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The applicability of the civil limb of Article 6(1) ECHR in the ECtHR's jurisprudence

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Abstract
The relevance of the study is rooted in the persistent tension between state sovereignty and the applicability of human rights guarantees under the European Convention on Human Rights (ECHR), particularly concerning Article 6(1) ECHR. The aim of the article was to explore how the European Court of Human Rights (ECtHR) interprets the application of procedural guarantees in cases involving sovereign state actions. The methodology employed includes a selective analysis of ECtHR case law, focusing on matters involving public and private law and the distinction between *acta jure imperii* and *acta jure gestionis*. The article demonstrated that the applicability of Article 6(1) depends significantly on whether the dispute relates to public law matters, such as tax assessments, or private law matters, such as contractual disputes. It was found that the Court generally excludes state actions in sovereign capacities from the scope of Article 6(1), while extending it to cases involving non-sovereign state activities. This distinction underscored the Court's ongoing balancing act between protecting individual rights and respecting state sovereignty. The article concluded that, despite challenges, the evolving jurisprudence of the ECtHR shows a potential for expanding the scope of human rights guarantees under the Convention. The practical value of this research lies in its contribution to the broader understanding of the ECtHR's approach, which can guide future case law and academic discussions regarding the limits of state sovereignty and the application of fair trial guarantees

Keywords:
human rights; state sovereignty; fair trial guarantees; international law; public law; judicial jurisprudence; legal interpretation

Introduction
Article 6(1) of the European Convention on Human Rights (hereinafter: the Convention, the ECHR)[1] is one of the main procedural guarantees of the Council of Europe's human rights protection system (Jones, 2023). Encompassing virtually all the protective measures needed to ensure a fair judicial process for a person, natural or legal, this provision has been interpreted by the European Court of Human Rights (the Strasbourg Court, the ECtHR) to include various elements of a fair trial (Van Drooghenbroeck & Rizcallah, 2019). As such,

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

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it prescribes conditions as varied as independence and impartiality of the judicial body dealing with the case at hand and reasonableness of the examination's duration. Despite this broad scope and its fundamental importance in international human rights law, the applicability of the civil limb of Article 6(1) ECHR was interpreted to depend on whether the proceedings in a case involve elements of public or private law. As the present Article aims to demonstrate, this approach is deeply rooted in the paradigm of State sovereignty, a theoretical approach which has continued to dominate European (and international) legal space since the adoption of the Convention.

Among the extensively studied scenarios in which such logic emerges, scholars have focused on tax assessment issues and asylum and deportation cases. In those types of proceedings, the guarantees of Article 6(1) ECHR have been considered inapplicable because both activities are generally regarded as falling within the exclusive competence of States. On the other hand, in situations where States have acted rather as private actors, the ECtHR has held that the procedural guarantees of this provision are applicable. This situation is further complicated by the fact that not each and every case is clearcut, as the Court's jurisprudence includes examples of situations where the judges used their discretion to rule that Article 6(1) ECHR guarantees might, in narrowly defined circumstances, apply to public-law-related proceedings. Viewed through the lens of the concept of State sovereignty, this approach reflects the traditional public international law distinction between *acta jure imperii* and *acta jure gestionis*, an idea emanating from the field of State immunity. It is necessary to offer a novel doctrinal perspective that seeks to connects all these theoretical elements, as the most pertinent scholarly arguments do not offer a comprehensive overview of the matter (Grech, 2006; Boschiero, 2013).

Numerous scholars, for example M. Kloth (2010), A. Sanger (2016), A. Orakhelashvili (2025), have already engaged in discussing the applicability of Article 6(1) ECHR to cases where applicants sought to argue that these guarantees should prevail over the immunities of sovereign States. These questions, however, lie outside of the scope of the present research. Instead of contributing to those debates, this Article only proposes to borrow the main logic of the distinction between sovereign and non-sovereign acts to support its thesis. Since Y. Okada (2023) have attempted to analyse how the bifurcation between *acta jure imperii* and *acta jure gestionis* informs different areas of international law, the scientific objective of this research was to provide a fresh perspective on the role that State sovereignty plays in the field of human rights. The main hypothesis of this research was that the Strasbourg Court's decisions on the applicability of Article 6(1) ECHR depend on whether the procedures complained involve issues of public or private law, thus reflecting the State acts' nature: in its sovereign capacity (*acta jure imperii*) or otherwise (*acta jure gestionis*). To support its hypothesis, this Article conducted a selective analysis of relevant ECtHR jurisprudence and the Convention's preparatory works. The scarce and inconsistent character of the academic literature on this topic underpins the scientific relevance of this research.

Materials and Methods

Given the vast scope of Article 6(1), the present paper focused only on the general guarantee prescribing that everyone is entitled to a fair hearing in the determination of their civil rights and obligations. Considering that the ECtHR, as a victim of the Council of Europe's political success, has produced considerable jurisprudence (Helfer, 2008), there are 407 judgments in English alone addressing this issue, which most closely resembles the theme of this research. This number excludes decisions, some of which might be especially germane for the purposes of this article, as it is reasonable to assume that once the Court finds that a matter brought up by the applicant falls within the ambit of public law (thus, is an *actus jure imperii*), the case will most likely be resolved through an inadmissibility decision without addressing its merits. Therefore, the methodological scope of this analysis was limited to the most relevant judgments and decisions of the Strasbourg Court that identified beforehand through a literature review and manual searches on the Court's jurisprudential database (HUDOC). The prompts included, among others, the following keywords: "migration", "tax assessment", "public law", "private law", "sovereignty", "State immunity", "*acta jure imperii*", and "*acta jure gestionis*" (the last two also spelled with an "I"). The selection was additionally narrow by relying on the Registry's own method of attaching importance to cases ("Key Case" indicator on HUDOC).

In accordance with the principle of systemic integration in interpreting international law norms, according to which they should be understood in harmony with other relevant applicable rules (Rachovitsa, 2017), attention was drawn to how the United Nations Human Rights Committee interprets Article 14 of the International Covenant on Civil and Political Rights (ICCPR)[1], a provision that largely codifies the same rule as Article 6(1) ECHR. It allowed to understand whether the ECtHR's judicial reasoning on the matter aligns with those of other (quasi-)judicial international bodies in light of the standard of universality of human rights. Additionally, the resort to this UN treaty body

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

is justified by numerous references that were made to the drafts of the ICCPR during the drafting process of Article 6 ECHR (Council of Europe, 1956). Although other regional and international (quasi-)judicial bodies tasked with examining claims of alleged violations of the right to a fair trial were excluded from the scope of this research due to the latter's constraints, it should by no means be interpreted as Eurocentrism or ignorance. On the contrary, other systems' approaches might shine light on potential means of overcoming the prevalence of the idea of State sovereignty in this field in further research.

Applying the distinction between *acta jure imperii* and *acta jure gestionis* horizontally, as developed in the context of State immunity, would be methodologically incorrect, since the analysis here emphasises vertical legal relations between persons (natural or legal) and States in the context of human rights litigation. As it is commonly known, the discipline of public international law presupposes the sovereignty *equality* of all States, seeing their relations as strictly horizontal. Instead of endorsing this, the idea is merely borrowed from its original context to highlight how this logic can help explain differences in the Court's approach to the applicability of fair trial guarantees.

In this light, the following section introduced the concept of State sovereignty in public international law and the distinction between the two types of State acts mentioned above. This is followed by an overview of the conditions of applicability of Article 6(1) ECHR in its civil limb, as per the ECtHR's case law. Subsequently, the paper offered convincing examples from the Court's jurisprudence where State sovereignty considerations have influenced judicial reasoning about the applicability of fair trial guarantees. Finally, the last section summarised the findings of this Article and suggests areas for future related research.

Results and Discussion

State sovereignty and the nature of state acts. As what seems to be a consensus among international jurists suggests, the international human rights protection system remains largely State-centred. However normatively undesirable this *status quo* might be, the Council of Europe and its organs, including the ECtHR, continue the quest for a fine balance between protecting the holders of human rights and avoiding State backlash, a process which oftentimes requires sophisticated mental and legal gymnastics (Bates *et al*., 2025). In the context of this article, it will suffice to recall that the traditional understanding of State sovereignty in public international law supports the axiom that international law is based on the consent of States and is created only by States and only for them (Henkin, 1995). Although in the 2010s the field of international human rights law has begun to offer more room for the involvement of non-State actors, it, as well as the entire discipline of public international law, continues to be dominated by this paradigm. The situation was even more favourable to States in the immediate aftermath of the Second World War, when the Convention was drafted. The following passage aims to support this assertion by referring to the preparatory works of the Council of Europe's leading treaty.

Reflecting the importance of the notion of State sovereignty, the founders of the Convention discussed several issues that were considered capable of directly affecting this idea from the outset of the process. The broader context of the drafting process was that of the "hesitat[ion] to support a real transfer of sovereignty to supra-national organisations" (Kivisto & Haapala, 2023). In particular, the Belgian representative, Mr Fayat, followed a radically State-centred approach when he minimised the importance of debating the implementation of the Court's judgments, his main argument being that the parties to the Convention were "States by right of law" (Council of Europe, 1972). Authors who analyse the travaux préparatoires of the Convention more often conclude that the idea of State sovereignty ultimately prevailed over the utopian spirit of universality of human rights (Huneeus & Rask Madsen, 2018). Although at later meetings it was acknowledged that, in principle, "the proposed Convention would involve some voluntary surrender of sovereignty" (Le Moli, 2022), the very idea that it was the States themselves that had to voluntarily agree to give up part of their sovereignty in order to protect human rights indicates that their representatives were negotiating a system designed for States. Legal historians have also underlined this objective, agreeing that the aim pursued by the founders of the Convention was to minimise any risk that could lead to a loss of sovereignty beyond what was considered absolutely necessary (Bates, 2010; Walther, 2024). The subsequent evolution of the Strasbourg machinery, with the ECtHR only becoming fully operational in the 1970s and 1980s, suggests that in the early 1950s States were merely not ready to transfer their sovereignty to a supranational body.

The drafting process as Article 6 ECHR were also underpinned by strong sovereignty connotations. Mr Teitgen, one of the most prominent drafters of the Convention, addressed the concerns of several participants over potentially intrusive Strasbourg institutions, emphasising the latter's subsidiarity in the context of this article: "[i]f the verdict has been given in a regular manner by a court regularly constituted, after the plaintiffs have made use of the normal channels which the laws of their country guarantee them, then no request is receivable by the international organ" (Council of Europe, 1956). Nevertheless, the position of State sovereignty in international law and, by implications, in the ECtHR's jurisprudence should not be seen as static. As R. Bernhards (1999), a former President of the Court, wrote over twenty-five years ago, "[e]very effective

protection of individual freedoms restricts State sovereignty, and it is by no means State sovereignty which […] has priority". Thus, one of the indicators of the Court's impact is that it successfully balances between imposing more limitations on State sovereignty through its rulings and avoiding backfire from States, whose participation is crucial for a meaningful implementation of the judgments. In this historical context, the distinction between *acta jure imperii* and *acta jure gestionis* might serve as a useful tool for understanding the purpose of State sovereignty and its implications for the applicability of Article 6(1) ECHR (Table 1). This dichotomy underpins a set of rules governing State immunity and marks the boundary between acts carried out by a State in its sovereign capacity and those undertaken in a private capacity (Sun & Liamzon, 2018).

The notion of *acta jure imperii* refers to inherently governmental acts carried out by a State as a sovereign entity. These include activities such as legislation, taxation, diplomatic and military measures, all of which are exercises of sovereign authority (Orakhelashvili, 2019). This notion has been codified in the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (not yet in force but reflects partly customary international law) in Article 2(1)(b)(iii), but received little interpretation there[1]. Confirmed by numerous expert and judicial authorities[2] as a rule of customary international law, the sovereign nature of these acts makes them immune from the jurisdiction of foreign courts (International Law Commission, 1991; Moravcová, 2023). For example, in the case of Germany v. Italy (Greece Intervening)[3], crucial for the development of international law, the International Court of Justice (ICJ) held that Germany's actions during the Second World War, although manifestly illegal from the perspective of substantive rules, were acts of State sovereignty and therefore entitled to immunity under international law.

Table 1. Practical examples of *acta jure imperii* and *acta jure gestionis*

Acta jure imperii	***Acta jure gestionis***	**Not-so-clear examples**
Taxation	Contracting	State-owned companies with mixed functions
Diplomatic acts	Commercial acts	Procuring goods/services for public services
Legislation	Foreign investment	Loaning cultural property to private museums

Source: developed by the author

On the other hand, the field of *acta jure gestionis* covers acts performed by States in a manner similar to private actors, engaging in non-sovereign activities such as commercial ones (Sun & Liamzon, 2018). These acts are not immune from foreign jurisdiction and are subject to the same legal consequences as those applicable to non-State entities. The reasoning behind this distinction is that when a State engages in non-sovereign activities, it should not benefit from sovereign immunity, as this would place it in an advantageous position over private actors engaged in the same type of activities. Therefore, when a State is involved in contractual, commercial or employment disputes, its actions are not immune by virtue of its sovereignty (Grant, 2013). It is also important to understand that sometimes the boundary between the two types of acts may be unclear, and in some cases, a detailed, case-specific analysis may be necessary to classify a State's acts within this dichotomy. In complex cases of interactions between a state and private entities, a golden standard would be, where possible, to separate acts and related (in-)tangible objects into two categories based on the purpose of their use. After explaining the theoretical distinction between these two types of State acts, it is opportune to turn to the Court's jurisprudence on the applicability of Article 6(1) ECHR, before examining how the former influences the latter.

General principles of the applicability of Article 6(1) ECHR under the civil limb. Article 6(1) ECHR has several purposes in light of which its applicability should be understood. It was included in the Convention because a judicial mechanism for protecting the individual rights of each person is required by the rule of law doctrine, which underpins the entire regime (Vogiatzis, 2022). Equally, it protects individuals from the arbitrariness of national courts and ensures the fair determination of the rights and obligations of persons under the jurisdiction of each State "based on democratic principles" rather than "social privilege, chauvinism, and racial inequality" (Council of Europe, 1956). However, historically, the Court, as the sole entitled interpreter of the Convention, has understood this provision as having a broad but selective scope (Teleki, 2021). The ECtHR has limited the applicability of its civil limb to a set of proceedings, making it subject to three cumulative criteria. Thus, there must be: (1) a genuine

[1] United Nations Convention on Jurisdictional Immunities of States and Their Property (2004, December). Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf.
[2] Judgment of the European Court of Human Rights in Case No. 45197/13 "Radunovic and Others v. Montenegro". (2016, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-167803%22]}.
[3] Judgment of the International Court of Justice in Case "Jurisdictional Immunities of the State (Germany v Italy, Greece Intervening)". (2012, February). Retrieved from https://www.icj-cij.org/case/143.

dispute over a right/obligation; (2) having its legal basis in domestic law; and (3) it must be of a civil nature[1]. Each of these will be addressed separately in the following passages.

In public international law, the idea of dispute refers to a situation of "disagreement on a point of law or fact, a conflict of legal views or interests between two persons" [2]. Although the definition comes from another court's jurisprudence, it would not be incorrect to apply it here because a person may be either a natural or a legal person, and sovereign States belong to the latter group by virtue of their full legal personality in international law (Worster, 2016). In most recent ECtHR cases, the parties rarely disputed the existence of a dispute, which leads us to turn to older case law for a summary of the relevant principles.

In Benthem v. the Netherlands[3], the Strasbourg judges clarified that in the context of the applicability of Article 6(1) ECHR, the notion should not be interpreted too technically. Instead, it must be given a "substantive rather than a formal meaning", implying that the existence of such a dispute should be deduced by the Court autonomously, even when the domestic legal system regulates it strictly. Moreover, the purpose of the dispute is extended to cover issues related to the existence and determination of the scope of a civil right, both in fact and in law. Finally, in addition to being genuine and serious (conditions that exclude frivolous complaints to the Court from wasting the judges' time), the dispute should have the civil rights or obligations at stake as one of its objectives[4]. The UN Human Rights Committee's (2007) interpretation aligns with that of the ECtHR on this matter, reaffirming that the "nature of the right [or obligation] in question should be examined, rather than […] the status of one of the parties or […] the specific forum offered by national legal systems for determining certain rights [or obligations]". Practical examples of situations which the ECtHR considered to give rise to a dispute for purposes of Article 6(1) ECHR include admission to the bar, suspension of the right to practice medicine, and claim for compensation after unlawful detention (Vitkauskas & Dikov, 2012).

This is perhaps the easiest condition to satisfy out of all three. It is important to bear in mind that according to the principle of subsidiarity, in light of which national authorities should be given an opportunity to address and rectify an alleged human rights violation before the Strasbourg Court engages with it (Kleinlein, 2019), the ECtHR is not in a position to interpret Article 6(1) ECHR *ex officio* so as to create new rights that have no legal basis in the domestic legal system. Coming back to the idea of State sovereignty, here one can notice a clearcut division of labour between national and supranational levels in favour of the former's interests.

In Grzęda v. Poland[5], the judges stressed that the starting point in analysing the existence of the legal basis of a civil right is national legislation and the interpretations given to it by the highest domestic courts. Thus, in situations where national judges have analysed in a reasoned manner, with reference to the principles emanating from the ECtHR's case law, the necessity to restrict a civil right protected by Article 6(1) ECHR, the Strasbourg Court should provide very compelling reasons to substitute its own interpretation for the national one. The case of Károly Nagy v. Hungary[6] offers an example of how the quality of domestic judicial analysis in an Article 6(1) case leaves no room for hesitation in this context. The majority considered that since the national courts had logically and coherently interpreted the appellant's right to compensation after his dismissal as a pastor as being governed by ecclesiastical rather than civil law, there was no indication of manifest arbitrariness in that interpretation. A critical observer might, nevertheless, take issue with this approach, as, in doing so, the Strasbourg Court seems to give national judicial systems a degree of credit, which might, as the cases of Russia, Türkiye, and, most recently, Poland, have demonstrated, lead to breaches of fundamental democratic processes (Kurban, 2023).

Finally, most Article 6(1) cases focus on the determination of whether a right or an obligation allegedly violated are of a civil character. The Court's jurisprudence, starting with *König v. Germany*, clarifies that this notion has an autonomous meaning under the Convention, which implies that it cannot always be interpreted solely on the basis of the relevant domestic provisions, thus granting the Strasbourg judges a significant degree of discretion. Nonetheless, domestic codification of a right plays a role in the initial determination of its civil nature, as the Court has stressed that this must be done "by reference to the substantive content and effects of the right – and not to its legal

[1] Judgment of the European Court of Human Rights in Case No. 6319/21 "Fabbri and Others v San Marino". (2024, September). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-237239%22]}.
[2] Judgment of the International Court of Justice in Case "Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)". (2024, February). Retrieved from https://www.icj-cij.org/case/182.
[3] Judgment of the European Court of Human Rights in Case No. 8848/80 "Benthem v the Netherlands". (1985, October). Retrieved from https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-57436%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 51357/07 "Nait-Liman v Switzerland". (2018, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22appno%22:[%2251357/07%22],%22itemid%22:[%22001-181789%22]}.
[5] Judgment of the European Court of Human Rights in Case No. 43572/18 "Grzęda v Poland". (2022, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216400%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 56665/09 "Károly Nagy v Hungary". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177070%22]}.

classification – under the domestic law of the State concerned"[1]. Resonating with the principles applicable to identifying a dispute discussed above, what is essential in determining whether the guarantees of Article 6(1) ECHR apply to a right or obligation is the nature of the right in question, not the way it is prescribed in national law. This civil nature of the right disputes before a judicial body should be understood as opposed to criminal (covered under the criminal limb of Article 6(1) ECHR), political (covered under Article 3 Protocol 1)[2], or administrative rights.

The ICCPR's codification of a similar notion ("determination of rights and obligations in a suit at law") is more problematic[3]: as equally authentic versions of the Covenant in various languages use concepts with slightly different meanings (English: suit at law, French: *matière civile*, Spanish: *materia contenciosa*), it was the UN Human Rights Committee that had to interpret it in its subsequent practice. The Committee's approach follows a logic similar to that of the ECtHR, as the UN body has consistently reiterated that the nature of the right in question, and not the status of one of the parties to the proceedings, matters for the determination of whether there is a "suit at law" regarding the determination of civil rights or obligations within the meaning of Article 14(1) ICCPR[4]. It later became more specific, with the Committee providing a list of examples of such rights, including rights and obligations stemming from contract, property, and tort law, termination of public servants' employment, determination of social security benefits or soldiers' pension rights, or proceedings concerning the use of public land or expropriation of private property (Human Rights Committee, 2007). As will be discussed below, the ECtHR has had many opportunities to address the applicability of Article 6(1) in civil matters to many of these situations over the years. Based on this rich jurisprudence, the following section seeks to explain how the applicability of Article 6(1) ECHR to matters involving public and private law reflects the distinction between sovereign and non-sovereign acts of the State.

***Acta jure imperii* and *acta jure gestionis* in the Court's jurisprudence on the applicability of Article 6(1) ECHR**. The starting point of analysis would be the summary of relevant principles in the judgment of Denisov v. Ukraine[5], where the ECtHR noted that the guarantees of Article 6(1) may apply to disputes which domestic law regards as belonging to the field of public law, and thus as an exercise of its sovereign power. From this, it can deduce that the applicability of Article 6(1) ECHR in civil matters is not an absolute value, but a relative one, depending on the category of dispute in question. It would, therefore, be more useful to imagine it on a spectrum, with one side containing disputes in which the State acted in a sovereign manner. The opposite pole of this spectrum (Fig. 1) will include disputes concerning rights and obligations based on the State's non-sovereign activities.

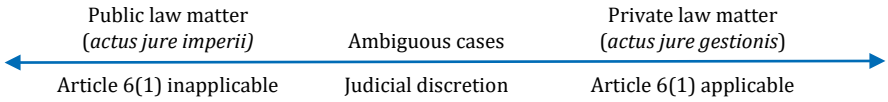

Figure 1. Applicability of Article 6(1) ECHR on a spectrum
Source: developed by the author

The first type of proceedings involving inherent governmental interests, which the Court has consistently considered not to fall within the scope of Article 6(1) of the Convention, is tax assessment. In Ferrazzini v. Italy[6], the Grand Chamber confirmed that the pecuniary nature of a tax dispute between an individual and a State is not sufficient to make Article 6(1) applicable in civil matters. The judges supported this decision by stating that "tax matters […] form part of the hard core of public-authority prerogatives, with the public character of the relationship between the taxpayer and the [State] remaining predominant". This reasoning indicates that taxation activities fall within *acta jure imperii* because of their predominantly public-law nature and are, therefore, excluded from the Strasbourg Court's scrutiny. The most recent Grand Chamber authorities on this subject confirmed that "despite the pecuniary effects which tax disputes necessarily produce for the

[1] Judgment of the European Court of Human Rights in Case No. 6232/73 "König v Germany". (1978, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57512%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 14305/17 "Şelahattin Demirtaş v. Turkey (No. 2)". (2020, December). Retrieved from https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-207173%22]}.
[3] Decision of the Human Rights Committee in Communication No. 2862/2016 "Aheyeu v. Belarus". (July, 2021). Retrieved from https://juris.ohchr.org/casedetails/3188/en-US.
[4] Decision of the Human Rights Committee in Communication No. 441/1990 "Casanovas v. France". (1990, December). Retrieved from https://hrlibrary.umn.edu/undocs/html/vws441.htm.
[5] Judgment of the European Court of Human Rights in Case No. 76639/11 "Denisov v Ukraine". (2018, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186216%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 44579/98 "Ferrazzini v Italy". (2001, July). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59589%22]}.

taxpayer", the civil limb of the right to a fair trial remains inapplicable to such disputes[1].

Another obvious example of an *actus jure imperii* excluded from the material scope of Article 6(1) ECHR concerns asylum and deportation matters. The Grand Chamber's judgment in Maaouia v. France offered the first authoritative statement on the inapplicability of this rule to proceedings concerning the entry, stay, or expulsion of aliens from the territory of a State. Unlike tax assessment proceedings, however, the Court considered it necessary to resort to a contextual interpretation of the Convention, together with its protocols, to argue this way. The majority was of the view that, since the Contracting Parties had decided to take on an additional obligation to guarantee the rights of foreigners by adopting Protocol No. 7 to the Convention, they "were aware that Article 6 § 1 does not apply to procedures for the expulsion of aliens"[2]. Although a different line of argumentation was followed to reach a similar conclusion, the Court's logic demonstrates that asylum and deportation issues fall within the exclusive competence of the State, since it is its sovereign prerogative to decide who has the right to enter and reside on its territory. At the same time, Judges Loucaides and Traja[3] suggested in their dissenting opinion that one of the reasons for the majority's decision was that such matters are traditionally public-law in nature, implying that their exercise derives directly from State sovereignty. One can observe similar tendencies in the UN Human Rights Committee's approach to deciding whether the guarantees of Article 14(1) ICCPR apply to migration and deportation cases. Albeit without evident references to state sovereignty, a consistent line of its quasi-jurisprudence strongly indicates that unless an instance of deportation results from the application of serious criminal sanctions, there is no room for arguing that a civil right or obligation of a person was determined in such proceedings[4,5].

Since the early years of the Council of Europe's judicial mechanism, the European Commission on Human Rights in Strasbourg has refused to recognise that issues of citizenship and nationality fall within the ambit of Article 6(1) ECHR[6]. It is indisputable that State decisions concerning citizenship and nationality are *acta jure imperii* because only the State itself has the legitimacy to decide who may be its national and who may not. They are, consequently, always regulated by means of public law. In Sergey Smirnov v. Russia[7], for instance, in which the applicant argued that the State's refusal to confirm his Russian citizenship violated his rights under Article 6(1), the ECtHR emphasised that 'neither the right to citizenship nor the right to a passport is a civil right, given that it is not of a pecuniary or otherwise of a private character'[8]. Instead, the Court held in its subsequent jurisprudence that "an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual". This logic aligns with the main argument of the present article, explaining their exclusion from the application of Article 6(1) ECHR guarantees.

In various scenarios for the applicability of Article 6(1) ECHR to public and private law matters on a spectrum, the issuing of licences for commercial activities would find its place closer to the opposite pole. In Tre Traktörer Aktiebolag v. Sweden[9], the applicant company faced the revocation of its licence to serve alcoholic beverages and claimed that, contrary to Article 6(1) of the Convention, domestic law did not provide for the possibility of judicial review of the license revocation. The respondent Government argued that since the wholesale sale of alcohol in Sweden was subject to a State monopoly, the issuance of such licences had to be strictly regulated by public-law provisions and that, therefore, the guarantees of Article 6(1) ECHR should not apply to such proceedings. However, the Court rejected the Government's objections, stating that all the 'companies concerned [were] carry[ing] on a private commercial activity, which has the object of earning profits and [wa]s based on a contractual relationship between the license-holder and the customers"[10]. Thus, since the nature of those actions of the Swedish State

[1] Judgment of the European Court of Human Rights in Case No. 49812/09 "Vegotex International SA v Belgium". (2022, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-220415%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 39652/98 "Maaouia v France". (2000, October). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58847%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 39652/98 "Maaouia v France". (2000, October. Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58847%22]}.
[4] Decision of the UN Human Rights Committee in Communication No. 1341/2005 "Ermst Zundel v Canada". (2007, March). Retrieved from https://hrlibrary.umn.edu/undocs/1341-2005.html.
[5] Decision of the UN Human Rights Committee in Communication No. 1234/2003 "Ms. P.K. v Canada" (2007, March). Retrieved from https://hrlibrary.umn.edu/undocs/1234-2003.html.
[6] Decision of the European Commission of Human Rights in Case No. 17309/90 "Galip v Greece". (1994, August). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-25814%22]}.
[7] Decision of the European Court of Human Rights in Cases Nos. 41788/22 and 51028/22 "Ali Aba Kadr and Rouhi v Spain". (2024, October). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-238088%22]}.
[8] Decision of the European Court of Human Rights in Case No. 14085/04 "Sergey Smirnov v Russia". (2006, July). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76823%22]}.
[9] Judgment of the European Court of Human Rights in Case No. 10873/84 "Tre Traktörer Aktiebolag v Sweden". (1989, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57586%22]}.
[10] Ibidem, 1989.

was not at the core of its sovereignty and had significant implications for private commercial interests, there was no reason to exclude them from the scope of Article 6(1) of the Convention[1].

Similarly, the Court's case-law includes a number of judgments where the guarantees of Article 6(1) ECHR were found applicable to contractual disputes between legal persons and states, because the latter's actions in concluding and (non-)performing the contracts were clearly *acta jure gestionis*[2]. A prominent example from the Strasbourg institution's jurisprudence is offered by arbitration proceedings between a company and a State, whereby arbitral awards prescribed civil rights of pecuniary nature, such as the right to demand payment of a debt, as in Regent Company v. Ukraine[3]. Returning to theoretical spectrum of the applicability of Article 6(1), these situations will represent its opposite pole, being located as far as possible from situations where the State acts in a sovereign manner. These situations, therefore, offer another example of how the dichotomy of *acta jure imperii* and *acta jure gestionis* shapes the Court's decisions on the applicability of fair trial procedural guarantees.

Since the Convention is a living instrument which has to be interpreted in the light of contemporary developments (Letsas, 2018), the Court's case law provides an example of a type of procedure which, although initially outside the scope of the civil limb of the right to a fair trial, is now included therein. By implication, the Strasbourg judges might be seen as benefiting of a degree of judicial discretion in dealing with ambiguous, not-so-clear in terms of this dichotomy, State acts. In this context, it is worth mentioning public sector employment disputes. For a very long time, the ECtHR consistently emphasised that a State's decision to dismiss a civil servant was an exercise of its sovereignty, thus not subject to supranational scrutiny (Lawson, 2018).

The change came with the Pellegrin judgment[4], where the Grand Chamber decided to introduce a new requirement for examining the applicability of the guarantees of Article 6(1) ECHR to such disputes, namely "a functional criterion based on the nature of the employee's duties and responsibilities". The French Government argued that Pellegrin, a French ministry employee, "had taken part in the exercise of [State] sovereignty", which should make his Article 6(1) claims inadmissible[5]. Dismissing the Respondent's argument, the Court established a functional approach, whereby the it would subsequently analyse whether the duties (functions) of a dismissed civil servant are quintessentially public, such as police or military functions, thus outside the scope of the ECtHR's scrutiny. Years later, in Fábián v. Hungary[6], the Grand Chamber confirmed that the *Pellegrin* logic rests on the idea of State sovereignty, stating that "it is […] for the […] States […] to identify expressly those areas of public service involving the exercise of the *discretionary powers intrinsic to State sovereignty* where the interests of the individual must give way".

In this context, the Court's judgment in Roche v. the United Kingdom deserves special attention[7]. This post-Pellegrin case was brought by a retired soldier, who developed serious health issues after having participated in chemical weapons trials. Thus, following Pellegrin, Roche's functions were inherently public and, therefore, fell outside the scope of ECtHR's scrutiny. However, the judgment was not that simple, as the overall context of the United Kingdom's legal system mattered; in a common-law State, the distinction between substantive and procedural rights played an important role for deciding on Roche's claims.

The crux of the matter under Article 6(1) ECHR was whether disputes concerning compensation for service-related injuries, claimed through a statutory pension mechanism and not ordinary tort law, touched upon determining civil rights and obligations within the meaning of this provision. The United Kingdom's Government argued that the Parliament had deliberately opted for a specialised pensions mechanism through a statute instead of allowing victims like the applicant to submit general tort claims. In line with Fábián, this choice reflects its sovereignty in legislative matters, as by delimiting the extent of the civil rights in domestic law, the State practically immunised itself from certain lawsuits under Article 6(1) ECHR. By the narrowest majority possible, the Grand Chamber ruled against a violation of the right to a fair trial, confirming that State sovereignty considerations retain their importance in the Court's jurisprudence.

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[2] Judgment of the European Court of Human Rights in Case No. 13427/87 "Stran Greek Refineries and Stratis Andreadis v Greece". (1994, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57913%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 773/03 "Regent Company v Ukraine". (2008, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85681%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 28541/95 "Pellegrin v France". (1999, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58402%22]}.
[5] Ibidem, 1999.
[6] Judgment of the European Court of Human Rights in Case No. 78117/13 "Fábián v Hungary". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-176769%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 32555/96 "Roche v the United Kingdom". (2005, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-70662%22]}.

The Pellegrin logic was subsequently supplemented by two additional safeguards in Vilho Eskelinen and Others v. Finland[1]: (1) specialised national laws must expressly exclude access to court for a certain category of public servants, and (2) such exclusion must be justified on objective grounds of national interest. Here, it is also important to mention that the ECtHR has consistently held that it is a State's prerogative to decide what it considers to be a national interest[2,3], another testimony to the importance of State sovereignty: no other State or supra-national body may decide for a State how to act. Although the Vilho Eskelinen approach seems to benefit public sector employees by prescribing more protection against arbitrary acts of State as employer, it was met with criticism from sovereignty-supporting judges.

For instance, in their dissenting opinion to this judgment, judges Costa, Wildhaber, Türmen, Borrego Borrego, and Jočienė went as far as to argue that the majority overruled its previous jurisprudence and set up a precedent through an 'arbitrary interpretation' of the Convention[4]. As know from the Strasbourg judges' emphasis on the notion of legal certainty, only a compelling reason might justify a departure from the Court's established jurisprudence[5]. Such a compelling reason, according to the Vilho Eskelinen bench, was the fact that the functional approach established in Pellegrin neither simplified the analysis of related cases, nor brought above more certainty[6]. The majority, then, thought it necessary to articulate the approach used to examine the applicability of the fair trial guarantees to public sector employment matters to ensure that the protection of Article 6(1) ECHR remains effective.

This line of case law indicates that there may be room for international examination of disputes involving *acta jure imperii*, since the conditionality of the requirements which the ECtHR has imposed on States to successfully exclude public-sector employment disputes from the guarantees of Article 6(1) suggests at least "a strong presumption [that they apply] to labour disputes between public servants and their State" (Lawson, 2018). A decade later after the Court had departed from its previous case law in Vilho Eskelinen, the Czech Government in the Regner proceedings argued that "the question whether or not a State should regard as reliable from a national security point of view a person working within its central administration concerned the core of public authority prerogatives and State sovereignty"[7]. However, as national legislation of the Czech Republic did not prescribe a specialised regime regulating employment terms for civil servants, the relationship between the applicant and his employer, the State, raised concerns under Article 6(1) ECHR.

An additional argument in favour of allowing such supranational scrutiny was offered by Judge Lemmens in his concurring opinion to the Grzeda judgment[8], where he opined that the litmus test to be applicable in such situations should address the question of whether "the effective functioning or the sovereignty of the [...] State" is concerned. According to this logic, the considerations of State sovereignty have to be balanced against the founding principles of the Council of Europe's human rights protection system. In other words, although State is indeed sovereign in deciding who it employs, it should not be entitled to abuse its position of power in employment matters unless it is essentially necessary to an effective exercise of its sovereignty, hence the Vilho Eskelinen guarantees. In a way, the development of the Court's jurisprudence on this topic provides an interesting example of how the judges have continuously pushed the boundaries of State sovereignty to the extent that could be considered an encroachment upon the latter, to ensure an effective Article 6(1) ECHR protection.

Lastly, before concluding, it is worth referring to a scenario which does not easily fit into either of the approaches discussed above. Some careful commentators may point to the Court's judgments in which the guarantees of Article 6(1) were found applicable to nationalisation (or other State-led manipulations) of private property, which is intuitively an *actus jure imperii* (Tomz & Wright, 2010). The UN Human Rights Committee (2007) has mentioned this type of disputes as determining individuals' civil rights or obligations, implying that fair trial guarantees apply to them. It is true that, although in such scenarios States act as sovereigns in restricting property rights in pursuit of its interests, the ECtHR has emphasised that various fair trial guarantees

[1] Judgment of the European Court of Human Rights in Case No. 63235/00 "Vilho Eskelinen and Others v Finland". (2007, April). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80249%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 69698/01 "Stoll v Switzerland". (2007, December). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83870%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 13863/19 "Uab Braitin v Lithuania". (2023, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225221%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 63235/00 "Vilho Eskelinen and Others v Finland". (2007, April). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80249%22]}.
[5] Judgment of the European Court of Human Rights in Case No. 17056/06 "Micallef v Malta". (2009, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-95031%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 63235/00 "Vilho Eskelinen and Others v Finland". (2007, April). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-80249%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 35289/11 "Regner v the Czech Republic". (2017, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-177299%22]}.
[8] Judgment of the European Court of Human Rights in Case No. 43572/18 "Grzęda v Poland" (2022, March). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-216400%22]}.

are applicable to proceedings arising from claims related to expropriation. Thus, in De Geouffre de la Pradelle v. France[1], the judges found that the applicant, part of whose property had been designated by the French State as an area of public interest, effectively limiting his property rights, "was entitled to expect a coherent system that would achieve a fair balance between the authorities' interests and his own". The Court's reasoning in this judgment provides an interesting example of how it can avoid discussing highly complex questions of State sovereignty by redirecting the issue at hand towards related deficiencies of the legal system, which in themselves trigger the applicability of the fair trial provision. In addition, in Sporrong and Lönnroth v. Sweden[2], it was established that a national expropriation programme affecting the applicants' properties could give rise to a dispute concerning civil rights.

However, a more complex approach to these judgments reveals that the applicability of Article 6(1) ECHR to such matters is triggered by the obviously pecuniary nature of the damage suffered by applicants as a result of the expropriation (and other restrictions) of their property (Tomz & Wright, 2010). This contrasts sharply with the Court's approach to the applicability of fair trial guarantees in tax assessment situations. This seeming discrepancy in approaches is resolved if turn to the above-mentioned judgment in Denisov[3], where the ECtHR stipulated that "the civil limb [of Article 6] has covered cases which might not initially appear to involve a civil right but which may have direct and significant repercussions on a private pecuniary or non-pecuniary right belonging to an individual". Thus, the Court focused on the consequences of the sovereign act of nationalisation rather than the act itself to successfully argue that Article 6(1) could apply, despite the sovereign character of the expropriation measures. This logic should be seen on a par with the ECtHR's above-explained exercise of discretion in interpreting State acts which are not-so-clear *acta jure imperii* or *acta jure gestionis* as falling within the realm of Article 6(1) ECHR. Together, these are some indicators of the Court's willingness to engage in mental gymnastics to expand the scope of conventional rights, an approach that should be seen as a positive one because it offer individuals greater protection under the Convention.

Conclusions

Through a selective analysis of ECtHR jurisprudence, the present Article has sought to demonstrate that the traditional public international law distinction between sovereign and non-sovereign acts of the State is reflected in the Court's decisions on the applicability of Article 6(1) ECHR in civil matters. The analysis suggests that even when there is a genuine dispute over a civil right or obligation, an essential condition for the applicability of this provision, the Court tends to decide that it does not fall within the scope of Article 6(1) of the Convention when the issues raised are of a public law nature and represent the exercise of State sovereignty. Examples from the Court's case law include matters of asylum, deportation, and taxation, all typically regarded as *acta jure imperii*, leading us to the conclusion that the paradigm of State sovereignty continues to play an important role in the Convention system. In this light, academics might use the findings of this Article to further emphasise the analytical and practical strength of the doctrine of State sovereignty.

However, it would be wrong to conclude that the European system of human rights protection is incapable of meeting contemporary challenges due to being anchored in the idea of State sovereignty, especially given that in the 2010s several scholars have sought to challenge the rigidity of the latter concept. As shown by the example of how the Court's approach to disputes relating to employment matters in the public sector has evolved, this perspective is not one set in stone, and social developments could affect the applicability of fair trial guarantees to sovereign acts. In fact, the Court itself has acknowledged that the majority of the Convention rights, including those of non-pecuniary nature, should be treated as 'civil rights' for the purposes of Article 6(1) ECHR.[4] Likewise, the UN Human Rights Committee clearly explains that the scope of these guarantees is not exhaustive and may cover other disputes between individuals and States which must nonetheless be assessed on a case-by-case basis, depending on the nature of the right in question. It is also important to note that even in a case as clear-cut an *actus jure imperii* as taxation, Article 6(1) of the ECHR will be applicable to related disputes if criminal law-type sanctions are involved (Case Jussila v Finland). This difference suggests that the prerogatives of State sovereignty are seen as requiring more supranational scrutiny where they might result in harsher punishments for individuals. The scope of the civil limb of Article 6(1) ECHR, therefore, despite initially being limited to *acta jure gestionis*, is evolving and now extends beyond it.

[1] Judgment of the European Court of Human Rights in Case No. 12964/87 "Geouffre de la Pradelle v France". (1992, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57778%22]}.
[2] Judgment of the European Court of Human Rights in Cases Nos. 7151/75 and 7152/75 "Sporrong and Lönnroth v Sweden". (1982, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57580%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 76639/11 "Denisov v Ukraine". (2018, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186216%22]}.
[4] Judgment of the European Court of Human Rights in Case No. 45835/95 "Shapovalov v Ukraine". (2012, July). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-112570%22]}.

Nevertheless, it would be too ambitious to expect that more disputes related to the exercise of State sovereignty will soon follow the example of labour disputes. In the poetic words of the judges of the International Criminal Tribunal for Former Yugoslavia (case "Prosecutor v Tihomir Blaskic"), States are incredibly jealous of their sovereignty and related prerogatives. This jealousy becomes toxic when politicians anchor their disagreement with the decisions of international (judicial) bodies in it. The situation of the European Union shows that even the most progressive and results-oriented States are not yet ready to give up their sovereignty in matters of taxation. What this Article suggests, instead, is that disputes concerning asylum and deportation represent an area on which future research could focus. The Court's reasoning in Vilho Eskelinen, where the judges decided that the guarantees of Article 6(1) could be applicable to disputes involving *acta jure imperii*, indicates that such a change is possible only under certain, strictly defined, conditions. This approach is reasonable, because to argue otherwise would mean advocating for an extensive encroachment on State sovereignty, respect for which remains crucial for the ECtHR's effectiveness and legitimacy. However, and especially in light of the ambiguous acceptance in the Court's case law of the importance of respecting and protecting the rights of asylum seekers and migrants, particularly in the anticipation of the 2026 Chișinău meeting of the Committee of Ministers, theorists might start developing a theoretical framework of conditions under which the Strasbourg judges might consider a transition analogous to that in public sector employment disputes.

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Застосовність цивільного аспекту статті 6(1) ЄКПЛ у практиці ЄСПЛ

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Анотація
Актуальність дослідження пов'язана з постійною напруженістю між державним суверенітетом і застосовністю гарантій прав людини згідно з Європейською конвенцією з прав людини, зокрема в контексті статті 6(1). Метою дослідження був аналіз тлумачення Європейським судом з прав людини застосування процесуальних гарантій у справах, що стосуються дій суверенних держав. Використана методологія передбачала вибірковий аналіз практики Суду з акцентом на питаннях, що стосуються публічного та приватного права, розмежування між *acta jure imperii* та *acta jure gestionis*. У статті продемонстровано, що застосовність статті 6(1) суттєво залежить від того, чи стосується спір питань публічного права, таких як податкові нарахування, чи питань приватного права, таких як договірні спори. Встановлено, що Суд загалом виключає дії держав у суверенній якості зі сфери застосування статті 6(1), поширюючи її на справи, що стосуються діяльності несуверенних держав. Це розмежування засвідчує постійне балансування Суду між захистом прав особи та повагою до державного суверенітету. Сформульовано висновок, що, попри складнощі, розвиток судової практики Суду демонструє потенціал для розширення сфери гарантій прав людини згідно з Конвенцією. Практична цінність цього дослідження полягає в його внеску в розширення розуміння підходу Суду, що може спрямувати судову практику й академічні дискусії щодо меж державного суверенітету та застосування гарантій справедливого судочинства

Ключові слова:
права людини; державний суверенітет; гарантії справедливого судочинства; міжнародне право; публічне право; судова практика; юридичне тлумачення