

Zbornik Instituta za kriminološka  
i sociološka istraživanja  
2016 / Vol. XXXV / 3 / 43-53  
Pregledni naučni rad  
UDK: 342.722:347.962.6, 342.7:340.114  
341.645:341.231.14

## IMPLICIT OF RIGHTS TO A FAIR TRIAL AND CASUISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS\*

Dragana Čvorović\*  
Academy of Criminalistic and Police Studies, Belgrade

*Doctrinal foundations of the European Court of Human Rights, through the fundamental importance of the rule of law and the existence of a democratic society, concretize the right to a fair trial, which is purely procedural in nature, that is not numerus clausus, so according to that, the aspects of creating a new law through the casuistry of the European Court gain importance more and more. Conceptually determined fair trial in itself sublimates a great number of rights which can be divided in distinctive ways, and through the form of independent procedure- legal guarantees be expanded, not only to the guarantees which are exclusively proclaimed by Art. 6. of the EC, but also beyond. Accordingly, it is necessary to consider the casuistry of the European Court of Human Rights through the critical tone of argumentation and to allocate specific principles of fair trial, which is an abstract concept, as well as to analyze the following issues: Firstly, a fair trial as an universal international standard; Secondly, the implicit right to a fair trial; casuistry of the European Court of Human Rights in cases of violations of fair trial.*

*KEYWORDS: fair trial / the European Court of Human Rights / equality of arms / adversarial*

---

\* This paper is a result of research Project Crime in Serbia: phenomenology, risks and the possibilities of social intervention (47011), financed by the Ministry of Education, Science and Technological Development of Republic of Serbia

\* E-mail: d.cvorovic@sbb.rs

## FAIR TRIAL AS A UNIVERSAL INTERNATIONAL STANDARD

Aspects of the universality of international standards set their foundation in international documents, aiming at achieving a single catalog of human rights, which would be based primarily on the prohibition of discrimination on any basis and that would apply to the entire universe. The set ideology for now represents only the basic hypothesis, which has established its firm foundations of modern democracy through the majority of international documents (Dimitrijevic, 2011: 401-409), which would constitute a basis for future unity and equality when it comes to human rights (Hammarberg, 2011: 217-243; Beljanski, 2001: 36-67; Dimitrijevic, 1996: 53-7). On the way to achieve the previously stated ideology, unquestionably the most important step in the field of their specialization was adoption of the Universal Declaration of Human Rights, which has opened the door to the expansionist development of basic rights and freedoms and in its most intense form. In accordance with modern pretensions to the realization of the idea of justice, the Universal Declaration of Human Rights pointed out the importance of due process by proclamations of the Art. 10 of the Universal Declaration of Human Rights<sup>1</sup> and explicitly set the subsequent international documents, regardless of whether it is the regional or universal aspect. Namely, the Art. 10 of the Universal Declaration proclaims the following explicates of the fair process: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, which is to determine their rights and obligations, and the merits of any criminal charge against him." In accordance with the previously stated, the importance of the Universal Declaration of Human Rights, from the aspect of the fair process is immeasurable; the declarative character does not diminish the qualitative aspect of its effectiveness and applicability, but it is necessary to implement robust mechanisms to protect human rights, which in the case of their violation would respond to the necessary legal basis, and not only the moral. The conceptual items that are the foundation of the Universal Declaration of Human Rights represented a model of work of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter EC)<sup>2</sup>, which takes over its basic rights in its normative frame mainly from the Universal Declaration and through inspirational transfer creates one of the most important documents with the regional character, whose obligatory degree and later the expansion of the catalog of human rights represents one of the most important, if not the most significant instrument of realization and protection of human rights. In support of the above statement regarding the transfer of the basic principles of due process of explicit Universal Declaration to the relevant international documents, we can mention Art. 6 of the

---

<sup>1</sup> Adopted and proclaimed by General Assembly resolution of the United Nations 217 A (III) of 10 December 1948

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms was made November 04, 1950 in Rome.

EC, which proclaims a fair trial as follows: "Only during the process of determining of his civil rights and obligations or of any criminal charge against a person, they are 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 for reasons 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, or to the extent that, in the opinion of the Court, it is strictly necessary in special circumstances where publicity would prejudice the interests of justice." We can observe the set principles of consistency at the universal level through the explicates of the independent and impartial tribunal, and fair public debate on the merits of a criminal charge against him. The tendency to expand explicates is in line with the expansion of human rights and the need for stronger protection, so, according to that there are the principles of the fair process through international documents, whereas the true representative of the above is the European Convention, which through the practice of the European Court created new rights, by interpretation most commonly, since explicates of due process are not quota. We can notice the ideals of justice proclaimed in the Universal Declaration and the European Convention, regardless of whether it is a universal or regional aspect, whereas in addition to the Universal Declaration of the International Covenant on Civil and Political Rights<sup>3</sup>, also at the universal level fair explicitly sets the explicates of a fair trial, with certain distinctions. In fact, Art. 14 Art. of the International Covenant on Civil and Political Rights proclaims, "Everyone is equal before the courts. Everyone is entitled for his business to be in a fair manner and publicly examined by a competent, independent and impartial tribunal established by law, which will decide on the merits of any whatever the nature of the criminal charges leveled against him, any disputes about their rights and obligations of civil nature. The press and public may be excluded during the whole or part of the trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private life of the parties require so, or if the court considers it absolutely necessary, if due special circumstances where publicity would prejudice the interests of justice. However, any verdict rendered in a criminal or civil matters shall be made public except where the interest of the minor requires it to be different, or if the proceedings concern matrimonial disputes or the guardianship of children. "Accordingly, the tendency of enlargement of the explicit fair trial, are successfully implemented by the international Covenant on Civil and Political Rights, but we note that unlike the EC the equality of citizens before the law and courts is explicitly guaranteed, which does not exclude the existence of an implicit of the Art. 6 of the European Convention. The ideals of justice proclaimed in international documents also exist in criminal proceedings, regardless of whether it is the Anglo-Saxon or Euro-continental legal system, which confirms the premise of universality already presented (David Brierly: 1985). In support of the above facts,

---

<sup>3</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution of the United Nations 2200A (XXI) of 16 December 1966. Entered into force on 23 March 1976 in accordance with Art. 49

we may mention that in criminal proceedings of America (Inciardi, 1984; Nagel, 1972: 13- 24; Perkins, Boyce, 1984; Stucky, 1986), the ideals of due process or a fair trial placed set on a pedestal of the basic principles of criminal proceedings and that through the American Convention on Human Rights<sup>4</sup> (Art. 8 of the American Convention) explicates were adopted placed back in the Universal Declaration, along with the extension of the principle primarily through the rights of the defendant (Cvorovic, 2015). In addition to contemporary America as a representative of Anglo-Saxon legal system, Africa (Adewoye, 1977, Aguda, 1974; Allott, 1963; Brett, Mc Lean 1963; Elias, 1963) affirms the universality of the fair process, although the regional approach is defined by the African Charter on Human and Peoples' rights<sup>5</sup> of the Universal Declaration also lays the foundations for a fair trial, along with the distinction of the right to appeal. Although when it comes to the formation of the fair process, the doctrine determines the country's common law system, which is in accordance with the model of the adversarial criminal proceedings and equality of arms between the defendant and the public prosecutor, which until recently was typical of these countries, the modern trend in the criminal procedural legislation spread to countries in Europe, and Asia, so the explicit of the fair procedure in these countries primarily took place. In support of the above facts, we may mention the country of Sweden (Becker, Einar, 1976; Bogdan, 2000; Cameron, 1999: 20; Danelins, 1998: 301), as well as Switzerland, which is specific for the adoption of a unified Code of Criminal Procedure in 2011, while until then 26 different Code of Criminal Procedure existed (Cvorovic, 2016), yet they realized the ideals of the fair process. Although they are not representatives of the two legal systems, criminal proceedings are China (Cohen, 1968; Du, 1990; Ward, 1985: 111- 115) and Japan (Hiroshi: 775- 804, 1970; Hideo, 1976) pays much attention to the issue of due process and proposals de lege ferenda in order to increase the efficiency of the criminal proceedings. Also, Russia (Bassiouni, Saritski, 1979; Filippov, 2003: 11- 32; Bowring, 1997: 628) as a signatory to the European Convention for the Protection of Human Rights implements explicates of the fair proceedings.

We can conclude that human rights developed in an expansionist manner by subliming the fair proceedings in all countries of the world and, along with the necessary improvements effective mechanisms to protect human rights are created, in other words, the realization of an efficient criminal proceedings, and that the European Court of Human Rights through the doctrinal foundation to a large extent contributed to the implementation of international standards.

---

<sup>4</sup> American Convention on Human Rights (adopted at San Jose, Costa Rica, November 22, 1969 at the Inter American Specialized Conference; Entry into force: July 18, 1978 in accordance with Article 74.2 of the Convention),

[www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf), access 20.11. 2016

<sup>5</sup> African Chapter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3rev.5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, access 20.11. 2016

## IMPLICIT OF THE RIGHT TO A FAIR TRIAL

The aspect of concealment certainly is not the approach that led the Council of Europe in drafting Convention for the Protection of Human Rights and Fundamental Freedoms, which through the tendentious transparency pointed to the existing ideological setting of the importance of human rights, but not from the declarative standpoint, but for the first time of the binding character. It must be noted that the European Convention for the Protection of Human Rights in its art. 6. explicitly proclaims the fair proceedings that expanded through the law of the European Court, and accordingly manifested themselves as the implicit ideals of justice, which often constitute a violation of Art. 6. of the EC. The explicates of the fair procedure by the EC are the following: explicit concerning the Court; the explicates regarding procedure and the explicates referring to the court's decision (Jaksic, 2006: 160). When it comes to a fair trial, there is no doubt that this is a procedure which is fair and which requires the implementation of the efficiency both from the quantitative and qualitative aspects. The interpretation referring to the process as manifested in Art. 6. s. 1. of the EC in such a way that each person during determining of his or her civil rights and obligations or of any criminal charge against him or her, is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The verdict shall be pronounced publicly but the press and public may be excluded from all or part of the trial for reasons 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, or to the extent that, in the opinion Court strictly necessary in special circumstances where publicity would prejudice the interests of justice. We can notice that in this paragraph the following explicates are manifested: the independent and impartial tribunal, fair hearings, speedy and efficient procedure, the court established by law, whereas the European Court through practice performed the following implicit referring to the process: the equality of arms, the principle of oral proceedings and the right to demonstrate. The equality of arms as a derivative of non-discrimination, implies the equal position of the parties in criminal proceedings, which is manifested by facilitating equal procedural means to the parties that are opportunistic parties in the process of proving the facts. Namely, on the one hand, we have the public prosecutor on whom the burden of proof lies and who, in accordance with his or her function, wants to prove beyond reasonable doubt the guilt of the defendant, whereby, his or her greatest satisfaction would be the conviction as biased and interested party in criminal court procedure, while the defendant with a defense function, has his or her pretensions to an acquittal verdict. In order to discuss the implementation of the above implicit of the fair procedure, it is necessary for the defendant and the public prosecutor to prove their viewpoints through the appropriate regulatory frameworks and challenge the views of the opposite side. The question has been posed as whether the defendant without a lawyer (if he or she does not have a duty

counsel) can be in an equal position with the public prosecutor, regardless of enabling the use of processing resources. Although the EC proclaims the right to defense as the minimum rights of the accused, in some countries, including Serbia, the equality of arms is impossible to realize if the defendant does not have a defense counsel, since in such situations, we can hardly talk about equal position of a public prosecutor and the defendant and the realization of the ideals of the fair process. It must be noted that it is necessary to proclaim in the national normative framework the equality of the parties, and that non-use of some of the planned law would not lead to the violation of Art. 6 of the EC., as well as that it is not relevant for the merits of the proceedings. According to this, it is necessary to enable the defendant and the public prosecutor to present the evidence with equal rights, without the possibility of rejection of a proposal by the evidence, and under the same circumstances, the admission of evidence the other side (Jaksic, 2006: 194). It is undisputed that usually a violation of Art. 6. EC happens in those countries where there is a dominant position of the public prosecutor, although it would accordingly be able to allocate America, where in addition to the most powerful figure of the criminal proceedings, the public prosecutor exercised a fair trial and to the following elements: the public prosecutor as a party to the investigation, direct presentation of evidence at trial, plea bargaining, the existence of the jury and others. We have listed the United States, due to the great impact on the country's Euro-continental legal system, so according to that, the above explicates might be taken as proposals de lege of the normative framework of the Member States of the EC.

The adversarial principle and the equality of arms represent derivatives of non-discrimination only in a different way, whereas when it comes to the equality of arms the emphasis was placed on the equality of procedural means and normative framework, while with the oral proceedings, in addition to the normative and practical aspects of its implementation are taken into account. Namely, for the parties to be able to respond to the allegations of the other party, it is necessary to ensure their presence, or notify the parties of presenting evidence, so that they might respond to the allegations made by the other party by their presence. Accordingly, the emphasis with the law of contradiction is manifested by ensuring the presence of the defendant, which would surely realized through the cross-examination of witnesses, experts etc., as well as getting to know the opposite side of the motions, opinions and findings of an expert, which are delivered to one side, but also another. Accordingly, a violation of the principle of oral proceedings would happen when it is possible to question witnesses, experts, and that is not provided by the presence of others, but the only thing necessary is the approval of the court (Art. 300, no. 6 and no. 7 of the CPC of the Republic of Serbia) and that such evidence be indirectly involved in the main trial, or be the factual basis of the judgment, which directly violates the implicit of the fair trial, equality of arms, but in its normative components. In addition to these implicit of the fair trial, as a concretization of the principle of equality of arms, i.e. the oral proceedings, the right to demonstrate is manifested, in other words the prohibition of illegal evidence (fruit of the poisonous tree). Equivalently, it is necessary to leave the normative equal opportunity to propose evidence, which means that evidence for the defense and prosecution

evidence, but later through the principle of oral proceedings to respond to the evidence adduced. This raises the legitimate question whether it is possible to limit this right when required for reasons of principle of material truth, judicial economy or the abuse of procedural law (Jaksic, 2006: 200). The adoption of public prosecution investigation in the Euro-continental system, in certain countries resulted in limiting the principle of material truth (Skulic, 2014: 23- 66; Bejatovic, 2014: 87- 114, Djurdjic, 2014: 139- 153 Bugarski, 2014: 221 - 233), as in the case of the principle of the fair process would have negative consequences. In fact, without the supporting activities of the court, and with the presentation of evidence only by the public prosecutor, without the presence of the accused to be on such evidence, assessed by a discretionary conviction, the court decision was based, is far procedural equality of the parties, and therefore an impartial assessment of the evidence the court, who himself did not have to participate in the taking of evidence. So it would be in line with the equality of arms in such situations either to deviate from the indirect presentation of evidence at trial or to obtain judicial taking of evidence that has been done in a number of countries.

We can conclude that when it comes to implicit of the fair proceedings that are considered derivatives of non-discrimination, it is difficult to set a clear determinant of equality of arms, the principle of oral proceedings and the right to demonstrate with what we as the general theoretical determinant would be able to determine the equality of arms that the normative framework of the Member States may set up the ideals of due process and enable the realization of concretely implicit principle of oral proceedings and the right to demonstrate.

### CASUISTRY OF THE EUROPEAN COURT OF THE HUMAN RIGHTS IN CASES OF THE VIOLATIONS OF A FAIR TRIAL

In accordance with the previously stated explicates of the right to a fair trial, the legitimate question is raised of the determinants of national framework of international standards and the degree of compliance with the EC, in other words the casuistry of the European Court of Human Rights, analyzing the situation which usually lead to a violation of Art. 6. of the EC, and accordingly the position of the European Court referred to above. As noted, an implicit right to a fair trial in which usually lead to violations of Art. 6. of the EC as a departure from the principle of immediacy in the presentation of evidence, and without allowing cross-examination at an earlier stage of the criminal proceedings. Also, decision-making in absence, in other words not making sure that the accused is present during the presentation of evidence and the quality of evidence on which the court decision is based or the exclusion of illegal evidence, which must be considered through the whole fair trial, and not only the determination of the admissibility of certain evidence. Accordingly, as an example of violation of equality of arms, i.e. the fair procedure, we note down

the case of *Sitnevskiy and Chaykovskiy v. Ukraine*<sup>6</sup>, in which, in addition to violations of the right to defense, which is viewed in the totality of a fair trial<sup>7</sup>, the court decision was based on the minutes of the questioning of witnesses, who did not appear at the trial and not allowed to set the question by the defendant, which has been a violation of the principle of oral proceedings implicit to a fair trial<sup>8</sup>. Also, in the case *Kovac v. Croatia*<sup>9</sup> there has been a breach of the adversarial principle, given that the defendant is not allowed to ask questions to the witness, according to the European Court all evidence must be carried out in the presence of the accused at a public hearing, with the possibility that the defense asks questions. Accordingly, the question reasonably arises as to which guarantees of the defense must be observed during the examination of witnesses in phases before the trial and whether certain procedural measures in protection of the witnesses may impair the right of defense of the principle of oral proceedings. The violation of equality of arms as an implicit fair procedure can be best seen in the case *Loboda v. Ukraine*<sup>10</sup>, in which the Supreme Court of Ukraine is to decide on the appeal in the absence of the defendant<sup>11</sup> or in the presence of the public prosecutor, which came directly to a violation of the equality of arms between the parties and also the defendant is deprived of the right to defense<sup>12</sup>. In addition to this implicit, it is necessary to mention the right to demonstrate as a derivative of the right to equality of arms and the principle of oral proceedings in cases *Khodorkovskiy and Lebedev v. Russia*<sup>13</sup> and the *Lisica v. Croatia*<sup>14</sup>, where the importance of establishing a court decision in lawful evidence is pointed out, in other words, the perception is implicit throughout the entire fair trial, not analyzing whether certain evidence was obtained correctly, since this is within the jurisdiction of national courts. According to the European Court, it is necessary to analyze whether the proceedings were fair in their entirety, by transforming the provision of evidence and that it is necessary to take into account the quality of the evidence, particularly from the aspect of a defendant who should attend the presenting of evidence. Accordingly, the legality of the evidence is observed, a violation of Art. EC 6 could occur in the event that such evidence was used against the defendant and that influenced the whole fair trial. The European Court of Human Rights with regard to the quality of evidence in a fair hearing sets the determinants of national frameworks as follows: first, setting the procedural

---

<sup>6</sup> ECHR, App. no. 48016/06 and 7817/07, judgment 10 November 2016.

<sup>7</sup> See: ECHR, *Ibrahim and others v. the United Kingdom*, app. no. 50541/08, 50571/08, 50573/08 and 40351/09, judgment 13 September 2016; *Salduz v. Turkey*, app. no. 36391/02, judgment 27 November 2008

<sup>8</sup> See: ECHR, *Schatschaschwili v. Germany*, app. no. 9154/10, judgment 2015; *Al- Khawaja and Tahery v. the United Kingdom*, app. no. 26766/05 and 22228/06, judgment 2011; *Ter- Sargsyan v. Armenia*, app. no. 27866/10, judgment 27 October 2016.

<sup>9</sup> ECHR, app. no. 503/05, judgment 12 July 2007.

<sup>10</sup> ECHR, app. no. 8865/06, judgment 17 November 2016.

<sup>11</sup> See: ECHR, *Shalinov v. Ukraine*, app. no. 20808/02, judgment 4 March 2010.

<sup>12</sup> See: ECHR, *Krombach v. France*, app. no. 29731/96, judgment 2001.

<sup>13</sup> ECHR, app. no. 11082/06 and 13772/05, judgment 25 July 2013.

<sup>14</sup> ECHR, app. no. 20111/06, judgment 25. February 2010.

guarantees in relation to the quality of evidence used in criminal proceedings; secondly, the provisions on handling of the competent authorities after complaints about a particular piece of evidence; third, the defendant's rights in phases before the trial, when the evidence was presented which are later introduced in the main trials by minutes.

In accordance with the previously presented, the doctrine of the European Court of Human Rights emphasizes the importance of looking into Explicit and the Implicit of the fair process in relation to the whole procedure which should be fair, while individual issues or improper applications of the provisions of the national law classifies the domain of national courts, given that it is not the task of the European Court to control the correct application of the national law.

## LITERATURE

- (1) Adewoye, O. (1977) *The Judicial System in Southern Nigeria 1854- 1954: Law and Justice in a Dependency*. Atlantic Highlands, NJ: Humanities Press.
- (2) Aguda, A. T. (1974) *The Law of Evidence in Nigeria*. Kondon, UK.: Sweet and Maxwell.
- (3) Allot, A.N. (1963) *The Future of Law in Nigeria*. London, UK: Sweet and Maxwell.
- (4) Bejatovic, S. (2014) *A Few Reasons for the Necessity of continuing work on the reform of criminal procedure legislation in Serbia*, proceedings: *Reform of Criminal Law, the Association of Public Prosecutors and Deputy Public Prosecutors of Belgrade*, 87- 114
- (5) Becker, H. L., and Hjellemo E. O. (1976) *Justice in Modern Sweden*, Springfield, IL: Charles C. Thomas.
- (6) Bogdan, M. (2000) *Swedish Law in the New Millennium*. Stockholm: Norstedts Juridik.
- (7) Beljanski, S. (2001) *International Legal Standards of Criminal Procedure*. Belgrade, Belgrade Center for Human Rights
- (8) Bugarski, T. (2014) *Direct Accusation*, Proceedings: *Prosecutorial Investigation, the Organization for Security and Cooperation in Europe, Mission in Serbia, 2014*, p. 221- 233
- (9) David, R. and Brierley, J. E. C. (1985) *Major Legal Systems in the World Today*, London: Stevens& Sons.
- (10) Dimitrijevic V. (2011) *Universal Declaration of Human Rights, the Foundations of Modern Democracy*, *Zavod za udzbenike*. p. 401- 409
- (11) Dimitrijevic, V. (1996) *Testing Reports of States as a Form of Control Over the Observance of Human Rights*. In Obradović K., & Paunovic, M.: *Law of Human Rights*, Belgrade Center for Human Rights, p. 53- 77
- (12) Danelins, H. (1998) *The Incorporation of the European Convention on Human Rights into Swedish Law*, 19 *Human Rights Law Journal*.
- (13) Du, X. and Zhang, L. (1990) *China's Legal System: A General Survey*, Beijing: New World Press.
- (14) Djurdjic, V. (2014) *Starting and Control of Public Prosecution Investigation*, Proceedings: *Prosecutorial Investigation, Organization for Security and Co-operation in Europe, Mission in Serbia, 2014*, p. 139- 153
- (15) Elias, O. T. (1963) *The Nigerian Legal System* London, UK: Routledge& Kegan Paul ltd.

- (16) Inciardi, J. A. (1984) *Criminal Justice*, New York, NY: Academic Press.
- (17) Itoh, H. (1970) How Judges Think in Japan. *The American Journal of Comparative Law*.
- (18) Jaksic, A. (2006) *European Convention for the Protection of Human Rights*. Faculty of Law, University of Belgrade. p. 194- 203
- (19) Nagel, S. S. (1972) *The Rights of the Accused: Overview, Effects, and Cuses*, in the *Rights of the Accused*, ed. Nagel. S. Beverly Hills, CA: Sage, p. 13- 24.
- (20) Perkins, R. M., and R.N. Boyce. (1984) *Criminal Law and Procedure*, Mineola, NY: The Foundation Press.
- (21) Stucky, G. (1986) *Procedures in the Criminal Justice System*. Columbus, OH: Charles E. Merrill.
- (22) Tanaka, Hideo.(1976) *The Japanese Legal System*, Tokyo: University of Tokio Press.
- (23) Hammarberg, T. (2011) *Human Rights in Europe: No Grounds for Complacency*, Council of Europe.
- (24) Cameron, L. (1999) *The Swedish Experince of the European Convention on Human Rights since Incorporation*, 48, *International and Comparative Law Quarterly*.
- (25) Cohen, J. A. (1968) *The Criminal Process in the People’s Republic of China, 1948-1953*. Cambridge, MA: Harvard University Press.
- (26) Cvorovic, D. (2015) *Public Prosecutor as a Powerful Figure of the Modern Criminal Procedure Legislation*, *Proceedings: Crime and Society of Serbia*, Institute for criminological research and sociological. p. 223- 237
- (27) Cvorovic, D. (2016) *The Principle of Opportunity and Criminal Legislation of Switzerland*, *Proceedings: European Integtration and Criminal Legislation*, Serbian Association for Criminal Law Theory and Practice, Zlatibor, 2016, p. 516- 525
- (28) Skulic, M.(2014) *Misconceptions and Numerous Legal and Technical Errors of the New Criminal Procedure Code-what to do next and how to reform the reform of Serbian criminal procedure*, *proceedings: Reform of Criminal Law*, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Belgrade.
- (29) Ward, R. (1985) *The Police in China*. *Justice Quarterly*

## IMPLICITI PRAVA NA PRAVIČNO SUĐENJE I KAZUISTIKA EVROPSKOG SUDA ZA LJUDSKA PRAVA

*Doktrinarna utemeljenja Evropskog suda za ljudska prava, kroz fundamentalan značaj principa vladavine prava i egzistiranja demokratskog društva, konkretizuju pravo na pravično suđenje koje je isključivo procesne prirode, koje nije numerus clausus, pa u skladu sa tim i aspekti stvaranja novih prava kroz kazuistiku Evropskog suda još više dobijaju na značaju. Pojmovno određeno pravično suđenje u sebi sublimira veliki broj prava koja se na distinktivne načine mogu podeliti, a kroz formu nezavisne procesno-pravne garancije i proširiti i to ne samo na garancije koje su isključivo proklamovane čl. 6. EK, već i šire. U skladu sa tim, neophodno je kroz kritički ton argumentacije sagledati kazuistiku Evropskog suda za ljudska prava i izdvojiti konkretne principe pravičnog suđenja koje je apstraktan pojam i analizirati sledeća pitanja: prvo, pravičan postupak kao univerzalni međunarodni standarda; drugo, impliciti prava na pravično suđenje; kazuistika Evropskog suda za ljudska prava u predmetima povrede pravičnog suđenja.*

*KLJUČNE REČI: pravično suđenje / Evropski sud za ljudska prava /  
jednakost oružja / kontradiktornost*