

# ***Analysis of Article 6 of the ECHR: In Recognition and Enforcement of Civil Judgments among European Countries***

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**Abstract:** The right to a fair trial under Article 6 of the European Convention on Human Rights plays a crucial role in procedural protection in the recognition and enforcement of judgments within the European sphere. While the European Court of Human Rights has developed various scrutiny standards for judgments of different statuses by contracting states to safeguard procedural rights under Article 6 of the Convention, there is still a lack of systematic clarification regarding the application sequence of relevant scrutiny rules in the judicial practice of the Court. This paper analyzes the Court's application sequence of rules through the examination of existing case rules and interpretation of recent cases. The study finds that in judicial practice, the Court examines the admissibility criteria based on the standard of "crucial importance of the judgment for the parties"; after meeting the admissibility criteria, the Court applies the "equivalent protection standard" to determine exceptions where contracting states do not require scrutiny; in cases requiring scrutiny, the Court guides its scrutiny scope based on the rules established in the Saccoccia case.

**Keywords:** Right to a fair trial, Recognition and enforcement of judgments, Right to a public hearing

## **1. Introduction**

In the recognition and enforcement of international civil judgments, judicial recognition of the requested State is required if the judgment is to take effect in another State. The court reviews the foreign judgment in this process. The standard of review encompasses various criteria. These criteria evaluate whether the judgment is final, if the trial proceedings were fair, and whether recognition would contravene the public policy of the State.

With regard to the recognition and enforcement of international civil judgments in Europe, the Brussels Ia Regulation abolishes the review of judgments for enforcement. Eu member states should assume that other member states comply with fundamental rights, thereby promoting faster recognition and enforcement of judgements between states within the EU, reducing the time and monetary costs of review [1]. But the effect of automatic recognition and enforcement based on judicial trust also has the potential to jeopardize procedural protections [2]. One current recourse is that each contracting state has incorporated human rights provisions into its domestic legal framework. States can prevent the enforcement of human rights judgments within their borders by invoking public policy. However, the interpretation of public policy is subject to national restrictions. For instance,

differences in legal systems between states are insufficient grounds for invoking public policy. Therefore, the role of public policy in assisting the protection of human rights is not significant [3].

Member States of the EU are all parties to the ECHR. If individuals involved in judgments made by these parties believe their procedural rights have been violated, they have the right to appeal to the Court of ECHR under Article 6. This may either hinder or facilitate the acknowledgment and execution of court decisions. In this aspect, Article 6 positively balances the conflict between individual rights in cases and the timely enforcement of judgments. However, according to the statistics in the annual report of the ECHR from 2019 to 2022, about 30% of the cases identified as infringements involved the right to a fair trial [4]. In fact, the Court of ECHR has developed many rules regarding Article 6. Thus, in practice, how the court applies these existing rules to protect the rights of the parties to the judgment, and the roles these rules play in cases, still necessitates research.

Article 6 of the ECHR typically ensures the right of individuals within the Convention's jurisdiction to a fair trial. The first paragraph of Article 6 covers rights in criminal and civil cases. The second and third paragraphs mainly deal with specific rights in criminal proceedings. Therefore, the scope of this paper mainly focuses on the application of the first paragraph of Article 6 in the recognition and enforcement of judgments. The research methodology of this paper entails both literature review and case analysis. The discussed case involves civil disputes concerning international enforcement issues related to Article 6 over the past five years. The aim of this paper is to examine the impact of existing rules on the judicial decisions of the European Court of Human Rights. The paper also explores how the Court applies these rules to ensure the right to a fair trial.

## 2. Literature Review

This chapter proceeds with a chronological description of cases to illustrate the development of rules. Past typical cases involving the recognition and enforcement of European civil judgments under Article 6 include the Drozd case, the Pellegrini case, the Saccoccia case, and the Avotiņš case.

### 2.1. Cases from 1975 to 2001

In the Golder case, the ECHR develops the meaning of the right to a fair trial in its jurisprudence, incorporating the concept of access to justice as an integral component of the right to a fair trial. The Court emphasizes that the application of access to justice should be effective and subject to limitations [5]. In the Hornsby case, the ECHR considers the intention behind the Convention, regarding the execution of judgments as an integral part of the litigation process. It holds that effective access to justice should also safeguard the parties' right to enforcement [6]. Based on this, the Court extends the scope of the right to a fair trial to the stage of judgment enforcement. This lays the groundwork for the impact of Article 6 in the field of judgment recognition and enforcement.

In the Soering case, the ECHR bases its conclusion on the principle that “the treaty does not create obligations or rights for third parties”. It is concluded that contracting states have no obligation to assess judgments from non-contracting states based on the human rights criteria outlined therein [7]. In the Drozd case, ECHR acknowledges that, in principle, the Convention doesn't bind judgments of non-contracting states. However, if judgments of non-contracting states reach a level of 'flagrant denial of justice,' they cannot be recognized and enforced in contracting states to safeguard human rights within the jurisdiction of the contracting state [8]. In the Pellegrini case, the ECHR establishes the standard that “the execution of judgments is of paramount importance to the parties involved”. When the execution of a judgment from a non-contracting state meets this standard, the contracting state is obliged to review its judgment [9].

## 2.2. Cases from 2002 to 2016

McDonald, the Court provided a case that a State party could reject. When the appellant engages in fraudulent behavior, the contracting state does not recognize or enforce foreign judgments without violating the rights of the parties involved. In the Saccoccia case, the court considers "no dispute in the case" as a valid reason to exempt from a public hearing [10]. The court also holds that if a contracting state already reviewed a foreign judgment, its task will be to examine whether the domestic courts comply with the standards of Article 6 of the Convention to ensure the judgment's fairness [11].

In the Vrbica case, the Human Rights Court affirms the discretion of the State party to limit access to justice and refines the rules of restriction. A State party's restrictions shall have a lawful end and be proportionate between the means and the ends. Moreover, these limitations should not fundamentally deprive the parties of their right to seek compensation based on a final and effective judgment [12]. In the cases of M.S.S. and Avotiņš, the Court discussed the standard established by the Justice of the European Union in the Bosphorus case regarding the "presumption of equivalent protection" rule. It believes that if both parties in the judgment dispute have dual identities, and the judgment of the requesting country complies with the fundamental rights of the EU, then based on the judicial mutual trust within the EU, the requested country can presume that this judgment also complies with the requirements of the ECHR [13]. This way, the requested country doesn't need to review the judgment.

## 2.3. Literature Summary

Drawing on past cases, the Court uses Article 6 as a procedural criterion for a State to recognize and enforce foreign judgements, and develops different rules for the criteria for recognition and enforcement between States with different statuses.

Between human rights treaty states and non-treaty states, treaty states apply two levels of review standards to judgments from non-treaty states. These standards include a an attenuated criterion of "a flagrant denial of justice" and a high-level criterion of "the execution of the judgment is extremely important to the parties." In cases of two countries being both EU member states and parties to the human rights treaty, the review standard is the principle of equal protection. The court does not provide specific review standards for countries that are only parties to the human rights treaty. Generally, treaty states have discretion within their domestic legal systems to determine how to protect specific human rights. According to international treaty rules, the court, when assessing the obligations of treaty states to safeguard human rights, clearly applies standards that are higher and inclusive of the above standards.

## 3. Analysis of Two Legal Cases

### 3.1. Mcilwrath Case: Right to a Public Hearing

#### 3.1.1. Case summary and points of contention

This case deals with the effect of the "right to a public hearing" under Article 6 on the recognition and enforcement of a divorce decree.

An American man files for divorce from his wife in Italy, the Florence court enters a judgment of divorce, and his ex-wife returns to Russia. The man applies to the Russian court to enforce the Italian judgment. The Russian court rejects the application, considering the content of the judgment to be incompatible with the fundamental principles of Russian law and public order. The man appeals against this, and the Appellate Division upholds the decision. The man contends that he has not

received notice to attend the appellate hearing in the Russian court's review process, resulting in his absence from the appellate hearing and impairing his rights protected under Article 6.

The key issue in this case concerns Article 6: Whether the Russian appellate court's failure to notify the applicant to attend the appellate hearing during the review process constitutes a violation of the right to a public hearing guaranteed under Article 6. The Russian government argues that Russian law doesn't mandate notification of parties during the appellate review process, and that parties have sufficient opportunity to fully state their views in written appellate materials [14].

### 3.1.2. Analysis of Non-violation of Article 6

In this regard, the Court of Human Rights further explains the issue of procedural fairness in relation to Article 6:

Firstly, procedural fairness primarily ensures the parties' effective presentation rights and equal adversarial rights in court, rather than guaranteeing the right to be present. The state has the discretion to choose legal means to safeguard these litigation rights [14]. Secondly, the "right to a public hearing" includes an "oral hearing", but this right is not absolute; if there is no legal or factual dispute in the case, the lack of a hearing in the appeal proceedings is justified as long as there is an oral hearing in the first instance [14].

In addition, the Human Rights Court cites the rule of its prior jurisprudence that the personal significance of the proceedings for the applicant is not a determining factor in the holding of the hearing [14]. The Court examines the scope of review of foreign judgments under Article 412 of the Russian Civil Procedure Code and ultimately finds that the grounds for refusal of enforcement are legitimate.

The court in this case considers: on the one hand, the applicant has already had a hearing in the initial trial of the case and has argued the relevant issues. The appellate procedure for enforcement only involves legal issues, so not holding another hearing in the appellate proceedings is also acceptable. On the other hand, the court takes into account the facts of the case: the facts are the provisions of Russian domestic law, and the court's refusal to enforce the grounds is justified. The Court ultimately finds that the court enforcing the appeal does not violate its obligation to guarantee the procedural rights of Article 6 by failing to notify the parties of the hearing.

### 3.1.3. Comprehensive Analysis

This case demonstrates the application of the "right to a public hearing" in the civil domain by the Human Rights Court.

In specific terms, the Court reiterates the application criteria of the "right to a public hearing" under Article 6, tracing it back to the public hearing right in criminal proceedings as established in the Saccoccia case. Combining it with the civil public hearing right in this case, despite involving different legal domains, its core application criteria remain similar. Human rights treaty countries only have an obligation to actively hold hearings when there is an objective dispute in the case and the proceedings lack an effective hearing stage.

Furthermore, the Human Rights Court extends its assessment criteria for the right to a fair trial to a broader scope by examining the overall litigation process in domestic courts prior to the appeal. This is done to determine whether the litigation process conducted by domestic courts for specific cases is fair and reasonable, rather than limiting the interpretation to the procedural stage of an appeal. In the balance between the Human Rights Convention and the contracting states, the court reasonably respects the domestic legal regulations of the human rights treaty countries. The case demonstrates that in the recognition and enforcement proceedings, the parties' rights to effective presentation and

equal confrontation are not placed in a significantly disadvantageous position. Generally, the court does not consider that the procedural fairness of the parties has been violated.

### **3.2. Dolenc Case: Right to Adversarial Proceedings**

#### **3.2.1. Case Summary and Points of Contention**

This case concerns the recognition of Israeli judgments in Slovenia. The case is a dispute over medical malpractice negligence.

The patient is disabled during an operation performed in a local Slovenian hospital, and the patient sues in an Israeli court and obtains a judgment for compensation. The judgment finds the defendant doctor responsible for the patient's disability and awards substantial liability. The plaintiff subsequently applies for recognition and enforcement of the judgment in the Slovenian courts, and the court holds that the Israeli judgment can be enforced. The applicant doctor points out that under Slovenian law, they are not responsible for the patient's harm, and the Slovenian court has not considered the procedural flaws in the Israeli judgment, thus undermining their right to a fair trial [15].

The key issue in the case involving Article 6 is whether the Slovenian court's insufficient attention to procedural defects in reviewing foreign judgments violates the appellant's rights under Article 6 of the Convention.

#### **3.2.2. Analysis of Violation of Article 6**

The Human Rights Court cites several cases concerning the standards for reviewing judgments for recognition and enforcement, establishing both the review obligation of the Slovenian court and the Court's own review responsibility.

First, the court cites the cases of Drozd and Pellegrini. The court believes that the Israeli judgment in this case establishes the applicant as the primary party responsible for the medical accident and awards significant compensation to the applicant. This judgment causes severe economic and reputational harm to the applicant. Therefore, the case constitutes a judgment significantly disadvantageous to the applicant's rights.

Additionally, the court cites the Avotiņš case, asserting that Israel and Slovenia are not members of the EU; they are merely contracting states to the human rights convention. Therefore, the recognition and enforcement of judgments between the two countries are not subject to the presumption of equal protection [15]. The Slovenian court needs to assume the obligation to conduct a review and cannot directly presume that Israel's judgment procedure complies with Article 6.

Subsequently, the court also cites the Saccoccia case, stating that before the appellant filed the appeal, the Slovenian court had already ruled on enforcement, indicating that the Slovenian court had reviewed the judgment. Therefore, the Human Rights Court only needs to review whether the Slovenian court, as a contracting state, ensured that the foreign judgment complied with the requirements of Article 6 of the Convention [15].

The Human Rights Court considers several aspects of the Slovenian court's review behavior. Firstly, the court examines Israel's non-application of the Hague Evidence Convention, a decision made with the aim of safeguarding the plaintiff's right to a trial within a reasonable timeframe. The Human Rights Court points out: while expeditious proceedings are crucial, they cannot serve as a reason to disregard fundamental principles such as the right to adversarial proceedings [15]. Additionally, the appellant has never waived the right to invoke the Hague Evidence Convention. Therefore, Israel's behavior fundamentally undermines the defendant's right to adversarial proceedings. Consequently, the Court believes that this aspect has not been adequately addressed. Furthermore, in Israel's legal proceedings, the appellant is using a language that the appellant does



not understand, and the Slovenia court has not considered the impact of language barriers in the judgment on the appellant's litigation rights. Lastly, the accident occurs in a hospital in Slovenia. However, the Israeli court does not review the opinions of Slovenian legal experts nor does it inspect the care provided by medical personnel in the Slovenian hospital[15]. Both of these issues are crucial for determining the facts of the accident, assessing the validity of the claims made by the plaintiff and the defendant, and the overall outcome of the litigation. However, the Slovenian court does not give adequate attention to these matters during its review.

Therefore, the Human Rights Court believes that the Slovenian court's consideration of the above issues is insufficient, violating its obligation as a contracting state to ensure compliance with Article 6(1) of the Convention.

### 3.2.3. Comprehensive Analysis

Combining literature review and case analysis, this case demonstrates the role of rules in the Human Rights Court's protection of procedural safeguards under Article 6 of the Human Rights Convention and the sequence of rules applied by the court.

The court considers the standard of "the importance of enforcing judgments to the parties" as one of the criteria for accepting appeal cases; the court views the standard of equal protection in the Avotiņš case as an exception to measure the need for courts of contracting states to review judgments. This exception directly affects whether the Slovenian court violates its obligation to safeguard under Article 6. The court assesses the identities of Slovenia and Israel. Based on their status as contracting states to the Human Rights Convention, there is no judicial mutual trust within the European Union. The court defines the review obligation of Slovenia, laying the groundwork for the court's subsequent judgment on the review obligation of contracting states. Finally, the court uses the Saccoccia case as its benchmark for its own review behavior. If a contracting state has already conducted a review, then the court examines whether the domestic court's review behavior ensures procedural rights under Article 6.

## 4. Conclusion

This study shows that overall, in the field of recognition and enforcement of civil judgments in Europe, the Human Rights Court adopts a mixed strategy to uphold procedural protection under Article 6 of the Convention framework.

For specific situations involving non-contracting state judgments, a contracting state's refusal to enforce the judgment within its own jurisdiction, its a passive strategy. For judgments from countries only holding the status of Human Rights Convention parties, the Human Rights Court ensures the protection of Article 6 in judgments according to the standards of the Convention and appropriate discretion. This is an active strategy. For judgments between countries holding dual membership in both the EU and the Human Rights Convention, the court is likely to exempt the requested state from reviewing the judgment, especially when the judgment from the requesting state can demonstrate that the judgment it rendered upholds fundamental rights of the EU. In this case, the requested state of the judgment is entitled to presume, based on judicial mutual trust, that the judgment also complies with the standards of Article 6 of the Human Rights Convention.

Furthermore, in judicial application, the court first assesses whether the appeal case meets the acceptance criteria, and the court judges the extent of harm to the appellant's rights based on the standard that "the enforcement of judgments is extremely important to the parties involved. "After meeting the acceptance criteria, the court assesses whether there are exceptions where the requested state of the judgment is not required to review, namely the assumption of equal protection applied by contracting states. After determining the need for review, the court first examines the conduct of the

domestic court, guided by the rules of the Saccoccia case to define the scope of its review. In the context of the "right to a public hearing" under Article 6, subjective factors have less influence, but this is closely related to the application standards of specific contexts and does not represent the impact of subjective factors on other contexts.

The limitation of the case samples in this study is that the two cases are not key cases concerning Article 6 in recent years by the European Court of Human Rights. This is because key cases mainly involve the interpretation of the essence of Article 6, while this study analyzes the extended application and impact of the essence of Article 6 in the field of recognition and enforcement. In future research, it would be beneficial to comprehensively consider the applicability of both criminal and civil judgments in this regard. This approach will facilitate a more comprehensive study of how the courts apply Article 6 in handling issues related to the recognition and enforcement of judgments.

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