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## The effective access to justice as an attribute of the Right to a Fair Trial

Budva, November 24<sup>th</sup>, 2014

It is a great pleasure for me to welcome you to our conference on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

It is good to see some friends again – partners with whom we have had an excellent cooperation for many years: Nenad Koprivica, the Executive Director of the Centre for Democracy and Human Rights, Biljana Braithwaite, the Program Manager of the AIRE Centre for the Western Balkans, and Maja Milosevic, the Director of the Judicial Training Centre. I would like to express my profound thanks to you for co-organizing this event with us and I would like to extend these thanks to the British Embassy in Montenegro and the OSCE Mission for their continuous support.

(...)

This conference will be about the issue “The effective access to Justice as an attribute of the Right to Fair Trial”. The most important provision in this context is probably Article 6 of the European Convention for Human Rights which protects the right to a fair trial and which is binding for Montenegro which has been a member of the Council of Europe since the 11th May 2007, being its 47th member country. The text of Article 6 is

long I will therefore refrain from reading it out. In summary Article 6 protects in criminal cases and cases to determine civil rights the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged in a criminal case, such as adequate time to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined and the right to the free assistance of an interpreter.

The right to fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 § 1 of the Convention restrictively, as the court pointed out in its judgment in the case *Perez v. France*.

However, there is often a misunderstanding as to the exact meaning of the term “fair” in Article 6 §1 of the Convention. The “fairness” required by Article 6 § 1 is not “substantive” fairness, a concept which is part-legal, part-ethical and can only be applied by the trial court, but “procedural” fairness, which translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court

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(Stare Cate Epilekta Gavmata and Others v. Greece)

The court has, therefore, always said that it is generally not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors are manifest and infringed rights and freedoms protected by the Convention (Garcia Ruiz v. Spain).

This means that the Court may not, as a general rule, question the findings and conclusions of the domestic courts, save they a flagrantly and manifestly arbitrary (Garcia Ruiz v. Spain).

In summary it is not the Court's role to substitute itself for the domestic courts; its powers are limited to verifying the contacting states' compliance with the human rights engagements they undertook in acceding to the Convention.

You will, however, know, and we will certainly discuss some important cases in this regard today and tomorrow, despite this restrictive interpretation of its own role the European Court has not only been never out of work, rather the number of cases in which member countries of the Council of Europe have been condemned because of a violation of Article 6 of the Convention are numerous.

As Montenegro is not only a member country of the Council of Europe but also an official candidate country of the European Union we will during this conference also talk about the key principles of EU law standards in relation to fair trial rights.

To date three procedural rights Directives have been adopted already. In 2010, the European Commission made the first steps in a series of measures to set common EU standards in all criminal proceedings. The Commission proposed rules that would oblige EU standards in all criminal proceed-

ings. The Commission proposed rules that would oblige EU countries to provide full interpretation and translation services to suspects. The proposal was adopted in a record time of nine months by the European Parliament and member States in the Council. EU member states have had three years to adopt these rules, rather than the usual two years, to give authorities time to put translated information in place.

The right to translation and interpretation was the first in a series of fair trial measures to set common EU standards in criminal cases. The law was followed by a second Directive on the right to information in criminal proceedings, adopted in 2012, and by a third Directive on the right to access to a lawyer and communication upon arrest, adopted in 2013. In November of the same year the European Commission proposed another three Directives: (1) on the respect for the presumption of innocence and the right to be present at the trial, (2) to make sure children involved in criminal proceedings have special safeguards; and (3) on the right to provisional legal aid and especially for people subject to a European Arrest Warrant.

The overall objective is to develop a European area of justice based on mutual recognition and mutual trust. The European Union shall be an area of freedom, security and justice.

Let me conclude my remarks by thanking each of you for your participation in this conference. Each of you is a legal professional with considerable responsibility and I appreciate your interest in the subjects that will be discussed today and tomorrow because it is a proof that you wish to apply European legal provisions correctly and responsibly.

The Rule of Law Program South East Europe of the Konrad Adenauer Foundation looks

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forward to cooperating with you also in the future.

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