



CRIMINAL FAIR TRIAL RIGHTS

Article 6 of the
European Convention
on Human Rights

Ryan Goss

B L O O M S B U R Y

Criminal Fair Trial Rights

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• H A R T •
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CRIMINAL FAIR TRIAL RIGHTS

The Article 6 fair trial rights are the most heavily-litigated Convention rights before the European Court of Human Rights, generating a large and complex body of case law. With this book, Goss provides an innovative and critical analysis of the European Court's Article 6 case law.

The category of 'fair trial rights' includes many component rights. The existing literature tends to chart the law with respect to each of these component rights, one by one. This traditional approach is useful, but it risks artificially isolating the case law in a series of watertight compartments.

This book takes a complementary but different approach. Instead of analysing the component rights one by one, it takes a critical look at the case law through a number of 'cross-cutting' problems and themes common to all or many of the component rights. For example: how does the Court view its role in Article 6 cases? When will the Court recognise an implied right in Article 6? How does the Court assess Article 6 infringements, and when will the public interest justify an infringement?

The book's case-law-driven approach allows Goss to demonstrate that the European Court's criminal fair trial rights jurisprudence is marked by considerable uncertainty, inconsistency, and incoherence.

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*For my parents,
Roisin and Wayne Goss*

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The Article 6 case law of the European Court of Human Rights is a fascinating and important body of law, permeated by intellectual puzzles, and it is my hope that this book furthers our understanding of some of those puzzles. But if this book is about ‘doing human rights law better’, then my own efforts to ‘do human rights law’ in this book would not have been possible without the assistance and encouragement of many others.

I must acknowledge Lincoln College, the University of Oxford, and the Australian National University, for their extensive support throughout this project. In addition, I could not have completed this research without the Rhodes Trust’s generous backing, and I am grateful to all at Rhodes House, especially Sir Colin Lucas, Don Markwell, and Mary Eaton, for their counsel and friendship.

This book is, in part, a descendant of my Oxford BCL studies and doctoral thesis, *Rethinking Article 6*. I thank Andrew Ashworth for supervising that thesis, and for his ongoing advice, trust, and encouragement; he has been a superb supervisor. For examining and giving formal feedback on my research at various stages, my gratitude goes to Liora Lazarus, Conor Gearty, and Steven Greer. For the inspiring BCL seminars that partly provoked this project, I thank, in addition to those already named, Christopher McCrudden, Paul Craig, John Gardner, Leslie Green, Alison Young, Ben Goold, and Nicholas Barber. For discussions and advice over the years about this book and its ancestor thesis I am grateful to Peter Cane, Roisin Goss, Wayne Goss, Caitlin Goss, Eric Heenan, Miles Jackson, Amy King, Johannes Krebs, Nicholas Luke, Travers McLeod, Robert Mullins, Joshua Neoh, Lionel Nichols, Don Rothwell, Simon Quinn, Natasha Simonsen, Andrew Stumer, and my students at Oxford and the ANU. For their support and advice, I must also thank Richard Hart, Rachel Turner, Mel Hamill, and everyone at Hart Publishing, who have all been terrific to work with on this book. All of that having been said, the usual disclaimer applies.

Even in the age of the invaluable HUDOC and BAILII databases, I am indebted to the Bodleian Libraries, the Codrington Library at All Souls College, the Lincoln College Library, the Oxford Union Library, and the ANU Law Library. For hosting me during the research and writing of this book, my thanks go to Lincoln College, Jael Rogers House, the Healy family, and all at Western Road. And for their support, good humour, and patience, I thank my family and friends, and, especially, Amy King.

The law is current to St Patrick’s Day, 2014.

RA GOSS

Canberra, March 2014

NOTE ON METHODOLOGY

This book is the result of an extensive survey of the European Court's Article 6 criminal fair trial rights case law. This short note explains the methodology used to identify the cases forming the basis of that survey.

Primary research for the book was conducted using multiple overlapping searches via the European Court's very useful HUDOC database, and involved reviewing and reading well over 1,500 decisions of the Court ranging from the inception of the Strasbourg institutions through to 17 March 2014. HUDOC 'tags' cases with various codings (as some examples, judgments will often be coded with the Article(s) considered in the case, any keywords describing the major issues in the case, and an 'importance' level from '1' to '3' based on the Bureau of the Court's assessment of the case).¹ This coding is not always done consistently, and so one must run several searches if one wishes to have a reasonably exhaustive set of results.

As part of that series of searches, every decision of the Court tagged as 'Article 6' and which included the word 'criminal' in the text was reviewed, as was every decision tagged as 'Article 6(2)' or 'Article 6(3)'. Every decision of the Court tagged as 'Article 6(1)' with an importance level of '1' was also reviewed, as were many of the decisions tagged as 'Article 6(1)' with importance levels '2' and '3'. In addition to these searches, a series of cross-cutting searches were also conducted for appearances of key words and phrases such as 'proceedings as a whole' or 'irretrievably' in Article 6 cases, and for relevant material discussed in the context of provisions related to Article 6 (for example, Article 5(4)). Cases available only in French were reviewed and translated as appropriate. In all, these searches identified well over 1,500 'hits', which included some civil cases, some less relevant cases; some cases generated more than one 'hit' due to the overlapping nature of the searches.

As noted in the acknowledgments, this book is in part a revised descendant of a doctoral thesis submitted and examined at the University of Oxford; since the time of the thesis' submission more than 500 recent cases have been surveyed, read, and added to the book as appropriate.

There are limitations to this methodology. It does not comprise a statistical survey, and cannot lead to any quantitative conclusions. It was, instead, a way of facilitating that method of legal research which may be summarised as 'try to read all the cases'.

¹ The two HUDOC User Manuals provide useful background information on these matters and are an invaluable guide for anyone conducting research in this area: see <http://tinyurl.com/HUDOCmanuals>. Note that importance level '1' usually includes, but is not limited to, cases reported in the official reports.

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