



P21068

Fair Trial

(corso tenuto integralmente in lingua inglese)

STUDENT HANDBOOK

(blended course)

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P21068
Fair Trial
(lingua inglese)

Cod. 21068

Data: 15-17 settembre 2021

Responsabili del corso: dott.ssa Ciriello – dott. Grasso

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Presentazione

La Scuola propone un seminario, interamente in lingua straniera, per la conoscenza e l'approfondimento - unitamente alle strutture linguistiche e al lessico correlati - del tema del "giusto processo", con particolare riguardo alla protezione assicurata dall'articolo 6 della Convenzione Europea dei diritti dell'Uomo e dall'articolo 47 della Carta dei diritti fondamentali dell'Unione europea. Il corso, finalizzato all'apprendimento del linguaggio giuridico, affronterà, anche grazie al contributo di relatori esperti della materia, alcuni aspetti, in materia civile e penale, della realizzazione del principio del giusto processo e del diritto ad una tutela giudiziaria effettiva nella giurisprudenza delle due Corti.

L'iniziativa, condotta interamente in lingua inglese, si rivolge a magistrati con livello di conoscenza della lingua B1 o superiore. Saranno proposte esercitazioni a contenuto grammaticale, sintattico e di vocabolario. La metodologia prescelta (laboratorio di ricerca) implica che tutti i partecipanti debbano intervenire attivamente nel dibattito valendosi, esclusivamente, della lingua inglese.

Corso blended, online e in presenza.

Wednesday 15 September 2021

15.00 Opening of the course

Article 6 ECHR and Article 47 EU Charter of Fundamental Rights

- Question and answer session
- Reading: Human rights in the ECtHR and the EU
- Listening: Introduction to the ECtHR and ECJ
- Discussion and Reading: EU Charter of Fundamental Rights; Case discussions
- Covid-19 related issues

06.00 p.m. End of the first day

Thursday 16 September 2021

9:30 AM

Fair trial in civil matters: Dispute, Statute of Limitations

- Vocabulary: the term "dispute"

- Listening: Statute of limitations
- Reading/Discussion: Statute of limitations in Italy

11.00-11.30 Coffee and technical break

The European Arrest Warrant

- Listening and Grammar: The European Arrest Warrant
- Listening and discussion: The European Arrest Warrant –examples from the UK

12.30 - Lunch Break

2:15PM - Plenary: Introduction to case studies about freedom of expression and the mock trial

- Mock Trial
- Introduction to the case
- Group preparation

05.00 p.m. End of the second day

Friday 17 September 2021

9:30 AM

Discussion: EAW and Questions of Extradition with the UK

11.00 Coffee and technical break

Case study (criminal matters): Extradition and Article 6

- Reading/Vocabulary: Harkins v the UK (ECtHR)
- Listening: Proceedings of Harkins v the UK
- Mini-presentations: Cases regarding Article 6 in Italy

12.30 PM. End of the seminar.

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Session 1: Introduction – Article 6 ECHR and Article 47 EU Charter of Fundamental Rights

A. Introduction

Vocabulary: Introduction to Article 6

In pairs talk about the following:

1. What specific rights does Article 6 ECHR cover?
2. Which of these issues particularly concern Italy and Italian justice?

Now together, complete the gaps in Article 6 of the ECHR with one of the expressions below (they are all nouns);

<i>hearing</i>	<i>criminal offence</i>	<i>minimum rights</i>	<i>charge</i>
<i>interpreter</i>	<i>accusation</i>	<i>obligations</i>	
<i>private life</i>	<i>national security</i>	<i>sufficient means</i>	<i>defence</i>
<i>witnesses</i>	<i>tribunal</i>		

ECHR Article 6 – Right to a Fair Trial

1. In the determination of his civil rights and (a) _____ or of any criminal (b) _____ against him, everyone is entitled to a fair and public (c) _____ within a reasonable time by an independent and impartial (d) _____ established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or (e) _____ in a democratic society, where the interests of juveniles or the protection of the (f) _____ of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a (g) _____ shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following (h) _____:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the (i) _____ against him;
 - (b) to have adequate time and the facilities for the preparation of his (j) _____;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not (k) _____ to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined (l) _____ against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an (m) _____ if he cannot understand or speak the language used in court.

Discussion: EU Charter of Fundamental Rights

Read article 47 and compare it to Article 6 of the ECHR with a partner. What are the similarities and/or differences?

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial

tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Grammar and speaking: introduction

English has no distinction between informal and formal YOU like Italian and many other languages. Therefore, we have to resort to other means to make a question or statement sound more formal or polite. One of these ways is to form indirect questions (or statements). Look at the following and compare:

Direct Questions:

What do you do? / What are you doing?
Are you a judge or a prosecutor?
Where do you work?
Where is the city court?

Indirect Questions/Statements:

- May I ask you** what you do for a living?
- Could you (please) tell me** whether (if) you are a judge or a prosecutor?
- I was wondering** where you work.
- I hope you don't mind me asking** but are you a judge or a prosecutor?

As we can see in a-d there are many different ways of forming **Indirect Questions**. These include

- *Could you tell me...*
- *Do you know...*
- *I was wondering...*
- *Do you have any idea...*
- *I'd like to know...*
- *Would it be possible...*
- *Is there any chance...*
- *I hope you don't mind me asking but ...*
- *Have you / Do you have any idea where ...*

If we look at the indirect questions in a-d we see that the grammar rules are different for the formation of this type of question: so instead of asking someone (e) "Where is the bank?", in polite terms we ask (d) "Could you (please) tell me where the bank is?". Please note that in the second phrase in (b) we do not change the word order as this part of the sentence is not the question. Above, only example (d) uses the typical question order "but are you a judge or a prosecutor" because it is actually a question.

Videos: Indirect Questions

Watch one of the following videos to review how to ask indirect questions in English. How much did you understand?:

- **Anglopod**
<https://www.youtube.com/watch?v=mvkAlvW2zk4>
- **BBC 6 Minute Grammar**
<https://www.youtube.com/watch?v=CzoxlVPtPgl>

Speaking Activities: Social English and Practice of Law

You will be divided into pairs. As an ice breaking activity to get to know each other better, interview your partner. Use the following structures or the ones we reviewed above:

- *I hope you don't mind me asking,..*
- *May I ask you a personal question?*
- *I would rather not talk about it..*
- *I was wondering...*

Ask your partner some of the following questions, making them into indirect questions as in 1:

1. Which university did you graduate from? What did you major in?
Would you mind telling me which university you graduated from? I'd like to know what you majored in.
2. What was the focus of your undergraduate/postgraduate thesis? What was your thesis/dissertation about?
3. Have you ever considered a career as an attorney or taking a different career path altogether?
4. What are some of the issues you have encountered in your job during the Covid-19 crisis?
5. What was your first job? What did you like most about it? Was there anything you didn't like about it?
6. Do you think it's possible to guarantee safe distancing among participants in a trial or hearing during a pandemic?
7. What is your main area of expertise? Do you have any other areas of expertise?
8. What are some of the safety measures that you and your court or prosecutor's office have put in place to ensure safety of workers and visitors during the pandemic?
9. Do you have any work experience in the area of human or fundamental rights?
10. What do you know about Article 6 and the right to a fair trial?
11. What do you know about specific issues relating to Article 6 and the COVID-19 pandemic?
12. How has the COVID-19 Pandemic affected criminal justice in Italy and/or the EU)?
13. How has the COVID-19 Pandemic affected civil justice (in Italy and/or the EU)

B. Justic during COVID-19: Some issues

Listening: Jury Trials during the Covid-19 Pandemic

Introduction

You are going to watch a video about how safety regulations for jury trials were put in place in the US state of Arizona during the pandemic. Before you begin, what exactly do you know about jury trials in the US? Read this excerpt below about being a juror (i.e. serving on a jury) in Arizona and then complete the gaps with the missing words (or letters) from the box below:

a. jury service	b. felony	c. evidence
d. jury trial	e. defendants	f. complex trials
g. witnesses	h. measures	i. jurisdiction

Jury Service Information

Jurors are the heart of the judicial system in the United States. In all serious criminal cases, (1) _____ are entitled to a trial by a jury representative of the defendant's community. Many civil cases also include a right to a (2) _____. All U.S. citizens are qualified for (3) _____ if they are at least 18 years old, are residents of the (4) _____ in which they have been summoned to serve, have had their civil rights restored if previously convicted of a (5) _____, and have not been determined by a court to be mentally incompetent or insane. Arizona has pioneered many successful jury reform (6) _____, such as jurors being allowed to ask written questions of (7) _____ in the court; jurors being allowed to discuss (8) _____ (in civil cases) during the course of the trial; juror note taking and juror notebooks in lengthy or (9) _____; and supplemental pay for long trials. Prospective jurors may be called for service by a Justice of the Peace Court, a Municipal Court, or by the County Jury Commissioner of the Superior Court.

Listening Part I

Now watch the video¹ and make notes as to how the following phrases are used and what they refer to:

- people are compelled to come here
- picking the juries
- jurors reported they felt safe
- the moment they arrive in the parking garage
- I had a lot to watch
- We received a lot of feedback
- We found it easier than we thought it would be.
- The jury is required by law.

Listening Part II

Complete the gaps with the correct forms of the verb (and adverb) in brackets and then listen again and check.

The biggest challenges that we faced while (a) _____ [**plan**] for jury trial during the pandemic was a lack of information about what to expect. We knew that we (b) _____ [**build**] a process and a plan that would keep jurors safe or as safe as possible while they were with us but we didn't know, once we built it, if they (c) _____ [**come, actually**]. We had to ensure the safety of the individuals that came to court. People who come to court (d) _____ [**compel**] to come here, and we wanted to make sure every point of access into our system. They individuals were safe and remained safe.

The biggest challenge I (e) _____ [**face**] with the jury trial so far has been picking the juries because my courtroom usually holds between 90 and 100 people at a time, and right now we're limited to about 20 folks at a time, so it really (f) _____ [**slow down**] the process and makes it a little more challenging.

My first trial went really, really well.

First trial went surprisingly well.

First trial (g) _____ [**go**] great. We had no problems, there was no issues. The jurors reported that they felt very safe and they felt very comfortable with the safeguards we (h) _____ [**put**] in place.

The measures employed by the court are, from the moment the jurors arrive at the parking garage until the moment the verdict comes in, everything (i) _____ [**analyze**] in order to ensure that safety protocol has been put in place: plexiglass, reduction in the seating, ensuring masking, making sure that we have temperature checks. Every time we have a juror come in we (j) _____ [**ensure**] that there's an opportunity for safe spacing, during lunch, during breaks, , during trial, during deliberations, every point (k) _____ [**analyze**].

The first time that I did the trial I was very stressed because there was a lot to watch. "Are people wearing their masks?" "Are people socially distancing?" "How (l) _____ somebody _____ [**approach**] the bench?, etc. And within an hour into the trial, okay, this is a normal trial with some preventative measures.

¹ <https://www.youtube.com/watch?v=oXcIlbbdtFg>

We have received a lot of feedback from jurors and we very much appreciate that. We invite it when people come in and we tell them, if you (m) _____ [**see**] something, say something whether it's good or bad because we can only improve when we hear from you.

Many of the jurors told me that they were apprehensive in (n) _____ [**come**] into the courtroom with groups of people that they do not know at all, but after (o) _____ [**experience**] the actual trial and seeing what we have done to be safe they were fine with it.

My work (p) _____ [**be**] tremendously different since the start of the pandemic. We redid the schedules for judges in terms of our morning calendars, trying to keep us in court less, fewer bodies in the courtroom, fewer people in the courthouse.

I think a lot of work (q) _____ [**go in**] from a lot of people to prepare for the trials during this period of time.

I think in the end it was actually a bit easier. I think all of us over the summer gearing up in terms of the transition to doing these trials were a bit nervous about how this (r) _____ [**play out**]. And I think as it's played out. I think we found it a bit easier than we thought it would be.

Jury trials are required to continue actually under Arizona Constitution and the United States Constitution. Both the defendant and a victim have a right to a speedy trial and we need (s) _____ [**fulfil**] those constitutional obligations. It's not something we can just put on hold during a pandemic. So we had to find a way to do it as safely as possible.

But it's also important when you think about (that) the humans involved, the people involved. There's a person whose liberty interests (t) _____ [**be**] at stake, and who (u) _____ [**accuse**] of a crime and they are entitled to a solution or resolution to that case. There are victims who have suffered horrible tragedies in their lives and they are entitled to have a resolution to their case.

It's how we ensure we can resolve our differences without (v) _____ [**have to**] resort to violence or just deciding who's ever the strongest or the toughest is going to win. If we don't have jury trials then people are going to be sitting for years to have their cases and their disputes resolved. And we just can't have that as an organized society. People need (w) _____ [**have**] finality and get jury verdicts so they can move on with their lives.

If you would like to learn more about how the jury system works in a state like Arizona you can watch the following video:

http://supremestateaz.granicus.com/player/clip/2623?publish_id=0b0d6a42-99df-11e9-b00b-0050569183fa&redirect=true

Listening: COVID-19 affecting defendants' rights to fair and speedy trial

Listen to a news report² from the State (or Commonwealth as it is known officially) of Virginia in the United States. Complete the gaps with the missing (single) words.

A right to a fair and speedy trial is being slowed thanks to Coronavirus. Some local (A) _____ are wondering if the virus and changes with the courts will hurt their clients for a fair outcome.

² <https://www.youtube.com/watch?v=eQ0zgmpalMU>

We're in front of the Portsmouth Courthouse right now. They are still operating but under very limited (B)_____. All jury trials in the Commonwealth for example are on (C) _____ for now until things go back to normal whenever that may be.

[Stephen Pfiffer, Defense Attorney] You have an interesting dynamic here: the speedy trial (D)_____ of the defendant who's in (E) _____, but also the safety (and) well-being of the community, securing the Courthouse.

A defendant's right to a fair and speedy trial is a crucial (F) _____ of the American justice system, so crucial it's part of the Bill of Rights. But the spread of Covid-19 has Virginia courts operating at a very limited (G)_____. Every jury trial has to be *continued*³.

The majority of my time over the last 14 days has been fielding phone calls from the (H) _____ office to try to set new dates and it's a moving target right now because it keeps getting (I) _____.

Those affected most by (J) _____ cases to unknown dates in the future are the defendants who were denied (K) _____ and remain behind bars.

[Eric Korslund, Defense Attorney] And I think what really causes a lot of challenge is they still have a right to (L) _____ trial, which basically means they have five months to be brought to trial from the date of (M) _____. And that's just not practical right now. I cannot see (N) _____ coming into court in the next two or three months.

Judges are still hearing bond and bond (O) _____. "It's really just a case by case basis but what the court is doing is reconsidering a lot of different defendants' bond (P) _____ and why you have a delay of all these cases and the threat, I think, a very serious threat of this breaking out in jail, which would be deadly. There's no one (who) knows in the jail, as far as I know nobody's been (Q) _____ in the jail and you have a large amount of people crammed into a little space. So it's just a recipe for disaster. So I think everybody has to balance the need of getting these individuals out of jail but we still have to protect the (R)_____."

As attorneys manage the present they're looking towards the future and they anticipate a pretty big (S)_____ of cases in trials once things eventually return to normal, whenever that is.

B. The ECtHR and EU Fundamental Rights: Development

Questions and answers about ECtHR and ECJ

Part I: Reading

In pairs, answer the following questions

1. What do the acronyms **ECJ** (or **CJEU**), **ECHR**, and **ECtHR** stand for?
2. How many contracting parties of the Council of Europe are there?
3. What kinds of complaints are accepted by the ECtHR?
4. Where is the European Court of Human Rights based? And what about the European Court of Justice (or the Court of Justice of the European Union)?
5. What kinds of case does the ECJ decide?

³ = postpone or adjourn a legal proceeding

6. Are the two courts in question competing or complementary?
7. How are the two courts different?
8. What are human rights and fundamental rights?

Now check the excerpt below for some of the answers.

I. INTRODUCTION⁴

While some regions of the world still do not have supranational structures for the protection of human rights and fundamental freedoms, Europe has two systems that are competing on some levels and complementary on others. The European Court of Human Rights (ECtHR) in Strasbourg is the guardian of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and accepts complaints by individuals alleging a breach of one or more Convention articles by acts or omissions of the authorities of one of the forty-seven Contracting Parties of the Council of Europe, provided certain conditions of admissibility are met. The Court of Justice of the European Union (ECJ), based in Luxembourg, is the guardian of the EU Charter of Fundamental Rights and decides in specific cases whether acts or omissions of the EU institutions and/or certain acts or omissions of the authorities of one of the twenty-eight Member States of the European Union are in conformity with the guarantees provided in the Charter. While there are differences in geographic coverage and in the substantive scope of protection, some cases can and have been brought before both supranational courts. [...]

In general, 'rights' refers to the moral or legal entitlement over something. As per law, rights are considered as the reasonable claim of the individuals which are accepted by the society and approved by statute. It can be fundamental rights or human rights. In most cases, the rights which are fundamental to the life of the citizens of a country are known as **fundamental rights**. On the other hand, **human rights** imply the rights that belong to all the human beings irrespective of their nationality, race, caste, creed, gender, etc. The main difference between fundamental rights and human rights is that the fundamental rights are specific to a particular country, whereas human rights has worldwide acceptance.

In the context of the European Union the term '**fundamental rights**' is used to express the concept of '**human rights**' within a specific EU internal context. Traditionally, the term 'fundamental rights' is used in a constitutional setting whereas the term 'human rights' is used in international law. The two terms refer to similar substance as can be seen when comparing the content in the Charter of Fundamental Rights of the European Union with that of the European Convention on Human Rights and the European Social Charter.

Part II: Memory Enhancing Activities

Choose a sentence or a part of a sentence from the text above and read it to your partner. Your partner should pretend they have only partially heard or understand what you are saying and try to reconstruct the sentence without looking at the text:

Partner A: The CJEU is the guardian of the EU Charter of Fundamental Rights and decides in specific cases whether acts or omissions of the EU institutions and/or certain acts or omissions of the authorities of the Member States of the European Union are in conformity with the guarantees provided in the Charter.

Partner B: Sorry, I didn't get that, did you say that CJEU is a guardian of the EU Charter of Fundamental Rights? And did you say it decides in specific case about the conformity with the guarantees provided by the Charter?

Part III: Vocabulary – Adjectives

Read the rest of the excerpt and complete the gaps with the missing adjective from the list below.

<i>adequate</i>	<i>inadequate</i>	<i>effective</i>	<i>certain</i>
<i>occasional</i>	<i>parallel</i>	<i>functioning</i>	<i>fundamental</i>

⁴ Adapted from "The European Union Charter of Fundamental Rights vs. The Council of Europe Convention On Human Rights And Fundamental Freedoms – A Comparison" by Frank Emmert & Chandler Piche Carney, *Fordham International Law Journal*, Vol 40 (4), 2017, <https://keydifferences.com/difference-between-fundamental-rights-and-human-rights.html> and <http://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions>.

Supranational structures are important, in particular, if and when the protection at the national level is (a) _____. Problems at the national level can and will occur from time to time even in mature democracies with (b) _____ systems of rule of law. This is evidenced by some of the cases that come to the European Court of Human Rights in Strasbourg from countries like the United Kingdom, France, Germany, Sweden, etc. It is also evidenced by the (c) _____ failure of a highly developed legal system in a mature democracy like the United States, where every now and then we sorely miss a functioning supranational system that would catch and correct most, if not all cases, where the national system has failed to provide (d) _____ solutions.

Obviously, the more problems a country has with rule of law and (e) _____ legal remedies at the national level, the more important the supranational systems become, provided the supranational decisions are respected and executed in these countries. In the European context, one indicator of this connection is the number of cases that are brought to Strasbourg from Russia, Ukraine, Turkey, and a handful of other countries that struggle to provide a high level of protection of human rights and (f) _____ freedoms for their people or at least for (g) _____ groups under their jurisdiction. Indeed, of the forty-seven Contracting Parties of the Council of Europe, just five or six are producing between two thirds and three quarters of all complaints brought to the attention of the ECtHR every year.⁵

Since the (h) _____ existence of two supranational catalogs of human rights and two supranational courts for their interpretation and enforcement is quite unique, this article will compare some of the strengths and weaknesses of each of the two systems and attempt some proposals for the future development of both of them. For the benefit of less specialized readers, however, we shall first recall the history and evolution and some of the most important features of each of the two systems.[...]

Listening: Introduction to the European Court of Human Rights⁶

Part I (numbers): History of the Court [from 0:47- 1:53]

Listen to the first part of the video and complete the gaps with a number or number form.

[Introduction in French with English subtitles] Each year tens of (a) _____ of people who consider that their fundamental rights have been breached turn to the European Court of Human Rights. What is this court, which for over (b) _____ a century has allowed individuals to have states held to account? And whose decisions may ultimately affect our everyday lives? It was in (c) _____, in the aftermath of the (d) _____ World War that a number of countries joined forces to set up the Council of Europe in order to promote human rights, democracy and the rule of law across Europe. They adopted the European Convention on Human Rights setting up a system that was unique at the time including a binding supervisory mechanism. That was how the Court came into being in (e) _____ reflecting the Member States' desire never again to experience the atrocities committed in the mid-(f) _____ century. Twelve states signed up initially. Now there are almost (g) _____ of them.

⁵ At the end of 2016, the total number of cases "pending before a judicial formation" was 79,750. Of these, 18,171 were against Ukraine; 12,575 against Turkey; 8,962 against Hungary; 7,821 against Russia; 7,402 against Romania; and 6,180 against Italy. Thus, a total of 61,711 or 77.4% of all cases pending at the end of 2016 originated in just six of the forty-seven Member States. By comparison, the number of cases pending against other large Member States was much smaller: 403 against France; 213 against Germany; and 231 against the United Kingdom.

⁶ <https://www.youtube.com/watch?v=EPWGDhgQlgk&t=552s>

Part II (nouns): How the Court works [1:53-4:02]

Listen to the second part of the video and complete the gaps with a noun.

The Court is based in Strasbourg in the Human Rights Building. It is composed of one (a) _____ for each Member State of the (b) _____ of Europe. The judges, who are elected by the parliamentary (c) _____ of the Council of Europe, are fully independent and do not represent any national (d) _____. In dealing with cases, the judges are assisted by the (e) _____, which employs qualified (f) _____ from all the Member States. The Court receives hundreds of letters and phone calls every day. When (g) _____ arrive at the Court, they are sorted and then dispatched to one of the units of the Registry, which prepare the files for the (h) _____. All the (i) _____ are taken by the judges, sitting as a single-judge (j) _____, a three-judge committee, a seven-judge (k) _____ or a Grand Chamber of 17 judges for the most important cases. The (l) _____ is conducted in writing, but in a very few cases the Court also holds public (m) _____, all of which are filmed and can be viewed via webcast. The Court receives a huge number of (n) _____ every year. However, the vast majority of them are rejected at the admissibility stage because the (o) _____ for applying to the Court have not been met, for example because the applicants have not first raised their case before the national (p) _____. For that reason, the Court delivers (q) _____ on the *merits*⁷ in only a small proportion of the cases brought before it. It then rules on whether or not there has been a (r) _____ of the Convention and it may award financial (s) _____. Since it was first set up, the Court has completed the (t) _____ of hundreds of thousands of cases. This is hardly surprising given that the number of individuals covered by this system totals around 820 million people. That is the number of potential (u) _____ living in the countries which have undertaken to comply with the convention.

Part III (verbs): Right to a fair trial [7:17-8:36]

Before listening try to complete the gaps with the correct form of the verb in brackets (one or two words, one of the examples is passive)

In numerous other cases brought against various countries the Court (a) _____ [identify] problems with overcrowding in prisons and inhuman and degrading conditions of detention.

But most of the cases (b) _____ [come] before the Court (c) _____ [concern] the right to a fair hearing and especially the length of domestic proceedings. The Court (d) _____ [receive] thousands of applications from individuals, who, in some cases, (e) _____ [wait] more than twenty years for a final judgment in their own country.

There are also very many cases concerning the failure (f) _____ [execute] final judicial decisions. For example, Anotoly Burdov who (g) _____ [work] on the Chernobyl site following the nuclear disaster (h) _____ [have to] wait several years before the Russian authorities (i) _____ [pay] him the compensation awarded by the domestic courts for his health problems. The Court in Strasbourg (j) _____ [hold] that a state could not cite budget shortages as a reason for not executing a judicial decision.

⁷ the intrinsic rights and wrongs of a case, outside of any other considerations

The rights and freedoms contained in the convention (k) _____
[set out] in general terms, and the Court has to interpret them in the context of today's society in order to avoid the Convention (l) _____ [become] a document that is out of touch with contemporary issues.

Reading: UK Human Rights Blog

Part 1

Read the first paragraph and see if what you said in the discussion was right.

Article 6 – Right to a Fair Trial⁸

There is no directly corresponding provision in the EU Charter of Fundamental Rights. Article 20 – the right to equality before the law – is more related to ECHR Art. 14, and Article 47, the right to an effective remedy and to a fair trial is based on Art. 13 ECHR, which guarantees the right to an effective remedy for human rights violations. However, it has been argued before the European Court of Justice that Article 6 ECHR and Article 47 contain effectively the same fair trial rights.

Part 2

Now skim the first part of the article below and summarize what it says about the following:

- “civil right”
- *Ali v Birmingham City Council* [2010]
- *parent’s right to contact with a child*
- “civil right” in the domestic courts
- *employment rights of civil servants*
- *access to justice*
- *HH (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 504
- *independent and impartial tribunal*
- “reasonable time”
- *public hearing*

The protection of Article 6 ECHR only extends to those disputes that concern a “civil right” (as well of course to the determination of any criminal charge against an individual). The jurisprudence on what does or does not constitute a “civil right” is complex and lengthy but a general rule is that the characterisation of the matter in domestic law is not determinative – *Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 EHRR 1 – and while such civil rights could be brought into play either by direct challenge or by administrative action, it was the nature and purpose of the administrative action that determined whether its impact on private law rights was such that a legal challenge involved a determination of civil rights. In *R(Begum) v Tower Hamlets London Borough Council* [2003] 2 AC 430 the House of Lords was prepared to assume that a decision as to housing for a homeless person did involve a “civil right” but in the more recent

case of *Ali v Birmingham City Council* [2010] 2 AC 39 the Supreme Court confronted that question and decided that it did not.

A parent’s rights to contact with, and custody of, a child constitute “civil rights” for the purposes of Art.6. This means that they must have a fair hearing before an independent and impartial tribunal. When a mother was refused access to her child by the local authority, and she was unable to challenge that refusal in court, there was found to be a breach of her Art. 6 rights (although the case was settled after it was declared admissible in Strasbourg: Application no. 11468/85, 15 December 1986). A more recent case against Croatia indicated that exclusion of a mother from the adoption (*X v Croatia*, 17 July 2008).

It is hardly surprising that domestic courts encounter some confusion when they come to determine whether a matter involves a “civil right” or not; Strasbourg case law

⁸ <https://ukhumanrightsblog.com/incorporated-rights/articles-index/article-6-of-the-echr/>

on the point is far from clear. In trying to determine whether a freezing order on a claimant's assets affected his civil rights, Sedley LJ observed that the Strasbourg Court is very clear about the concept having an autonomous meaning, but "What is neither certain nor clear is what that meaning is."

Particular difficulties have been caused by the fast-changing Strasbourg case law on employment disputes involving public servants, which until recently have been excluded from the purview of Article 6. The Court decided in *Pellegrin v France* (2001) 31 EHRR not to allow administrative servants the guarantees of Article 6 because their employment involves important state imperatives, but defining this kind of employment is far from easy, as was demonstrated by the case of an army chaplain who sought redress for alleged unfairness; after considering the authorities Nichol J found that the claimant fell within the *Pellegrin* exception under the test laid down (2007).

The requirements of fairness imposed on Member States by this Article apply to civil and criminal litigation. Art.6, taken as a whole, has been held to ensure not only a fair trial once litigation is under way but to impose an obligation on States to ensure access to justice (*Golder v United Kingdom* (1975) 1 EHRR 524: interference with a prisoner's correspondence with a solicitor constituted a breach of his right of access to court under Art.6, even though litigation was not pending). Most recent litigation has concerned the matter of costs; whilst the right of access to justice is implied in Article 6(1), the original case on costs, *Airey v Ireland* (1979), has not been interpreted to impose on states an obligation to provide a legal aid scheme. Legal aid constitutes one avenue to justice but there are others, such as the availability of representation under a contingent or conditional fee agreement. Legal representation is not considered indispensable in all cases. Where there are no particularly complicated points of law, the state is not compelled to provide a publicly funded lawyer (*HH (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 504). In environmental challenges, on the other hand, the right of access to (affordable) access coincides with the obligation on states

imposed by the Aarhus Convention to avoid prohibitive expense where individuals or groups ask the courts to enforce environmental law. The Aarhus Convention is part of EU law therefore may be relied upon in UK courts, until such time as the UK's departure from the EU is finalised.

The requirement that the trial be conducted by an "independent and impartial tribunal" is satisfied if an internal disciplinary appeals board consists equally of members of the relevant profession and members of the judiciary: *Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 EHRR 1.

At the Strasbourg level the most litigated requirement in Art.6 is the obligation on States to ensure that proceedings do not exceed a "reasonable time". The circumstances of the case may determine the importance of expedition; in AIDS cases the Court's approach has been stricter than in other areas, since the rapid dispatch of compensation claims is essential in respect to terminally ill patients (*X v France* (1992) 14 EHRR 483). The Court has also take a strict approach to delay in child care cases where the child may have bonded with its new carers: *H v United Kingdom* (1987) 10 EHRR 95.

The requirement of a public hearing relates to proceedings in courts of first and only instance. The failure to provide a public hearing will not be cured by making the appeal proceedings public where the case is not reheard on its merits: *Le Compte*.

If the initial hearing (e.g. by a regulator) does not fulfil the requirements of independence and impartiality, appeal may cure the defect: *Bryan v United Kingdom* (1996). In any event if the matter is essentially one of policy, the detailed requirements of Art.6 do not necessarily apply: see the House of Lords ruling in *Alister v Ingham* (2001) and the line of cases preceding the House of Lords' analysis in *R (Begum) v Tower Hamlets London Borough Council*. In many administrative fields, such as planning, an administrator may be decision-maker, and not "an independent tribunal" within the meaning of Article 6(1), but the process will be Article 6(1) compliant, if an aggrieved party has a right of appeal or review from that decision before such a tribunal.

Listening: European Court of Justice "Cutting through the fog"⁹

Listen to the report and complete the gaps with the correct two-word phrases.

There's one for every Member State. These are the judges for the Court of European Justice of the European Union followed by 11 (a) _____. The environment, economic and (b) _____

⁹ https://www.youtube.com/watch?v=QFJnYt4z_S8

_____, competition, employment and social affairs, research and innovation, health and many other areas are regulated by (c) _____. It's the same in all Member States. The judges clarify the interpretation of (d) _____ when requests are made to them by (e) _____ or by colleagues. They also deal with (f) _____ concerning annulment and appeals. Other judges assist them through the (g) _____ of the European Union in cases concerning annulment brought by individuals, companies and in some cases by Member States. The cases they handle concern most often trade, (h) _____, trademarks, agriculture or (i) _____. They also deal with disputes between the EU and its staff. With a continuously (j) _____, there was a backlog to be cleared. 600 cases a year before 2010 grew to 912 in 2014. At the end of 2015, an unprecedented 1270 cases were pending. (k) _____ will progressively reinforce the General Court. In September 2019, each Member State should have two judges and maintain equal (l) _____. This way the court should be able to reach its decisions in a (m) _____ as required by the Charter of Fundamental Rights.

Extra listening: European Court of Justice: What it does

Listen to the BBC report about the European Court of Justice and complete the gaps with the correct verb phrases (the correct number of spaces is provided).

BBC European Court of Justice where judges rule on EU laws¹⁰

This is how justice is served EU style. Well, we are about to watch a judgment (a) _____ in the European Court of Justice. Now (b) _____ that this is not the European Court of Human Rights that Tory *backbenchers*¹¹ hate. This is a completely different organisation in a completely different city (c) _____. This place (d) _____ European Union organisations, countries, and companies who are (e) _____ the EU's rules. So last year, for example, they passed judgment on whether airlines (f) _____ if passengers are delayed, whether people from outside the EU (g) _____ to housing benefits. But most often they're responding to national courts who asked for an EU law (h) _____. This particular case (i) _____ by a panel of 15 judges. Sometimes there are fewer (j) _____ on how complicated it is. Overall, there is one judge from each Member State. They (k) _____ of six years and they've all got a legal background. (l) _____ the _____-l_____, a role that British courts don't have, but this one does, an Advocate-General. [speaking by Advocate General] There are eight of them and here's Britain's Eleanor Sharpston. Her job ... to analyse cases and suggest what the Court (m) _____.

Sharpston: People reading the judgments of the Court find it easier to understand what the Court (n) _____ and the reasoning behind the thinking of the Court if they have an Advocate-General's opinion, which

¹⁰ <https://www.youtube.com/watch?v=4xdvXvlwhDQ&t=37s>

¹¹ a Member of Parliament who does not hold office in the government or opposition and who sits behind the front benches in the House of Commons:

(o) _____ , sets the scene, explains what the options were that the Court had to consider, and then why you (p) _____ or the other. Secondly, most Supreme Courts, when they (q) _____ a case, have the benefit of judgments that (r) _____ by the courts below. With this Court, many of the cases that come to us are cases that come straight here.

Critics of the justices who've sat here over the years (s) _____ the EU by *stealth*¹², even though they're not elected. But talk to them and they say judges at home aren't elected either. Personally, I'm just amazed how much the building looks like a boutique hotel. Now this is a big place doing a big job. There are about 600 new cases lodged here every year. And in the league table of which countries end up here most often, the UK's kind of near the bottom. Not as squeaky clean, as say, Slovenia, but not accused of being naughty as often as France. And did I mention? It's definitely not the European Court of Human Rights.

Extra Reading: Human rights in the ECtHR and the EU

RC Part I: Answering questions

Skim the article on the next page and find the answers to the following questions.

1. When did the Lisbon Treaty take effect?
2. When does the EU Charter of Fundamental Rights apply?
3. What is the status of convicted prisoners' right to vote in the UK? What did the Strasbourg Court hold about this issue in 2005?
4. What does the UK Human Rights Act 1998 say about the applicability of ECtHR decisions?
5. How does EU law differ according to the article?
6. What happened in a recent employment appeal tribunal decision?
7. What issue did Mr Justice Langstaff have to address?
8. What did Mr Paul Luckhurst (who was representing the two women in the case) argue?
9. Why did the judge grant the embassies involved in the case the right to appeal?
10. What is the author's opinion?

Never mind human rights law, EU law is much more powerful¹³

The Guardian Human Rights, 9 October 2013 by Joshua Rozenberg

Even though the human rights court in Strasbourg and the convention it **enforces** are never far from the headlines these days, it is rare to find any mention of another important human rights agreement – the European Union's charter of fundamental rights. This is understandable: although the charter was “**proclaimed**” by the EU institutions more than 13 years ago, it did not become legally binding until the Lisbon treaty took effect in December 2009.

Even then, the charter applies only to EU member states when they are **implementing** EU law. [...] And you could be forgiven for thinking that the charter simply **codifies** EU case-law and merely re-states the human rights convention: where the charter contains rights that **stem**¹⁴ from the convention, their meaning and scope are the same.

¹² cautious and surreptitious action or movement:

¹³ <https://www.theguardian.com/law/2013/oct/09/human-rights-eu-law-powerful>

¹⁴ originate in or be caused by

Hang on a moment. Decisions by the human rights court do not have direct effect in the UK. Convicted prisoners can't vote, even though the UK's **blanket**¹⁵ ban on prisoner voting was held to be **in breach** of their human rights as long ago as 2005. And the Human Rights Act 1998 says only that UK courts must take Strasbourg decisions "into account". That does not make them **binding**.

Where possible, UK courts must give effect to existing legislation in a way that is compatible with convention rights. But if that proves impossible, the most that a higher court can do is to declare the two laws incompatible and let parliament sort it out.

But EU law is different. It has direct effect under the European Communities Act 1972. And that means the EU charter can be used to "disapply" – effectively, to **overturn** – an act of parliament. That's the conclusion to be drawn from a recent decision of the employment appeal tribunal. The case was won by Paul Luckhurst of Blackstone Chambers. A note on his **chambers**¹⁶ website says drily that the ruling is "likely to be of wider significance". Adam Wagner, the barrister and blogger who alerted me to it, says "this could be big". The case involved two Moroccan women who were sacked by diplomatic missions in London. Benkharbouche was a cook at the Sudanese embassy and Janah was on the domestic staff of the Libyan embassy. They complained variously of unfair dismissal, unpaid wages and **breaches** of the working time regulations.

Both their claims were dismissed on the basis that foreign states have immunity from the jurisdiction of the UK courts. Although that immunity is not unlimited, section 4 of the State Immunity Act 1978 gives embassies immunity in respect of staff who are foreign nationals and who are not habitually resident in the UK. So the two women were deprived of the right to bring their claims.

The question for Mr Justice Langstaff, sitting as president of the Employment Appeal Tribunal, was whether there was any way round this statute. Article 6 of the human rights convention gives everyone bringing a civil claim in the UK the right to a fair hearing. But the judge said he could not use the Human Rights Act to change the meaning of the State Immunity Act.

So Luckhurst, representing the two women, turned to EU law. Article 47 of the EU charter also guarantees a fair hearing and an effective **remedy**¹⁷. His clients' claims for unfair dismissal were covered by the working time directive, which is part of EU law, although other parts of their claim were **outside its scope**. Since the charter has direct effect in national law, the question for the appeal tribunal was whether it could disapply national laws that were contrary to the charter in litigation between private parties, as for these purposes they were.

Langstaff decided it could, despite what he described as "the uncomfortable recognition that the domestic legislature took care in the Human Rights Act not to allow the courts to disapply any domestic statute which was in conflict with the European convention on human rights". He allowed the women's appeals to the extent that they were covered by the working time regulations, as well as claims by Janah for racial discrimination and harassment. Recognising that he was opening up a **rift**¹⁸ between the application of EU law and the use of human rights law, the judge granted the embassies permission to appeal. An appeal would also allow the two women to seek a declaration of incompatibility in respect of their unfair dismissal and minimum wage claims – something his tribunal had no power to grant.

The ruling demonstrates once again that EU law **trumps**¹⁹ laws passed by parliament. Despite all the attention paid to human rights law, EU law is much more powerful. And it's a decision that may make life more difficult for ministers. The foreign office will have to tell embassies in London that they can't sack their domestic staff without paying the compensation to which those staff are entitled under EU law. But what's wrong with that?

Reading, vocabulary & discussion (part II): Human rights in the ECtHR and the EU

Look at the words in bold in the article above and discuss their meaning with a partner.

Imagine a similar case in Italy. In pairs, one of you takes the side of the judge in the case and the other the lawyer. Present the issues to your partner. Try to use as many of the (new) vocabulary words as possible.

¹⁵ covering all cases or instances; total and inclusive

¹⁶ rooms used by a barrister or barristers, especially in the Inns of Court

¹⁷ a means of legal reparation

¹⁸ break, disagreement

¹⁹ surpass (something) by saying or doing something better

Session 2: Fair trial in civil matters

A. Fair Trial in civil matters: Dispute and time limitations

Reading, listening and discussion: Statute of limitations

You are going to read a short article and watch a video about the statute of limitations.

Part I: Reading and vocabulary – Statute of Limitations in Italy

Before you do this, however, skim the following blogpost (which mainly deals with the Italian criminal system) and decide whether you agree with what it says. Has anything changed since this article was first published? Has the author made any mistakes or over-simplifications?

Focus on the meanings of the highlighted words and expressions, discuss their meaning with a partner:

Statute of Limitations according to Italy's Government for Change²⁰

By Paolo Paracchini

Italy's justice system has long been one of the most dysfunctional in Europe, especially when it comes to **PUTTING AWAY** alleged mafia or white-collar criminals. Prosecutors say it is all but impossible to reach a definitive sentence for a multitude of financial crimes within the **PRESCRIBED TIME FRAME**, which is seldom more than eight years. That's partly because legal cases take so long in Italy. But it is also because Italy is unique in Europe, even among the other civil law systems:

Its **STATUTE OF LIMITATIONS** starts from the moment an **ALLEGED** crime is supposed to have been committed rather than from the point it is discovered, and the time limit is not extended when a defendant is put under investigation, **INDICTED** or judged. No other country has both rules!

In 1988 the Italian criminal process underwent substantial reform modeled on what is done in common-law jurisdictions to bring Italy's outdated **INQUISITORIAL SYSTEM** more in line with modern legal thought and practice. Indeed, Italy's criminal law judicial system and process was rooted in long-standing legal tradition heavily biased in favor of the state's virtually unlimited financial resources (if compared to those of individual suspects) and absolute monopoly of law enforcement, including police, public prosecutors and judges. What the reform did or tried to do was to

increase those institutions that make a trial **"ADVERSARIAL"** as opposed to "inquisitorial" among the "parties" (to a trial), i.e., the public prosecutor, the accused or defendant and judge. Today such "parties" thanks to the reform have theoretically been placed on **AN EQUAL FOOTING** with equal access to the **EVIDENCE** gathered by the police and prosecution.

Notwithstanding the reform of 1988, Italy remains light years away not only from common-law criminal trials but from civil law criminal trials of other EU jurisdictions as well! Despite the Italian Constitution, heralded by comic Roberto Benigni as the "the most beautiful in the World," the concept of a speedy trial is virtually unknown. The Constitution, which Benigni swears by, talks of a "reasonable duration" (art. 111). That, in a country where case law does not have the same place, authority or purpose as it does in common-law jurisdictions and where the principle of **STARE DECISIS** is non-existent, "reasonable duration" is practically meaningless, as are other institutions known to Italian law but either defined differently or applied "loosely" as opposed to "strictly" such as, **HABEAS CORPUS**, ne bis in idem (Latin for **DOUBLE JEOPARDY**) or what under Italian law constitutes a legal **SEARCH AND SEIZURE** by the police, just to name a few. The Government for Change seems intent on completing the reform of the Italian criminal law process begun in 1988.

Part II: Listening

Listen to the video about the statute of limitations in the civil system in the US state of Florida and complete the gaps with the missing legal terms:

If you have a good reason to take someone to court, it's rarely helpful to put off doing that. And, depending on the type of (a) _____, the law becomes a ticking clock for you to (b) _____

²⁰ <http://www.reflectionsonitaly.blog>

_____. The laws designed to prevent any *dilly-dallying*²¹ are called statutes of limitation. A statute of limitation is a window of time one has to (c) _____ in court. Each state has its own time limits for (d) _____, and there are different time limits for different kinds of cases. It's easy to look up these time limits on the internet, but it's not always as easy to know when the time limit starts. Typically the clock starts on the day that whatever you (e) _____ about happened, or the day you find out that you (f) _____. In Florida, injury, fraud, property damage, trespassing and (g) _____ have a four-year statute of limitation, while professional malpractice, wrongful death, (h) _____ all have a two-year statute. Written contracts have a five-year limitation. Sometimes you can stop the statute clock on a case and then restart it. This is called tolling. Tolling is allowed only for good reasons, some of which include the accused being out of state, in hiding somewhere or that the (i) _____ is currently a minor. There is also something called a statute of repose. A statute of repose differs from a statute of limitation because it's not related to when you first learned you (j) _____. A statute of repose can bar your action even before you have one. These statutes are designed to protect manufacturers and their insurers from (k) _____ for accidents that happen after the design life of the product. Say you bought a product over 12 years ago. Then due to a design or manufacturing defect the product (l) _____ you. In Florida, with a few exceptions, you can't bring a claim (m) _____. Exceptions include products that are expressly warranted to have an expected useful life of more than 12 years or certain specified products like airplanes, railroad equipment and elevators. For more insight into statutes of limitation and how they apply to your potential case, spend some quality time with "LegalYou". You can do this.

Part III: Reading and discussion

Now read the following excerpt from another blog post²² and discuss in small groups. Focus particularly on the highlighted words.

The Italian Statute of Limitations is very odd when compared to the United States'. Usually, in the United States, the time limit "**RUNS**" only until a **COMPLAINT IS FILED** and a person is **CHARGED**. The **PLAINTIFF** must file the complaint within the time period designated by the laws surrounding the specific alleged crime and the Defendant has a right to Speedy Trial. But the Plaintiff does not, per se, have to worry about the Statute of Limitations expiring while they are prosecuting the case. Italy seems to be the exact opposite. Article 157 of the Italian penal code limits the amount of time for the prosecution of all crimes in Italy excepting some **FELONIES**. These felonies are the crimes that are serious enough to trigger **LIFE IN PRISON SENTENCES**. In Italy, the Statute of Limitations continues to run until the trial ends, which gives ample opportunity for the defendant to **STALL** and force the trial to go on longer past the Statute of Limitations to avoid a **CONVICTION**.

²¹ waste time through aimless wandering or indecision

²² <https://balestrierefariello.com/articles/united-states-statutes-of-limitations-versus-italian-statutes-of-limitations/>

Complete the gaps with the prepositional phrase from the list below. One has been done for you.

for an additional period	within that period	in first or second	in view of
due to a legitimate	for the same crime	in principle	at the moment
in the event	by Italian law	with a few exceptions	as of August 4, 2017

How are enforcement-limitations periods calculated, and when does a limitations period begin running?

According to Italian law, the statute of limitations begins running at the moment the crime is committed and, in the event of so-called “permanent crimes”, at the moment such continuation has stopped (art. 158 ICC).

In relation to each crime ([A] _____ for the most serious offences, to which the statute of limitations does not apply), Italian law provides for a first limitations period equal to the maximum period of imprisonment which the law provides [B] for the same crime, and this cannot be fewer than six years (art. 157 ICC). In the event that no qualified activity of investigation is carried out [C] _____ (such as a request interrogation of the suspect, a request of committal for trial, an order of pre-trial custody, the fixing of a preliminary hearing, etc.), the crime is considered extinguished.

On the contrary, [D] _____ that a qualified activity of investigation is carried out, then the original limitations period is extended [E] _____ equal to one-quarter of the original time. If no final conviction is reached within that longer period, the crime is considered extinguished.

For crimes committed [F] _____, Law no. 103/2017 has provided for a *de facto* extension of the limitations period in the event of conviction [G] _____

_____ instance (i.e. after such convictions, the statute of limitations is suspended, and it does not run, for a maximum period of one year and six months in each instance).

Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

As explained in question 5.1, in the event of so-called “permanent crimes”, the statute of limitations begins running [H] _____ such continuation has stopped. However, once the limitations period has expired, prosecution is no longer admitted. The same principle applies to the “conspiracy”, which is provided [I] _____ as an “autonomous crime”, performed by three or more individuals who create an association aimed at committing several offences (art. 416 ICC). The limitations period for the conspiracy, which is, [J] _____, equal to seven years (extendable by one-quarter, to up to eight years and nine months), starts running for each member from the moment he or she gave the last contribution to the criminal association.

Can the limitations period be tolled? If so, how?

Yes, the running of the statute of limitations is tolled in particular cases, such as the following:

(i) when the criminal proceeding is suspended, [K] _____ a decision of another court (such as the Italian Constitutional Court, etc.); and

²³ Excerpted from <https://iclg.com/practice-areas/business-crime-laws-and-regulations/italy#chaptercontent5>

(ii) when the criminal proceeding is temporarily suspended [L] _____ impediment to attend from the defendant or his defence lawyer. The time bar starts running again from the day on which the cause of the suspension has stopped.

Part V: Mini-presentations

Prepare a presentation about what you have learned about the Statute of Limitations in Italy and elsewhere, especially in the United States.

B. Fair Trial in criminal matters: The EAW

Listening : The European Arrest Warrant–Definition²⁴

Listen to the short definition of the European Arrest Warrant and correct the 10 mistaken vocabulary items (including phrases) in the transcript.

European Arrest Warrant or EAW: an arrest warrant, valid outside the European Union, that encourages the Member State receiving the warrant to arrest and imprison a suspect or arrested person to the Member State that has issued the arrest so that the person can be put in custody or complete a prison sentence. The EAW applies to people who are due to stand trial, be arrested or serve their time and only applies to crimes where the maximum penalty is at least 10 months in prison.

Listening: The European Arrest Warrant

Listen to a short video²⁵ by Fair Trials International, an organisation that works “for the better protection of fair trial rights and defend[s] the rights of people facing criminal charges in a country other than their own. [Their] vision is a world where every person’s right to a fair trial is respected, whatever their nationality, wherever they are accused”. Listen once and decide **if the organisation is completely against the European Arrest Warrant**. Now read and try to complete the missing words in the transcript below. Listen to the video again to check your answers.

The European Arrest Warrant is a fast-track (A) _____ system that was (B) _____ in the EU in the wake of 9/11. It was designed to tackle serious cross-border (C) _____, tackle terrorism, and basically means that if one European country requests the (D) _____ of someone else from another European country the (E) _____ have very little power to do anything other than extradite them. The European Arrest Warrant system is essentially a no-questions-asked extradition (F) _____. Courts have very little power to (G) _____ extradition and the major problem is that it was introduced with very little consideration

²⁴ https://www.youtube.com/watch?v=_MoHqc0OgcQ and <https://www.youtube.com/watch?v=OgWapU--dLQ>

²⁵ http://www.youtube.com/watch?feature=player_embedded&v=ZVbWPzVcdew

for the (H) _____ of the people who are being extradited. It was supposed to tackle serious cross-border crime, terrorism, drugs (I) _____, that sort of thing. But, instead, we see hundreds of people who are extradited for very minor (J) _____ and with very little consideration for either their circumstances or for the conditions they will be held in when they are (K) _____. Fair Trials International is fully in favour of an efficient extradition system. We have a Europe without borders and, of course, people should be held (L) _____ for crimes they commit and shouldn't be able to avoid justice just by (M) _____ a border within Europe. However, additional safeguards are needed. Fair Trials International is calling for a (N) _____ test to ensure that people aren't extradited for very minor offences like (O) _____ a bicycle or stealing a piglet. We're also calling for courts to be able to consider the human (P) _____ situation in the country that was requesting the extradition, so that if people's human rights will be (Q) _____ they're not extradited.

Grammar and vocabulary: The European Arrest Warrant²⁶

The European Arrest Warrant (EAW), applied throughout the EU, replaced lengthy extradition procedures within the EU's territorial jurisdiction. It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or period in detention.

EAW part I: Grammar (verbs)

Complete the gaps with the correct form of the verb in brackets (the number of words corresponds to the gaps provided).

Judicial implications

The **EAW** implies:

- **faster and simpler surrender procedures and an end to political involvement ;**
- **EU countries can no longer refuse to surrender, to another EU country, their own citizens who**
(A) _____ **[commit]** a serious crime or are suspected of having committed such a crime in another EU country, on the grounds that they are nationals.

Simplifying and improving the surrendering procedure between EU countries (B) _____ **[make]** possible by a high level of mutual trust and cooperation between countries.

Since 1 January 2004, when the EAW (C) _____ **[come]** into operation, persons surrendered under the EAW system (D) _____ **[include]**:

- a failed London bomber (E) _____ **[catch]** in Italy;
- a German serial killer (F) _____ **[track down]** in Spain;
- a suspected drug smuggler from Malta (G) _____ **[extradite]** from the UK;
- a gang of armed robbers (H) _____ **[seek]** by Italy whose members were then arrested in six different EU countries.

Conditions

²⁶ http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm

An EAW may (I) _____ [issue] by a national judicial authority if:

- the person whose return (J) _____ [seek] is accused of an offence for which the maximum period of the penalty is at least one year in prison;
- he or she (K) _____ [sentence] to a prison term of at least four months.

A decision by the judicial authority of an EU country to require the arrest and return of a person should therefore be executed as quickly and as easily as possible in the other EU countries.

Legal basis

The EU document governing the operation of the EAW is the **Council Framework Decision of 13 June 2002**. This was the first instrument to (L) _____ [adopt] on the basis of the principle of mutual recognition of judicial decisions.

It (M) _____ [come] into force on 1 January 2004 and is founded on the principle of direct contacts between the judicial authorities.

Part II EAW: Vocabulary (Adjective and adverbs)

Complete the following part with an adjective or adverb from the list below (2 of them are used twice)

<i>common</i>	<i>top</i>
<i>criminal</i>	<i>fair (x 2)</i>
<i>efficient</i>	<i>trivial</i>
<i>proportionately</i>	<i>minimum</i>
<i>mutual</i>	<i>fundamental (x 2)</i>

Proportionality

There is a need to ensure that the EAW is used (A) _____ so that the system is not undermined by a glut of EAWs for (B) _____ offences. The judicial authorities in the EU Member States issuing the EAW should apply a 'proportionality check' by considering the seriousness of the offence, the length of sentence and the costs and benefits of executing an EAW.

Guaranteeing (C) _____ trials and (D) _____ rights

The operation of the EAW will also benefit the work of the European Union on helping to **guarantee**

(E) _____ **trials by having (F) _____ EU standards** for the rights of people suspected or accused of a crime.

This includes measures setting out (G) _____ rules in the EU on:

- the right to interpretation and translation during (H) _____ proceedings;
- the right of suspects to be informed of their rights;
- the right to have access to a lawyer and the right of persons in custody to communicate with family members and employers;
- the presumption of innocence;
- the right to legal aid.

Each of these measures will apply to suspects who are subject to an EAW, helping to ensure respect for their (I) _____ rights.

Further work on ensuring the proper functioning of the EAW

While the EAW provides an (J) _____ way to surrender suspects in a border-free EU, there is room for improvement in the way it operates in order to continue to build (K) _____ confidence in the EU countries' judicial systems. The Commission is committed to supporting the proper functioning of the European arrest warrant through funding networking projects, training and sharing of good practices. Such successful good practices include the guidelines on applying a proportionality test at issuing stage in the European arrest warrant Handbook, which were strongly endorsed in the Commission's 2011 implementation report.

Ensuring that the Member States fully implement the complementary EU instruments on mutual recognition, such as the transfer of prisoners and supervision orders, is among the Commission's (L) _____ priorities, as these instruments usefully set-up alternatives to the detention of persons concerned. This new legislative framework will contribute to the EAW's proper functioning and thus enforce mutual trust.

Part III EAW: Vocabulary (Collocations)

Look at the following adjective and noun collocations. Choose the correct collocations in the gaps below. One has been done for you already.

<i>custodial sentence</i>	<i>serious crime</i>	<i>judicial authority (x 2)</i>
<i>administrative burden</i>	<i>arrest warrant</i>	<i>alternative measures</i>
<i>criminal prosecution</i>	<i>final judgment</i>	<i>framework decision</i>
<i>maximum period</i>	<i>judicial procedures</i>	<i>extradition system</i>

More effective extradition procedures: European arrest warrant²⁷

A person who has committed a (A) _____ in an EU country but who lives in another can be returned to the first country to face justice quickly and with little (B) _____.

ACT

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the (C) _____.

SUMMARY

WHAT DOES THE FRAMEWORK DECISION DO?

It improves and simplifies (D) _____ to speed up the return of people from another EU country who have committed a serious crime.

KEY POINTS

The European arrest warrant **replaces the** (E) extradition system. It requires each national (F) _____ to recognise and act on, with a minimum of formalities and within a set deadline, requests made by the (G) _____ of another EU country. A warrant asks for a person to be handed over so that:

- a (H) _____ can be conducted;
- the person can be placed in custody or detention.

The warrant **applies** in the following cases:

- offences punishable by imprisonment or a detention order for a (I) _____ of at least 1 year;
- where a final (J) _____ has been passed or a detention order has been made, for sentences of at least 4 months.

Proportionate use of the warrant

EU countries must take the following into consideration (non-exhaustive list):

²⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AI33167>

- the circumstances and the gravity of the offence;
- the likely sentence;
- less coercive (K) _____.

When an individual is arrested, he/she must be informed of the contents of the (L) _____.

In which cases must EU countries refuse to act on a warrant?

- If an EU country has already handed down a (M) _____ on the person concerned for the same offence.
- If the offence is covered by an amnesty in the EU country asked to hand over the perpetrator.
- If the person concerned may not be held criminally responsible by the EU country asked to act on the warrant, owing to his/her age.

Part IV EAW: Reading and discussion

Now read the rest and summarize the information about the EAW in pairs.

Rules to ensure procedural rights in arrest-warrant proceedings

These include:

- Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings;
- Directive 2012/13/EU on the right of subjects to be informed of their rights;
- Directive 2013/48/EU on the right to have access to a lawyer and the right of persons in custody to communicate with family members and employers.

Room for improvement

A 2011 European Commission report found that although the European arrest warrant was very successful in helping EU countries fight crime, several areas could be improved further, including:

- transposition;
- correct application;
- proportionality;
- ensuring procedural rights.

C. More on Length of Proceedings

Summarising skills: Length of proceedings

Read the text from an ECtHR publication below and take notes about the following issues:

- *starting-point*
- *reasonable time*
- *writ of commencing proceedings*
- *supervision by a judicial body*
- *when the period ends*

Determination of the length of the proceedings²⁸

271. As regards the starting-point of the relevant period, time normally begins to run from the moment the action was instituted before the competent court (Poiss v. Austria, §50; Bock v. Germany, § 35), unless an application to an

²⁸ From *Guide on Article 6 of the Convention – Right to a fair trial (civil limb)*, pp. 51-51.

administrative authority is a prerequisite for bringing court proceedings, in which case the period may include the mandatory preliminary administrative procedure (*König v. Germany*, § 98; *X v. France*, § 31; *Kress v. France* [GC], § 90). 272. Thus, in some circumstances, the reasonable time may begin to run even before the issue of the writ commencing proceedings before the court to which the claimant submits the dispute (*Golder v. the United Kingdom*, § 32 in fine; *Erkner and Hofauer v. Austria*, § 64; *Vilho Eskelinen and Others v. Finland* [GC], § 65). However, this is exceptional and has been accepted where, for example, certain preliminary steps were a necessary preamble to the proceedings (*Blake v. the United Kingdom*, § 40).

273. Article 6 § 1 may also apply to proceedings which, although not wholly judicial in nature, are nonetheless closely linked to supervision by a judicial body. This was the case, for example, with a procedure for the partition of an estate which was conducted on a non-contentious basis before two notaries, but was ordered and approved by a court (*Siegel v. France*, §§ 33-38). The duration of the procedure before the notaries was therefore taken into account in calculating the reasonable time.

274. As to when the period ends, it normally covers the whole of the proceedings in question, including appeal proceedings (*König v. Germany*, § 98 in fine) and extends right up to the decision which disposes of the dispute (*Poiss v. Austria*, § 50). Hence, the reasonable-time requirement

Vocabulary: The term “Dispute”

Before you read the following explanation of dispute, discuss the meanings of the following terms with a partner:

- *procedure*
- *proceedings*
- *substantive*
- *non-contentious and unilateral procedure*
- *points of law*
- *tenuous connection*
- *remote effects*

Now read the text and focus on the use of these vocabulary items.

The Term “Dispute”²⁹

4. The word “dispute” must be given a **substantive** meaning rather than a formal one (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 45). It is necessary to look beyond the appearances and the language used and concentrate on the realities of the situation according to the circumstances of each case (*Gorou v. Greece (no. 2)* [GC], § 29; *Boulois v. Luxembourg* [GC], § 92). Article 6 does not apply to a **non-contentious and unilateral procedure** which does not involve opposing parties and which is available only where there is no dispute over rights (*Alaverdyan v. Armenia* (dec.), § 35).

5. The “dispute” must be genuine and of a serious nature (*Sporrong and Lönnroth v. Sweden*, § 81). This rules out, for example, civil **proceedings** taken against prison authorities on account of the mere

presence in the prison of HIV-infected prisoners (*Skorobogatykh v. Russia* (dec.)). For example, the Court held a “dispute” to be real in a case concerning a request to the public prosecutor to lodge an appeal on **points of law**, as it formed an integral part of the whole of the proceedings that the applicant had joined as a civil party with a view to obtaining compensation (*Gorou v. Greece (no. 2)* [GC], § 35). 6. The dispute may relate not only to the actual existence of a right but also to its scope or the manner in which it is to be exercised (*Bentham v. the Netherlands*, § 32). It may also concern matters of fact.

7. The result of the proceedings must be directly decisive for the right in question (*Ulyanov v. Ukraine* (dec.)). Consequently, a **tenuous connection** or remote consequences are not enough to bring

²⁹ excerpted from Guide on Article 6 of the Convention – Right to a fair trial (civil limb)

Article 6 § 1 into play (*Boulois v. Luxembourg* [GC], § 90). For example, the Court found that proceedings challenging the legality of extending a nuclear power station's operating licence did not fall within the scope of Article 6 § 1 because the connection between the extension decision and the right to protection of life, physical integrity and property was "too tenuous and remote", the applicants having failed to show that they personally were exposed to a danger that was not only specific but above all imminent (*Balmer-Schafroth and Others v. Switzerland*, § 40; *Athanassoglou and Others v. Switzerland* [GC], §§ 46-55; *Sdružení Jihočeské Matky v. the Czech Republic* (dec.)). For a case concerning limited noise pollution at a factory, see *Zapletal v. the Czech Republic* (dec.). For the hypothetical environmental impact of a plant for treatment of mining waste, see *Ivan Atanasov v. Bulgaria*, §§ 90-95. Similarly, proceedings which two public-sector employees brought to challenge one of their colleagues' appointment to a post could have only **remote effects** on their civil rights, specifically,

their own right to appointment (*Revel and Mora v. France* (dec.)).

8. In contrast, the Court found Article 6 § 1 to be applicable to a case concerning the building of a dam which would have flooded the applicants' village (*Gorraiz Lizarraga and Others v. Spain*, § 46) and to a case about the operating permit for a gold mine using cyanidation leaching near the applicants' villages (*Taşkın and Others v. Turkey*, § 133; see also *Zander v. Sweden*, §§ 24-25). More recently, in a case regarding the appeal submitted by a local environmental-protection association for judicial review of a planning permission, the Court found that there was a sufficient link between the dispute and the right claimed by the legal entity, in particular in view of the status of the association and its founders, and the fact that the aim it pursued was limited in space and in substance (*L'Érablière A.S.B.L. v. Belgium*, §§ 28-30). Furthermore, proceedings for the restoration of a person's legal capacity are directly decisive for his or her civil rights and obligations (*Stanev v. Bulgaria* [GC], § 233).

Statute of limitations and procedural time limits in Italy Part II

Procedural time limits in Italy Part ³⁰

Complete the gaps with the letter corresponding to the correct phrase that completes the title questions. One of them has already been done for you.

A	... what is the starting time?
B	... weeks, in months or in years, what is meant?
C	... does the indicated number of days include calendar days or working days?
D	... relevant for civil procedures?
E	... by the method of transmission or service of documents (personal service by a huissier or postal service)?
F	... on time limits for the various civil procedures?
G	List of the various days envisaged as non-working days pursuant to Regulation (EEC, Euratom) No 1182/71 of 3 June 1971
H	... is the day when the event occurred taken into account in the calculation of the time period?

1 What are the types of deadlines ☐

Procedural time limits, i.e. the period of time within which a particular step must be taken, may be a) **mandatory** (*perentorio*), meaning that failure to comply makes the step invalid; b) **indicative** (*ordinatorio*), meaning that failure to comply does not entail invalidity or nullity; c) **minimum** (*dilatorio*), meaning that the step is invalid if taken before the date in question (Code of Civil Procedure, Sections 152 to 155, see annex referred to below).

2 List of the various days envisaged as non-working days pursuant to Regulation (EEC, Euratom) No 1182/71 of 3 June 1971.

The following are regarded as non-working days: all Sundays, 1 January, 6 January, 25 April, Easter Monday, 1 May, 2 June, 15 August, 1 November, 18 December, and 25 and 26 December.

³⁰ https://e-justice.europa.eu/content_procedural_time_limits-279-en.do

3 What are the applicable general rules ☐

When calculating a procedural time limit, the starting day (*dies a quo*) is not considered. If the final day (*dies ad quem*) is a non-working day, the time limit is automatically extended to the next working day. If the law refers to the concept of 'clear days' (*giorni liberi*), both the starting and final day are excluded from the calculation. If the law does not expressly state that the time limit is mandatory, the time limit will be considered indicative.

To compute time limits expressed in months or years, the common calendar is used; thus the time limit expires upon the expiry of the last moment of the day of the month corresponding to the initial one or, in the case of time limits in years, on the last moment of the day of the month and (subsequent) year corresponding to the initial ones, irrespective of whether the months have 31 or 28 days or whether the calculation includes February of a leap year. Mandatory time limits cannot be extended.

Procedural time limits in ordinary and administrative courts are automatically suspended during the summer recess from 1 August to 15 September of each year, and their calculation resumes or commences from the end of this suspension period.

4 When an act or a formality has to be carried out within a given period, ☐

When calculating a procedural time limit, the starting day is not considered. If the final day is a non-working day, the time limit is automatically extended to the next working day.

5 Can the starting time be affected or modified ☐

This may occur in the following two cases:

a) With reference to time limits that begin to run from the date of service or notification of a document (as, for example, the time limits for appealing a judgment):

In these cases, for the purposes of an appeal within the short time laid down in Section 325 of the Code of Civil Procedure (30 days for a first appeal, or 60 days for an appeal on a point of law to the Court of Cassation), what counts is the moment of receipt of the copy of the judgment by the addressee. Therefore, the moment from which the time limit begins to run may indeed vary depending on the method of service, since postal delivery might be slower than delivery by a court bailiff.

b) With regard to service by post, the Constitutional Court (judgments No 477 of 2002 and No 28 of 2004) has held that the service of a court document is completed on the sender's side when the document is handed over to the court bailiff, whatever the method of transmission thereafter (by post or delivery by the bailiff), whilst it is completed on the recipient's side on the date of receipt of the document. This principle means that the time of service of the document by the sender is distinct from the time of receipt by the addressee, a principle also accepted by Council Regulation (EC) No 1348/2000. The principle is concerned only with the timeliness of the service of the document, in that the legal time limit is deemed to have been observed by the serving party if the document is given to the court bailiff before the applicable time limit expires. It does not affect the starting time for other time limits, which is the time of notification or delivery of the document to the addressee, or of publication of a judgment, or another event as explained in greater detail above.

6 If the occurrence of an event sets the time running, ☐

No, the day when the event occurred is not taken into account.

7 When a time limit is expressed in days, ☐

All days are counted; only if the deadline falls on a holiday is it extended to the next working day.

8 When such a period is expressed in ☐

Where a period is expressed in months or years, calendar months and years are meant.

Procedural time limits in Italy Part II

Complete the gaps with the missing verb forms, question word or pronouns to complete the questions.

9 When _____ the deadline expire if expressed in weeks, in months or in years?

In those cases, the time limit expires upon the expiry of the last moment of the day of the month corresponding to the initial one or, in the case of time limits in years, on the last moment of the day of the month and (subsequent) year corresponding to the initial one, irrespective of whether the months have 31 or 28 days or whether the calculation includes February of a leap year.

**10 If the deadline expires on a Saturday, Sunday or a public holiday or non-working day, _____
_____ extended until the first following working day?**

Yes, it is.

11 _____ certain circumstances under which deadlines are extended? What are the conditions for benefiting from such extensions?

Mandatory time limits cannot be extended. However, parties may apply to the court for an extension where they can prove that they failed to meet the deadline for reasons over which they had no control.

12 _____ the time limits for appeals?

A first distinction must be made between long and short time limits.

The long time limit is six months. The short time limit, which starts from the moment the judgment is notified, is 30 days for appeals before a court of appeal and 60 days for appeals before the Court of Cassation. Applications in third-party opposition (*opposizione di terzo revocatoria*) and applications for revision (*revocazione*) must be lodged within 30 days after discovery of the deceit or mistake that the application relies on. Appeals for lack of jurisdiction must be lodged within 30 days (Code of Civil Procedure, Sections 323 to 338, see annex referred to below).

13 _____ courts modify time limits, in particular the appearance time limits or fix a special date for appearance?

As a general rule, the court may set time limits at will within an interval established by law. However, the time limits for the appearance of the parties are established by law and not by the court.

14 _____ an act intended for a party resident in a place where he/she would benefit from an extension of a time limit is notified in a place where those who reside there do not benefit from such an extension, _____ this person lose the benefit of such a time limit?

In Italy there is no general rule for granting extension of time limits. However, in certain cases, time limits have been suspended on account of natural disasters. Thus, as a rule the extension applies only to the person or area covered by the measure.

15 _____ are the consequences of non-observance of the deadlines?

Non-compliance with a mandatory time limit leads to loss of the power to perform the act covered by the time limit.

16 If the deadline expires, _____ remedies are available to those who have missed the deadlines, i.e. the defaulting parties?

The defaulting parties may apply for extension of the deadline if they are able to demonstrate that they failed to comply for reasons outside their control.

Session 3: Mock Trial (Article 6)

Language of opinions³¹

We will review together some of the most common ways to express opinions in English.

Common phrases

Many phrases are suitable in everyday speech and some types of writing, such as on blogs and personal websites. You have probably already seen or used some of these phrases:

- *I think...*
- *I believe...*
- *I feel...*
- *In my opinion... and*
- *I would say...*

For example, imagine you have your own legal talk show. Today you're talking about the freedom of speech. You might say:

- *In my opinion, freedom of speech should be an absolute right.*

Add strength

But suppose you wanted to make the statement stronger. You can do it by adding an adverb or adjective. For example:

- *I really think...*
- *I strongly believe...*
- *I truly feel... or*
- *In my honest opinion...*

In addition, giving reasons for your opinion adds strength to the claim. Let's hear the freedom of speech statement again:

Formal phrases

Next, let's look at a few phrases that are more common in formal situations. You might, for example, hear one of these at a business meeting or a conference, or in a formal paper:

- *From my point of view...*
- *From my perspective...*
- *In my view... or*
- *It seems to me that...*

Here's an example:

- *In my view, statements offending any form of religious faith should be banned. They are contrary to the right to peaceful practice of religion..*
- *Although phrases like "In my view..." are usually more formal than ones like "I think," there is no rule for where or when you can use them. It's often a matter of personal choice.*

Asking for opinions

So, imagine you've expressed yourself. But what about the opinion of others? Often, when we express an opinion or suggestion, it's a good idea to ask other people for theirs. Phrases like these help show our desire to hear from others:

³¹ <https://learningenglish.voanews.com/a/how-to-express-your-opinions-in-english/4755937.html>

- *What do you think of...?*
- *What are your thoughts on/about...?*
- *How do you feel about...?*
- *What's your opinion on/about...?*

You can use these questions in many kinds of situations. You might ask, for instance:

- *What's your opinion about/on the death penalty?*
- *How do you feel about the new president of the supreme court?*
- *What are your thoughts on this language course?*

Facts of the case

Main facts

Part I

The applicant, Abdoul Aziz Thiam, is a Mauritanian national who was born in 1978. In September 2008 the Société Générale Bank **lodged a criminal complaint against a person unknown for forgery, uttering forged documents, and fraud**, following complaints by **Mr Sarkozy, the then President of the Republic, about banking operations conducted on his account**. In October 2008 the public prosecutor **instigated a judicial investigation in respect of fraud within an organised crime**. During the investigation Mr Sarkozy **applied to join the proceedings as a civil (injured) party**.

Please explain the words used above:

- *to lodge a criminal complaint against sb. [somebody],*
- *forgery*
- *forged documents*
- *fraud*
- *to instigate a judicial investigation*
- *an organised crime*
- *an application to join the proceedings as a civil (injured) party*

Part II

Read Part II and pay particular attention to the highlighted words and discuss the meaning with a partner.

In June 2009 the investigating judge ordered the defendants Mr Thiam and six other persons to stand trial before the criminal court. They were charged with having obtained telephone accounts, mobile telephones and the payment of subscriptions using banking information pertaining to a third party.

Before the trial court, the applicant claimed that Mr Sarkozy's **application to join the proceedings as a civil party was inadmissible**. In July 2009 the court **found the applicant guilty of the charges** against him and **sentenced him to one year's imprisonment**. It held that Mr Sarkozy's application to join the proceedings as a civil party was admissible on the basis of the right of access to a court, but deferred its decision on his claim for damages. In January 2010 the Versailles Court of Appeal **modified the judgment and sentenced the applicant to eight months' imprisonment**. In respect of the civil action, **it ordered the applicant to pay compensation to Mr Sarkozy**.

The applicant appealed on points of law and asked the Court of Cassation, in the meantime, to refer a question relating to the compatibility of Article 2 of the Code of Criminal Procedure with respect to the separation of powers and the rights of the defence, **and to the right to a fair trial**, to the Constitutional Council for a preliminary ruling on constitutionality (QPC). In November 2010 the Court of Cassation decided not to refer the QPC on the grounds that the question was not new and had no serious merit, in that, in reality, it raised a question which fell within the jurisdiction of the ordinary courts.

In June 2012 the plenary Court of Cassation found that the President of the Republic, in his status as victim (injured party) , was entitled to exercise the rights of a civil party during his term of office.

It considered that the defendant had not shown that he had suffered a breach of his right to a fair trial by the French institutions, since the **mere fact that judges were appointed by the President did not render them subordinate to him.**

Each party had also been able to **present its arguments and discuss those of the opposing party throughout the preliminary investigation and the oral proceedings before the court, and then before the court of appeal.**

Part III

In pairs summarise the most important points from the complaints, its applicability in the ECtHR and the arguments.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (d) (**right to a fair trial / right to have witnesses examined**) **the applicant alleged that the fact that the President of the Republic had joined the proceedings as a civil party had breached the principle of equality of arms and had infringed the right to an independent and impartial court.**

The application was lodged with the European Court of Human Rights on 13 December 2012. Judgment was given by a Chamber of seven judges.

Article 6 §§ 1 and 3 (d)

With regard to the allegation that the **principle of equality of arms had been breached**, Mr Thiam complained, **firstly, of the imbalance caused by the fact that the President of the Republic was allegedly protected by Article 67 of the Constitution from legal proceedings to punish any abuse of his involvement as a civil party in the criminal proceedings.**

Arguments:

1)

Applicant: Please be prepared to present the arguments why the intervention of the President in the proceedings would deprive the defendant of equal treatment in respect of the conduct of such proceedings.

Government: Be prepared to rebut the above argument.

2)

The applicant then alleged that, in order **for the trial to be fair, there ought to have been a confrontation with the President of the Republic (as the victim) before the investigating judge or during the oral proceedings before the domestic court.**

Applicant: Please be prepared to present the arguments for which the intervention of the President in the proceedings would deprive the defendant of equal treatment in respect of the conduct of such proceedings.

Government: Be prepared to rebut the above argument.

3)

Mr Thiam also alleged a **breach of the principle of equality of arms on account of the support given by the public prosecutor's office to the civil party.**

Applicant: Please be prepared to present the arguments why the intervention of the President in the proceedings would deprive the defendant of equal treatment in respect of the conduct of such proceedings.

Government: Be prepared to rebut the above argument.

4)

The applicant further alleged that the court that had tried the applicant had NOT been independent, inter alia due to the procedure for appointing judges exercised by the President of the Republic, (with an implied "approval" by the CSM). Furthermore, the President of the Republic being the President of the CSM's and among other things having powers such as signing the decrees appointing new judges or ordering their promotion or appointment to new posts and that this undermined the independence of the persons concerned.

And that the President of the Republic's intervention in the proceedings led Mr Thiam to query his influence on the professional future of the judges whom he had helped to appoint and who were required to rule on a claim relating to his private interests.

Applicant: Please be prepared to present the arguments for which the intervention of the President in the proceedings would deprive the defendant of equal treatment in respect of the conduct of such proceedings.

Government: Be prepared to rebut the above argument.

Part IV: Discussion questions

With a partner answer and discuss the following questions.

1. What are the governing legal sources in Italy?
2. What would you tend to argue in this particular case, based on your personal and professional opinion?
3. If you were an attorney, which party would you prefer to represent and why?
4. If you were the judge in the instant case, based on your professional opinion and first impression, what would you be likely to hold in an identical case?
5. Why were the criminal proceedings instigated in the instant case, who was the **victim** and who was the **defendant**?
6. What are the fundamental facts of the case?
7. What are the fundamental arguments of the applicant?
8. What are the fundamental arguments of the government?
9. Can you list some arguments in favour of the plaintiff based on Italian law?
10. Can you list some arguments in favour of the defendant, based on Italian law?

Part V: Group Division

You will be divided evenly among the following three groups for the mock trial. We will discuss the different groups in more detail after the break.

Group A: PANEL OF JUDGES deciding the case: REVIEW ALL OF THE CASE FILES AND THE RELATIVE ECHR ARTICLES.

Group B: APPLICANT: PREPARE OPINIONS ARGUMENTS ESTABLISHING LACK OF IMPARTIALITY AND INDEPENDENCE based on all or some of the above and seek declaration of breach of Article 6.

Group C: GOVERNMENT: PREPARE OPINIONS AND ARGUMENTS REASONING WHY THERE WAS NO LACK OF IMPARTIALITY AND INDEPENDENCE based on all or some of the above and seek that the court finds no violation of Article 6.

Preparation of Mock Trial

Now that you are familiar with the facts of the case and you have had a chance to discuss the facts, we can proceed with the mock trial: You will be divided in three groups

Group A:

You are the panel of judges in Chamber deciding on the case: you need to think of the core legal questions that the Court needs to test, the facts and the evidence the court needs to test including possible testimonies if any (this would not happen before the ECtHR but let's pretend for the purposes of the mock trial that you can call witnesses).

You need to agree on the core definitions that will somehow overcome the fact that in reality you may not have experience with French law regulating the powers of the President and you need to either persuade the other members of your Chamber to adopt your legal interpretation of the facts or let yourself be persuaded in order for this Mock trial activity to work.

Remember you need to stay impartial and independent and not let your personal opinion of the circumstances of the case cloud your judgement and assess the facts and the evidence freely and independently.

While the other teams are preparing their witnesses and their speeches, you need to draft both decisions, in favour of the applicant and in favour of the government, so that you can then - based on the arguments presented in the proceedings – decide which one you are going to use during the deliberation and add some arguments before the delivery of the ruling. You also need to draft the questions that you think need to be answered in course of the proceedings.

Group B

You are representing the Applicant, Mr. T and you need to come up with as many arguments as you can to get a ruling against the Government and to make the Court understand that they must find a violation of Article 6 – again you need to agree on the core definitions in spite of the fact that many of you might not have any experience with this area of law – so you need to either persuade the other members of your team to adopt your legal interpretation of the facts or let yourself be persuaded in order for this Mock trial activity to work.

Your client, in your opinion, is a man who made some wrong decisions in his life, but this should not be relevant as the protection of the right to a fair trial is a fundamental right that must be protected.

Please remember you need to persuade the Chamber of Judges to rule against the Government and that is your primary aim and you need to think of any and all arguments and pieces of evidence to do so. Unlike in real life you can call and coach your witnesses.

Group C

You are representing the Government, you are professional legal practitioners with many years of successful experience, and you need to come up with as many arguments as you can to get a ruling in favour of the Government.

After all, the Defendant was indeed found guilty and sentenced in criminal proceedings and the decision was affirmed by the Appellate Court. It is your strong belief that he is just trying to find ways to save face as he is, in fact, just an ordinary criminal. You need to be creative in spite of the fact that you might not have any experience with this area of law, and you need to think of the witnesses that you need to call and what testimony would really benefit your client (remember that this would not happen in the ECtHR but according to our new rules you can do this).

Remember you need to persuade the Chamber of Judges to rule for the Government and find no violation of Article 6 and that is your primary aim. Importantly, you need to think of any and all arguments and evidence to do so.

Administration and time keeping

Thursday 3-3:45PM

Read the case and analyze it from the legal point of view: discuss in the group and subgroups, come up with relevant concepts and arguments.

Divide the participants into groups and let the groups read the instructions, draft opening and closing statements, choose and “prepare” witnesses and prepare questions for their direct examinations and for possible rebuttals in cross examinations. - 40 - 45 minutes, although the judges will also be drafting their decision they should technically draft the reasoning for both the conviction and the acquittal depending on which party manages to convince the Chamber.

Listening: Grand Chamber Hearing 11 January 2017

Part I: Harkins v. UK Grand Chamber – nouns³² [from 1:05-2:50]

Tomorrow we are going to find out more about the case of Harkins v. the UK. In the meantime we will review how the public hearing is opened in the ECtHR. Please underline any of the useful language you may decide to use in your mock trial.

President: Please be seated.

I declare open the public hearing on the admissibility and (A) _____ in the case of Harkins v. The United Kingdom. The (B) _____ was lodged with the Court on 11 November 2014 under article 34 of the Convention by a British (C) _____, Mr Phillip Harkins. The application was allocated to the first (D) _____ of the Court pursuant to Rule 52 paragraph 1 of the rules of the court. It was communicated to the government on 31 March 2015. On 5 July 2016 the Chamber decided to relinquish (E) _____ in favour of the Grand Chamber. On 22 August 2016 the President of the Grand Chamber granted (F) _____ to reprieve to submit written (G) _____ of the third party by virtue of Rule 44 paragraph 3 of the rules of the court. The (H) _____ are represented by their agent Mrs Rashmin Sagoo, assisted by Mr James Eadie QC and Mrs Clair Dobbin, Counsel and by Mr Stephen Jones, Adviser. The (I) _____ is represented by Mr. Edward Fitzgerald QC and Mr Ben Cooper, Counsel, and by Mrs Yasmin Aslam, Mr Baljit Singh Ahluwalia and Mrs Aisha Aslam, Advisers. I welcome the (J) _____ of the parties in the name of the court. I also welcome a delegation

³² <http://www.echr.coe.int/Pages/home.aspx?p=hearings>

The Mock Trial: Timing

- *Plaintiff: 5 minutes for opening statement and calling witnesses*
- *Defence: 5 minutes for opening statement and calling witnesses*
- *Court: 5 minutes for questions and for deciding which witnesses should be heard*
- *Witness statement: each party to the proceedings allowed maximum of two witnesses 3 minutes each (total of 12 minutes)*
- *Plaintiff: 3 minutes for closing statement*
- *Defendant: 3 minutes for closing statement*
- *Court: 4 minutes for deliberation*
- *Judgment delivery: maximum 3 minutes*

Total 40 minutes plus possible delay of 3 minutes

Extra stuff for mock trial

Finally, we will repeat what the court decided in real life, and what the reasons were behind this decision, and you can decide whether you agree or disagree with the decision of the European Court in this particular case.

Judgment

1) The Court noted in the present case that the conditions for bringing such proceedings had not been met, since no decision **to discontinue the proceedings or discharge the applicant had been issued and Mr Sarkozy had not instituted the criminal proceedings.**

It had to be concluded that the President's **intervention in the proceedings had not deprived Mr Thiam of equal treatment in respect of the conduct of those proceedings and that the victim's absence from the trial contravened Article 6 of the Convention.**

2) Mr Thiam then alleged that, in order **for the trial to be fair, there ought to have been a confrontation with the President of the Republic before the investigating judge or during the oral proceedings before the domestic court and that the President being the civil party in the proceedings had the effect of creating an imbalance in the parties' rights and the conduct of the proceedings**

The Court noted that, under **the Constitution, the President of the Republic could not be required to appear as a witness.** In consequence, his absence from the trial did not **contravene Article 6 of the Convention**, since it was based on serious legal grounds and on objective considerations. (Furthermore, the national courts had not referred to any evidence adduced by the civil party that required them to test its credibility and reliability in a hearing. In the present case, the nature of the case and the evidence available did not therefore require that Mr Sarkozy be examined).

3) Mr Thiam also alleged a **breach of the principle of equality of arms on account of the support given by the public prosecutor's office to the civil party.** The Court noted that there was no indication in the file that Mr Sarkozy's involvement had encouraged the public prosecutor's office to act in a way that would unduly influence the criminal court or prevent the applicant from bringing an effective defence. **Nor did it appear that Mr Thiam had been denied adversarial proceedings.**

The Court concluded that the intervention of Mr Sarkozy as a **civil party in the proceedings had not had the effect of creating an imbalance in the parties' rights and the conduct of the proceedings.** It therefore held that there had been no violation of Article 6 § 1 with regard to the principle of equality of arms.

Concerning the allegation of a lack of impartiality on the part of the court which had tried the applicant, the Court pointed out that Mr Thiam's guilt had been established by evidence that was separate from Mr Sarkozy's civil action. Furthermore, the applicant had not alleged that the domestic courts had acted on instructions from the President of the Republic. Consequently, the Court considered that there was nothing in the conduct of the applicant's trial to indicate that it had not been impartial.

4) Turning to an assessment of whether the court that had tried the applicant had been independent, the Court noted, firstly, that the duration of judges' terms of office and the existence of guarantees against outside pressures were such as to guarantee their functional independence and protect them from external pressure, especially with regard to the executive. Under French law, judges' tenure was constitutionally guaranteed and accompanied by detailed rules on the promotion and discipline of judges. Decisions affecting the appointment of members of the judiciary and their career progress, transfer and promotions were taken following the intervention of the National Legal Service Commission (CSM) and after adversarial proceedings. In disciplinary matters, the CSM ruled as a disciplinary board and imposed any penalty directly, so its decisions in this area had a judicial character.

With regard to the procedure for appointing judges, the Court emphasised that, although it was exercised by the President of the Republic, the power to make appointments implied "approval" by the CSM, meaning that the executive could not appoint a judge if it went against the CSM's opinion. In addition, for the appointment of judges on the bench of the Court of Cassation, and also of presidents of appeal courts and of tribunaux de grande instance, the relevant CSM body put forward candidates' names and examined their candidatures alone, before selecting the individual whom it considered most suitable. Furthermore, an application for judicial review could be lodged with the Conseil d'Etat against a decree appointing a judge. It thus followed from the CSM's powers that the fact that the President of the Republic signed the decrees appointing new judges or ordering their promotion or appointment to a new post did not, as such, undermine the independence of the persons concerned.

However, the Court noted that Mr Sarkozy was still president of the CSM when the judges of the criminal court and the appeal court had decided on the applicant's case. The President of the Republic's intervention in the proceedings could thus have led Mr Thiam to query his influence on the professional future of the judges whom he had helped to appoint and who were required to rule on a claim relating to his private interests.

The Court considered, however, that this fact was not sufficient to establish a lack of independence. Mr Thiam had not submitted any concrete evidence capable of showing that he could objectively have feared that the judges from the tribunal de grande instance and the appeal court were under Mr Sarkozy's influence.

Equally, the case submitted to the judges had had no connection with the President of the Republic's political functions and he had neither instituted the proceedings nor provided evidence intended to establish the applicant's guilt.

(Furthermore, the Court of Cassation had delivered its judgment on a date when Mr Sarkozy no longer chaired the CSM. The revision of the French Constitution, resulting from the Law of 23 July 2008, had entered into force after the appeal court's judgment of January 2010, and it transferred the chairmanship of the CSM from the President of the Republic to the First President of the Court of Cassation.)

In conclusion, the Court found no reason to conclude that the trial courts called upon to rule in the applicant's case were not independent within the meaning of Article 6 § 1 of the Convention.

Session 4: Fair trial in the UK and Italy

A. The case of Wang Yam: National security and fair trial

LC: An intriguing murder case, BBC Newsnight³³

Part I

Read the following excerpt about the video before listening.

The Court of Appeal is about to examine whether to overturn the conviction of a man who is in jail on a minimum 20 year sentence for murder. It's a case that goes back to the violent killing in 2006 of an elderly man in a prosperous part of North London. The subsequent trial was partly held in secret. Did that contribute to a potential miscarriage of justice? Journalist and writer Thomas Harding, who lived in the neighbourhood of the murder, interviewed the convicted man, Wang Yam. He's authored this film for Newsnight. Newsnight contacted the Metropolitan Police for comment on the claim that another similar burglary in the same street was not passed by local police onto Met officers investigating the murder, or to the defence team. The Met said it was unable to comment given the ongoing judicial proceedings.

Part II [up to 6:16]

Now listen to the first part of the video and pay attention to how the following words and expressions are used in the video:

- was bludgeoned to death
- who was somehow connected to the secret intelligence service MI6
- the case has always been shrouded in mystery
- first murder trial in modern times to be held partly in secret
- the man behind bars
- he suffered a miscarriage of justice
- as the eccentric who lived four doors up from me
- the house was knocked down
- I want to get to the bottom of what happened to my neighbour
- wandering up and down the street in his grubby raincoat
- incredibly proud of the ramshackle house
- repairing leaks with Sellotape
- buried under half a ton of his book manuscripts
- after being strangled and beaten to death
- it was a real whodunnit

³³ https://www.youtube.com/watch?v=Ig356e7OQUs&feature=emb_logo

- had been the victim of fraud which led to a burglary gone wrong
- any bungled burglary with such a high level of violence
- I'm still supremely confident we have got the right man
- expert in criminal behaviour
- excessive use of violence
- that's not what a burglar does
- the Inland Revenue
- worried he'd been a victim of mail fraud
- the police had identified their prime suspect
- their suspect had fled to Switzerland
- he had been involved with various suspicious financial dealings
- no forensic evidence tying Wang Yann to the crime scene
- it seems so circumstantial to me
- so circumstantially everything adds up
- there is no evidence that he'd ever been in the house

Vocabulary discussion

Look at the following expressions and discuss the (possible) meaning with a partner.

- | | |
|--|---|
| • <i>to deny doing/having done something</i> | • <i>risk of serious harm to public interest</i> |
| • <i>to serve a sentence</i> | • <i>to lodge an application at / before the ECtHR / the Strasbourg Court</i> |
| • <i>blocked on security grounds</i> | • <i>to overturn a judge's order</i> |
| • <i>to be convicted of murder</i> | • <i>the ruling was upheld</i> |
| • <i>punishable as contempt (of court) / to be held in contempt of court</i> | • <i>principle of comity among courts / interest of justice and the comity of nations</i> |
| • <i>the trial was held in camera</i> | |

Vocabulary: Word formation

*Complete the gaps with the correct word which is related to the word in brackets. Please note that the word form can also be changed through the addition of prefixes or suffixes, e.g. **care** > **carefully**.*

Allan Chappelow murder: Wang Yam's secret trial appeal fails³⁴

16 December 2015, BBC by JULIA QUENZLER

A man jailed for life for murder after a semi-secret trial has lost an attempt to disclose what happened to the European Court of Human Rights.

³⁴ <http://www.bbc.com/news/uk-35114884>

Wang Yam denied (A) _____ [**murder**] reclusive author Allan Chappelow in north London - but his defence is unknown. A judge ordered the original case to be held behind closed doors for unspecified security and witness safety reasons. The Supreme Court ruling could mean cases can be blocked from going to Strasbourg on security grounds. Yam's lawyers say they are (B) _____ [**care**] considering the complex and highly unusual decision and whether he can still continue his appeal to Europe. Mr Chappelow, 86, was found dead at his Hampstead home in June 2006, several weeks after he had been killed. He had suffered severe head (C) _____ [**injure**].

Three years later, Yam, 54, was convicted of murder after two semi-secret trials that excluded the press and public. Prosecutors said Yam killed the author to plunder his wealth - but the secret part of the trial covered almost all of the case for the defence and the Crown's (D) _____ [**respond**] to it. A judge granted that secrecy order, believed to be the first since World War Two, after hearing that prosecutors might have otherwise dropped the case.

Before it went behind closed doors, the court heard Yam claimed to have been given Mr Chappelow's cheques, credit cards and banking information by "gangsters" with Chinese names and that he had been (E) _____ [**assemble**] evidence as a means of turning them in.

During his subsequent and failed appeal, it emerged there had been four defence witnesses behind closed doors - and his lawyers said others capable of supporting his case could have come forward if there had been (F) _____ [**publicise**].

Who is Wang Yam?

- Wang Yam was born Ren Hong in China

- His grandfather was one of Mao's comrades in the 1930s
- Formerly an associate professor of electrical (G) _____ [**engineer**] at the Beijing Institute of Technology
- Fled China following the 1989 Tiananmen Square pro-democracy (H) _____ [**rise**]
- UK later granted him asylum - became a British (I) _____ [**city**] in 1998

Now (J) _____ [**serve**] a minimum 20-year-sentence, he has since asked the European Court of Human Rights (ECHR) in Strasbourg to intervene. However its review of whether he received a fair trial has been in limbo because the British courts won't disclose the secret material.

In a unanimous judgement on Wednesday, a Supreme Court panel of seven judges backed that decision - saying English courts could block (K) _____ [**disclose**] on national security grounds, even if the material was at the heart of an appeal. Lord Mance, the lead judge on the panel of seven, said: "The appellant has not made good the (L) _____ [**propose**] which he needs to establish, namely that there are no circumstances in which refusal to permit disclosure of the in-camera [**secret**] material to the European Court of Human Rights in the appellant's response could be (M) _____ [**justify**]."

Under the international rules governing the European Court, each state promises not to stand in the way of anyone who wants to seek its help. But the Supreme Court said the long-established block on

(N) _____ [**reveal**] national security material did not compromise that principle. It won't be clear for some months whether Strasbourg agrees.

Vocabulary: In Camera material

Complete the gaps with the correct collocation from the box below

contempt order	Interested Party	his lawyers	individual applications
judicial review	crucial importance	domestic court	substantive application
legal framework	special measures	hung jury	preceding sentence

“In Camera” material before the European Court of Human Rights³⁵

Kirsty Brimelow QC

R. (Wang Yam) v. Central Criminal Court [2015] Crim.L.R. 224, DC ([2014] EWHC 3558 (Admin.))

On the 14th June 2006, Allen Chappelow, an 86 year-old reclusive writer, was discovered murdered in his home in West Hampstead. Wang Yam was arrested and charged with Mr. Chappelow’s murder. The prosecution successfully applied for large parts of the case to be held *in camera*. Trial Judge Ouseley J made an order preventing the publication of anything dealt with *in camera*.

Mr. Yam was tried twice – the first trial resulted in a (A) “_____” on the count of murder -and he was convicted after the second trial (on 16 January 2009). Mr. Yam was sentenced to life imprisonment, with a minimum term of 20 years. An appeal against conviction was unsuccessful.

Fast (or slowly) forward to the last two years. Mr. Yam is trying to place some of the *in camera* material before the ECtHR in support of his application that his trial – in particular the decision to hold large parts of it *in camera* - was in breach of Article 6.

Mr. Yam has undertaken to cooperate with the UK authorities in seeking that (B) _____ are put in place by the ECtHR to ensure the security of the sensitive material and avoid any wider dissemination. The ECtHR has indicated that such measures are available and that it would be prepared to employ them.

After protracted correspondence with the Crown Prosecution Service and then Treasury Solicitors - and given the broadly worded contempt order which remained in force - we made an application to Ouseley J to interpret or vary the (C) _____ so as to permit Mr. Yam to use the *in camera* material in the context of his ECtHR application.

The Attorney General intervened as an (D) _____, resisting the application and arguing that Mr. Yam should be prevented from releasing any of the *in camera* material even to the ECtHR. Ironically, it was Mr. Yam who had raised the issue out

of an abundance of caution so that he or (E) _____ could not be held in contempt. In a judgment dated 27 February 2014 Ouseley J refused Mr. Yam’s application and varied the original contempt order, pursuant to section 11 of the Contempt of Court Act 1981 to include the following:

For the avoidance of doubt, no document or other communication in whatever form shall disclose any of the material to which the prohibition in the (F) _____ applies, or make it available, to anyone who was or would have been excluded from the “in camera” parts of the trial, including the staff and members of the European Court of Human Rights. ...

Mr. Yam applied for (G) _____ and argued that the Order was in breach of his fundamental right of access to the courts; that it placed the UK in breach of its international law obligations and that the conduct prohibited would not amount to a publication within the meaning of section 11 of the 1981 Act.

The Divisional Court dismissed the (H) _____ for judicial review and upheld the Order.

This case is significant as it raises issues over the courts obligations to comply with international obligations and the meaning of the word “publication”. Also, if, contrary to our argument, there is an inherent common law power to impose restrictions on access to the ECtHR, it is of (I) _____ that the scope of this power and the circumstances in which it can be exercised are clearly defined by the Supreme Court. The Order in this case is worryingly wide but, fundamentally, there is an interference with a basic right to fully communicate a case to the ECtHR with no clear (J) _____/safeguards and so no legal certainty.

Meanwhile, there is a real risk that the courts’ decisions will be warmly embraced by those member countries of the

³⁵ <http://doughty-street-chambers.newsweaver.com/Appeals/wi0mc6i849g?a=2&p=559146&t=174048>

Council of Europe who actively seek to limit (K) _____ to ECtHR.

The Supreme Court has granted permission to appeal. The certified question asks: "Is there a power under the common law or under section 12 of the Administration of Justice Act 1960 to prevent an individual from placing material before the

European Court of Human Rights? If so, can the power be exercised where the (L) _____

_____ is satisfied that it is not in the interests of state for the material to be made public even to the Strasbourg Court?"

Listening: UK Supreme Court Judgment

Listening Part 1:

Listen to the judgment and answer the following questions

1. How old was Allan Chappelow when he died?
2. When was Chappelow murdered?
3. Where did the appellant live?
4. What did the appellant claim to have been given?
5. Who did the appellant claim had given him access to Chappelow's finances?
6. When did the Court of Appeal uphold the order?
7. When was the appellant convicted?
8. When did the appellant apply to the European Court of Human Rights?

Listening Part 2:

Listen to the video again and complete the gaps with a missing verb (1-3 words).

Lord Mance: In circumstances attracting extensive public attention at the time, Mr Allan Chappelow, an 86-year-old reclusive writer was on the 14th of June 2006 found to (a) _____ plainly some weeks beforehand in his house in Downshire Hill, Hampstead. The appellant who (b) _____ nearby was charged with his murder and with associated offences of fraudulent misuse of his identity and bank accounts. The appellant (c) _____ the murder charge and alleged that he (d) _____ the deceased's cheques, credit cards and banking information to use by named gangsters and (e) _____ along with them as a means of assembling evidence against them and reporting them. The Crown (f) _____ in the interests of national security and for the protection of witnesses that the trial so far as it (g) _____ to this defence take place *in camera*, in other words with the public excluded and with a prohibition on public disclosure in respect of that part of the trial. The judge, Mr Justice Ouseley, (h) _____ such an order, later extended to the entire defence case. The Court of Appeal in January 2008 (i) _____ the order after considering the *in camera* material. In January 2009 the appellant (j) _____ and the Court of Appeal in October 2010 upheld the conviction, again after (k) _____ the *in camera* material. In April 2011 the appellant applied to the European Court of Human Rights in Strasbourg (l) _____ about the *in camera* procedure. The United Kingdom (m) _____

_____ his application. The appellant wants in reply to disclose the contents of the *in camera* material to the Strasbourg Court. The Foreign Secretary, then the Right Honourable William Hague, issued a certificate that this (n) _____ a real risk to an important public interest and attached a closed schedule (o) _____ why. After further (p) _____ the position in this light Mr Justice Ouseley ruled that such disclosure was and (q) _____. The divisional court upheld his decision, but (r) _____ a leap-frog appeal, which now comes direct to the Supreme Court.

Now watch the last part of the video and see what happened.

B. A case of extradition and fair trial

Vocabulary: Harkins v the UK excerpts

Part I: Prepositions and particles

Choose the correct preposition from the list below to complete the beginning of the statement of facts.

<i>out</i>	<i>to (x 2)</i>	<i>in (x 2)</i>	<i>without</i>
<i>on (x 2)</i>	<i>before</i>	<i>after</i>	<i>by</i>

Communicated on 31 March 2015

FOURTH SECTION

Application no. 71537/14 Phillip HARKINS against the United Kingdom lodged on 11 November 2014

STATEMENT OF FACTS

The applicant, Mr Phillip Harkins, is a British national, who was born (A) _____ 1978. He is currently detained in London. He is represented (B) _____ the Court by Ms Yasmin Aslam, a lawyer practising in Manchester.

A. The circumstances of the case

The facts of the case, as submitted (C) _____ the applicant, may be summarised as follows.

1. The background facts and domestic proceedings

The background facts and details of domestic proceedings were set (D) _____ in the Court's judgment in Harkins and Edwards v. the United Kingdom, nos. 9146/07 and 32650/07, 17 January 2012 ("Harkins (No. 1)").

2. Further proceedings in the High Court

The applicant made further representations (E) _____ the Secretary of State, which were rejected (F) _____ 29 January 2013. On 20 June 2013 the applicant issued an application (G) _____ judicially review the Secretary of State's decision. (H) _____ the Grand Chamber's decision on 9 July 2013 in Vinter and Others v. the United Kingdom [GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts), the applicant substituted his judicial review grounds with submissions that the Grand Chamber's decision had radically changed the law on Article 3. His extradition, (I) _____ circumstances where he faced a risk of a mandatory sentence of life imprisonment (J) _____ the possibility of parole, would violate that Article. He later also argued that his extradition would violate Article 6 because of the sentencing court's inability to consider any mitigating factors because of the mandatory nature of the sentence that would be imposed were he convicted.

The High Court held a hearing on 9 and 10 July 2014 and reserved judgment. On 8 September 2014 the High Court was informed that the Court had given judgment in Trabelsi v. Belgium, no. 140/10, ECHR 2014 (extracts). After

considering written submissions (K) _____ the relevance of Trabelsi, the High Court held a further hearing on 29 October 2014.

Part II: Adjectives

Choose the correct adjective from the list below to complete the gaps in the text.

<i>unusual</i>	<i>principal</i>	<i>analogous</i>	<i>domestic</i>
<i>mandatory</i>	<i>untried</i>	<i>judicial</i>	<i>consistent</i>

On 7 November 2014 the High Court refused permission to re-open proceedings in the Article 3 claim and refused permission for (A) _____ review in relation to the Article 6 claim. The court identified two (B) _____ issues, namely the basis on which proceedings could be re-opened and whether the Court's decisions in Vinter and Trabelsi, cited above, had recast Convention law to such an extent that the applicant's extradition would result in a violation of Article 3.

As regards the first, the High Court decided that in the very (C) _____ circumstances of the case it should apply a test (D) _____ to that in Rule 52.17 of the Civil Procedure Rules for re-opening appeals. With respect to the second, the High Court decided that it was necessary to consider (i) whether Vinter had changed the law on Article 3 in relation to (E) _____ sentences of life imprisonment without the possibility of parole in the domestic context; (ii) the state of the law on Article 3 in the extradition context; (iii) whether there was any conflict between (F) _____ law and Convention law in respect of Article 3 in the extradition context, especially as regards the House of Lords' decision in *R (Wellington) v. Secretary of State for the Home Department* [2008] UKHL 72 (see "Relevant domestic law" below); and (iv) the evidence of the applicant's expert. [...]

The High Court decided that the Court's decision did not develop the principles set out in Vinter, except that it purported to lift and apply them to extradition. The Court's conclusions did not reflect any clear and (G) _____ case law on Article 3, life imprisonment without the possibility of parole and extradition. Although required to take Convention cases into account, the High Court decided that it did not have to follow them. The High Court would not decide the applicant's case on the basis of new and (H) _____ case law, even if the Court had extended previous principles.

With respect to the applicant's Article 6 claim, the High Court decided that he could have argued it earlier and that it had no merit in any event. If the applicant was convicted a sentence of life imprisonment without parole was mandatory. The sentence would be dealt with as part of the trial process. [...]

Part III: Reading

Read the paragraphs about relevant domestic law, underline the key points and discuss with a partner.

B. Relevant domestic law

1. Extradition arrangements between the United Kingdom and the United States

The relevant law was set out in Harkins (No. 1), § 33.

2. United Kingdom law on Article 3 and extradition: *R (Wellington) v. Secretary of State for the Home Department* [2008] UKHL 72

The relevant law was set out in Harkins (No. 1), §§ 34-42.

3. United States law and practice on sentence commutation

The relevant law was set out in Harkins (No. 1), §§ 51-55. In particular, Article IV, Section 8(a) of the 1968 Florida Constitution, which vests the Governor of Florida with a power of executive clemency, provides:

“Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.”

Furthermore, the Florida Rules of Executive Clemency state in relevant part:

“2. Administration

A. These rules were created by mutual consent of the Clemency Board to assist persons in applying for clemency. However, nothing contained herein can or is intended to limit the authority or discretion given to the Clemency Board in the exercise of its constitutional prerogative.

... 8. Commutation of Sentence A. Request for Review

An applicant who applies for commutation of sentence under Rule 5(B) may do so only if he or she has completed at least one third of the sentence imposed, or, if serving a minimum mandatory sentence, has completed at least one half of the sentence.

Individuals eligible for commutation of sentence consideration may receive a “Request for Review” form by contacting the Office of Executive Clemency or it may be downloaded from the clemency website at www.fcor.state.fl.us. Upon receipt of the Request for Review form, clemency application, and any other material to be considered, the Coordinator shall forward copies of the documents to the Clemency Board and the Florida Commission on Offender Review. The Commission shall review the documents and make an advisory recommendation to the Clemency Board. Notification of receipt by the Office of Executive Clemency of such a request shall be provided as indicated under Rule 6.

Rule 17 may also be invoked by any member of the Clemency Board.

B. Referral to Commission

Upon receipt by the Coordinator of written notification from the Governor and at least one member of the Clemency Board granting a Request for Review, or notification invoking Rule 17, the Coordinator may refer the request to the Commission on Offender Review for a full investigation and place the case on an agenda to be heard by the Clemency Board.

COMPLAINTS

The applicant complains under Articles 3 and 6 of the Convention about his intended extradition to the United States of America on the basis that if he is convicted of first-degree murder it is mandatory for a sentence of life imprisonment without parole to be imposed.

Discussion: Questions to the Parties in *Harkins v the UK*

In pairs discuss the questions to the parties below.

QUESTIONS TO THE PARTIES

1. Would the extradition of the applicant, in circumstances where he risks the imposition of a life sentence without parole, be consistent with the requirements of Article 3 of the Convention (see in particular *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts) and *Trabelsi v. Belgium*, no. 140/10, ECHR 2014 (extracts))?
2. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention in relation to the right under Article 6 on which he now wishes to rely before the Court?

If so, would the applicant, if extradited, be at real risk of a flagrant denial of justice contrary to Article 6 of the Convention because of the risk that a mandatory sentence of life imprisonment without the possibility of parole might be imposed.

Listening: Grand Chamber Hearing 11 January 2017

Part II: Harkins v. UK Grand Chamber: verbs [3:47-5:45]

Listen to the second part and complete the gaps with the correct verbal forms.

Mr Eadie, QC, for the government:

Mr President, Members of the Court, this, we say, is a troubling case, that the applicant (A) _____ of a brutal murder in the United States. The prosecution (B) _____ that the victim (C) _____ in the face and killed by Mr Harkins in the course of an armed robbery. The murder (D) _____ on the 10th of August 1999 some 17 years ago. The applicant (E) _____ for first-degree murder and attempted robbery with a firearm in the Florida courts in February 2000. He (F) _____ the United States for the United Kingdom. He only (G) _____ to the attention of the United Kingdom authorities following a fatal traffic accident in 2003. Shortly thereafter, extradition proceedings (H) _____ in March 2003 with the English courts (I) _____ that the evidence (J) _____ by the US demonstrated a sufficient case to answer in July of that year, 2003. The procedural history thereafter (K) _____ in our observations at paragraphs 11 to 22. I'm (L) _____ two short points only by way of context and I'm then going (M) _____ my oral submissions on the first two of the court's questions for the purpose of these proceedings: the admissibility issues under Article 35 and the question of Article 3, compatibility of Mr Harkin's extradition to the United States. The two points on context are these: first, there (N) _____ repeated opportunities to challenge the legality of his extradition in the domestic courts and indeed also in this Court.

Part III: Harkins v. UK Grand Chamber: two-word phrases [35:40-38:15]

Listen to the third part and complete the gaps with the missing two words.

Mr Fitzgerald, QC, for the applicant

Members of the court. If Mr Harkins is extradited (A) _____ then he will face trial on a (B) _____ felony murder. To convict him of felony murder the prosecution will only have to prove that he (C) _____ in the course of a robbery. They will not have to prove (D) _____ to kill on his part and their (E) _____ suggests that there was no such intention. But felony murder qualifies as (F) first-_____. And on conviction the court would have no option but to sentence him to the (G) _____ of life (H) _____ for an offence committed at the age of 20. And the sentence of life without parole in Florida is intended to ensure that he will die (I) _____. That was the (J) _____ of the Florida legislature when it introduced this draconian sentence in 1994. Now, there is, it is true, a purely discretionary power of executive mercy conferred on (K) _____. But that is governed by no prescribed or accessible criteria and there is no recognition of a life (L) _____ to earn release by progress in prison as required by Vinter and Trebelsi. Indeed, the system in Florida is not intended to offer the prisoner (M) _____ of earning such release by his progress. And one can predict with (N) _____ that the governor's unfettered discretion to grant mercy will never be exercised in (O) _____. That virtual certainty is established by the statistics and by the independent (P) _____ of Professor Babcock. She shows that Mr Harkin's chances of release are, I quote, "so low as to be non-existent". Those bare facts give rise to the injustice that Mr Harkins brings to (Q) _____. When the Fourth Chamber looked at the matter in 2012 it didn't have the benefit of the court's later decisions

C. Mini-Presentation: Cases regarding Article 6 and Italy

You are going to give a presentation to the class in small groups. Participants will have prepared a 15-minute oral presentation on practical problems that have arisen in relation to the topics studied in this course. Choose one of the following (from ECtHR Article 6 case law publications):

- The principle that the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions does not give the Court power to interpret Article 6 § 1 as though the adjective “civil” (with the restrictions which the adjective necessarily places on the category of “rights and obligations” to which that Article applies) were not present in the text (*Ferrazzini v. Italy* [GC], § 30).
- The dispute may relate not only to the actual existence of a right but also to its scope or the manner in which it is to be exercised (*Bentham v. the Netherlands*, § 32; *Cipolletta v. Italy*, § 31). For example, the fact that the respondent State does not actually contest the existence of a right for torture victims to obtain compensation, but rather its extraterritorial application, does not mean that there cannot be a “dispute” over that right for the purposes of the Convention (*Nailt-Liman v. Switzerland* [GC], § 107).
- The Court has held that Article 6 § 1 is applicable to disputes concerning social matters, including proceedings relating to an employee’s dismissal by a private firm (*Buchholz v. Germany*), proceedings concerning social-security benefits (*Feldbrugge v. the Netherlands*), even on a non-contributory basis (*Salesi v. Italy*), and also proceedings concerning compulsory social-security contributions (*Schouten and Meldrum v. the Netherlands*).
- The Court has held – in the context of imprisonment – that some restrictions on detainees’ rights, and the possible repercussions of such restrictions, fall within the sphere of “civil rights” (see the summary of the case-law on this point in *De Tommaso v. Italy* [GC], §§ 147-50). Thus, Article 6 applies to prisoners’ detention arrangements (for instance, disputes concerning the restrictions to which prisoners are subjected as a result of being placed in a high-security unit (*Enea v. Italy* [GC], §§ 97-107) or in a high-security cell (*Stegarescu and Bahrin v. Portugal*)), or disciplinary proceedings resulting in restrictions on family visits to prison (*Guñmez v. Turkey*, § 30); or other types of restrictions on prisoners’ rights (*Ganci v. Italy*, § 25).
- Consecutive criminal and civil proceedings: if a State’s domestic law provides for proceedings consisting of two stages – the first where the court rules on whether there is entitlement to damages and the second where it fixes the amount – it is reasonable, for the purposes of Article 6 § 1, to regard the civil right as not having been “determined” until the precise amount has been decided: determining a right entails ruling not only on the right’s existence, but also on its scope or the manner in which it may be exercised, which of course includes assessing the damages (*Torri v. Italy*, § 19).
- The right to a court may also be infringed where a court fails to comply with the statutory time-limit in ruling on appeals against a series of decisions of limited duration (*Musumeci v. Italy*, §§ 41-43) or in the absence of a decision (*Ganci v. Italy*, § 31). The “right to a court” also encompasses the execution of judgments.
- In order to determine whether there is a risk of a flagrant denial of justice, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (*Saadi v. Italy* [GC], § 130; *Al-Saadoon and Mufdhi v. the United Kingdom*, § 125). The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion (*Saadi v. Italy* [GC]).
- The term “flagrant denial of justice” has been considered synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (*Sejdovic v. Italy* [GC]).
- The obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation. Thus, a failure of the domestic courts to examine the allegations of inadequate services of an interpreter may lead to a violation of Article 6 § 3 (e) of the Convention (*Knox v. Italy**, §§ 182-187).

Some useful language for giving a presentation

*Before you begin review some of the useful language below.*³⁶

Good presenters always use language (sometimes single words, sometimes phrases) which shows where they are in their presentation. These ‘signposts’ make it easier for the audience to:

- follow the structure of the presentation

³⁶ <http://speakspeak.com/resources/general-english-vocabulary/presentation-language-phrases>

- understand the speaker more easily
- get an idea of the length and content of the presentation.

Welcoming your audience

- *Good morning and welcome to [the linguistics seminar on civil cooperation, the Eurojust meeting on..., etc.].*
- *Thank you all very much for coming today.*
- *I hope you all had a pleasant journey here today.*

Introducing yourself

- *My name is Mark Watson and I am responsible for*
- *My name is Jane Smith from [name of Court], where I am responsible for*
- *Let me introduce myself; my name is Francesca Grande and I am responsible for*

Introducing your presentation

- *The purpose of today's presentation is to*
- *The subject/topic of my talk is...*
- *The purpose of my presentation today is to*
- *In today's presentation I'd like to ... show you / explain to you how*
- *In today's presentation I'm hoping to ... give you an update on... / give you an overview of ...*
- *In today's presentation I'm planning to ... look at / explain*

You can also outline your presentation to give the audience a clear overview of what they can expect:

- *In today's presentation I'm hoping to cover three points:*
- *firstly, ... , after that we will look at ... , and finally I'll*
- *In today's presentation I'd like to cover three points:*
- *firstly, ... , secondly ... , and finally*

Explaining that there will be time for questions at the end

- *If you have any questions you'd like to ask, please leave them until the end, when I'll be happy to answer them.*
- *If there are any questions you'd like to ask, please leave them until the end, when I'll do my best to answer them.*

Starting the presentation

- *To begin with*
- *To start with*
- *Let's start/begin by looking at*
- *I'd like to start by looking at*
- *Let's start with / start by looking at*

Closing a section of the presentation

- *So, that concludes [title of the section]*
- *So, that's an overview of*
- *I think that just about covers*

Beginning a new section of the presentation

- *Now let's move on to*
- *Now let's take a look at*
- *Now I'd like to move on to*
- *Next I'd like to take a look at*
- *Moving on to the next part, I'd like to*
- *Moving on to the next section, let's take a look at*

Concluding and summarising the presentation

- *Well, that brings us to the end of the final section. Now, I'd like to summarise by*
- *That brings us to the end of the final section. Now, if I can just summarise the main points again.*
- *That concludes my presentation. Now, if I can just summarise the main points.*
- *That's an overview of Now, just to summarise, let's quickly look at the main points again.*

Finishing and thanking

- *Thank you for your attention.*
- *That brings the presentation to an end.*
- *That brings us to the end of my presentation.*
- *Finally, I'd like to finish by thanking you (all) for your attention.*
- *Finally, I'd like to end by thanking you (all) for coming today.*
- *I'd like to thank you (all) for your attention and interest.*

Inviting questions

- *If anyone has any questions, I'll be pleased to answer them.*
- *If anyone has any questions, I'll do my best to answer them.*
- *If anyone has any questions, please feel free to ask them now.*
- *If anyone has any questions, please feel free to ask them and I'll do my best to answer.*

Referring to a previous point made

- *As I mentioned earlier*
- *As we saw earlier*
- *You may recall that we said*
- *You may recall that I explained*

Dealing with (difficult) questions

- *I'll come back to that question later if I may.*
- *I'll / We'll come back to that question later in my presentation.*
- *I'll / We'll look at that point in more detail later on.*
- *Perhaps we can look at that point at the end / a little later.*

The presentation talk – more input

- *I am going to talk about a Czech/ Bulgarian/ German/ hypothetical case.*
- *The case is concerned with / concerns the right to legal assistance within the scope of Article 6 of the European Convention of Human Rights.*
- *The facts of the case are as follows.....*
- *The legal question the Court has to test/ answer is this (whether/ if)*
- *- The core legal point / right(s) / principle(s) in the instant case is...*

Appendix

Extra reading and discussion. ECJ Judgment *Gambazzi v. Daimler Chrysler Canada, Inc. and CIBC Mellon Trust Company*

Conflicts of law: ECJ Judgment *Gambazzi*³⁷

by Gilles Cuniberti on April 2, 2009

Part I: Verbs

Complete the gaps with the correct form of the verb in brackets. The correct number of gaps is provided for each verb form.

The European Court of Justice (ECJ) has delivered today its judgment in *Gambazzi v. Daimler Chrysler Canada, Inc. and CIBC Mellon Trust Company*. The case, previously known as *Stolzenberg*, (A) _____ **already** _____ **[litigate]** in numerous jurisdictions. The defendants (B) _____ **[sue]** *Gambazzi* in London and obtained there a *Mareva* injunction. As *Gambazzi* failed to comply with it, he (C) _____ **[sanction]** by the English court and debarred from defending in the main proceedings. As a consequence, the defendants (D) _____ **[enter]** into a default judgment against him. They (E) _____ **[seek, then]** enforcement of the said default judgment throughout Europe, including in Italy. The Court of Appeal of Milan (F) _____ **[refer]** the case to the ECJ, and asked:

*On the basis of the public policy clause in Article 27(1) of the Brussels Convention, may the court of the State requested to enforce a judgment (G) _____ **[take]** account of the fact that the court of the State which (H) _____ **[hand down]** that judgment denied the unsuccessful party which had entered an appearance the opportunity to present any form of defence following the issue of a debarring order as described [in the grounds of the present Order]? Or does the interpretation of that provision in conjunction with the principles to be inferred from Article 26 et seq. of the Convention, concerning the mutual recognition and enforcement of judgments within the Community, (I) _____ **[preclude]** the national court from finding that civil proceedings in which a party has been prevented from exercising the rights of the defence, on grounds of a debarring order made by the court because of that party's failure to comply with a court injunction, are contrary to public policy within the meaning of Article 27(1)?*

Following closely the conclusions of Advocate General Kokott, the ECJ (J) _____ **[rule]** this morning that it could only give guidelines to national courts so that they (K) _____ **[make]** a decision themselves. It held:

*the court of the State in which enforcement (L) _____ **[seek]** may take into account, with regard to the public policy clause referred to in [Article 27(1)], the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered appearance before it but who was excluded from the proceedings by order on the ground that he had not complied with the obligations imposed by an order made earlier in the same proceedings, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.*

³⁷ <http://conflictoflaws.net/2009/ecj-judgment-in-gambazzi/>

Clearly, this is a bit disappointing. We (M) _____ [have to] wait longer before getting a chance to know whether nuclear weapons of English civil procedure are compatible with human rights in general, and Article 6 of the European Convention on Human Rights (ECHR) in particular.

Part II: Reading and summarising

Now read the second part of the article and underline the key points. Summarise the issues to a partner.

The ECJ addressed two issues in its judgment.

First, it made it clear that English default judgments are judgments within the meaning of Article 25 of the Brussels Convention. It held that they meet the *Denlauler* test of being adversarial. This is good to know, but I am not sure this was the most interesting issue. Advocate General Kokott had also focused on whether English default judgments meet the *Solokleinmotoren* test, and this was much more questionable. AG Kokott had concluded that they did meet that test, but the Court is silent in this respect.

Second, the Court discussed whether the English default judgment was contrary to public policy. It only addressed the issue referred to it by the Milan Court, i.e. whether rendering a 'default' judgment as a consequence of debarment from defending was a violation of the right to a fair trial. Along the lines of AG Kokott's conclusions, the ECJ only gave guidelines to national courts which will have to appreciate whether, in the light of all circumstances, there was such violation. In particular, the Court insisted that they should assess whether debarment was a proportionate sanction.

33 With regard to the sanction adopted in the main proceedings, the exclusion of Mr Gambazzi from any participation in the proceedings, that is, as the Advocate General stated in point 67 of her Opinion, the most serious restriction possible on the rights of the defence. Consequently, such a restriction must satisfy very exacting requirements if it is not to be regarded as a manifest and disproportionate infringement of those rights.

34 It is for the national court to assess, in the light of the specific circumstances of these proceedings, if that is the case.

The ECJ does not discuss whether the lack of reasons of English default judgments is contrary to Article 6 ECHR. It does not discuss either whether being prevented from accessing to one's evidence because it is withheld by one's lawyer is contrary to the right to a fair trial. As we had previously reported, other courts in Europe had found that these were violations of their public policy.

Fair trial in criminal matters – European Arrest Warrant

Listening: Two example cases of the EAW and the UK

This activity concerns two cases in the UK in which a total of three men were extradited to third countries on the basis of crimes they claim to have been cleared of.

Case 1: Extradition to Portugal³⁸

Listen and complete the gaps with the nouns

A man from Kent is facing extradition to Portugal for a crime he was cleared of 17 years ago. Graham Mitchell, who is from Canterbury, is wanted by the Portuguese (A) _____ for the attempted (B) _____ of a German (C) _____. Well, in his first interview since he was arrested earlier this (D) _____, Graham Mitchell has spoken to our Home Affairs correspondent, Danny Shaw.

Graham Mitchell, here with his wife Laura, is facing a legal (E) _____ that he never expected. A fortnight ago he was arrested by (F) _____ at the request of the authorities in Portugal. His alleged (G) _____

³⁸ <https://www.youtube.com/watch?v=Gx0tSnIWVC0&t=33s>

_____ : attempted (H) _____. What Graham can't understand is why the Portuguese want him to stand (I) _____ when he was cleared of the (J) _____ by a court 17 years ago.

Graham: We're terrified. I'm terrified, My wife's terrified. My life's been turned upside down and inside out. Nothing's the same. Every waking moment, there's a constant (K) _____. You know, it's getting back to like it was when I first came back from Portugal, you know. Everything is hell on earth.

Graham and his friend Warren Tozer outside court in Portugal in 1995. The two friends had been on (L) _____ in the Algarve when they were arrested on (M) _____ of trying to kill Andre Jorling. The young German man was left paralysed from the waist down after falling over a 12-foot (N) _____. It was a high-profile case, which featured on BBC One. During the trial (O) _____ were allowed into the (P) _____. They filmed as the defendants waited in the (Q) _____ for the (R) _____. When the judge summed up the case and read out her (S) _____ there was huge relief. Graham and his friend had spent a year in jail and faced a long prison (T) _____ if convicted. They were given back their (U) _____ and allowed to leave the country. It brought back painful memories for Graham when he watched the programme again. Laura too was visibly upset. So why are the Portuguese seeking Graham Mitchell's (V) _____? The paperwork doesn't make it clear. If there is new (W) _____ for a retrial it hasn't been revealed. Perhaps it's simply a dreadful (X) _____.

Alex Tinsley [from Fair Trials International]: This man has already been prosecuted for this, that the trial came to an end, was thrown out, that he returned home, got on with his life and that we shouldn't now upset all that by opening up (Y) _____ on the same facts again.

Graham Mitchell's case will be dealt with here at Westminster Magistrates Court. But the European Arrest Warrant (Z) _____ gives our courts little discretion over extradition requests from abroad, which is why there is a real possibility Graham Mitchell may be sent back for trial to Portugal.

Case 2: Extradition to Hungary³⁹

LC Hungary Extradition: Part I

Complete the gaps with the missing two words.

First tonight: European Arrest Warrants. It's supposed to be a fast-track way of getting someone from one European country (A) _____ in order to stand trial for a serious crime or to serve a (B) _____. But as one man from Dorset has found out, there are real concerns at the moment that this system itself is (C) _____.

Budapest, November last year [2012]. Michael Turner and his ex-business partner Jason McGoldrick have just been (D) _____ of fraud, allegations they strongly deny. Summing up, the judge says, although guilty, they are not criminals and should not have a (E) _____. This case has taken seven years to (F) _____, four months of which Michael and Jason were locked away in an ex-KGB prison without (G) _____ under the powers of the European Arrest Warrant – treatment that campaigners believe (H) _____ for terrorists, murderers, and rapists.

[Lord Dartmouth MEP] It's a completely inappropriate use of the European Arrest Warrant. The danger for all of us who are citizens and residents of the United Kingdom is that we're all (I) _____ a

³⁹ <https://www.youtube.com/watch?v=frgeJmrbMZU&t=249s>

prosecutor in an (J) _____ country. The protections for the individual that we in Britain take (K) _____ all disappear.

Six months ago at the Castle Inn at Corfe. The landlord, Mike's dad, is (L) _____ for his son's continuing legal battle. Seven years earlier Mike and Jason were running a marketing company in Hungary called Dream España (M) _____ in the Canary Islands. But after two years of trading the company collapsed leaving behind a debt of £18,000. They say they'd returned to the UK under the impression they'd followed all of the (N) _____ of winding down the business. Three years ago their story took a (O) _____.

LC Hungary Extradition: Part II

Look at the second part of the transcript in which the accused and their relation speak about what happened. Complete the gaps with the number of the missing phrases. Listen and check.

N	MISSING PHRASE
1	<i>not to speak one word</i>
2	<i>that they should have used other things</i>
3	<i>to extradite people to serve a prison sentence or for the purposes of a criminal prosecution</i>
4	<i>that we had been caught and handed over</i>
5	<i>didn't even know what it was</i>
6	<i>we'd handed ourselves over but there was no transfer of trust</i>
7	<i>at passport control they arrested me</i>
8	<i>heavily pregnant at the time</i>
9	<i>When they realized that cameras were present</i>
10	<i>disproportionate for such minor allegations</i>
11	<i>when the nightmare really began</i>
12	<i>I'm going to get a policeman walk through</i>
13	<i>There's a European Arrest Warrant out in your name</i>
14	<i>no choice but to hand themselves over</i>

[Jason McGoldrick] I went on holiday with my wife to Monaco. She was (A) _____. We arrived back in the UK after a fantastic time and (B) _____.

[Michael Turner] I got a phone call from Jason, who rang me and said “(C) _____”. You know, shock set in straight away. You know, what is this? You instantly think in a minute (D) _____ the door and arrest me.

[Mark Turner, Michael's father] I'd never heard of a European Arrest Warrant, (E) _____. I thought now why would they want to arrest Michael anyway?

The European Arrest Warrant was intended to be used explicitly (F) _____. But in Michael and Jason's case a warrant had been served even though no decision had yet been made to prosecute. In 2001 the men lost a High Court battle to avoid extradition and had (G) _____.

[Mark] When we got to Gatwick Airport and we met the Hungarian authorities, that's (H) _____. It was one of the darkest days of my life.

[Jason] They wanted to search us and handcuff us, which they did. And they believed, and so did the police when we arrived at the other side, they believed (I) _____.

[Mark] They were there prepared as if they were taking back desperate criminals. (J) _____, the Hungarian officers reached into their black holdalls that they had with them to take balaclava masks out to cover their faces. And we were surrounded by dozens of armed police officers with dogs who cordoned off the entire section of the airport.

[Jason] We sat at the back of a plane. It was cordoned off. We were told (K) . It was not a nice situation. We were attached with a dog lead each and paraded through all of the travellers and holiday makers waiting for their luggage. That will always stick out in my mind because that was terrifying and embarrassing.

[Michael] And that's when it all sort of sank in that we knew (L) . As soon as we got to Hungary, you know, we were caught criminals, I suppose, it was quite a horrible feeling.

[Jago Russell, Fair Trials International] We have serious concerns about the decision to use these extradition proceedings against Michael and Jason. It seems to us incredibly (M) , to go to the cost and to put people through the ordeal of extradition proceedings, of being shipped off to a foreign country. And we believe (N) , like working with the British police instead.

Rather than being questioned, Mike and Jason were separated and locked up.

[Jason] We were taken to a police holding cell in the heart of the city and locked away in a very dark room with no ventilation, no taps, no toilet, nothing for three days separately.

[Michael] I think the first day was pretty low. We were refused a telephone call home. And they tried to get us to sign paperwork, when we arrived, and we refused without our lawyer. That was a very tough situation.

[Mark] I was given assurances by the lead officer from Hungary that an Interpol officer [would be waiting], I was given assurances, "don't worry because when they get to Hungary they'll be able to phone you straight away and let you know where they are and that they're ok. That's their right," they insisted so you don't have to worry.

LC Hungary Extradition: Part III

Listen to the rest of the video and answer the questions

1. What did Jason believe at the very beginning?
2. What happened when they appeared in court three days after they'd arrived in Hungary?
3. What do they say about the conditions of their cells?
4. What does Jago Russell say about their treatment?
5. Why, according to Mr Russell, do some countries use pre-trial detention?
6. Who was Mutu?
7. How many days did they spend in prison?
8. When did the trial finally finish and what was the verdict?
9. How much time did they have to consider if they wanted to appeal the decision?
10. What is the real issue according to Lord Dartmouth MEP?
11. What did the Hungarian authorities claim?

Reading and discussion: Resolution of the two cases

In four groups discuss the cases and prepare a presentation. The groups should be as follows:

- 1A Portuguese authorities who issued the EAW

- 1B Fair Trials International who represent Graham Mitchell
- 2A Hungarian authorities who issued the EAW
- 2B Fair Trial International who represent Michael Turner

Groups 1A and 1B should read Article 1 and 2A and 2B should read Article 2 below. Then in small groups prepare your presentation. You will need to add (and even invent) details that you can't find on the Internet. You can use the sample EAW in the Appendix to help.

Article 1 Graham Mitchell⁴⁰

May 18, 2012. Portuguese authorities have removed their extradition request for Canterbury man Graham Mitchell. Graham was cleared of attempted murder in 1995 after spending a year in pre-trial detention in Portugal, but a European Arrest Warrant was issued 18 years later to face a retrial in relation to the same allegations. Graham faced being taken from his family to face a retrial for a crime he had already been cleared of, however. Portugal has finally decided to remove the extradition request due to the amount of time that has passed.

Fair Trials International's Chief Executive, Jago Russell, said:

"We are delighted that Portuguese authorities have finally seen sense and brought Graham's needless ordeal to an end. It would have been a grave injustice if the EU's fast track extradition system had been used to subject Graham to another trial in Portugal, so many years after he was acquitted. Prosecutors should think twice before issuing these tick-box extradition requests and reforms must be made now to stop future cases of injustice."

Graham Mitchell said:

"I am thrilled that the criminal charges against me are now extinct. Events since March 6th have brought back many unpleasant memories and my health has suffered as a result. My family and I have been through hell. I'd like to thank my legal team, family, friends and colleagues – the support I have received has made the whole episode slightly more bearable."

The European Arrest Warrant has removed many of the traditional safeguards in the extradition process. If a court in one country demands a person's arrest and extradition, courts and police in other countries must act on it. Although it was intended to deliver justice, the current system is actually resulting in serious injustices. Fair Trials International is pressing for an EU extradition system which is both fair and effective.

Article 2 Michael Turner⁴¹

Hungarian authorities sought the extradition of Michael Turner, a young British national from Dorset, and business partner Jason McGoldrick following the failure of their business venture in Budapest. Michael was extradited to Hungary under a European Arrest Warrant on 2 November 2009 and was held in a high security prison for four months, during which time he was interviewed only once by police. He was released from jail on Friday 26th February 2010 and was allowed to return to the UK.

The European Arrest Warrant was intended to be used explicitly to extradite people to serve a prison sentence or for the purposes of a criminal prosecution but in Michael's case, an extradition took place even though no decision had yet been made to prosecute him. While the investigation continued, Michael had to bear the costs and disruption of repeated trips to Budapest in order to cooperate.

In October 2012 Michael's case was finally heard. After a seven year investigation and a 10 month trial Michael was found guilty of defrauding members of the Hungarian public in the amount of approximately £12,000. He was given a fine and a five month suspended prison sentence. Michael is appealing the verdict. This case goes to show the lack of proportionality in the use of the European Arrest Warrant, when Michael has had to endure very difficult prison conditions for a crime that was punishable with a fine.

⁴⁰ <https://www.fairtrials.org/portugal-withdraws-extradition-request-for-graham-mitchell/>

⁴¹ <https://www.fairtrials.org/michael-turner/>

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