

# **Trials and Tribulations: International Fair Trial Law**

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## Introduction

As her judges wished, Jeanne D'Arc was condemned as a heretic; and burned at the stake on May 30, in the year 1431. In 1932, the two writers who *translated "The Trial of Jeane D'Arc"*, into English has eloquently stated that "Rarely has injustice taken the likeness of justice, to this degree; rarely has an assembly seemed so little imbued with zeal for the safety of the soul and body of a poor and saintly girl; rarely has one invoked with such hypocrisy its own impartiality and shown likewise a false goodwill towards helping an unlettered woman to defend herself..."

Today international law has moved to outlaw farce trials like the trial of JEANNE D'ARC and will continue to condemn unfair trials in developed and developing nations around the world. The international community have developed both aspirational standards and formal international law covering "fair trials". Prominent legal examples of the right to a fair trial are contained in Articles 5,9,10 and 11 of the Universal Declaration of Human Rights (UDHR). Whilst the UDHR is not initially a formal legal treaty it is now thought to bind all states whether they have signed the UDHR or not, as the UDHR is considered declarative of customary international law.<sup>1</sup>

Decisions of the European Convention on Human Rights (ECHR) may also be relevant to our own jurisdiction even though Australia is not a party to the European Convention. As the Hon. Chief Justice Derek Schofield at the 2001 Cayman Islands Human Rights

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<sup>1</sup> Lawyers Committee for Human Rights, *What is a Fair Trial?: A Basic Guide to Legal Standards and Practice*, Lawyers Committee for Human Rights, March 2000, 3.

Conference has stated “Jurisdictions no longer consider themselves as islands, it is perfectly proper for judges to seek guidance from international sources, particularly when dealing with cases involving basic human rights.”<sup>2</sup> Yet I stress that the International Covenant on Civil and Political Rights (ICCPR) to which Australia have ratified is unquestionably the foremost obligation concerning Australia’s international obligation to “fair trials”. This means is critical to Australia as the Optional Protocol to the ICCPR has also been ratified which allows individual complainants to take complaints to the United Nations Human Rights Committee, when all domestic remedies to the denial of a fair trial have been exhausted.

I will outline three stages of Fair Trials rights being (first) Pre-Trial Rights; (second) Rights at the Hearing Stage and (third) Post-Trial Rights. In concluding I will touch on an issue raised in academic forums but for which I could locate no international decision. That is, would it be a fair trial to pit an inexperienced young lawyer against a bench of senior counsels with time and resources far beyond that of a solitary junior counsel? Could this scenario breach the right to a fair trial?

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<sup>2</sup> Derek Schofield (Hon. Chief Justice), *The Right to a Fair Trial: the Right to Effective Legal Representation*, A paper for the Cayman Islands Human Rights Conference, 10-14 September, 2001, <http://www.humanrightstoday.ky/papers/schofield.pdf> , accessed 19 October 2003.

## **The First Category of Fair Trial: Pre-Trial Rights**

**Article 9(2) of the ICCPR** states that "anyone who is arrested shall be promptly informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

**Article 9(4) of the ICCPR** states that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court. **Article 9(3) is the (Prompt Trial) Article.** It states that "anyone arrested or detained on a criminal charge shall be brought shall be entitled to trial within a reasonable time or to be release."

**Article 9(5)** states that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". **Article 14(3)(f) of the ICCPR** states that during all stages of legal proceedings subsequent to and including trial and appeal, interpreters should be made available to suspects or accused people, Principle 14 of the Body of Principles confirms this right for detainees. Everyone is entitled "To have the free assistance of an interpreter if he cannot understand or speak the language used in court"

**Article 14(d) of the ICCPR** states that every detainee has the right "*To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him...*" This right applies from the time of arrest, during pre-trial detention, during investigation and at trial, and through appeals. (Principles 1 & 7 of the Basic Principles on the Role of Lawyers).

In **S v Switzerland (1991) 14 EHRR 667** the accused person was being held in custody on suspicion of being involved in certain serious crimes concerning anarchist activities. His correspondence and visits from his court-appointed lawyer were subject to surveillance in pursuance of a Swiss legal provision which provided that oral and written contact with defence counsel was permitted in so far as the purpose of the investigation was not jeopardised. The District Attorney feared that the accused's defence lawyer might collude with other lawyers or the co-accused. The accused was interviewed by his defence lawyer only in the presence of a police officer who took notes. The accused argued that free communication between a lawyer and his detained client was a fundamental right. The ECHR held that although the European Convention does not expressly guarantee the right of a person charged with a criminal offence to communicate with his defence counsel without hindrance that right is part of the basic requirement of a fair trial in a democratic society. If a lawyer is unable to confer with his client and receive confidential instructions without surveillance, their assistance would lose much of its usefulness. There had thus been a violation of Article 6(3)(c) of the ECHR.

It can well be theorised that in the wake of the fervor of terrorism legislation that such a scenario may arise in an Australian context.

## **The Second Category of Fair Trial Rights: Hearing Rights**

**Article 14(2) (Presumption of Innocence)** states that “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

**Article 14(3)** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

**Article 14(1)** says “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”

**Communication No. 272/1988 : Jamaica. 08/04/92.<sup>3</sup> CCPR/C/44/D/272/1988.**

In the 1988 case of Communication No 272 the author of the communication, Mr Alrick Thomas, a Jamaican citizen imprisoned in the Kingston General Penitentiary complained that he was a victim of a violation by Jamaica of his human rights. Especially Article 14(1) of the ICCPR.

Mr Thomas was an ex-constable of the Manchester Police Force, and was arrested and was charged with the murder of Leroy Virtue. Thomas claims that the deceased was shot incidentally, in the course of a mêlée outside a bar, after a man who had been in the company of the deceased had resisted the author's attempt to arrest him.

Thomas was unhappy with the verdict at the trial of first instance and appealed. Yet Thomas claims that he was not properly informed of the date of the hearing of his appeal. On 14 October 1985, counsel visited him and told him that his appeal had been dismissed earlier that day. On the next day, he received a letter from the registrar of the Court of Appeal informing him that his case was due to be heard in the week beginning 14 October 1985. According to the author, this meant that he was prevented from instructing his counsel and from attending the appeal personally. Although Mr Thomas had appealed on the ground that he had not been given a fair trial, counsel had withdrawn that ground, allegedly without consulting with Mr Thomas.

It was uncontested that the author was only informed about the date of the hearing after it had taken place. He was therefore unable to communicate with his representative with regard to the appeal. Taking into account the combination of circumstances in the instant case, the Committee formed the view that the appeal proceedings did not meet the requirements of a fair trial, under article 14, paragraph 1 of the Covenant.

The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, held the view that the facts before the Committee disclose a violation of article 14, paragraph 1, of the Covenant.

The Committee held that, in cases in which a capital sentence may be pronounced, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the opinion that Mr. Alrick Thomas is entitled to an appropriate remedy.

The Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

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<sup>3</sup> CCPR, *CCPR/C/44/D/272/1988. (Jurisprudence)* <http://www.unhcr.ch/tbs/doc.nsf>, accessed 18 October 2003.

## **The Third Category of Fair Trial Rights: Post-Trial Rights**

**Article 14(6) (Compensation provision)** states that “When a person has by a final decision been convicted of a criminal offence and when subsequently that conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

**Article 14(7) (The Double Jeopardy rule)** states that “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

**Article 14(5) (The Right to Appeal)** states that “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”. The right to appeal is aimed at ensuring at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal. The review undertaken by such a tribunal must be genuine.

## **Duelling Lawyers**

Francis Bacon has written an interesting article entitled "Against Duelling" in which he contemplates *in futuro* ways in which to stigmatise "duelling" as a form of dispute resolution. Possibly duelling is the greatest adversarial match of all, yet is void of the equitable notion of "fairness", for the result is not adequately influenced by injustice.

In a legal trial, the ECHR has held that there must be a fair balance between parties to litigation. In *Dombo Beheer BV v Netherlands* (1993) 18 EHRR 213 it was said: "*The Court agrees with the Commission regarding litigation involving opposing private interests, 'equality of arms' implies that each party must be afforded a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-a-vis his opponent.*"

The right to "equality of arms" is relevant to a fair trial, yet certain trials seems vulnerable to similar levels of criticisms as to duelling as an inexperienced lawyer flounders in the wake of more experienced and better researched lawyers. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring their "procedurally" equal position during the course of a trial. And this is "procedural" position is that which is currently taken by the Human Rights Committee. Yet in the International Criminal Tribunal Case of *Tadic*, it was reasoned that in a domestic trial a more liberal approach may be taken to "equality of arms" that may require more than mere procedural fairness. In the future, in the wake of further cut-backs to Legal Aid, a "substantive equality of arms" case may be tried in a United Nations Committee hearing as a response to inequities in power between parties in an Australian domestic legal dispute.

## **Conclusion**

In concluding it must be noted that miscarriages of justice can happen in the best of legal systems. The international law that I've raised will only be utilised where domestic remedies have been exhausted in an attempt by the complainant to rectify the injustice of a breach of the right to a fair trial. Yet this does not prevent International law being useful as an interpretative and guiding tool in domestic judicial reasoning.

The International Law on the topic of Fair Trials insists upon procedural and often substantive rule of law. Surely this is a principle that no Police Service, Lawyer, Judge, Politician or Australian citizen proud of a democracy should dismiss out of hand.

Thank You.

# Appendix

## **Other important standards developed by the international community include:**

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles);  
 UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);  
 UN Basic Principles on the Role of Lawyers;  
 UN Basic Principles on the Independence of the Judiciary;  
 UN Safeguards guaranteeing protection of the rights of those facing the death penalty (UN Safeguards);  
 UN Guidelines on the Role of Prosecutors;  
 UN Basic Principles for the Treatment of Prisoners;  
 UN Code of Conduct for Law Enforcement Officials.  
 UN Rules for the Protection of Juveniles Deprived of their Liberty;  
 UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);  
 UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");  
 UN Convention on the Rights of the Child.  
 UN Convention on the Elimination of All Forms of Discrimination against Women;  
 UN Declaration on the Elimination of Discrimination against Women.

## **Torture Safeguards:**

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);  
 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture);  
 UN Convention on the Rights of the Child (which has been ratified by all states in the region).  
 Among the fundamental rights addressed by these standards are the following:

**Freedom from arbitrary arrest or detention:** Article 9(1) of the ICCPR states that: "*No one shall be subjected to arbitrary arrest or detention*" and that "*No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law*". The Human Rights Committee has stated that the term "arbitrary" does not just mean "against the law": it should be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. Article 9 of the UDHR also states that no one shall be subjected to arbitrary arrest or detention.

**Right to be told of your rights:** Everyone has the right to be informed of their rights in a language they understand. Principle 13 of the Body of Principles states: "*Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation of his rights and how to avail himself of such rights.*"

**Right to inform family of arrest:** Everyone has the right to have their families told of their arrest. Rule 92 of the Standard Minimum Rules states that a detainee *"shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them..."*

**Right to presumption of release:** There is a presumption in international standards that people charged with criminal offences should not be detained prior to their trials. Article 9(3) of the ICCPR states: *"It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial..."* Principles 36(2) and 39 of the Body of Principles contain similar provisions.

**Right to review of detention:** Everyone has the right to be brought promptly before a judge after arrest or detention to have judicial review of detention, known in some countries as *habeas corpus*. This right is spelled out in Article 9(3) and (4) of the ICCPR and Principles 32(1) and 37 of the Body of Principles. This is to enable an assessment of whether legal reasons exist for the arrest and whether detention prior to trial is necessary. It is also to safeguard the well-being of the detainee and prevent human rights violations. Article 9(4) of the ICCPR, states that every detainee should be allowed access to a court *"in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful"*.

**Right to be free from torture:** In all circumstances torture and cruel, inhuman or degrading treatment or punishment is outlawed by international law. Article 5 of the UDHR states: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"*. Similar words appear in international treaties, including the Convention against Torture and Article 7 of the ICCPR.

**Non-admissibility of statements extracted under torture:** Article 15 of the Convention against Torture states: *"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."* Similarly, Article 12 of the Declaration Against Torture states that *"Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings"*. Article 14 (3)(g) of the ICCPR forbids the compelling of defendants to testify or confess guilt. The Human Rights Committee has also noted in its General Comment on Article 7 of the ICCPR that: *"It is important for the discouragement of violations under article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment"*.

**Prompt justice:** Article 9(3) of the ICCPR states that anyone arrested or detained on a criminal charge *"shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."* "Promptly" has been interpreted by the Human Rights Committee to mean within "a few days". Article 14(3)(c) of the ICCPR states that everyone is entitled *"To be tried without undue delay"*. Principle 38 of the Body of Principles says: *"A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial"*. The Human Rights Committee has noted that: *"this guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered..."*

**Equality before the law:** Article 14(1) of the ICCPR provides that *"All persons shall be equal before the courts and tribunals"*. This means that everyone must be granted, without discrimination of any kind, equal access to a court, and that fair trial guarantees must be equally available to all.

**Public hearing:** Article 14(1) of the ICCPR guarantees the right to a public hearing as an essential element of a fair trial. The hearing should as a rule be conducted orally and publicly, and the court or tribunal should make available information about the time and venue of the hearing. The public and the media may be excluded from part or all of a trial but only in exceptional circumstances (such as if material in the case would genuinely threaten national security if publicized) and for specific reasons, as spelled out in the Article.

**Competent, independent and impartial tribunal established by law:** Article 14(1) of the ICCPR states that proceedings in any criminal case are to be conducted by a competent, independent and impartial tribunal established by law. This principle is reiterated in the Basic Principles on the Independence of the Judiciary.

**Rights of access to family and legal and medical assistance whilst in detention:** Everyone has the right to legal counsel (Principle 8 of the Basic Principles on the Role of Lawyers), to see their family (Rule 92 of the Standard Minimum Rules), and to medical examination and treatment (Rule 24 of the Standard Minimum Rules).

**Humane conditions of detention:** Article 10(1) of the ICCPR demands that anyone who has been arrested "*shall be treated with humanity and with respect for the inherent dignity of the human person*". This imposes a positive obligation on states to provide reasonable conditions of detention and to respect detainees' rights.

**The right not to incriminate oneself:** Article 14(3)(g) of the ICCPR and Principle 21 of the Body of Principles spell out that everyone has the right to be free from compulsion to incriminate themselves. These standards aim to prohibit coercion, physical or mental, that could be used to force defendants to testify against themselves or to confess guilt. Article 14(3)(g) has been interpreted to mean that evidence provided by means of such compulsion should not be admissible at trial.<sup>(12)</sup>

**Adequate time and facilities for the defence:** Anyone accused of a crime is entitled "*To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing*" (Article 14(3)(b) ICCPR). This right is also spelled out in Principle 8 of the Basic Principles on the Role of Lawyers.

**Right to be present at trial:** Everyone has the right to attend their own trial: no one should be tried *in absentia* unless they have absented themselves (Article 14(3)(d) of the ICCPR).

**Right to defence:** Article 14(3)(c) of the ICCPR includes the right to defend oneself in person, to choose one's own counsel, to be informed of the right to counsel, and to receive free legal assistance. Such rights are also included in Principles 1, 5 and 6 of the Basic Principles on the Role of Lawyers.

**Examination of witnesses:** Everyone is entitled "*To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him*". (Article 14(3)(e) of the ICCPR).

**Right to an interpreter:** During all stages of legal proceedings subsequent to and including trial and appeal, interpreters should be made available to suspects or accused people, Principle 14 of the Body of Principles confirms this right for detainees. Everyone is entitled "*To have the free assistance of an interpreter if he cannot understand or speak the language used in court*" (Article 14(3)(f) of the ICCPR).

**The Right not to be retried for the same offence:** Article 14(7) of the ICCPR states that "*No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*"

**Prohibition on retroactive law:** Article 15(1) of the ICCPR states that "*No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.*" Moreover, a penalty heavier than the one that was prescribed at the time the offence was committed may not be imposed. These rights are also confirmed in Article 11(2) of the UDHR.

**Safeguards in death penalty cases:** International standards emphasize the importance of strict adherence to fair trial procedures in capital cases. Article 6(2) of the ICCPR says that: "*the death penalty can only be carried out pursuant to a final judgment rendered by a competent court*". Everyone sentenced to death has the right to seek pardon or commutation of sentence, which may be granted in all cases (Article 6(4) of the ICCPR). The UN Safeguards spell out that every aspect of a trial must comply with international standards in a capital case. Safeguard 4 says that: "*capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts*".

**Right to appeal:** Article 14 of the ICCPR states: "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*"

## Article 9 (ICCPR)

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

## **Article 14 (ICCPR)**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit of law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

## **Article 10 of the Universal Declaration of Human Rights**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

## **Article 11(1) of the Universal Declaration of Human Rights**

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

## **Art 6 – Right to a Fair Trial - European Court of Human Rights**

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal 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 interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to 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 criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence.
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses 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 interpreter if he cannot understand or speak the language used in court.