



## KEY THEME<sup>1</sup>

### Mass Protests

### The right to a fair trial

(Last updated: 31/08/2023)

#### Introduction

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According to the Court's case-law, the general requirements of fairness contained in Article 6 apply to all criminal proceedings, irrespective of the type of offence in issue (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 252). This accordingly applies to cases concerning mass protests.

In this connection, the Court has relied on the *Engel* criteria to determine the existence of a criminal charge and, ultimately, the applicability of Article 6 to administrative proceedings, which are in practice often instituted against protesters (*Kasparov and Others v. Russia*, 2013; *Navalnyy v. Russia* [GC], 2018; *Mikhaylova v. Russia*, 2015).

#### Principles drawn from the current case-law

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In the context of mass protests, when confronted with various allegations of a breach of the right to a fair trial, the Court examines in turn each of the various grounds giving rise to the complaints in order to determine whether the proceedings, considered as a whole, were fair (*Gafgaz Mammadov v. Azerbaijan*, 2015, § 75).

In practice, protesters are often prosecuted in expeditious trials. The Court has considered that recourse to such procedures when a "criminal charge" is determined is not in itself contrary to Article 6 as long as the procedure provides the necessary safeguards and guarantees (see *Borisova v. Bulgaria*, 2006, § 40).

This, in particular, concerns the following safeguards and guarantees (*ibid.*; *Gafgaz Mammadov v. Azerbaijan*, 2015, § 77; *Butkevich v. Russia*, 2018, § 92):

- Full, detailed information to the defendant concerning the charges against him or her, and consequently the legal characterisation that the court might adopt in the matter (Article 6 § 3 (a));
- Adequate time and facilities for the preparation of the defence (Article 6 § 3 (b));
- The right to participate effectively in the examination of evidence and witnesses (Article 6 §§ 1 and 3 (d)) (*Butkevich v. Russia*, 2018, §§ 91-103; *Mushegh Saghatelian v. Armenia*, 2018, §§ 200-212; *Olga Kudrina v. Russia*, 2021, §§ 38-41);
- More generally, the principle of equality of arms specifically in relation to the possibility of the defendant to present his or her version of the circumstances of the arrest during a protest (*Kasparov and Others v. Russia*, 2013; §§ 63-69; *Navalnyy and Gunko v. Russia*, 2020, §§ 69-70);
- The right to a duly reasoned judgment (Article 6 § 1) (*Navalnyy v. Russia* [GC], 2018, §§ 83-84).

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<sup>1</sup> Prepared by the Registry. It does not bind the Court.

In this context, issues may also arise from the perspective of the impartiality of the court if the prosecuting party is absent from the (administrative) proceedings concerning offences allegedly committed during protests (*Elvira Dmitriyeva v. Russia*, 2019, §§ 103-105). The Court has found that the lack of a prosecuting party had an effect on the operation of the presumption of innocence during the trial and, by implication, on the question of the trial court's impartiality and vice versa (*Karelin v. Russia*, 2016, §§ 69-84).

The Court has also emphasised the importance of early access to a lawyer (*Beuze v. Belgium* [GC], 2018). In the context of mass protests, the issue of lack of access to a lawyer may arise with respect to the arrest and first questioning or in relation to the subsequent proceedings against the protester (*Mikhaylova v. Russia*, 2015; *Huseynli and Others v. Azerbaijan*, 2016, §§ 125-134).

### Noteworthy examples

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- *Navalnyy v. Russia* [GC], 2018, – judicial decisions not based on an acceptable assessment of the relevant facts as they only took into account the version of events presented by the police;
- *Kasparov and Others v. Russia*, 2013 – concerning the national classification of the administrative offence of breaching the regulations on holding demonstrations;
- *Gafgaz Mammadov v. Azerbaijan*, 2015 – concerning the lack of adequate time and facilities for the applicant to prepare for his defence;
- *Karelin v. Russia*, 2016 – lack of a prosecuting party, which had an impact on the applicant's presumption of innocence and right to a fair trial in general;
- *Butkevich v. Russia*, 2018 – applicant not being afforded the opportunity to challenge the witness evidence which was solely constituted by police pre-trial reports;
- *Navalnyy and Gunko v. Russia*, 2020 – concerning the refusal of national courts to verify the second applicant's explanation regarding the circumstances of the arrest.

### Recap of general principles

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- *Butkevich v. Russia*, 2018, §§ 86-90;
- *Karelin v. Russia*, 2016, §§ 72-84;
- *Gafgaz Mammadov v. Azerbaijan*, 2015, §§ 74-77;
- *Kasparov and Others v. Russia*, 2013, §§ 39-45.

### Further references

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#### Other key themes:

- Absent witnesses and other restrictions on the right to examine witnesses (Article 6 criminal limb)
- Access to a lawyer (Article 6 criminal limb)
- Presumption of innocence (Article 6 criminal limb)
- Waiver of the guarantees of a fair trial (Article 6 criminal limb)

#### Press factsheets:

- Police arrest and assistance of a lawyer
- Use of force in the policing of demonstrations

## KEY CASE-LAW REFERENCES

### Leading cases:

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- *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018 (no violation of Article 6 § 1 as regards the administrative proceedings concerning the events of 5 March 2012; violation of Article 6 § 1 as regards the remaining six sets of proceedings).

### Other cases:

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- *Borisova v. Bulgaria*, no. 56891/00, 21 December 2006 (violation of Article 6 §§ 1 and 3 (a), (b) and (d) on account of the lack of fairness of the proceedings against the applicant and the lack of respect of the rights of the defence);
- *Kasparov and Others v. Russia*, no. 21613/07, 3 October 2013 (violation of Article 6 regarding the first eight applicants);
- *Gafgaz Mammadov v. Azerbaijan*, no. 60259/11, 15 October 2015 (violation of Article 6 §§ 1 and 3);
- *Mikhaylova v. Russia*, no. 46998/08, 19 November 2015 (violation of Article 6 §§ 1 and 3 (c));
- *Gülcü v. Turkey*, no. 17526/10, 19 January 2016 (violation of Article 11);
- *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, 11 February 2016 (violation of Article 6 §§ 1 and 3 in respect of all three applicants);
- *Karelin v. Russia*, no. 926/08, 20 September 2016 (violation of Article 6 § 1 on account of the impartiality requirement);
- *Butkevich v. Russia*, no. 5865/07, 13 February 2018 (violation of Article 6 § 1 on account of the requirement of objective impartiality, and as regards the fairness requirement);
- *Elvira Dmitriyeva v. Russia*, nos. 60921/17 and 7202/18, 30 April 2019 (violation of Article 6 § 1);
- *Mushegh Saghatelyan v. Armenia*, no. 23086/08, 20 September 2018 (violation of Article 6 § 1 as regards the fairness of the applicant's trial);
- *Navalnyy and Gunko v. Russia*, no. 75186/12, 10 November 2020 (violation of Article 6 § 1 as regards the fairness of the administrative proceedings in respect of each applicant);
- *Olga Kudrina v. Russia*, no. 34313/06, 6 April 2021 (violation of Article 6 §§ 1 and 3 (d) in relation to a failure of the domestic courts to examine witnesses for the defence).