

# Rights of parties to an impartial court in the light of the case law of the European Court of Human Rights

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## Abstract

Human rights are freedoms, means of protection and benefits, which, when recognized as rights, in accordance with contemporary freedoms, all people should be able to demand from the society in which they live (*Encyclopedia...* 1985: p. 502). Public confidence in the judiciary depends on many factors. One of them is judicial impartiality, generally understood as not being guided by prejudices against parties and participants in the proceedings and lack of interest in the case. The fundamental importance of this value in the administration of justice means that the law defines its specific guarantees, such as rules for determining adjudication panels, open proceedings, obligation to justify a decision, as well as the possibility of excluding a judge from participating in proceedings due to doubts as to his impartiality.

The aim of the article is to indicate that the ability to assert rights is the most important aspect of human rights. These rights are not only lofty ideals or aspirations, but also the improvements underlying the claims. This is proved by outcomes of the analysis presented in this article.

**Keywords:** human rights, court, case law, European Court of Human Rights.

## Prawa stron do bezstronnego sądu w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka

### Streszczenie

Prawa człowieka to wolności, środki ochrony oraz świadczenia, których respektowania właśnie jako praw, zgodnie ze współcześnie akceptowanymi wolnościami, wszyscy ludzie powinni móc domagać się od społeczeństwa, w którym żyją (*Encyclopedia...* 1985: p. 502). Zaufanie społeczne do

władzy sądowniczej zależy od wielu czynników. Jednym z nich jest bezstronność sędziów, rozumiana najogólniej jako niekierowanie się uprzedzeniami wobec stron i uczestników postępowania oraz brak zainteresowania w sprawie. Fundamentalne znaczenie tej wartości w sprawowaniu wymiaru sprawiedliwości sprawia, że prawo określa jej szczegółowe gwarancje, takie jak m.in. zasady wyznaczania składów orzekających, jawność postępowania, obowiązek uzasadnienia rozstrzygnięcia, a także możliwość wyłączenia sędziego od udziału w postępowaniu ze względu na wątpliwości co do jego bezstronności.

Celem artykułu jest wskazanie, że zdolność dochodzenia praw jest najważniejszym aspektem praw człowieka. Prawa te to nie tylko szczytne ideały czy aspiracje, lecz także usprawnienia stanowiące podstawę roszczeń. Przeprowadzone w artykule analizy naukowe potwierdzają to założenie.

**Słowa kluczowe:** prawa człowieka, sąd, orzecznictwo, Europejski Trybunał Praw Człowieka

Human rights to every entity are universal and moral rights, which are of a basic nature and belong to every individual in their relations with states and other entities, such as international organisations. The very definition of human rights is based on several assumptions. Firstly, that each authority is limited; secondly, that each person has their own zone of autonomy and independence, to which no authority has access, and thirdly, that each entity can direct their own claims to the state regarding the protection of their rights. However, there is no single definition of the concept of human rights. The encyclopedia of international public law, developed by many authors from different countries, defines human rights as freedoms, means of protection and benefits, the observance of which as rights, in accordance with the currently accepted freedoms, all people should be able to demand from the society in which they find themselves (*Encyclopedia...* 1985: p. 268). In this definition, the main emphasis is on the moral right to demand that society respect and protect human rights (Osiatyński 1998: p. 1).

Trust in society in relation to the judiciary depends on many conditions. One of them is impartiality on the part of judges, which is understood as not being guided by certain prejudices towards the parties and other participants in the proceedings, as well as the lack of unjustified interest in the case (Łyda 1996: p. 46). The basic significance of this principle in the implementation of justice causes that legal provisions specify its specific guarantees, such as specific rules for forming adjudication panels, open procedure, obligation to justify a decision, as well as the right to exclude a judge from participating in the proceedings due to uncontested doubts as to his impartiality (Brzozowski 2018: p. 211).

The aim of the article is to indicate that the ability to assert one's rights is the most important and highest aspect of human rights. These rights are not only lofty ideals or aspirations, but also demands constituting the legal basis for the claims. A person who is deprived of rights can ask, petition or beg those who have control and authority over them. Such requests or petitions result from the level of inequality and lead to servilism or manipulation. The issue related to the claim is quite different because it assumes a certain fundamental level of equality of position of the throne, despite the existing, and sometimes even desired, inequality of position in society and places that are located in the hierarchy

of power. The claim is therefore based on the assumption of the freedom of every person. The subject or slave is inclined to beg, while free man asks his rights. A claim is an important element of human dignity. Thus, protecting this dignity is one of the main functions and tasks for which human rights are responsible. Their other functions are closely related to the dignity and freedom of the individual (Brzozowski 2018: p. 2).

The thesis of this study is an indication that the right of a party to impartiality in proceedings before the European Court of Human Rights is a right of every human being. Impartiality is one of the most important features of court proceedings. Irrespective of the changing legal and material situation of the parties to the proceedings, as well as of the judicial authorities, impartiality is an absolute right.

Characterisation of human rights issues, including the right to impartiality in court proceedings, has become possible thanks to the use of methodology and conceptual apparatus in the field of public international law. Achieving the assumed goals also required reaching, to the extent necessary, institutions in the field of legal theory, European law and constitutional law.

The main research method used in this study is the legal and analytical method. As a part of the indicated research problem, the sources of international law, judicial decisions and statements of various international bodies relating to the conditions for the implementation of legal regulations enabling the exercise of an individual's rights in proceedings before the ECHR were analysed. The review of the relevant treaty and customary norms made it possible to clarify the essence and role of legal regulations in the field of the rights of every human being. Moreover, the conducted analysis was supported by numerous examples from practice and positions presented in the doctrine.

## **The concept of human rights**

The definition of human rights first appeared in 1776 in the Bill of Rights in Virginia and was the sum of normative thoughts that existed during the Enlightenment. They were understood as the original rights of the individual implemented in relation to the state and society as a whole. At that time, according to the emerging liberal philosophy, great emphasis was placed on the freedom of individual action and the role of the will of all citizens in deciding on their own affairs, while the state was perceived as the greatest threat to the protection of these rights. While the philosophy of the Enlightenment period grew out of the opposition of the individual to the state, in the modern world the state is seen as a sure guarantor of fundamental rights (Piechowiak 1997: p. 12). Many authors, including B. Banaszak, indicate that every individual has human rights without exception and regardless of any nationality or social status. They should be treated as the inherent, inalienable rights of the individual, in the same way as: the right to life, personal freedom, property or security (Banaszak 2004: p. 446). According to the opinion of Fr. J. Tischner's human rights indicate what is due to man under the principle of justice that is ubiquitous. For this reason, these laws are called natural, inborn, inalienable, inviolable, always and in every situation valid and functioning laws (Tischner 1998: p. 30).

Legal doctrine understands the concept of human rights in very different ways. Many authors define this term broadly, sometimes including material, social and cultural rights (Banaszak 1995: p. 6). Others, in turn, say that the rights contained in the basic laws of individual states and vested in all persons (including those who do not have the citizenship of a given state) constitute human rights (Michalska 1982: p. 113). The encyclopedia of international law defines human rights as rights, freedoms, means of protection and benefits, which all individuals should demand from the society in which they live in accordance with the freedoms that exist today (*Encyclopedia*..1985: p. 268).

According to A. Łopatka, human rights are the rights that are assigned to each entity, which result directly from his inherent and inalienable dignity. These rights cannot be deprived of any human being in the slightest way, no one can be relinquished, and the state must protect and respect them (Łopatka 2002: p. 13).

Human rights belong to the fields of constitutional and international law. The task of this science is to defend in a very individual way the rights of the human person. It is also worth emphasizing that national legislation is more important for the protection of human rights because it is the closest to these rights. Any individual who has suffered any damage to his or her own rights first raises its claims against the authorities of the state whose citizenship is (Kuźniar 2000: p. 12).

Bearing in mind who the subject of human rights should be distinguished those whose subject is the individual, and therefore individual human rights and those whose subject is a larger community, an example of which can be a nation or religious communities. In this situation, we are talking about collective human rights. There are also human rights that are mixed. At the same time, their subject can be individuals, collectivities, states and even humanity as a whole (Chmaj 2006: p. 16).

If we want to refer to the entities with the main responsibility for the implementation and protection of human rights, it should be undoubtedly noted that these entities are in the first place the state and the international community (Jurczyk 2009: p. 31).

## **The system of protecting human rights in Europe**

The creation of the Council of Europe in 1949 gave rise to the creation of a treaty devoted to the protection of human rights. The fundamental issue aimed at establishing and disseminating human rights standards on the basis of the Council of Europe are international treaties (conventions, charts) supplemented by additional protocols. The document that forms the pillar of the human rights system in the context of the Council of Europe are: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950), the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), and the European Framework Convention for the Protection of National Minorities (1995).

The legal system of the functioning of the Council of Europe is subsidiary in relation to intra-state systems. This means that bodies operating on the basis of RE conventions are the final instance that can be launched only after all domestic legal means have

been exhausted. No entity can first rely on European regulations until it benefits from the protection of its rights under the legal provisions of the state of which it is a citizen (Biszyta 2003: p. 122).

A very important stage in the implementation of the protection of human rights was the signing in 1950 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter: ECHR). 14 additional protocols were adopted for this document, which are divided into two groups: substantive protocols that extend the catalog of rights contained in the ECHR and procedural and organizational protocols that relate to the control mechanism. The entry into force of such protocols is subject to the requirement to initiate and implement the ratification procedure (Gronowska et al. 2005: p. 70).

The catalog of rights contained in the ECHR includes: the right to life, the prohibition of torture, the prohibition of slavery and forced labour, the right to personal liberty and security, the right to a fair trial, the prohibition of punishment without a legal basis, the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the right to marry, the right to an effective remedy and a prohibition of discrimination. Protocol No.1 added: the right to property, the right to education and the right to free elections. Protocol No. 4 contains a ban on deprivation of liberty for debts, the right to free movement, a ban on the expulsion of citizens, and a ban on the collective expulsion of foreigners. Protocol No. 6 deals with the abolition of the death penalty, and Protocol No. 7 includes guarantees regarding foreigners, the right to appeal in criminal matters, the right to compensation for unlawful conviction, the prohibition of double judging or punishment, and equality of the spouses. A general prohibition of discrimination is included in Protocol No. 12, and Protocol No. 13 contains an absolute ban on the death penalty. Other protocols relate to procedural issues (Jurczyk 2009: p. 38).

Despite the fact that the scope of rights that protect the individual and which were included in the ECHR is wide, it is based on the art. 53 of the Convention, national provisions providing greater protection than those contained in the Convention have priority. The indicated catalog of rights contained in the ECHR makes it possible to state that the Convention is one of the most important acts of European law, which is a kind of guide for states wishing to become a fully democratic state, in which the protection of individual rights is at a very high level. Thanks to this document, there is now a concept such as the European legal order in the sphere of protection of individual rights, which includes not only a catalog of protected rights developed by additional protocols and the interpretation of its organs, but also a unique mechanism on a global scale for implementing them (Nowicki 2010: p. 15).

At present, it can be seen internationally that human rights violations occur much less frequently by national governments, and increasingly by non-state actors, including terrorist, separatist or organised crime groups that commit genocide, ethnic cleansing or fundamentalist actions. This state of affairs results from the huge awareness of today's rulers that if they want to stay universally recognised members of the international community, is to commit and respect the universal importance of international human rights.

## The right of a party to an impartial court and the case law of the ECtHR

The impartiality of a judge occurs when it is guided by objectivity in its work, treating participants in proceedings equally, without creating a more favorable situation for either party or participants in the proceedings, both in the course of the pending case and subsequent ruling. The legislator has not introduced the definition of legal impartiality. It is worth looking at the position of the doctrine presented against the background of proper understanding of this concept. The starting point is the semantic approach to the concept of an impartial judge. An impartial judge is a judge guided by objectivity, not being biased, who is characterized by objectivity and justice (Szymczak 1982: p. 150).

The individual's right to a fair public trial, which occupies an important place in a democratic society within the meaning of the ECHR, is of great importance for the proper functioning of democracy mechanisms and, for this reason, cannot be narrowly interpreted (Szymczak 1982: p. 387).

Article 6 ECHR establishes a set of guarantees for a fair trial, it does so in an extensive way, formulating first (paragraph 1) the general principle of wide application, and then (paragraphs 2 and 3) indicating a number of detailed guarantees for proceedings in criminal matters. The approach to these issues went far beyond the constitutional norms. The recipe cites the influence of the common law tradition, which has always given important significance to procedural guarantees (Hofmański, Wróbel 2010: p. 246).

Judicial impartiality and independence is one of the elementary guarantees of conduct that ensures equality of procedural parties and the correctness and lawfulness of the decision issued. Therefore, it should be treated as an indispensable and at the same time the main factor conditioning the proper fulfillment by courts of the jurisdiction entrusted to them. In addition, it is one of the basic values of applying the law by the court (Mokry 1985: p. 218).

The extension of the guarantee of a fair trial must be seen against the background of the general values constructing the ECHR, especially in the context of one of the basic constitutional principles, i.e. the rule of law (Wyrzykowski 1998: p. 82). This principle should be understood in this regard as a system condemning the arbitrariness of power and treating the courts as the basic guardian of the rights of the individual. Therefore, it is considered necessary not only to designate the basic elements of the constitutional system of the judiciary, but also to subject the functioning of courts to the observance of various types of procedural guarantees, and also to establish European supervision as a guarantee of a final nature. As it is legitimately emphasized in the doctrine, only then is it possible for the rights and freedoms guaranteed by the ECHR to become not so much "theoretical or illusory" as "concrete and effective" (Hofmański, Wróbel 2010: p. 246).

In its case law, the European Court of Human Rights (ECtHR) has repeatedly emphasized what acts may constitute and constitute a violation of Art. 6 clause 1 of the ECHR regarding the impartiality of proceedings. First of all, the Court emphasized that representatives of the judiciary are required to maintain maximum discretion regarding the cases they are dealing with in order to preserve their image of impartial judges (Wyrok

2016). This discretion should discourage them from media coverage, even when provoked. This obligation results from the higher needs of the judiciary and the momentous nature of the office of judge (Wyrok 2008).

The Court also pointed out that the judge's opinion on the party's moral attitude may justify the perception of the judge as biased, unless the opinion was necessary to hear the case and justify the judgment (Postanowienie 2001). Violation of Art. 6 clause 1 also occurs in cases where the statements or proceedings of judges are inconsistent with the impartiality that is required of the court (Wyrok 1999).

For example, in the case of *Kyprianou v. Cyprus*, the Court found that the emphatic language of judges used throughout the decision expressed outrage and shock, which is contrary to the principle of distance that is expected from court rulings (Wyrok 2005). Taking into account additional factors, the Court ruled that the applicant's doubts as to the court's impartiality were justified. In another case, however, the Court, noting that it would be better for the judge to refrain completely from expressing his views in the media, did not consider that he had demonstrated personal bias against the applicants (Wyrok 2018).

## Conclusions

Impartiality is an element of the status of a judge and results from the principle of judicial independence (Article 178 (1) of the Polish Constitution). Even before the entry into force of the current Basic Law, the constitutional court indicated that the correlate of the principle of independence on the part of a judge is the obligation of impartiality, in accordance with the content of the oath made by the judge. The duty of impartiality obliges the judge to oppose the assessments of his experience, stereotypes and prejudices. It was later stated that violation of the judge's duty to maintain impartiality would be a particularly drastic form of misappropriation of obligations related to the principle of independence, which could consist not only in adapting the content of issued judgments to suggestions or external orders, but also in anticipating such suggestions from think about potential benefits (Wyrok 1998). It is not only about the objective lack of impartiality of the judge, but also about the perception of the circumstances of the judge by other persons, i.e. external image of the judiciary and strengthening the authority of the judiciary (Wyrok 2009, 465/08). By removing even appearances of bias, the image of the court is built as an impartial body (Brzozowski 2018: p. 211).

Therefore, from this study it can be concluded that impartiality in court proceedings is a human right. This right applies to every party in proceedings before any judicial authority. Its possession may not be limited or excluded. The entity in relation to which attempts to limit this right will be made are entitled to submit claims that will enable its possible restoration.

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