidate or override a law enacted by the legislature. Nor can a right for an individual to trigger a decision of a parliamentary body to seek a constitutional review of a law be derived from that provision (*Gyulumyan and Others v. Armenia* (dec.), 2023, § 79).
- Having regard to the specific nature of an appeal to the Constitutional Court, the Court has accepted that the conditions of access to that court could be stringent (*Arribas Antón v. Spain*, 2015, § 50; see also, *Pinkas and Others v. Bosnia and Herzegovina*, 2022, § 48 and *Olivares Zúñiga v. Spain*, 2022, § 29), in order to guarantee legal certainty and the proper administration of constitutional justice at the highest level of the judicial hierarchy (*Dos Santos Calado and Others v. Portugal*, 2020, §§ 112 and 133; *Albuquerque Fernandes v. Portugal,* 2021, §§ 68 and 75 and *Çela v. Albania*, 2022, § 23).

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

- Three factors must be taken into consideration when determining the proportionality of restrictions on access to a Constitutional Court, namely (i) whether the modalities for exercising the appeal may be regarded as foreseeable from the point of view of the litigant, (ii) whether the person concerned had to bear an excessive burden due to procedural errors made during the proceedings and (iii) whether the restrictions in question can be regarded as "excessive formalism" (*Dos Santos Calado and Others v. Portugal*, 2020, §§ 113-116; *Albuquerque Fernandes v. Portugal,* 2021, § 69).

Impartiality:

- The subjective and objective tests also apply to Constitutional Court proceedings (*Mežnarić v. Croatia*, 2005, §§ 29-32).

Fairness of proceedings:

- The right to adversarial proceedings may also apply in proceedings before a Constitutional Court (*Milatová and Others v. the Czech Republic*, 2005, § 59).
- In the context of failure of the Constitutional Court to communicate to the applicant the written observations of the general courts involved in his case, the Court held that the principles underlying its case-law on equality of arms and fairness of proceedings must be seen as requiring the Constitutional Court, in all cases in which it decides that there is no need to communicate one party's observations to the other parties in proceedings before it, to state clearly in its decision the reasons for reaching such a decision (*Janáček v. the Czech Republic*, 2023, § 53).
- When Constitutional Court proceedings deal with *ad personam* legislation, the persons concerned must be guaranteed free access to the observations of the other participants and a genuine opportunity to comment on those observations (*Ruiz-Mateos v. Spain*, 1993, § 63; see conversely, *Gorraiz Lizarraga and Others v. Spain*, 2004, §§ 56-61).
- Where a preliminary reference mechanism to a Constitutional court exists, a refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings, such as where the refusal has not been duly reasoned (*Šaltinytė v. Lithuania*, 2021, § 88; *Xero Flor w Polsce sp. z o.o. v. Poland*, 2021, §§ 166).
- The guarantees enshrined in Article 6 § 1 include the obligation for courts, including Constitutional Courts, to give sufficient reasons for their decisions, in particular where the case before them relates to the rights and freedoms guaranteed by the Convention (*Paun Jovanović v. Serbia*, 2023, §§ 105-109) or the guarantees of judicial independence (*Ovcharenko and Kolos v. Ukraine*, 2023, § 126) or novel or rare issues regarding which there is no settled jurisprudence on their applicability (*Lorenzo Bragado and Others v. Spain*, 2023, §§ 143-148).

Public hearing:

- When Constitutional Court proceedings are limited to an examination of constitutional issues and only entail an assessment of points of law, the holding of public hearings at the decisive stage of the proceedings is sufficient to comply with Article 6 § 1 (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, § 82).
- In abstract constitutional review proceedings, States are not required to make sure that every individual concerned is heard before the court (*Gavella v. Croatia* (dec.), 2006).
- When a specific case is examined before a Constitutional Court acting as a court of first and only instance, an oral hearing must be held unless there are exceptional circumstances that

justify dispensing with it (*Selmani and Others v. the former Yugoslav Republic of Macedonia*, 2017, §§ 36-43).

Length of proceedings:

- Constitutional Court proceedings must be taken into account in assessing the reasonableness of the length of proceedings when the result is capable of affecting the outcome of the dispute before the ordinary courts (*Ruiz-Mateos v. Spain*, 1993, §§ 35; *Süßmann v. Germany* [GC], 1996, § 39; *Bieliński v. Poland*, 2022, § 47).
- Where proceedings before the Constitutional Court are embedded in ordinary proceedings, for example where the domestic courts refer a question of the constitutionality of a relevant provision to it, the proceedings before it may be relevant, to a greater or lesser extent, in an assessment of the compliance of the underlying proceedings with Article 6 (*Polyakh and Others v. Ukraine*, 2019, §§ 186-192). However, the obligation of Constitutional Courts to hear cases within a reasonable time cannot be construed in the same way as for an ordinary court (*Süßmann v. Germany* [GC], 1996, §§ 56-58).
- The Constitutional Court's role as guardian of the Constitution makes it particularly necessary for it to be able to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (*A.T. v. Slovenia* (dec.), 2022, § 21 ; and its limits, see *Oršuš and Others v. Croatia* [GC], 2010, § 109).

Noteworthy examples

Access to court:

- *Ferré Gisbert v. Spain*, 2009: Restrictive interpretation of the *dies a quo* to be relied on for the calculation of the time-limit to appeal to the Constitutional Tribunal (violation);
- *Klausecker v. Germany* (dec.), 2015: Limitations on access to the German Federal Constitutional Court to review recruitment procedure before European Patent Office when reasonable alternative procedure (arbitration) is available (inadmissible);
- *Dos Santos Calado and Others v. Portugal*, 2020: Display of excessive formalism in declaring the constitutional appeals inadmissible for failure to satisfy the statutory conditions. Application of the case-law principles laid down in *Zubac v. Croatia* [GC], 2018 which concerned Supreme Court proceedings to Constitutional Court proceedings (violation with regard to two of the applications; no violation for the third application);
- *Albuquerque Fernandes v. Portugal,* 2021: No display of excessive formalism in dismissing, on procedural grounds, a constitutional appeal by a judge who was challenging a disciplinary penalty (no violation).
- *Dragan Kovačević v. Croatia*, 2022: Disproportionate refusal to award costs for complaint before Constitutional Court concerning applicant's divestment of legal capacity (violation).
- *Çela v. Albania*, 2022: Dismissal of constitutional complaint due to unforeseeable application of new time-limit (two years to four months) introduced after lodging of complaint (violation).
- *Olivares Zúñiga v. Spain*, 2022: *Amparo* appeal declared inadmissible due to an unforeseeable requirement to exhaust a prior remedy (violation).
- *Supergrav Albania Shpk v. Albania*, 2023: Dismissal of the applicant's constitutional complaint as being lodged outside of the four-month time-limit calculated from the date of adoption of the Supreme Court's decision rather than the date on which the fully reasoned decision was served (violation).

- *Lorenzo Bragado and Others v. Spain*, 2023: Dismissal of amparo appeal, as out of time and without examining merits, against Parliament's failure to pursue appointment process of a new General Council of the Judiciary, by magistrates on final candidate list (violation).
- *Jarre v. France*, 2023: applicants' claim dismissed following a decision by the Constitutional Council repealing, while the proceedings were ongoing, the provision forming the legal basis for the applicants' claim (no violation).
- *Gyulumyan and Others v. Armenia* (dec.), 2023: termination of terms of office of Constitutional Court judges and President, all appointed with life tenure, through non-judicially reviewable constitutional amendments (inadmissible – incompatible *ratione materiae*).

Impartiality:

- *Steck-Risch and Others v. Liechtenstein*, 2005: Impartiality of Constitutional Court judge in a small country where the judiciary is operating part-time and where the same persons perform double functions as judges and as practising lawyers (no violation);
- *Švarc and Kavnik v. Slovenia*, 2007: Impartiality of Constitutional Court judge who had acted as legal expert of the applicant's opponent in the civil proceedings at first instance (violation);
- *Bellizzi v. Malta*, 2011: Alleged lack of impartiality where Constitutional Court President's judicial assistant had acted for one of the parties in prior civil proceedings in same case (no violation);
- *Dos Santos Calado and Others v. Portugal*, 2020: Impartiality of the three-judge committee of the Constitutional Court examining an objection against an admissibility decision on account of the presence of the judge rapporteur who had given the decision (inadmissible);
- *Scerri v. Malta*, 2020: Alleged lack of impartiality of the three Constitutional Court judges who had previously sat on the Court of Appeal which had decided on the applicant's appeal as well as his request for a constitutional reference (violation);
- *Croatian Golf Federation v. Croatia*, 2020: Alleged lack of impartiality of a judge who sat on a three-judge panel of the Constitutional Court despite being the wife of the president of the golf club against which the applicant association had instituted enforcement proceedings (violation).

Tribunal established by law:

- *Xero Flor w Polsce sp. z o.o. v. Poland*, 2021: One of the judges on the bench of the Constitutional Court, which had examined the applicant company's constitutional complaint, had not been elected in accordance with the domestic law. The three-step test formulated in *Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, applied to a civil case before a Constitutional Court (violation).

Length of proceedings:

- *Von Maltzan and Others v. Germany* (dec.) [GC], 2005: Length of proceedings regime before the German Federal Constitutional Court related to expropriations during the communist in the unique context of German reunification (inadmissible);
- *Janković v. Croatia* (dec.), 2000: Length of constitutional proceedings regarding military pension for retired officer of the Yugoslav People's army involving complex legal questions in the context of the dissolution of the former Yugoslavia (inadmissible);
- *Oršuš and Others v. Croatia* [GC], 2010: Length of proceedings before the Constitutional Court lasting more than four years (violation);

- *Project-Trade d.o.o. v. Croatia*, 2020: Length of proceedings of almost five years before the Constitutional Court in a case related to the cancellation and revocation of the applicant company's shares in a private bank (violation);
- *Shorazova v. Malta*, 2022: Duration of constitutional redress proceedings, lasting almost five years over two jurisdictions, not excessive in the specific circumstances of the case (no violation);
- *A.T. v. Slovenia* (dec.), 2022: Length of proceeding before the Constitutional Court, lasting about three years and one month, not excessive with regards to the complexity of the issues at stake (inadmissible).

Further references

Council of Europe:

- Constitutional Justice – Cooperation between the Venice Commission and Constitutional Courts

KEY CASE-LAW REFERENCES

Leading cases:

- *Ruiz-Mateos v. Spain*, 23 June 1993, Series A no. 262 (violation);
- *Süßmann v. Germany* [GC], 16 September 1996, *Reports of Judgments and Decisions* 1996-IV (no violation);
- *Pierre-Bloch v. France*, 21 October 1997, *Reports of Judgments and Decisions* 1997-VI (Article 6 § 1 not applicable);
- *Milatová and Others v. the Czech Republic*, no. 61811/00, ECHR 2005-V (violation);
- *Albuquerque Fernandes v. Portugal,* no. 50160/13, 12 January 2021 (no violation);
- *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021 (violation).

Other Cases under Article 6:

- *Deumeland v. Germany*, 29 May 1986, Series A no. 100 (violation);
- *Zumtobel v. Austria*, 21 September 1993, Series A no. 268-A (no violation);
- *Pammel v. Germany*, 1 July 1997, *Reports of Judgments and Decisions* 1997-IV (violation);
- *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X (inadmissible – manifestly ill-founded);
- *Malhous v. the Czech Republic* [GC], no. 33071/96, 12 July 2001 (violation);
- *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, ECHR 2002-VII (inadmissible – manifestly ill-founded);
- *Niederböster v. Germany*, no. 39547/98, ECHR 2003-IV (extracts) (violation);
- *Voggenreiter v. Germany*, no. 47169/99, ECHR 2004-I (extracts) (violation);
- *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, ECHR 2004-III (no violation);
- *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01 and 2 others, ECHR 2005-V (inadmissible – manifestly ill-founded);
- *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, 19 May 2005 (violation);
- *Mežnarić v. Croatia*, no. 71615/01, 15 July 2005 (violation);
- *Gavella v. Croatia* (dec.), no. 33244/02, ECHR 2006-XII (extracts) (inadmissible – manifestly ill-founded);
- *Pronina v. Ukraine*, no. 63566/00, 18 July 2006 (violation);
- *Švarc and Kavnik v. Slovenia*, no. 75617/01, 8 February 2007 (violation);
- *Marini v. Albania*, no. 3738/02, 18 December 2007 (violation);
- *Olujić v. Croatia*, no. 22330/05, 5 February 2009 (violation);
- *Gaspari v. Slovenia*, no. 21055/03, 21 July 2009 (violation);
- *Ferré Gisbert v. Spain*, no. 39590/05, 13 October 2009 (violation);
- *Oršuš and Others v. Croatia* [GC], no. 15766/03, ECHR 2010 (violation);
- *Paksas v. Lithuania* [GC], no. 34932/04, ECHR 2011 (extracts) (Article 6 not applicable);
- *Kübler v. Germany*, no. 32715/06, 13 January 2011 (violation);
- *Bellizzi v. Malta*, no. 46575/09, 21 June 2011 (no violation);
- *Klausecker v. Germany* (dec.), no. 415/07, 6 January 2015 (inadmissible – manifestly ill-founded);
- *Arribas Antón v. Spain*, no. 16563/11, 20 January 2015 (no violation);

- *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, 9 February 2017 (violation);
- *Acar and Others v. Turkey* (dec.), nos. 26878/07 and 32446/07, 12 December 2017 (inadmissible – manifestly ill-founded);
- *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, 23 October 2018 (violation);
- *Fraile Iturralde v. Spain* (dec.), no. 66498/17, 7 May 2019 (inadmissible – manifestly ill-founded);
- *Grace Gatt v. Malta*, no. 46466/16, 8 October 2019 (violation);
- *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, 17 October 2019 (violation);
- *Alminovich v. Russia* (dec.), no. 24192/05, 22 October 2019 (Article 6 not applicable);
- *Dos Santos Calado and Others v. Portugal*, no. 55997/14 and three others, 31 March 2020 (violation as regards access to court concerning two of the applications, no violation as regards the other application; manifestly ill-founded as regards impartiality);
- *Scerri v. Malta*, no. 36318/18, 7 July 2020 (violation);
- *Project-Tade d.o.o. v. Croatia*, no. 1920/14, 19 November 2020 (violation);
- *Croatian Golf Federation v. Croatia*, no. 66994/14, 17 December 2020 (violation);
- *Šaltinytė v. Lithuania*, no. 32934/19, 26 October 2021 (violation);
- *Dragan Kovačević v. Croatia*, no. 49281/15, 12 May 2022 (violation);
- *Bieliński v. Poland*, no. 48762/19, 21 July 2022 (violation);
- *Shorazova v. Malta*, no. 51853/19, 3 March 2022 (no violation);
- *A.T. v. Slovenia* (dec.), no. 20952/21, 20 September 2022 (inadmissible – manifestly ill-founded);
- *Pinkas and Others v. Bosnia and Herzegovina*, no. 8701/21, 4 October 2022 (no violation);
- *Çela v. Albania,* no. 73274/17, 29 November 2022 (violation);
- *Olivares Zúñiga v. Spain*, no. 11/18, 15 December 2022 (violation);
- *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, 12 January 2023, (violation);
- *Janáček v. the Czech Republic*, no. 9634/17, 2 February 2023 (violation);
- *Paun Jovanović v. Serbia*, no. 41394/15, 7 February 2023 (violation);
- *Supergrav Albania Shpk v. Albania*, no. 20702/18, 9 May 2023 (violation);
- *Lorenzo Bragado and Others v. Spain*, nos. 53193/21 and 5 others, 22 June 2023 (violation);
- *Gyulumyan and Others v. Armenia* (dec.), no. 25240/20, 21 November 2023 (inadmissible – incompatibility *ratione materiae*);
- *Jarre v. France*, no. 14157/18, 15 February 2024 (no violation).