

# The Criminal LAWYER

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The Criminal Lawyer is published six times a year to keep the busy criminal law practitioner up-to-date with recent changes and developments in criminal law.

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## The equality of arms doctrine

The concept of 'equality of arms' was introduced into EU law in 1959 in *X v Sweden* [1959] (one party must not be placed in an advantageous position) and again in *Ofner and Hopfinger v Austria* [1963] and also in *Pataki and Dunshirn v Austria* [1963]. The doctrine of 'equality of arms' must play a central part in the fairness of court cases in the United Kingdom in line with Article 6(1) of the European Convention on Human Rights 1948.

The rights under Article 6 (1) are absolute and it will always be unfair if a person is deprived of them, in addition to which, Articles 6(2) and 6 (3) confer express rights on individuals facing criminal charges.

The key to the doctrine is its inherent element in a fair trial as set out in *Neumeister v Austria* [1980]. The Commission determined that 'equality of arms' concerns 'the procedural equality of the accused with the public prosecutor', a more general notion than the specific rights in criminal cases, these being: the right to a fair trial; and the right to a public hearing before an independent and impartial tribunal within these explicit factors:

- (1) Reasonable time.
- (2) Presumption of innocence.
- (3) Adequate time and facilities to prepare the defence case.
- (4) Access to legal representation.
- (5) Right to examine prosecution witnesses; or have them examined.
- (6) Right to the *free* assistance of an interpreter. This factor in a fair trial implies that the defendant will be informed promptly, in a language which he understands *and in detail*, of the nature and cause of the accusation against him. This factor implies adequate disclosure and equal arms (Clough and Jackson, *Criminal Lawyer*, Issue 211, December 2012). In *Rowe and Davis v United Kingdom*, the prosecution withheld certain relevant evidence on the grounds of public interest without notifying the trial judge. A similar case was that of *Jasper and Fitt v United Kingdom* [2000].

Disclosure of its evidence by the prosecution may, for example, reveal that the evidence against the defendant was due to breach of confidentiality. The doctrine of breach of confidence protects