

« *Lawyers for Lawyers* »

CRIS 2008 165-110 EuropeAid/126412/C/ACT/Multi

TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 19 : FAIR TRIAL – PRIOR TO THE TRIAL

➤ *The right to a tribunal*

Texts: art. 8 of the UDHR, art. 14§ 1 of the ICCPR, art. 6§ 1 of the ECHR, art. 18 of the ADRDM, art. 8§ 1 of the ACHR.

Case-law: ECHR, 21 Feb. 1975, *Golder v/United Kingdom* (1), ECHR, 9 Oct. 1979, *Airey v/Ireland* (2), IACHR, 27 Nov. 2008, Case *Valle Jaramillo et al v/Colombia*, ACHPR, Case *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v/Nigeria*.

This relates to the right to practical and effective access to a tribunal. Any person wishing to instigate legal action for the recognition of his or her rights should have the power to do so (1).

The prohibition on the denial of justice enables any person to have his or her case heard. Free justice makes it possible to ensure equality of access to a court (2).

- *Effective access to a judge*

Case-law : ECHR, 4 Dec. 1995, *Bellet v/France* (1), ECHR 9 Oct. 1979, *Airey v/Ireland* (2).

The litigant must have the clear and practical option of contesting an action which constitutes an intrusion upon his or her rights (1).

The litigant must have practical means of access to a judge, and primarily benefit from the assistance of a lawyer in the legal procedure.

Free legal aid is not expressly guaranteed in criminal matters. However, in civil matters, the inability to obtain free legal aid infringes the right to a tribunal when the complexity of the procedure or the case renders this assistance essential, or the law orders the representation of a lawyer. (2).



Lawyers for Lawyers

➤ **The right to information for any arrested person**

Texts: art. 14 §3 of the ICCPR, art. 5 §2 and 6 §3 of the ECHR, art. 7 §4 and 8 §2.b of the ACHR, point N. 1 of the Directives and Principles on the right to a fair trial and legal assistance in Africa.

Case-law : ECHR, 30 August 1990, *Fox, Campbell and Hartley v/ United Kingdom*.

Any arrested person must be informed, at the earliest opportunity and in a language her or she understand, of the reasons for his or her arrest, as well as any charges brought against him or her (facts and legal qualification of facts.)

➤ **The right to defend oneself in an appropriate manner**

Texts: art. 14 §3 of the ICCPR, art. 6 §3 of the ECHR, art. 8 §2. c and d of the ACHR, art. 7 §1 of the ACHPR, point A.2, H, N.2, N.3 of the Directives and Principles on the right to a fair trial and legal assistance in Africa.

Case-law: ECHR, 13 Amy 1980, *Artico v/Italy* (1), ECHR, 25 April 1993, *Pakelli v/Germany* (2), ECHR, 28 November 1991, *S. v/Switzerland*, ECHR, 16 October 2001, *Brennan v/ United Kingdom* (3), ECHR, 28 March 1990, *Granger v/United Kingdom* (4), IACHR, 1 February. 2006, Case *López Álvarez v/Honduras*.

The accused must be able to receive practical and effective defence (1).

- **The right to have the time and facilities required for preparation of one's defence**
- **The right to defend oneself or have the assistance of a lawyer**
 - the right to defend oneself (2)
 - the right to choose a defence lawyer and the right to discuss freely with said lawyer (3)
 - the right to free assistance from a legal aid lawyer (4), when the accused cannot afford to pay for a defence lawyer and where the interests of justice so require, or because the accused is facing the death penalty.

Sources:

- Frédéric SUDRE, *Droit européen et international des droits de l'homme*, Puf, 2008.
- Amnesty International Section française, *Protéger les droits humains. Outils et mécanismes juridiques internationaux*, Litec, 2003.
- Avocats Sans Frontières France. Recueil d'instruments juridiques internationaux relatifs au procès équitable.

Last updated : 1st October 2010