THE RIGHT TO A FAIR TRIAL AS A PILLAR OF GOOD GOVERNANCE: AN ECTHR PERSPECTIVE

By

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Abstract

In recent years, the concept of good governance, which is a cornerstone of democratic society, has been increasingly questioned. Given its broad and open-ended nature, its legal enforceability remains disputable. This thesis adopts a human rights-based approach and argues that the legally binding right to a fair trial under Art. 6 ECHR can serve as a legal tool for enforcement of key elements of good governance, such as transparency, accountability, and effectiveness. Through doctrinal legal research and qualitative case analysis, the thesis explores whether and how the ECtHR engages with the concept of good governance within its fair trial jurisprudence. Despite clear conceptual overlaps, the Court rarely links the two in its reasoning. The thesis critically examines this gap and argues that reinforcing good governance standards through fair trial guarantees could improve the enforceability of governance principles, extend procedural safeguards beyond the judicial context, and offer individuals a legal mechanism to hold public authorities accountable. By linking these two concepts, the thesis enriches debate on their legal significance and suggests how ECtHR jurisprudence could evolve to address the current rule of law challenges in Europe.

Keywords: good governance, the right to a fair trial, ECtHR, rule of law, human rights-based approach

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List of Abbreviations

CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR/ the Court	European Court for Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OECD	Organisation for Economic Co-operation and Development
PACE	Parliamentary Assembly of the Council of Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations

Introduction

In recent years, many states across the Europe have increasingly come under pressure due to growing challenges to the rule of law and weakening of fundamental rights.[1] [2] In this context, the principle of good governance has gained a greater attention as a normative framework shaping the proper exercise of public power. Built on values such as transparency, accountability, effectiveness, and respect for human rights, good governance is frequently described as a cornerstone of modern democratic state.[3] Yet, despite its normative significance, good governance remains conceptually vague and relatively difficult to enforce through legal means. This lack of clear definition and enforceability limits its practical relevance. This thesis proposes a solution for these limitations. It uses a human rights-based approach and argues that the right to a fair trial - established and enforceable under Art. 6 ECHR - can serve as a mean to give legal effect to key aspects of good governance. By exploring the intersection between these two concepts, with a particular focus on the caselaw of the ECtHR, the thesis aims to show how the fair trial framework can help translate the normative commitments of good governance into concrete and justiciable standards.

Background

Good governance assumes that all individuals and institutions, including the government, are accountable under the law.[4] It represents not only the further development of the rule of law and democracy, which could be considered as ideologically leading concepts, but also encompasses practical exercise of state power as a norm for the governments and the rights of

[1] 'WJP Rule of Law Index' <https://worldjusticeproject.org/rule-of-law-index> accessed 31 January 2025.

[2] 'Interactive Data Access | Worldwide Governance Indicators' (*World Bank*) <https://www.worldbank.org/en/publication/worldwide-governance-indicators/interactive-data-access> accessed 31 January 2025.

[3] Henk Addink, 'Good Governance: An Introduction' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019), 3.

[4] 'About Good Governance' (*OHCHR*) <https://www.ohchr.org/en/good-governance/about-good-governance> accessed 19 January 2025.

citizens.[5] As noted above, one of its core aspects represents the respect for human rights.[6] Especially this perspective is crucial for the context of this thesis. The effective protection and fulfilment of human rights require the presence of good governance, as it provides the essential institutional and legal framework to uphold them.[7]

Despite the concept's prominent nature, it remains vague and lacks a universally accepted legal definition and its binding force. This raises significant concern – its enforceability and justiciability as a legal standard is highly limited. Without clear scope and binding mechanisms, good governance remains purely abstract principle. This thesis addresses the question of how the enforceability of good governance can be improved.

One of the solutions could be the use of human rights framework through linking good governance to the well-established right to a fair trial under Art. 6 ECHR, which is considered as one of the most fundamental human rights in a democratic society.[8] This right shares similar features with good governance, and so, by translating its values - such as transparency, accountability, and effectiveness - into justiciable legal standards, it could provide a specific legal avenue to strengthen good governance application and oversight in practice.

Moreover, by bridging the fair trial and good governance, the thesis highlights the importance of the fair trial standards in decision-making, not limited only to the judiciary, but relevant for administrative and public bodies as well. If these standards are applied to non-judicial bodies under human rights legal provisions, requiring impartiality, reasoned decisions and accountability, ensuring overall procedural fairness, this would ensure enforceability of these norms as justiciable rights.

[5] Addink, 'Good Governance' (n 3), 5.
[6] ibid, 3.
[7] 'About Good Governance' (n 4).
[8] William A Schabas, *The European Convention on Human Rights: A Commentary* (First edition, University Press 2015), p. 265.

Thesis Contribution

It may be observed that several European countries, e.g. Hungary, Slovakia, Romania or Bulgaria, face a decline in adherence to the rule of law.[9]

Yet, it is crucial not to ignore these challenges but rather to prioritize and actively promote the principles at stake. By focusing on good governance and the right to a fair trial together, this thesis aims to contribute to strengthening both the normative and practical frameworks that support democracy and the rule of law in Europe.

The relevance of the fair trial within good governance matters for multiple reasons. Firstly, as outlined above, good governance does not represent strictly legal concept. Thus, its subsequent enforceability is questioned. Since the right to a fair trial is justiciable right, transforming abstract principles of good governance into legally binding standards with concrete legal weight would ensure the greater legal enforceability of the concept.

Secondly, by requiring that all public authorities, not only courts, uphold the principles embedded in Art. 6 ECHR, such as impartiality, fairness, and reasoned decision-making, it promotes greater transparency, accountability, and fairness across all levels of governance.

Ultimately, it reinforces the protection of individual rights as such. The application of legal fair trial standards to governance matters extends the individual's capacity to challenge public authorities before both national and international courts, and held them accountable, strengthening legal certainty, institutional trust and the rule of law.

For example, the Slovak experience illustrates how poor governance can directly lead to erosion of fair trial guarantees, which underlines their mutual interdependence. Recent developments – such as dissolution of the Special Prosecutor's Office, which has been handling

[9] 'WJP Rule of Law Index' (n 1).

high-profile corruption cases,[10] politicized criminal law reforms,[11] and increased threats from executive to judicial institutions[12] - demonstrate how quickly governance structures can be compromised. In this context, several rights including the right to a fair trial may be only hollow guarantees if they are not backed by strong governance standards ensuring accountability, transparency or independence.

Applying the human rights-based approach to good governance through Art. 6 ECHR could provide Slovak citizens with a mechanism to challenge these governance failures through specific and enforceable legal standards. For instance, since the dissolution of the Special Prosecutor's Office was adopted in the shortened legislative procedure[13] - potentially lacking due process and meaningful participation of key stakeholders, including the civil society – this may conflict with procedural guarantees under Art. 6 ECHR. For a country like Slovakia, currently facing institutional distrust and politicization of judicial and administrative bodies, such a shift could offer a legal tool for resilience against rule of law backsliding and rights-based reforms.

Filling the Research Gap

[10] Barbara Zmušková and Natália Silenská, 'Slovak Reform "Posing Rule of Law Threat" Now under EU Commission Review' (*Euractiv*, 5 December 2023) <https://www.euractiv.com/section/politics/news/slovak-reform-posing-rule-of-law-threat-now-under-eu-commission-review/> accessed 22 January2025.

[11] Transparency International Slovensko. 'Schválená Novela Trestného Zákona Oslabuje Právny Štát a Boj s Korupciou' [*Approved Amendment to the Criminal Code Undermines the Rule of Law and the Fight against Corruption*] <https://transparency.sk/sk/schvalena-novela-trestneho-zakona-oslabuje-pravny-stat-a-boj-s-korupciou/> accessed 22 January 2025.

[12] 'With Threats to Judges and Journalists, Slovakia Spirals Eastward' (*POLITICO*, 4 April 2024) <https://www.politico.eu/article/threat-judge-journalist-slovakia-spiral-eastward-robert-fico/> accessed 22 January 2025.

[13] Transparency International Slovensko. 'ZMENY V TRESTNEJ LEGISLATÍVE MÔŽU OVPLYVNIŤ MNOŽSTVO PRÍPADOV, NA SKRÁTENÉ KONANIE NIE JE DÔVOD' [*CHANGES IN CRIMINAL LEGISLATION MAY AFFECT A NUMBER OF CASES, THERE IS NO REASON FOR SHORTENED PROCEEDINGS*] <https://transparency.sk/sk/pravnik-tis-zmeny-v-trestnej-legslative-mozu-ovplyvnit-mnozstvo-pripadov-na-skratene-konanie-nie-je-dovod/> accessed 22 January 2025.

Recently, the concepts of good governance and the right to a fair trial are well developed, both in the academic discussion and in the ECtHR jurisprudence.[14] However, so far, there are limited sources which would suggest that the academics or the ECtHR would have focused on these concepts through a common lens. Hence, this thesis seeks to bridge the gap in existing research. Moreover, it offers a comprehensive examination of how the ECtHR interprets and applies the concepts of good governance and what is its approach in understanding of the concept in the fair trial rulings.

For the purpose of this thesis, the explicit reference to good governance within the fair trial framework is crucial. Therefore, the main research question of this thesis is whether the ECtHR jurisprudence explicitly indicates that it considers the right to a fair trial under Art. 6 ECHR as a part of good governance.

In order to answer this research question, the thesis addresses what the overlap between the concepts of the right to a fair trial and good governance is, and how it may support the enforceability and justiciability of good governance as a concept.

Sources and Methodology

The research relies on both primary and secondary sources. Within the primary sources the thesis examines the ECtHR jurisprudence relevant to the right to a fair trial under Art. 6 ECHR and good governance. The secondary sources comprise academic literature, including journal articles and books, reports published by international organizations and non-governmental organizations, and official guides on caselaw published by the ECtHR.

[14] For the good governance principle, see for example Addink H, *Good Governance: Concept and Context* (OUP 2019); Wakefield J, *The Right to Good Administration* (Kluwer 2007); or the good governance within the concept of rule of law, see Dworkin RM, *Law's Empire* (Belknap Press of Harvard University Press 1986). For the right to a fair trial, see for example Clooney, A and Webb, P, *The Right to a Fair Trial in International Law* (Oxford University Press 2021); or Leanza P and Pridal O, *The Right to a Fair Trial: Article 6 of the European Convention on Human Rights* (Kluwer Law International 2014).

Among the legal research methodologies, the doctrinal legal research is perceived as one of the most dominant.[15] Relying solely on the legal material, it explains legal rules, norms and concepts, and analyses the relationship and connection between them.[16] Therefore, this thesis employs this methodology combined with a qualitative thematic analysis of the ECtHR jurisprudence.

Multiple analytical methods are integrated. Firstly, it undertakes document review where it examines academic literature to establish a theoretical foundation. Viewed as a precursor for further study,[17] the literature review ensures the understanding of the concepts of good governance and the right to a fair trial and their theoretical overlap.

Secondly, the thesis conducts an analysis of ECtHR rulings related to the right to a fair trial and good governance. The selection of cases emerges from the HUDOC database as follows. Firstly, judgements under Art. 6 ECHR are filtered. From this, cases containing the keywords 'good governance,' 'good administration,' and 'proper administration' are identified. Given the relatively small number of relevant cases, the author conducts a detailed case-by-case analysis, focusing specifically on the paragraphs where these terms appear explicitly in order to explore how the Court addresses the relationship between good governance and the right to a fair trial. The analysis follows a chronological approach, starting with the oldest judgments and moving towards the most recent ones.

At this point, it is worthy to emphasize that the research focuses exclusively on judgements, not decisions. This distinction stems primarily from the thesis's aim to examine the use of good governance within the Court's substantive reasoning. In contrast, decisions tend to address only procedural grounds and do not engage with the merits of the case to the same

[15] Nasir Majeed, Amjad Hilal and Arshad Nawaz Khan, 'Doctrinal Research in Law: Meaning, Scope and Methodology' (2023) 12 Bulletin of Business and Economics (BBE) 559.
[16] ibid, 560.
[17] ibid.

extent. Additionally, only explicit references are examined. This stems from the research goal to assess the Court's deliberate engagement with the concept of good governance within Art. 6 ECHR, rather than relying on speculative or implicit interpretations.

By assessment of judicial reasoning, the thesis summarizes whether the ECtHR's position aligns with the theoretical findings in the thesis regarding the overlap of the right to a fair trial with the good governance principle.

In defining the methodology, it is important to establish a clear scope of the methodology. This thesis focuses solely on the CoE human rights system, considered as the largest in Europe, with well-established and developed jurisprudence. While other human rights systems, such as the UN or Inter-American system, could provide valuable additional insights, they fall outside the scope of this thesis due to feasibility and regional focus.

Roadmap

The first chapter provides the conceptual background, assessing the definitions of good governance, the role of human rights within good governance, and it closer determines the issue with vagueness and enforceability of the concept. It also closer looks at the international fair trial standards. The second chapter examines the theoretical overlap between the concepts of good governance and the right to a fair trial, either observed in academic literature or resulted from the analysis of the presence of fair trial standards in individual good governance elements. Subsequently, this chapter critically discusses the pros and cons of viewing of good governance and the right to a fair trial through common lens. In the third chapter, the thesis focuses on the concept of good governance in the ECtHR jurisprudence. It provides the analysis of the fair trial judgments encompassing the term 'good governance' or its equivalents and examines how this concept is used by the ECtHR when assessing the violations of Art. 6 ECHR. Finally, the fourth chapter critically examines the reasons behind the concept's limited application in the

context of the right to a fair trial and ultimately it argues why linking good governance with Art. 6 ECHR would be beneficial.

1. Conceptual Background

This section provides the theoretical framework for the main leading concepts of this thesis. It firstly examines various definitions of good governance and outlines why this variety may be problematic. Secondly, it focuses on the role of human rights within the concept of good governance and advantages of using the human rights framework. Finally, it determines the core definitions for the right to a fair trial and explores the international standards on this right.

1.1. The Concept of Good Governance

As mentioned in the introduction, the good governance principle is one of the cornerstones of modern democratic societies. The term good governance was introduced in 1992 by the World Bank[18] and is widely used by many actors within the public and academic sphere, ranging from lawyers and politicians, to economists, philosophers or social scientists. Depending on who operates with this concept, its substantive meaning varies. From the legal perspective, this concept is perceived as a legal concept, constructing a legal rule of a given desired state.[19]

In the academic discourse, various definitions of good governance can be found, yet, without no single universally recognized one.[20] The following text provides a brief overview of these definitions presented in academic literature and by international organizations.

[18] 'Governance and Development' (*World Bank*) <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/en/604951468739447676> accessed 17 March 2025. See also Agnė Andrijauskaitė, 'Good Governance in the Case Law of the ECtHR: A (Patch)Work in Progress' (Presented at the ICON-S Conference: *Identity, Security, Democracy: Challenges for Public Law*, Hong Kong, 25–27 June 2018), 2.

[19] Addink, 'Good Governance' (n 3), 3.

[20] 'Draft Report on the Notion of "Good Governance"' (*Venice Commission 2008*), § 49 <https://www.coe.int/en/web/venice-commission/-/CDL(2008)091-e> accessed 2 April 2025.

Regardless of the field of study, good governance jointly focuses on the functioning of governments and the prevention from abuse of their powers. Its goal then is to improve the quality of governments and bring the most of benefits to society.[21] Then, the quality of life that citizens experience largely depends on how the government exercises its power.[22]

Good governance in the first point should serve its citizens. It refers to the way how the rules, procedures and state's actions are employed, how the state resources are managed and how the state power is exercised as such,[23] with minimal interference with human rights.[24] It includes six universal key aspects of good governance - properness, transparency, participation, effectiveness, accountability, and human rights.[25] These elements, which will be examined in more detail later in this thesis, form the core foundation of good governance and serve also as the basis for the further thesis research.

At the UN level, good governance has an important role in development, representing the capacity, reliability and integrity of the key state institutions, the governments' ability to perform and implement state policies, their accountability, and the transparency in their decision making.[26]

The UN Commission on Human Rights emphasizes on good governance elements of transparency, responsibility, accountability, participatory government, and responsiveness to the needs and aspirations of the people.[27]

[21] Addink, 'Good Governance' (n 3), 3.
[22] Jeff Huther and Anwar Shah, 'A Simple Measure of Good Governance' in Anwar Shah (ed), *Public Services Delivery* (The World Bank 2005), 2.
[23] Addink, 'Good Governance' (n 3), 3.
[24] Aaron Fellmeth and Siobhán McInerney-Lankford, 'International Human Rights Law and the Concept of Good Governance' (2022) 44 Human Rights Quarterly, 4.
[25] Addink, 'Good Governance' (n 3), 5.
[26] An Agenda for Development, Report of the Secretary General, 6 May 1994, A/48/935, §§ 125, 126, <http://www.globalpolicy.org/reform/initiatives/ghali/1994/0506development.htm> accessed 1 April 2025.
[27] The role of good governance in the promotion of human rights, Commission on Human Rights Resolutions 2000/64, 2003/65 and 2004/70.

And for instance, in 2005 at the Warsaw Summit, the CoE states representants expressed that alongside democracy, good governance is essential for preventing conflicts, promoting stability, creating "*sustainable communities where people want to live and work, now and in the future*."[28]

The above-mentioned definitions suggest approximately similar approach to good governance – highlighting quality of governments, well-management of state resources and emphasizing human rights. But at the international level, we can see also other definitions, focusing on another aspects of governance.

According to the CoE PACE Resolution 1060(1995), except democracy and human rights, good governance includes the absence of corruption, protection of disadvantaged, but also economic reforms promoting market principles, or open trade.[29]

The Word's Bank provides also more economically oriented definition on good governance, which represents a development management, and it plays a key role in the provision of public goods through economic policies – such as efficient market or production of goods.[30]

On the other hand, for instance, the OECD under the good governance principles encompasses respect for the rule of law, openness, transparency, and accountability – similarly as the above mentioned definitions – but also includes fairness and equity in contact with citizens, participation, efficiency of services, clear and transparent laws, policy consistency and high standards of ethical behaviour.[31] Here, we can see another approach to good governance,

[28] Warsaw Declaration adopted at the Third Summit of Heads of State and Government of the Council of Europe, point 3, <http://wcd.coe.int/ViewDoc.jsp?Ref=CM(2005)79&Language=lanEnglish&Ver=final> accessed 1 April 2025.
[29] Parliamentary Assembly Resolution 1060(1995) on development co-operation policies, point 8.
[30] 'Governance and Development' (n 18).
[31] Venice Commission 'Draft Report on the Notion of "Good Governance"' (n 20), § 26.

not putting emphasis on the economic or development aspect, but on substantial quality of governance services considering the ethical aspect as well.

While the concept of good governance is widely used (also inter-disciplinary), the universal definition of good governance cannot be clearly stated. Despite some commonly mentioned elements – such as transparency, effectiveness, accountability, or participation – that are mentioned frequently, the overview of definitions shows that interpretation of good governance varies. It ranges from institutional efficiency and human rights protection to economic performance and development management. Still, there is no consensus on whether good governance should be an aim to achieve some goal – such as human rights protection – or whether it should be a result already.[32]

It is not only the definitions that vary, but also the views on the binding nature of the concept. This conceptual variability may be problematic, particularly in legal discourse. Often, the concept of good governance is perceived as a set of policy guidelines,[33] lacking any binding force. However, using a legalistic approach makes the concept more formal and normative, potentially making it legally enforceable.[34] To realize such enforceability, good governance principles must be incorporated into states' legal systems.

One way to achieve this is the use of a human rights framework – the approach which forms the basic building element of this thesis. But first, before the further elaboration, some other clarifications regarding the concept of good governance must be established.

It is important to note that both in academic literature and legal practice as well, the term of governance is sometimes replaced by the term 'administration'. While in some countries the

[32] ibid, § 46.
[33] Veerle van Doeveren, 'Rethinking Good Governance: Identifying Common Principles' (2011) 13 Public Integrity, 303 et seq.
[34] Henk Addink, 'An Overview of Good Governance' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019), 17.

difference between these two terms is blurred, in others, the term 'governance' is a broader concept and relates to all state branches – legislative, executive and judicial. In this regard, the 'administration' relates only to the one of those – the executive branch.[35]

Determining the extent to which the concepts of good governance and good administration differ is not straightforward, however, they undoubtedly share several common features. Both are open-ended concepts that encompass a broad range of tools and mechanisms aimed at upholding the rule of law and promoting values such as transparency, effectiveness, or properness.[36] Even though good administration may primarily focus on administrative branch of power, its core aspects remain the same as those of good governance, and in essence, they pursue the same overarching goal. Sometimes, it can be even viewed only as a matter of terminology, which can be demonstrated on the ECtHR's effort to use its own label for "*what seems to be prima facie the same concept*."[37]

The link between good administration and good governance is also confirmed by the CoE's Recommendation on good administration, according to which good administration is considered as a part of good governance.[38] This concept is moreover the only aspect of good governance that has been formally codified – as the right to good administration, established in Art. 41 CFR.[39]

Nevertheless, even though good administration can be identified as more narrowly focused on administration power – considered as a component of the broader concept of good

[35] ibid.

[36] Ulrich Stelkens and Agnė Andrijauskaitė, 'Introduction: Setting the Scene for a "True European Administrative Law"' in Ulrich Stelkens and Agnė Andrijauskaitė (eds), *Good Administration and the Council of Europe: Law, Principles, and Effectiveness* (Oxford University Press 2020) 12,13. See also Hanns Peter Nehl, *Principles of Administrative Procedure in EC Law* (Bloomsbury Publishing 1999), 17.

[37] Agnė Andrijauskaitė, 'Good Governance in the Case Law of the ECtHR: A (Patch)Work in Progress' (Presented at the ICON-S Conference: *Identity, Security, Democracy: Challenges for Public Law*, Hong Kong, 25–27 June 2018), 2.

[38] Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, 4.

[39] According to Addink, the best to say is that *some* aspects of good governance are codified in this article. See Addink, 'Good Governance' (n 3), 8.

governance - as Addink argues, these terms are sometimes used interchangeably.[40] Therefore, the further research examines both concepts and often draws on aspects of good administration, as omitting them would leave a significant part of good governance overlooked.

1.2. The Normative Dimension of Good Governance: Applying a Human Rights-Based Approach

As already discussed, good governance encompasses certain principles and values that guide governments in policymaking at various levels. This represents its normative dimension – which can be understood as certain collective expectation of the proper behaviour of given actors,[41] e.g. state authorities.

What is relatively problematic is that the definition of good governance is not uniform, and its interpretation varies among both academics and international organizations. This makes the concept difficult to understand and establish the actual scope of the concept.[42]

Subsequently, some may argue that the concept is overly broad or vague. One of the reasons may be the complexity of good governance components as such.[43] For instance, as described above, one of the components of good governance is effectiveness, but it is not clear in general what the effectiveness means and what scope it has. The same applies also to other components. In practice, this may lead to situations where the state flexibly justifies a wide range of actions – potentially even contradictory ones – under the use of good governance.[44]

[40] Addink, 'An Overview of Good Governance' (n 34), 18,19.
[41] Ciprian Iftimoaei, 'Good Governance: Normative vs. Descriptive Dimension' (2015) III SEA - Practical Application of Science, 310.
[42] van Doeveren (n 33), 304.
[43] Jilles LJ Hazenberg, 'Good Governance Contested: Exploring Human Rights and Sustainability as Normative Goals' in Ronald L Holzhacker, Rafael Wittek and Johan Woltjer (eds), *Decentralization and Governance in Indonesia* (Springer International Publishing 2016) 32, 37.
[44] For instance, Hazenberg uses the example of UK's involvement in Rwandan economic and institutional strengthening through its policies, while Human Rights Watch criticized this because of the lack of human rights improvements in the country, both referring to good governance. See ibid, 37.

The broadness of the concept reflects an issue of no clear understanding of its specific aim, of the lack of a clear normative foundation.[45] Even though good governance is often framed in economic terms, moreover, often viewed as a kind of a policy guideline. One way to establish this may be grounding good governance in the human rights framework.[46]

A human rights-based approach, primarily developed by the UN, may be a relatively effective tool to address the vagueness of the concept. It grounds policies and programs in a system of rights and obligations binding under international law. It subsequently identifies rights-holders and duty-bearers, granting them legally binding and justiciable entitlements or obligations.[47]

As Hazenberg argues, the interpretation of human rights standards is relatively uncontroversial.[48] They are established in international treaties, declarations or national constitutions, and are binding on states - subsequently, legally enforceable. Maybe because of that, the human rights framework is currently one of the most dominant normative conceptions.[49]

Within this approach, one way (and the most straightforward one) would be the establishment of the right to good governance. However, this right is not universally recognized.[50] In the academic scholarship, there is ongoing discussion about the introducing of the right to good governance as a supplement to the right to democratic governance,[51] focusing not just on the procedure, but also on the substance of the governance.[52]

[45] ibid, 32, 38.
[46] ibid, 36, 38.
[47] United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (United Nations Publications 2006) 15.
[48] Hazenberg (n 43), 40.
[49] Varun Gauri and Siri Gloppen, 'Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy' (2012) 44 Polity 485.
[50] Dobrochna Bach-Golecka, 'THE EMERGING RIGHT TO GOOD GOVERNANCE' (2018) 112 AJIL unbound 89.
[51] Recognized by T. M. Franck, in Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 The American journal of international law 46.
[52] Bach-Golecka (n 50), 90.

According to Bach-Golecka, good governance represents the public decision-making which must aim the common good and respect for human rights. It therefore includes the standard for public officials to govern well, but also an individual entitlement of citizens to this governance performance. She links this right to various human rights provisions in UDHR or ICCPR and ICESCR, but most significantly to Art. 28 UDHR, which provides the right to a social and international order in which the rights can be fully realized.[53]

While this approach may be promising, it is essential to acknowledge certain limitations. Despite the potential recognition of the right to good governance, the UDHR remains non-binding instrument. As such, it would not contribute to the legal enforceability of the right. Although the UDHR could serve as a soft-law reference, it would lack direct applicability in binding legal contexts. Subsequently, it would not improve the justiciability of this right within the ECtHR system.

An example of partial improvement may be the recognition of the right to good administration, as established in Art. 41 CFR. However, this right applies only in the context of EU institutions and bodies, and it primarily concerns the administrative procedures. As a result, its jurisdictional scope is narrow, and justiciability remains limited.[54]

In the absence of universally applicable legal mechanism, there is need for alternative way that could serve to enforce good governance principles. This may be represented by the attribution of the good governance principle to an already existing and well-established right safeguarded by the Convention. In this regard, the right to a fair trial under Art. 6 ECHR may emerge as a potential mechanism to bridge this gap. Based on this, the right to a fair trial could provide a framework for enforcing good governance values in practice through human rights law, transforming the abstract principles into concrete standards of state's conduct.

[53] ibid, 89,90.
[54] Andrijauskaitė (n 37), 1.

Accordingly, this thesis aims to use the human rights framework to address the conceptual vagueness around good governance. However, before doing so, the relationship between the human rights and good governance must be examined.

1.3. The Role of Human Rights within the Concept of Good Governance

Human rights resulted from the universal consensus that everyone's dignity must be respected equally and inalienably, which is "*the foundation of freedom, justice and peace in the world*."[55] Accordingly, human rights law plays a key role in the world public order.[56] When assessing the role of human rights in the framework of good governance, two main approaches emerge. The first considers human rights protection as an essential element of good governance. The second focuses on the right to good governance as a subjective right. Yet, both these approaches represent crucial position in understanding the interplay between the governance and human rights.

The first perspective is built on the idea that the best governance is one that fully upholds and implements human rights.[57] It emerges from the fact that many human rights rely on the governments' actions, which must respect, protect and fulfil human rights.[58] This represents, in other words, states' positive obligations.[59] States have the primary duty to implement human rights. To achieve this, the governance must be performed constructively, optimally, and certain institutional requirements must be present – for instance, in the light of the separation of powers, an independent courts or prohibition of abuse of power.[60] As outlined earlier, it is not necessary that all this needs to be ensured by the government itself, but it must establish a framework that

[55] United Nations, 'Universal Declaration of Human Rights' (*United Nations*), Preamble.
[56] Fellmeth and McInerney-Lankford (n 24).
[57] Venice Commission 'Draft Report on the Notion of "Good Governance"' (n 20), § 51.
[58] 'What Are Human Rights?' (*OHCHR*) <https://www.ohchr.org/en/what-are-human-rights> accessed 15 March 2025.
[59] Fellmeth and McInerney-Lankford (n 24), 5.
[60] Venice Commission 'Draft Report on the Notion of "Good Governance"' (n 20), §§ 51,52,55.

enables a realization of these rights, whether through other official institutions or private individuals.

Human rights are not only about the subjective entitlements for citizens, but they also set key values and standards that serve as guidelines for governments, ensuring their actions align with these principles.[61] As Addink argues, human rights norms and good governance norms can be only realized complementary, they mutually need each other.[62] According to the UN OHCHR report, good governance is a precondition for the realization of human rights. Without good governance, human rights cannot be safeguarded properly and sustainably, as they rely on appropriate legal frameworks, institutions and processes responding to the rights and needs of society.[63]

The implementation of human rights largely depends on principles of good governance[64] - such as transparency, effectiveness, etc. The example may be that the good governance elements of transparency and participation are closely connected with the right to information[65] – for instance in criminal proceedings.[66]

The second perspective focuses on the subjective right to good governance, as already discussed above. So far, the only formally recognized and codified component of this right is

[61] UN Office of the High Commissioner for Human Rights, *Good Governance Practices for the Protection of Human Rights* (UN, 2007) <https://digitallibrary.un.org/record/618018> accessed 17 March 2025.
[62] Henk Addink, 'The Principle of Human Rights' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019) 173.
[63] Rights (n 61).
[64] Addink, 'Good Governance' (n 3), 7.
[65] Wouter Hins and Dirk Voorhoof, 'Access to State-Held Information as a Fundamental Right under the European Convention on Human Rights' (2007) 3 European constitutional law review, 114, 116.
[66] European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights – Right to a Fair Trial (Criminal Limb)* (ECHR, 2024), § 414 et seq., <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng> accessed 15 March 2025.

the right to good administration, as set out in Art. 41 CFR. However, its applicability remains limited only to persons encountering the EU institutions.[67] [68]

Beyond the CFR, we can find good governance norms also in other human rights treaties. For example, within the UN human rights system, the ICCPR in Art. 2(3) establishes the right to an effective remedy for those whose rights have been violated, including violations by official authorities. Subsequently, it guarantees the right to have this remedy determined by a competent judicial, administrative, legislative, or other appropriate authority, as well as the right to its enforcement. In a case of the CoE system, good governance is often applied in connection with the right to property under Art. 1 of Prot. 1 ECHR.[69]

These two approaches show, that on one hand, the realization of human rights is deeply dependent on the quality of governance structures – without transparent, accountable and fair institutions, the protection of human rights remains inadequate. On the other hand, human rights themselves serve as a normative concept guiding states towards fair governance. The recognition of good governance as a subjective right further embeds this concept into legally enforceable mechanisms. This is especially important in case of the open-ended nature of the concept such as good governance.

This thesis proposes the use of the right to a fair trial framework to the concept of good governance in order to enhance its justiciability and legal enforceability. One may question why is this necessary given that certain rights associated with good governance already exist and

[67] Klara Kanska, 'Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights' (2004) 10 European law journal: review of European law in context, 301.

[68] In academic scholarship, a discussion may be noted about whether the scope of Article 41 of the CFR applies exclusively to EU institutions, or whether - due to its inclusion of certain general principles of EU law, which member states are obliged to uphold - it also extends to domestic authorities. See further Opinion AG Bobek, 7 September 2017, ECLI:EU:C:2017:650. Case C- 298/ 16 T and A Ispas v Direcția Generală a Finanțelor Publice Cluj, § 74 et seq.

[69] The relationship between good governance and property rights is explored in greater detail in sub-section 3.3. of this thesis. See also Ulrich Stelkens and Agnė Andrijauskaitė, 'Sources and Content of the Pan-European General Principles of Good Administration' in Ulrich Stelkens and Agnė Andrijauskaitė (eds), *Good Administration and the Council of Europe: Law, Principles, and Effectiveness* (Oxford University Press 2020) 28,29.

could, in theory, be invoked to support its enforcement. However, in practice, the use of these rights remains limited due to their narrow scope or weak enforcement mechanisms.

While Art. 41 CFR is applicable only in relation to EU institutions, for instance, Art. 2(3) ICCPR is relatively abstract and lacks strong regional enforcement. This lack could be addressed by Art. 1 of Prot. 1 ECHR, but this is applicable only in case of property rights, which does not encompass broad procedural standards.

In contrast, Art. 6 ECHR provides broader and comprehensive enforceable standards essential for realization of nearly all fundamental rights protected by the Convention's provisions or national equivalents. Linking fair trial standards to governance through Art. 6 ECHR would have significant implications: first, the quality of decision-making of all public authorities could be improved, second, it could strengthen the legal enforceability of the concept of good governance, and third, through individual's possibility to challenge violations of this right, it could hold authorities accountable and thus, ensure the adherence to good governance.

To further develop this argument, it is first necessary to define the concept and scope of the right to a fair trial.

1.4. The Right to a Fair Trial: International Standards

The right to a fair trial is one of the most fundamental human rights,[70] crucial for the realization and enforcement of other fundamental rights,[71] but also for the prevention against their abuse.[72] Moreover, it is an essential component of the rule of law.[73] As Clooney and Webb argue, this right represents "*the heart of human rights protection*," because without it, all other

[70] Amal Clooney and Philippa Webb, 'Introduction' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 13.
[71] Schabas (n 8), 265.
[72] Ian Langford, 'Fair Trial: The History of an Idea' (2009) 8 *Journal of human rights*, 37.
[73] Schabas (n 8), 265.

rights would be endangered. They point out how devastating the unfair trials may be – not only for individuals but for societies as well, undermining democracy and oppressing minorities.[74]

The right to a fair trial was recognized in the UDHR in 1948 and since then it was included not only in all international and regional human rights treaties, but in most constitutions as well. One of the leading instruments is the ICCPR,[75] establishing this right in Art. 14. It sets basic international standards on fair trial, both in the case of civil and criminal proceedings. These standards are also equivalently reflected in regional human rights instruments.

The domestic level is also crucial, as national judicial proceedings, despite their variations, must adhere to international standards. This obligation arises primarily from the ratification of the ICCPR and other human rights instruments. And even in cases where the state has not ratified any treaty establishing the right to a fair trial, there is strong evidence that the right to a fair trial – or at least certain elements of it – constitutes the customary law[76] or general principle of law,[77] making it binding on all states.[78]

However, for the purpose of this thesis, the European human rights context is important. The ECtHR, also referred to as the 'human rights hegemon,' has the largest jurisprudence on the right to a fair trial out of all human rights systems and is widely cited by other human rights bodies.[79] The ECHR establishes the right to a fair trial in Art. 6, providing, in paragraph 1, that everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law. It includes (generally) the right to publicly pronounced judgement.

[74] Clooney and Webb, 'Introduction' (n 70), 1.
[75] ibid.
[76] WGAD, *Report, Question of The Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment* (1993) UN Doc. E/CN.4/1993/24, 12, § 23.
[77] UN Special Rapporteur, M. Vázquez-Bermúdez, Second report on general principles of law (2020) UN Doc. A/CN.4/741, §§ 86-88, 155-158.
[78] Clooney and Webb, 'Introduction' (n 70), 13.
[79] ibid, 57.

The typical perception of the right to a fair trial includes 13 elements – "right to a competent, independent and impartial tribunal established by law; right to a public trial; right to be presumed innocent; right to prepare a defence; right to counsel; right to be tried without undue delay; right to be present; right to examine witnesses; right to an interpreter; right to silence; right to appeal; right to equality; right not to be subject to double jeopardy."[80] Within these, other partial rights can be identified, e.g. right to be informed about the charges and reasons for their arrest,[81] or, importantly, the right of access to a court, which is a crucial component of Art. 6.

For instance, the right to a public trial may serve as a control of the courts, whether the overall system is composed of competent, independent and impartial tribunals, and whether they hold fair and equal proceedings, not subjected to any political nor discriminatory grounds. Moreover, it prevents unreasonable delays in proceedings, which undermine the public sense of courts' effectiveness and good management of public funds spent on them.[82]

This supports the statement that the right to a fair trial stands as a cornerstone of human rights protection and the rule of law. It not only safeguards individuals from injustice and abuse but also strengthens public confidence in the judicial system. Through its guarantees - particularly within the European context under Art. 6 of the ECHR - this right ensures that proceedings are conducted fairly, openly, and without discrimination. Ultimately, it is this right that upholds the integrity of justice systems and preserves democratic values in society.

As established in this chapter, good governance faces several challenges related to its enforceability and legalistic character. It has been demonstrated that human rights are closely linked to this concept, which is one of the main reasons for adopting a human rights-based

[80] Clooney and Webb, 'Introduction' (n 70), 7.
[81] ibid, 9.
[82] ibid.

approach to address its justiciability. Taking fair trial standards into account, this thesis argues that these two concepts share lot of common elements. The following chapter elaborates more on this argument and explores what is the extent of this overlap.

2. The Overlap Between Good Governance and the Right to a Fair Trial

As has been repeatedly suggested throughout this thesis, good governance and the right to a fair trial are closely intertwined – both aiming to ensure the legitimacy, effectiveness and accountability of public institutions, playing crucial role in upholding of the rule of law.

Having established the general definitions of good governance and the right to a fair trial, this section explores the overlaps between these two concepts and seeks to demonstrate why the fair trial framework could be used for enforcement of good governance. In the first part, the thesis focuses on the connections between good governance and the right to a fair trial already noted by the academics or international organizations. The second part analyses the key principles of good governance – properness, transparency, participation, effectiveness, accountability, and human rights, and determines how critical these elements are in safeguarding fair trial standards.

Yet, since the importance of the right to a fair trial among other fundamental rights has been established in the section defining this right, the following text will no longer address the element of human rights.

2.1. Good Governance and the Right to a Fair Trial: Theoretical Linkage

So far, there has been not largely developed theory behind the relationship between the good governance and the right to a fair trial. When subsuming ECHR rights under good governance, the right to property under Art. 1 of Prot. 1 ECHR seems to be more common.[83]

One of the possible reasons may be the traditional association of the fair trial with the judiciary, whereas good governance extends across all branches of state power. Yet, we can find a few sources which include the fair trial standards when speaking about good governance.

Venice Commission's Draft Report on the Notion of "Good Governance" notes that good administration refers to some of the rights enshrined in Art. 6 ECHR – such as impartiality, fairness, legal certainty, the right to be heard, or proceeding without unreasonable delay.[84] Thus, this report undoubtedly sees the fair trial elements as a part of good governance.

The CoE in its recommendation on good administration mentions that it can be reinforced through fundamental principles of the rule of law, which includes for instance impartiality, proportionality, legal certainty, or proceedings without undue delay – basically representing the fair trial principles.[85] Yet, it does not mention the right to a fair trial explicitly.

Nevertheless, Herdegen does recognize a fair trial as one of the standards of good governance explicitly. He sees fair trial standards as essential for upholding the rule of law, legal certainty and limiting state abuse – factors required for good governance and subsequent sustainable economic development. Yet, he highlights its importance especially in relation to international investment law and its standard of fair and equitable treatment.[86]

[83] Stelkens and Andrijauskaitė (n 69), 28.
[84] Venice Commission 'Draft Report on the Notion of "Good Governance"' (n 20), § 47.
[85] Council of Europe Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, 4.
[86] Matthias Herdegen, 'Good Governance: The Internal Structure of States and Global Economic Integration' in Matthias Herdegen (ed), *Principles of International Economic Law* (Oxford University Press 2024), 172-173.

Advocate General Bobek also mentions the connection between the good governance and the right to a fair trial element.[87] More specifically, his argument focuses on question whether rights of the defence, especially the right of access to the file, the right to be heard, or the duty to state reasons, can be considered as a component of good administration under Art. 41 CFR.[88]

However, he sees this relationship quite controversial. According to his opinion, as supported by the theory above, various components can be placed under the 'right to good administration.'[89] Certain rights of defence can be also subsumed under this right. Yet, he concluded that while these two concepts share certain overlapping elements, their content is not identical in legal nature.[90]

It appears that, although some authors do refer to the right to a fair trial in the context of good governance, such references are often indirect, or the connection itself remains disputable. Nevertheless, the academic literature does reveal implicit links between these two concepts, which will be further explored in the following text, focusing on the core elements of good governance.

2.2. Parallels Between Good Governance and the Right to a Fair Trial Elements

This section takes a closer look at the six core elements of good governance and explores their overlap with fair trial standards. It provides a more detailed analysis of the extent to which fair trial standards are embedded within the concept of good governance.

2.2.1. Properness and the Right to a Fair Trial

[87] Opinion AG Bobek, 7 September 2017, ECLI:EU:C:2017:650. Case C- 298/ 16 T and A Ispas v Direcția Generală a Finanțelor Publice Cluj.
[88] In this section, Bobek examines whether the rights of defense can be subsumed under Art. 41 CFR. If so, given that these rights also constitute general principles of EU law, he considers whether they should be applicable not only to EU institutions but also at the domestic level.
[89] Bobek (n 91), §§ 86,87.
[90] ibid, § 89.

The first good governance element identified by Addink – the element of properness - includes formal carefulness of public authorities, prohibition of abuse of power, rationality, proportionality, legal certainty, legitimate expectations, equality and reasoning.[91] According to Lust, this principle includes elements such as the duty to hear the person concerned by the decision, rights of due process of law, impartiality, or independence.[92] These requirements closely align with fair trial standards, ensuring that the decisions are made in accordance with well-established law and free from arbitrary discretion.

Several aspects may be highlighted. Firstly, for example, legal certainty, also representing a part of the rule of law, has been underlined as a crucial part of the right of access to a court, including the proper administration of justice.[93] Another example may be the right to a public judgement, which exposes courts to certain scrutiny and by that enhances legal certainty.[94]

Secondly, noteworthy is also the importance of prohibition of abuse of power, common also for the rule of law. To avoid the arbitrariness of the decision, proper reasoning is essential. Decisions that are not reasoned properly may indicate either that judges were biased, and thus not independent and impartial. This applies not only to the final decisions themselves, but also to the unreasoned evaluation of evidence, or other partial decisions in a trial.[95] The requirement of reasoned decisions is thus a direct expression of the element of properness.

[91] Henk Addink, 'The Principle of Properness' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019), 99.
[92] Sabien Lust, 'Administrative Law in Belgium', *Administrative law of the European Union, its member states and the United States: a comparative analysis* (Intersentia 2007) <http://hdl.handle.net/1854/LU-397664> accessed 17 March 2025.
[93] Schabas (n 8), 285.
[94] N. H. B. Jørgensen & A. Zahar 'Deliberation, Dissent, Judgment' in G. Sluiter & others (eds), *International Criminal Procedure: Principles and Rules* (OUP 2013), 1178.
[95] Amal Clooney and Philippa Webb, 'Right to a Competent, Independent and Impartial Tribunal Established by Law' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 125-126.

The last example of the overlap between the good governance element with those of the right to a fair trial may be the requirement of well-established law which is precise and clear.[96] Vague or ambiguous norms not only undermine legal certainty but also reflect flawed legislative processes and, to some extent, an improper exercise of state power. When law lacks clarity, it creates space for arbitrary interpretation and selective enforcement, which directly affects the state of good governance, demanding the consistent application of legal norms to ensure fairness and justice.

2.2.2. Transparency and the Right to a Fair Trial

Transparency is a crucial element both of good governance and the right to a fair trial. It requires a clarity of procedures, clear reasoning, drafting and publication of law including decisions, and consistency, because the opposites are an incubator for arbitrariness, inefficiency and corruption.[97] Although typically associated solely with public administration, this principle within good governance is also applicable to judicial power, which must ensure transparency both in a trial and the decision[98] – mostly through public hearings.

The right to a public trial, also a fundamental aspect of the rule of law, allows the public to expose courts to a certain degree of scrutiny. This includes the right to have a trial held in public and right to have judgment pronounced publicly. Even though the courts must be independent and cannot be subjected to external influence, this scrutiny makes the courts less likely to violate the rights of individuals.[99] By this, the public may evaluate whether the case

[96] Amal Clooney and Philippa Webb, 'Right to Equality' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 739-740.
[97] Henk Addink, 'The Principle of Transparency' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019) 112.
[98] ibid, 114.
[99] *Pretto and Others v Italy* [1983] ECtHR 57561/00, § 21. See also Amal Clooney and Philippa Webb, 'Right to a Public Trial' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 185.

was decided (or it seems that it was decided[100]) by the independent and impartial court and other fair trial rights were respected.[101] Accordingly, the public perception of independence is crucial. If the public will not view the judiciary as independent, they will not believe that the court proceedings would be fair and honest.[102]

Additionally, transparency in judicial proceedings ensures that legal standards are applied consistently, prevents legal unpredictability and strengthens the legal certainty. Moreover, the obligation to publish judicial decisions is essential mean in ensuring that courts operate openly and fairly.

2.2.3. Participation and the Right to a Fair Trial

The element of participation entails the involvement of citizens in decision-making process, constituting a crucial feature of democracy.[103] It ensures that governance structures remain responsive and inclusive. In the fair trial context, this principle is manifested through access to justice and participatory rights within legal proceedings. As Addink argues, the right to a fair trial or the right to an effective remedy are specifically applicable to the principle of participation.[104]

The right to be present in proceedings is particularly important. It allows an individual to exercise other rights subsumed under the right to a fair trial – such as the right to understand

[100] In accordance with a legal maxim 'Justice must not only be done, but must also be seen to be done' attributed to Lord Hewart, the then Lord Chief Justice of England in the case of *Rex v. Sussex Justices,* [1924] 1 KB 256. See for example Arvind Datar, 'The Origins of "Justice Must Be Seen to Be Done"' (*Bar and Bench - Indian Legal news*, 18 April 2020) <https://www.barandbench.com/columns/the-origins-of-justice-must-be-seen-to-be-done> accessed 23 March 2025.

[101] WGAD, *Gutierrez Vasquez v. Peru* (Opinion no. 17/2001), 14 September 2001, §11.

[102] Nik Ahmad Kamal Nik Mahmod, 'GOOD GOVERNANCE AND THE RULE OF LAW' (2013) 4 UUM journal of legal studies, 16.

[103] Sanne Akerboom, 'Between Public Participation and Energy Transition: The Case of Wind Farms' <https://dare.uva.nl/search?identifier=4198a137-4c34-4b65-a442-a10387e60a62> accessed 17 March 2025.

[104] Addink, 'The Principle of Human Rights' (n 62), 175.

the case against them, defend themselves, or confer with their counsel.[105] This right also extends to victims and third parties whose interests may be affected, also enjoying the right to be present at the court.

Notably, in certain circumstances, individuals may waive their right to be present. However, the court still enjoys a certain degree of discretion and may refuse such a waiver – especially if it requires the fair administration of justice.[106] This underscores the crucial role of the element of participation withing the justice administration as such.

2.2.4. Effectiveness and the Right to a Fair Trial

Effectiveness is a key aspect of good governance, requiring state institutions to function efficiently while delivering fair outcomes. For this thesis, effectiveness represents state's actions which are not unnecessarily wasteful of natural or human resources.[107] In relation to effective protection of human rights, the ECHR's separate doctrine on principle of effectiveness is useful. Within this interpretation, states must ensure that the protection of human rights is not theoretical or illusory, but practical and effective.[108] It implies that when considering different possibilities in decision-making, the preference must be given to this option that is most likely to guarantee the protection of the right.[109]

Within the right to a fair trial, effectiveness is embodied for example in the requirement that trials shall be conducted without undue delay, or access to legal remedies and enforcement of judicial decisions.

[105] Amal Clooney and Philippa Webb, 'Right to Be Present' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 446-447.
[106] ibid, 469-470.
[107] Fellmeth and McInerney-Lankford (n 24), 4.
[108] *Airey v Ireland* [1979] ECtHR 78103/14, § 24.
[109] Daniel Rietiker, 'The Principle of "Effectiveness" in the Recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and Its Consistency with Public International Law – No Need for the Concept of Treaty Sui Generis' (2010) 79 Nordic journal of international law = Acta scandinavica juris gentium, 256.

The premise 'justice delayed is justice denied'[110] accurately reflects the essential role of speed of trial in fair proceedings. It applies both to defendants and victims and witnesses.[111] The effectiveness of the trial ensures that defendants are not uncertain about their situation for too long, that it does not interfere with an individual's liberty to an unnecessary degree, especially in cases with a deprivation of liberty present,[112] it reduces the risk of maltreatment with evidence, and it contributes to the victims' and public trust in justice.[113] For instance, more than half of fair trial judgments delivered by the ECtHR concern length of proceedings.[114]

The principle of effectiveness in the right to access to court and legal remedies is reflected in the way that citizens should be not worried about whether they can even afford to pay the costs of the trial.[115] Thus, the good governance element is present within this aspect as well.

Good governance requires also an effective law enforcement. To achieve this, judicial independence is essential. One of the most crucial judiciary's responsibilities is to uphold the rule of law, which should prevent governments from abuse of their power, and it would not be able to provide this without its independence from government.[116]

The concept of good governance goes further and encompasses also the operational aspect of judiciary's practice. Judicial independence is a reflection of the system's effectiveness.[117] It ensures both the legitimacy of decisions but also their practical enforcement. A judiciary that

[110] The phrase attributed to W. E. Gladstone, Former British Statesman and Prime Minister, in 1868. See for example Choi I, 'Justice Delayed is Justice Denied: Managing Contracting Performance for Equal Employment Opportunity Discrimination Complaints' (2024) 0(0) *Review of Public Personnel Administration.*
[111] Amal Clooney and Philippa Webb, 'Right to Be Tried without Undue Delay' in Amal Clooney and Philippa Webb (eds), *The Right to a Fair Trial in International Law* (Oxford University Press 2021), 389-390.
[112] HRC, General Comment No. 32 (2007), § 35.
[113] Clooney and Webb, 'Right to Be Tried without Undue Delay' (n 115), 391.
[114] ibid, 390.
[115] Nik Mahmod (n 106), 18.
[116] ibid, 16.
[117] ibid, 18.

is independent, impartial, and free from external pressures strengthens the effective enforcement of the law, necessary for good governance.

2.2.5. Accountability and the Right to a Fair Trial

The principle of accountability represents the need to hold public officials for their acts, omissions, or policies accountable. It increases the quality of governance and should prevent government errors.[118] The question of accountability is most apparent in cases of abuse of power.[119]

Central to this good governance element is the concept of judicial accountability. It refers to the mechanisms designed to hold judges and courts, both individually and institutionally, responsible for actions and decisions that violate constitutional or legal standards. This includes accountability both by legislative or executive authorities, or by the civil society.[120] High judicial accountability reflects a judiciary free from corruption and other unfair influence, also serving as a tool for preventing corruption in the whole public sector as such[121] - thus, ensuring the independent and impartial courts.

The concept of judicial accountability is relatively extensive and has been subject to various academic discussions.[122] However, the scope of this thesis does not allow to explore this in more depth. Nonetheless, it can be noted that accountability is a crucial element of the

[118] Mark Bovens 'Analysing and Assessing Accountability: A Conceptual Framework.' (*Practical Law*) <https://uk.practicallaw.thomsonreuters.com/Document/I8A920540268A11DC96C1F49EEBF31D0A/View/FullText.html?skipAnonymous=true&transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 17 March 2025.

[119] B Guy Peters and Jon Pierre, *Handbook of Public Administration: Concise Paperback Edition* (SAGE Publications 2007), 340.

[120] 'Judicial Accountability' (*Oxford Constitutions*) <https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-e329?utm_source=chatgpt.com> accessed 30 March 2025.

[121] Niclas Berggren and Christian Bjørnskov, 'Corruption, Judicial Accountability and Inequality: Unfair Procedures May Benefit the Worst-Off' (2020) 170 Journal of economic behavior & organization, 343.

[122] See for example discussion on the clash of judicial accountability with the principle of judicial independence. In David Kosař, *Perils of Judicial Self-Government in Transitional Societies* (Cambridge University Press 2016).

right to a fair trial, as it contributes to an independent judiciary – also essential for of good governance.

The above-mentioned text showed that good governance elements are strongly reflected in the fair trial standards. To certain extent, this connection is supported not only by scholars, but also by the preceding analysis. Based on this, the thesis argues that the scope of Art. 6 ECHR could sufficiently cover the good governance framework. Nevertheless, this approach may still face several limitations.

2.3. Possible Limitations and Feasibility of the Proposed Linkage

From the above-mentioned theoretical perspective, it seems feasible to use the framework of the right to a fair trial as a tool for enforcement of good the governance concept. Nevertheless, this approach must count with several limitations which can be voiced as counterarguments.

First, from a conceptual perspective, some could argue that good governance and the right to a fair trial have different legal nature. The right to a fair trial is a clearly defined and enforceable human right, while good governance is a broader, policy-oriented concept. Aligning the fair trial with good governance could therefore weaken its binding legal force and instead give it a more abstract nature.

However, addressing this, the fundamental nature of the right to a fair trial should be reminded and its crucial role in realization of other human rights. In practice, incorporating fair trial standards into the good governance framework could actually strengthen the practical enforcement of both concepts and enhance the overall protection of human rights. The right to a fair trial not only ensures individual procedural guarantees but also reintegrates values crucial under good governance. By grounding good governance in a justiciable right, these values could gain clearer legal shape and stronger enforcement mechanisms.

Second, the application of these two concepts can differ. While good governance is intended to be applied to all branches of state power, fair trial standards are primarily applicable to judiciary. Extending fair trial standards beyond the judiciary could be met with resistance from states, as it could be perceived as intrusive or an excessive broadening of human rights protection.

Yet, this thesis argues that applying fair trial principles to other branches of state power could not only contribute to better human rights protection, but to also enhance public trust and reinforce the legitimacy of state decisions - ultimately benefiting the state itself.

Alternatively, another argument could be that the content of these two concepts is simply not identical. While they refer to same principles, such as transparency or effectiveness, they have different meaning depending on the branch of state power – while in administration this refers to more open policy-making, within the judiciary, it includes public hearings.

Nevertheless, it is important to recognize that good governance applies to all branches of power, including the judiciary. Thus, the content of these concepts should be perceived as complementary rather than contradictory. They both promote the same objective – open, predictable and lawful decision-making, directly impacting citizens. Therefore, from this perspective, the right to a fair trial can serve as a benchmark for decision-making across all branches of state power - not just within the judiciary.

As determined above, although theoretical connections between the two concepts remain underdeveloped, references in academic literature and by international bodies do exist. Ultimately, fair trial rights are not only essential for individual justice but also crucial for the effective functioning of state institutions. This section can conclude that a fair and independent judiciary reinforces good governance and ensures that state power is exercised within the boundaries of law and justice.

In the next chapter, the thesis addresses the main research question and examines whether the ECtHR has already recognized this connection between good governance and the right to a fair trial in its practice.

3. Good Governance in the ECtHR's Perspective

This chapter shifts to the practical application of the concept of good governance within the Court's practice. It firstly establishes how the concept of good governance is understood by the Court. Subsequently, it closer examines the concept's connection with the right to a fair trial, which despite the normative overlap established in the previous chapters, remains unclear.

3.1. The Emergence of Good Governance in the ECtHR Caselaw

In the ECHR context, good governance is a relatively new concept. While the concept as such has been already introduced by the World Bank in the 1990s, the ECtHR has explicitly recognized it for the first time in 2009 in the case Moskal v. Poland.[123] In the ECtHR's view, good governance encompasses three main elements – it expects from public authorities, when an issue in the general interest is at stake, "*to act in good time, in an appropriate manner and utmost consistency*."[124] However, exactly this phrase was firstly used by the Court in 2000 in another case, Beyeler v. Italy,[125] and later, for example in the *Megadat.com* case in 2008.[126] Apparently, the Court only "named" an already existing standard of conduct expected from the state.

Nevertheless, this concept has been more developed through the caselaw focusing on partial elements of good governance. For example, Stelkens and Andrijauskaitė in their

[123] Andrijauskaitė (n 37), 4.
[124] *Moskal v. Poland* [2009] ECtHR 10373/05, § 51.
[125] *Beyeler v. Italy* [2000] ECtHR 33202/96, § 120.
[126] *Megadat.com SRL v. Moldova* [2008] ECtHR 21151/04, § 72.

publication provide a list of rules supported by specific cases possibly subsuming under the principle of good governance – such as the requirement of transparent and clear administrative procedures in order to foster legal certainty, the requirement on authorities' competence, or procedural requirements concerning the decision reasoning or possibility to present the case, etc.[127]

After the *Moskal* case, the definition of good governance has not changed over the time, and the Court has remained consistent in its interpretation. We can follow several recent judgements, such as the case Maria Mihalache v. Romania from 2020,[128] or Grobelny v. Poland from 2020,[129] which contain the very same understanding of good governance.

The phrasing "*to act in good time, in an appropriate manner and utmost consistency*," suggests that the Court's definition is formulated relatively broadly, open to multiple interpretations. Nonetheless, to a certain degree, there is a developed jurisprudence on these requirements separately.

The time-related requirement encompasses known criteria such as 'to act promptly and duly' or 'to act without undue delay'.[130] The requirement of appropriateness is a wide category, but the central aim is to prevent overly bureaucratic conduct by public authorities.[131] Lastly, the consistency requirement calls for public authorities to act with 'reasonable clarity and coherence,' to avoid legal uncertainty and ambiguity.[132] In this context, the clarity refers to precise, reliable and trustworthy public activities,[133] while coherence requires to act logically and orderly.[134]

[127] Stelkens and Andrijauskaitė (n 69), 30-33.
[128] *Maria Atanasiu and Others v. Romania* [2010] ECtHR 30767/05, 33800/06, § 70.
[129] *Grobelny v. Poland* [2020] ECtHR 60477/12, § 61.
[130] *Nekvedavičius v. Lithuania* [2013] ECtHR 1471/05, §§ 56,57. See also Andrijauskaitė (n 37), 6,7.
[131] Andrijauskaitė (n 37), 10,11.
[132] Plechanow v. Poland [2009] ECtHR 22279/04, § 103.
[133] *Dzirnis v. Latvia* [2017] ECtHR 25082/05, §§ 84,85.
[134] Andrijauskaitė (n 37), 8,9.

Nevertheless, some of these requirements may overlap – for instance, to act in an appropriate manner may be interpreted similarly as to act consistently. According to Andrijauskaitė, the exact content of these elements of good governance largely depends on the circumstances of particular case, and some of them remain "*nothing more than empty shells*."[135]

This may be illustrated also on the fact that there is no universal test or checklist for determining whether the state has acted in accordance with the principle of good governance. As such, the ECtHR's understanding of good governance appears to be quite open-ended, encompassing a range of requirements that may vary from case to case.[136]

However, this open-ended nature of the concept does not have to be necessarily problematic. A broader and more flexible formulation allows the Court to adapt the principle to various factual and legal contexts, ensuring that it remains relevant and effective in responding to evolving governance challenges. Such flexibility prevents the Court from being overly formalistic or rigid, which could, on the contrary, lead to the undermined protection of individuals' rights. It makes the principle universally applicable across various areas of state's action and prevention of human rights violations. Therefore, this broader nature of the concept may be viewed not as a weakness but a strength, which can ensure the practicality and effectiveness of the concept.

The above-mentioned approach may be ideal in theory, however, in practice, hardly enforceable. As highlighted above, the concept of good governance is relatively vague as such. The Court in its definition does not depart from this as well. Yet, this thesis argues that precisely because of this vagueness, linking fair trial standards to good governance can serve as an effective tool to give the concept real structures, and enhance its legal enforceability.

[135] ibid, 6,12.
[136] ibid, 13,14.

At this stage, it is essential to acknowledge the presence of the concept of good administration in the caselaw of the Court. As previously discussed, this thesis acknowledges good administration as a part of good governance. However, since these two terms may be sometimes used interchangeably, good administration cannot be disregarded in the analysis.

Although the ECHR does not explicitly recognize the right to good administration, it has developed the concept of good administration partly through its interpretation of administrative procedures, as seen in the *Beyeler* case above, and further supported it in other judgments such as Humpert and Others v. Germany. In this case, good administration is understood as ensuring the protection of individual rights, the provision of public services, and effective governance through a well-functioning public administration. Here, the Court explicitly links good administration to the broader obligation of states to uphold good governance.[137]

Nevertheless, the concept of good administration remains relatively underdeveloped in the ECtHR's caselaw,[138] and the term 'good governance' tends to prevail in the Court's terminology.

Having established the concept of good governance in the ECtHR's jurisprudence, the following text turns its focus specifically to the Cour's fair trial judgements and examines the good governance references found within them.

3.2. Good Governance in the ECtHR Jurisprudence on the Right to a Fair Trial

Even though the concept of good governance was officially introduced to the Court's jurisprudence in 2009 in the *Moskal* case, references to it appeared also in earlier decisions. In the context of fair trial judgments, as examples may serve the cases Schouten and Meldrum v.

[137] *Humpert and Others v. Germany* [2023] ECtHR 59433/18, 59477/18, 59481/18, 59494/18, § 118.
[138] The Court rarely uses this term, in most HUDOC search results, references to good administration originate from government submissions or relevant domestic and international materials.

the Netherlands[139] or Van de Hurk v. the Netherlands[140] from 1994, or Ekholm v. Finland[141] from 2007. In these cases, the term 'good governance' is mentioned, but only in the sections describing the facts or outlining relevant domestic law, rather than being invoked or applied by the Court itself.[142] As a result, these judgments do not provide insights into the Court's own interpretation of the relevance of good governance with the right to a fair trial, since the concept is not employed in the Court's reasoning or legal analysis.

Filtering the rulings, in nearly half of the identified cases, the Court directly refers in its reasoning to the principle of good governance – however, primarily in the context of Art. 1 of Prot. 1 ECHR, rather than Art. 6 ECHR.[143] This may be observed even more generally, where good governance is most frequently invoked by the Court in cases concerning the right to property.

For example, in the *Rysovskyy* case, the Court reiterated the importance of good governance and expressed that "*where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as property rights, the public authorities must act in good time and in an appropriate and above all consistent manner*."[144] It emphasized the transparency and clarity of public authorities' action, minimizing of the risk of mistakes, and fostering legal certainty.[145] This demonstrates that the Court perceives good

[139] *Schouten and Meldrum v. the Netherlands* [1994] ECtHR 19005/91, 19006/91.
[140] *Van de Hurk v. the Netherlands* [1994] ECtHR 16034/90.
[141] *Ekholm v. Finland* [2007] ECtHR 68050/01.
[142] In Schouten and Meldrum v. the Netherlands, good governance is being referred to by the Central Appeal Tribunal, which had regard to general principles of good governance (algemene beginselen van behoorlijk bestuur), assessing the length of proceedings (§17). In Van de Hurk v. the Netherlands, the Industrial Appeals Tribunal referred to good governance when assessing whether there had been any abuse of authority and weighing up the interests at stake (§ 32). In Ekholm v. Finland, good governance is included in the Finish Constitution (§ 42).
[143] See *Rysovskyy v. Ukraine* [2011] ECtHR 29979/04, § 70 et seq.; *Nekvedavičius v. Lithuania* [2013] ECtHR 1471/05, § 87; *Bogdel v. Lithuania* [2013] ECtHR 41248/06, §§ 65,66; *JGK Statyba Ltd and Guselnikovas v. Lithuania* [2013] ECtHR 3330/12, § 133; *Berger-Krall and Others v. Slovenia* [2014] ECtHR 14717/04, § 198; *Pádej v. Slovakia* [2020] ECtHR 74175/17, § 52; *Borisov v. Ukraine* [2021] ECtHR 2371/11, §§ 42,43; *Pařízek v. the Czech Republic* [2023] ECtHR 76286/14, § 52; *Zela v. Albania* [2024] ECtHR 33164/11, § 95; *Tverdokhlebova v. Ukraine*, [2025] ECtHR 15830/16, § 41.
[144] *Rysovskyy v. Ukraine* [2011] ECtHR 29979/04, § 70.
[145] ibid.

governance as relevant not only to property rights but also to other fundamental rights. Nevertheless, even though certain fair trial standards - such as prohibition of undue delay in proceedings or legal certainty – may be observed in this reasoning, the Court does not explicitly link them to good governance. Therefore, these judgements cannot be included in the case analysis on the right to a fair trial, given the absence of a direct connection between the two concepts.

Nevertheless, the judgement where the Court deals exclusively with the right to a fair trial and where the term 'good governance' may be observed is the recent case Cavca v. The Republic of Moldova.[146] In this case, the concept is invoked in connection with corruption, which is considered as undermining the rule of law and good governance. However, this reference originates from the Venice Commission's *amicus curiae* to the Moldovan Constitutional Court and is only embraced by the ECtHR in the part focusing on relevant international material. Therefore, even though the Court does not appear to dispute the Venice Commission's note and incorporates it in the judgement, it does not further engage with or develop the concept as such.

In the case Makarashvili v. Georgia, the Court has focused solely on Art. 6 ECHR[147] and referred in its reasoning to the good governance principle.

Not surprisingly, this reference is also not very clear. At first, it is used by the domestic court – Tbilisi City Court – in its reasoning on the assessment of evidence. It emphasized that public authorities must act strictly within the bounds of law, which presumes good governance.[148] It suggests that if public authorities act in accordance with law, their actions are presumed legitimate, and the burden of proving the contrary bears the opposite party. It also

[146] *Cavca v. the Republic of Moldova* [2025] ECtHR 21766/22, § 26.
[147] And Art. 11 ECHR, however not on Art. 1 of Prot. 1 ECHR.
[148] *Makarashvili and Others v Georgia* [2022] ECtHR 23158/20, 31365/20, 32525/20, § 23.

expressed that when assessing the evidence, the public officials' testimonies (in this case police officers) were more trusted due to their role as such, compared to testimonies by the offenders.[149]

However, the ECtHR has not endorsed this approach. Instead, it referred to the 'witness' as an autonomous term within the ECHR, giving the equal weight to all testimonies, regardless the witness's status.[150] This reflects the above-mentioned fair trial principle of equality before the law, which can be considered as a part of the broader concept of good governance, particularly under the element of properness.[151]

Nevertheless, the Court did not explicitly frame its reasoning in terms of good governance, nor did not further elaborate on the relevance of the concept in the right to a fair trial context. The Court clearly prioritized the fair trial guarantees under Art. 6 ECHR, and thus, while the principle of good governance is mentioned, it plays only a marginal role in the Court's analysis. Therefore, although some conceptual overlap may be observed, the judgment does not establish a substantive link between good governance and the right to a fair trial.

This in fact concludes the list of cases concerning the alleged violation of Art. 6 where the term 'good governance' appears in the Court's judgements. From the above analysis, it becomes clear that good governance is not substantively elaborated in the context of Art. 6 almost at all. While the term may be observed in the judgements, they are mostly linked to Art. 1 of Prot. 1 or cited by external sources such as domestic courts or international bodies. The ECtHR itself rarely develops or applies the notion of good governance directly within the fair trial principles.

[149] ibid.
[150] ibid, § 62.
[151] See sub-chapter 2.2.

This limited engagement can be attributed to several factors. But first, to have a complex understanding, it is necessary to examine the presence of the concept of good administration in the ECtHR's caselaw, as it is often used interchangeably with good governance.

After filtering the judgments containing the term 'good administration', it became clear that the Court did not refer to this concept in its reasoning in any of the cases. While a few rulings did mention this term, it appeared either in submissions by respondent governments,[152] in references to international material,[153] or in references made by national authorities.[154] Consequently, no fair trial judgment could be considered as referring to good administration by the Court directly. Similarly, this applies to the term 'proper administration'.[155]

While both these terms are frequently used in the context of 'good administration of justice' or 'proper administration of justice', since these concepts substantially differ from the concept of good governance, they cannot be objectively considered as good governance indicators within the Court's jurisprudence.

Therefore, the first part of this analysis demonstrates that despite the conceptual overlap between good governance and the right to a fair trial, the ECtHR does not appear to meaningfully engage with these two concepts as being interrelated. While the term 'good governance' or its equivalents do occasionally appear in the fair trial judgements, such references are typically used only in the facts of the case or in relevant international materials, or in arguments raised by domestic courts or parties. The Court itself rarely integrates the

[152] See for example *Ships Waste Oil Collector B.v and Others v the Netherlands* [2025] ECtHR [GC] 2799/16, §§ 134,135.
[153] See for example *Lashmankin and Others v Russia* [2017] ECtHR 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13, § 317.
[154] See for example *Hall v Austria* [2012] ECtHR 5455/06, § 22.
[155] See also *Hall v Austria* [2012] ECtHR 5455/06, § 29; or *Oerlemans v the Netherlands* [1991] ECtHR 57706/10, § 25.

principle of good governance in its reasoning under Art. 6 ECHR, and when it does, such as in *Makarashvili* case, the reference remains marginal and underdeveloped.

A different situation emerges in the case of the right to property under Art. 1 of Prot. 1 ECHR. As mentioned above, the Court engages with good governance more frequently in this context. Therefore, the following section examines how the notion of good governance is applied in relation to this article.

3.3. Good Governance in the ECtHR Jurisprudence on the Right to Property

In several right to property judgements, the ECtHR uses good governance as a guiding principle.[156] The Court draws upon the established definition in *Moskal* case,[157] which was originally developed also in relation to the right to property. These cases typically concern errors committed by public authorities in administrative procedures and subsequent remedies.[158] In light of the good governance principles, these mistakes should be primarily corrected by the state, but the correction of old "wrong" should not disproportionately interfere with a newly obtained right by an individual, who relied on the legitimacy of the actions of the public authority.[159]

There may be several reasons why the Court more frequently engages with the concept of good governance in the context of the right to property under Art. 1 of Prot. 1 than in relation to Art. 6 ECHR. First, the notion of good governance has been more extensively developed within the economic and administrative dimensions of governance, particularly in relation to

[156] See for example *Romeva v North Macedonia* [2019] ECtHR 32141/10, § 58; *Grobelny v. Poland* [2020], 60477/12, § 68; *Seregin Et Autres c Russie* [2021] ECtHR 31686/16, 45709/16, 50002/16, 3706/18, 24206/18, § 94; *Gavrilova and Others v. Russia* [2021], 2625/17, § 74; *Semenov c Russie* [2021] ECtHR 17254/15, 59; *Muharrem Güneş Et Autres c Turquie* [2020] ECtHR 23060/08, § 74.
[157] *Moskal v. Poland* [2009] ECtHR 10373/05, § 51.
[158] *Gashi v Croatia* [2007] ECtHR 32457/05, § 40; *Gladysheva v Russia* [2011] ECtHR 7097/10, § 80.
[159] *Beinarovič and Others v Lithuania* [2018] ECtHR 70520/10, 21920/10, 41876/11, §§ 140-142; *Muharrem Güneş Et Autres c Turquie* [2020] ECtHR 23060/08, § 75.

property rights and economic regulation. In academic discourse, this connection is often framed through the lens of sustainable development, economic performance, and the management of economic resources.[160] From this perspective, property rights and good governance mutually depend on each other.[161]

This conceptual alignment may explain why the ECtHR first introduced and developed its good governance understanding within Art. 1 of Prot. 1 ECHR. Since the full realization of the right to property requires an effective state action and institutional safeguards – which involves administrative efficiency or legal certainty, the concept of good governance naturally arises as a part of state's positive obligation.[162]

Another reason why the Court has remained aligned with Art. 1 of Prot. 1 may be that it simply is not willing to go beyond this provision. This may emerge from the so-called 'procedural turn' – a shift from substantive rights adjudication to a greater focus on quality of domestic procedures.[163]

This shift is relevant to the issue addressed in this thesis because it illustrates the Court's increasing reluctance to actively expand the scope of rights as such. Instead, the Court tends to focus on procedural safeguards and adhere to well-established doctrinal concepts. As Jackson explains, this doctrinal turn reflects the Court's strategic adjustment to growing political pressure from member states. It underlines the new Court's position to put emphasis on

[160] Biman C Prasad, 'Institutional Economics and Economic Development: The Theory of Property Rights, Economic Development, Good Governance and the Environment' (2003) 30 International journal of social economics 755-756.
[161] Clement Allan Tisdell, 'Good Governance, Property Rights and Sustainable Resource Use: Indian Ocean Rim Examples' (1997) 65 The South African Journal of economics 28.
[162] European Court of Human Rights, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights – Protection of property (ECHR, 2025) <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_1_protocol_1_eng> accessed 16 May 2025.
[163] See for example Robert Spano, 'The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law' (2018) 18 Human rights law review 480 et seq.; or Oddný Mjöll Arnardóttir, 'The "Procedural Turn" under the European Convention on Human Rights and Presumptions of Convention Compliance' (2017) 15 International journal of constitutional law 13 et seq.

subsidiarity and process-based review, showing deference to states and their decisions by assessing the procedures rather than invalidating their outcomes.[164]

This helps to explain why the Court, when invoking the principle of good governance, continues to apply it within the right to property and has not extended it other rights such as the right to a fair trial. Given the nature of good governance, which imposes obligations on states to meet high governance standards, there is high probability that any attempt by the Court to substantively expand its interpretation could provoke resistance from member states. Such expansion could be perceived as even potentially overstepping the Court's mandate as a judicial and not legislative body, and intervening to politically sensitive areas – something the Court appears to avoid.

As Cumper and Lewis suggest, the procedural turn allows the Court to avoid substantively assess rights violations, focusing on the domestic process.[165] This enables the Court to refrain from introducing new concepts or expanding the scope of existing ones. It may be particularly evident also in the context of good governance, where the Court appears to be bound by existing interpretations - such as those under Art. 1 of Prot. 1 – and thus limiting its potential for conceptual innovation.

Although the Court appears to be avoidant in expanding the established use of good governance beyond Art. 1 of Prot. 1 ECHR, many of fair trial elements may be seen in the concept's application. For example, as in *Rysovskyy* case, the Court invoked good governance in support of demands for consistency, transparency, and timely action by state bodies. These requirements fully align with standards set out in Art. 6 ECHR – which suggests the implicit recognition of the relevance of fair trial standards within good governance.

[164] Miles Jackson, 'Judicial Avoidance at the European Court of Human Rights: Institutional Authority, the Procedural Turn, and Docket Control' (2022) 20 International journal of constitutional law 113-116.
[165] Peter Cumper and Tom Lewis, 'BLANKET BANS, SUBSIDIARITY, AND THE PROCEDURAL TURN OF THE EUROPEAN COURT OF HUMAN RIGHTS' (2019) 68 International & Comparative Law Quarterly 625.

This recognition may be further illustrated also in the table below. It shows that requirements formulated in the *Moskal* definition in relation to the right to property are in fact reflected in the standards established in the fair trial caselaw. This ultimately supports the practical applicability of the fair trial framework on good governance.

Moskal definition elements	Fair trial standard	Caselaw example
To act in good time	Reasonable time	Wemhoff v Germany, 1968; Adiletta and Others v. Italy, 1991; Rutkowski and Others v. Poland, 2015
In appropriate manner	Appropriateness and proportionality	Janosevic v. Sweden, 2002; Falk v. the Netherlands (dec.), 2004; A. Menarini Diagnostics S.R.L. v. Italy, 2011
Utmost consistency	Legal certainty, clarity and coherence	Hadjianastassiou v. Greece, 1992; Coëme and Others v. Belgium, 2000; Bratyakin v. Russia (dec.), 2006; Borg v. Malta, 2016;

Table 1: Example of an overlap between the good governance elements and fair trial standards in the ECtHR caselaw.

Building on this, the following section closer examines the reasons why the Court does not engage more with good governance under the right to a fair trial framework. In the end, it explores how this link could strengthen the enforceability and justiciability of good governance.

4. Evaluating the Absence of Good Governance in Fair Trial Reasoning

As has been shown in the previous section, while the ECtHR does not engage with the concept of good governance within the right to a fair trial, it does apply it within the right to property. The earlier text suggests why this connection with Art. 1 of Prot. 1 ECHR appears to

be more prevalent. This section continues with critical examination of the Court's reluctance to engage more with the right to a fair trial in this regard. Subsequently, it examines why the reliance on the right to property is not sufficient. Finally, it proposes how the integration of the fair trial into good governance would enhance the concepts enforceability and strengthen both the human rights protection and the overall quality of public governance.

4.1. Explaining the Court's Non-Engagement with Good Governance in the Context of the Right to a Fair Trial

There may be several possible reasons why the Court does not engage more deeply with the concept of good governance in relation to the right to a fair trial. Even though this thesis does not seek to explore them comprehensively, it outlines few plausible explanations.

One explanation may lie in the previously discussed 'procedural turn', which mirrors the current political environment and growing political pressure from member states. This shift in the Court's approach, which emphasizes the quality of domestic procedures rather than substantive outcomes, may explain why the concept of good governance has remained mostly confined to Art. 1 of Prot. 1 and has not been extended to Art. 6.

By subsuming good governance under Art. 6, the Court would be required to engage more directly in the substantive evaluation of public institutions' practices. However, given the political pressure from member states, the current situation may not be favourable for this conceptual expansion.

Closely connected to this is the issue of judicial activism and the frequent criticism directed at the ECtHR in this regard.[166] Even some of its own judges have agreed with this critique.[167] However, as Judge Bošnjak and his colleague argue, this is not completely accurate.

[166] Marko Bošnjak and Kacper Zajac, 'Judicial Activism and Judge-Made Law at the ECtHR' (2023) 23 Human Rights Law Review 1.
[167] For example Serbian Judge Popović. In Popovic, 'Prevailing of Judicial Activism Over Self-Restraint in the Jurisprudence of the European Court of Human Rights' (2008) 42 Creighton Law Review 361.

First, they suggest that the term "judicial activism" should be reframed as "judicial law-making." Second, they argue that this form of judicial law-making is, to a certain extent, inevitable. Under the living instrument doctrine, the changing environment requires certain development in the Court's understandings.[168]

In their publication, they suggest several factors affecting the accumulation of judge-made law. First, the Court must be, to a certain degree, more activist, if the legal text is not comprehensive. The vaguer and less comprehensive the text is, the greater is the need for the Court to elaborate the legal argumentation.[169] Second factor is related to the concept of positive obligations, which creates space for the Court to engage with judge-made law more extensively, allowing it to extend the protection of human rights and to impose on states certain obligations to act.[170] This includes also legislative activities of states. Where such obligations are not adequately fulfilled, it is the Court's role to fill this gap through its rulings.[171] A third factor emerges from the growing caseload. As the Court is faced with an increasing number of cases, it is confronted with a broader range of legal questions, thereby expanding the scope of its jurisprudence and inevitably contributing to judicial law-making.[172]

These insights are directly relevant to the issue of good governance in this thesis. The Court may be hesitant to extend the concept of good governance beyond its current understanding, due to its concerns about alleged unwanted judicial activism, for what it has been already criticized. However, as Bošnjak and Zajac argue, the Court is not inherently activist, but it more likely participates in law-making, which is currently unavoidable.

For example, the vagueness of good governance may be one of the reasons why the Court does not engage with it more under Art. 6 – because the concept as such is relatively broad and

[168] Bošnjak and Zajac (n 170) 2,4.
[169] ibid, 6.
[170] ibid, 7.
[171] ibid, 11.
[172] ibid, 8-9.

it would require deep and potentially far-reaching judicial reasoning – opening questions about judicial activism. In conjunction with other factors mentioned above, it becomes clear that any potential expansion of the concept of good governance could clash with the issue of judicial law-making. It remains open to interpretation, whether this development is in fact problematic.

Another reason for not using of good governance on Art. 6 ECHR may lie in the Court's path-dependency, as suggested above. Since the Court has already build a well-developed jurisprudence connecting good governance and the right to property, it may prefer to keep along this path rather than extend the concept to other Convention rights.

This may be observed frequently in the Court's practice. While it acknowledged its role as an interpreter and developer of the meaning of Convention rights, it has repeatedly noted that it will not depart from its previous precedents without good reason.[173] Even though the Court is not bound by its previous rulings, in the interest of legal certainty, foreseeability and equality before the law, it usually tries to follow them.[174]

A similar logic may apply to the concept of good governance. Given that the concept is already rooted within Art. 1 of Prot. 1 ECHR, and in the light of other factors, such as previously mentioned Court's current focus on procedural aspects and reluctance to engage in substantive expansion of certain - potentially politically sensitive - rights, the Court has even stronger incentive to adhere to its well-established interpretation and to refrain from its further extension. This reluctance may be observed in the *Makarashvili* case, where the Court refers to the concept of good governance but does not engage with it further in any substantive matter.

[173] As an example may serve the Court's long-standing reluctance to take a position on issues such as the right to abortion or the right to assisted suicide, firstly focusing instead on procedural aspects of the cases – such as a provision of legal remedies. See Janneke Gerards, 'Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights' (2018) 18 Human Rights Law Review 507.
[174] Bošnjak and Zajac (n 170), 7-8.

All of these factors may help to explain why the Court has not expanded its application of good governance under the right to a fair trial and instead has remained within the right to property. Before this thesis explains how the use of the fair trial framework could enhance the concept's enforceability and justiciability, it is necessary to examine why the current reliance on the right to property framework is insufficient.

4.2. Limitations of Relying on the Right to Property in Ensuring Good Governance Standards

Assessing why the enforcement of good governance standards through Art. 1 of Prot. 1 ECHR is not sufficient, the crucial limitation lies in the narrow scope of the right to property. Good governance is inherently a multidimensional concept encompassing values such as transparency, accountability or effectiveness in entire public governance. These values are crucial in all interactions between individuals and public authorities, not only in those involving property matters. Limiting good governance only to Art. 1 of Prot. 1 narrows its scope and disregards a wide range of areas, which remain unaddressed. As a result, only individuals with property-related claims may benefit from good governance, while other areas remain unaffected. However, if good governance should serve as a tool for promoting transparency, efficiency, and in the end the rule of law and democracy, this principle cannot be limited only the property rights alone.

Moreover, it may be problematic that similar principles - such as transparency, legal certainty, or effectiveness - are invoked under different rights without coherent conceptual framework. For example, Moskal's definition of good governance clearly incorporates elements of the right to a fair trial, yet it does not explicitly identify them as such and does not establish a direct connection to that right. This lack of clarity risks creating of conceptual confusion, which undermines the coherence and enforceability of the good governance within the Court's practice.

Because of that, this thesis proposes that connecting good governance to the right to a fair trial would serve as a better framework for its enforcement under the human rights-based approach.

4.3. The Potential of Applying the Right to a Fair Trial Framework on Good Governance

As has been shown, the concept of good governance and the right to a fair trial share essential elements and can be seen as overlapping. Nevertheless, the ECtHR does not interpret these two concepts through a common lens. Instead, it prefers to remain within context of the right to property. The previous section outlined why this property-based conceptualization is not sufficient. Now, the following text will present arguments, why the application of good governance under Art. 6 ECHR would be beneficial.

The primary benefit of connecting good governance to the right to a fair trial would be the creation of more concrete and enforceable standards for evaluating performance of public institutions. In their interactions with citizens in any matter, public authorities must act consistently, effectively, transparently and properly, ensuring citizen participation in decision-making when appropriate, and in cases of failure, these institutions must be held accountable. By doing so, the state would contribute more effectively to the protection of human rights.

While good governance is often used as a soft, aspirational goal and policy guideline, its practicality and effectiveness are limited by its lack of enforceability and definitional vagueness. In contrast, Art. 6 ECHR provides a legally binding, judicially interpreted, and justiciable set of standards and obligations. By grounding good governance within this framework, the concept could become to be clearer and more precise, and all relevant stakeholders – such as public institutions, courts or citizens - could better understand its scope and act accordingly.

Subsequently, the concept's enforceability and justiciability could be strengthened through the enforcement mechanisms under the right to a fair trial. Fair trial guarantees can serve as a gateway for addressing broader governance failures, such as judicial bias, abuse of discretion, or systemic inefficiency. In practice, this would allow individuals to invoke good governance principles not only before national courts but also before the ECtHR, compelling states to uphold high standards in public decision-making. This would be beneficial not only for affected individuals, who could claim access to remedies where standards are not met, but also from the systemic perspective - the ECtHR could use such cases to formulate higher standards that would guide all state branches *pro futuro*.

Another area that could be strengthened through the proposed approach is that public authorities' decision-making and the conduct as such would be subject to more consistent obligations. Not only courts but all public authorities would be required to act effectively, reason their decision properly and transparently – most importantly, under the ECtHR scrutiny. In case of any failure, the responsible public bodies could be held accountable. Inconsistent or arbitrary decisions could be challenged on procedural fairness grounds. Accordingly, citizens could also invoke fair trial rights in challenging administrative decisions that lack transparency or proportionality.

Last but not least, linking good governance with the right to a fair trial would not only enhance the concept's enforceability but would also reinforce the rule of law, as one of the foundational principles of "*all genuine democracy*."[175] As noted in the very beginning of this thesis, this is vital especially in current days when several European countries are facing rule of law backsliding.

[175] Preamble to the Statute of the Council of Europe. See also Venice Commission of the Council of Europe. The Rule of Law Checklist (Council of Europe 2016) 9.

Together with the rule of law and democracy, good governance shapes the state, its institutions, and regulates the relationship between the government and citizens. In this regard, the rule of law basically employs the idea of a legal base for government, preventing the arbitrariness or abuse of power, and the need for the protection of human rights.[176] Although academic discourse has no clear stance on whether good governance is a component of the rule of law or stands as a separate concept that interacts with and strengthens it,[177] since they both create an environment where the state operates transparently, fairy and in accordance with law, their mutual importance remains without any doubt.

Therefore, if the overall good governance is strengthened – for instance through Art. 6 framework – this simultaneously strengthens the rule of law. The more the state upholds high quality standards in governance and decision-making, the stronger the protection of human rights will be, which is essential for a substantive rule of law.[178]

Good governance, and especially its element of accountability, can serve as a check on abusive or arbitrary state action. As argued above, relying solely on the right to property framework significantly narrows the scope of good governance. This limited approach leaves large areas of state action beyond the reach of legally binding good governance obligations. Even if this does not lead directly to arbitrary state behaviour due to the lack of scrutiny, it certainly does not contribute to the strengthening of the rule of law.

At this point, it is important to address the main concerns raised in the previous section concerning the reasons why the Court does not connect good governance with Art. 6 ECHR. Firstly, regarding the procedural turn and the Court's reluctance to engage in the substantive

[176] Addink, 'Good Governance' (n 3), 3.
[177] See for example Henk Addink, 'The Rule of Law and Good Governance' in Henk Addink (ed), *Good Governance: Concept and Context* (Oxford University Press 2019), 76; or Kofi Annan, 'The Quiet Revolution' (1998) 4 Global governance, 123; or World Bank's Worldwide Governance Indicators (n 2) where the rule of law is considered as one of the indicators affecting good governance.
[178] Addink, 'The Rule of Law and Good Governance' (n 181), 85.

expansion of good governance on more Convention rights, it is essential to underline that this thesis exactly highlights the importance of procedural rights. By subsuming good governance under Art. 6, it does not require anything beyond what is already expected from states – the proper functioning and performance of public institutions.

In fact, this thesis aligns with the Court's own shift towards emphasize on procedural safeguards. Rather than imposing new substantive obligations, the application of good governance through Art. 6 would reinforce the need for transparency, accountability, impartiality, and timeliness in public decision-making – requirements already well-established within the fair trial framework. Therefore, this approach does not call for substantive innovation of the right's meaning but simply extends existing procedural standards to other areas – not only those related to property matters.

Closely related to this is the Court's potential path-dependency. However, this should not be seen as an obstacle either. While it is true that the ECtHR generally adheres to its previous caselaw, integrating good governance into Art. 6 framework would not require the Court to overrule its prior decisions and adopt a new legal doctrine. Rather, it would represent a natural development – particularly given that references to good governance already appear in fair trial judgments, whether raised by the parties or cited from relevant international instruments.

Recognizing the relevance of good governance within the context of the right to a fair trial would clarify and systematize what is already present under the understanding of good governance within the right to property framework. Ultimately, this approach would not only align with the Court's prior reasoning but would reinforce the overall human rights protection.

Final point concerns the fear of judicial activism. While this thesis argues that the expansion of good governance to the right to a fair trial framework does not require any form of judicial activism, even if it would be necessary, it should not be viewed as problematic. As

Bošnjak and Zajac argue, when courts are faced with vague or open-ended concepts, judicial development of them is to a certain extent inevitable and natural.[179]

Given that the concept of good governance is relatively vague and broad, it should not be a problem to involve judicial activism to closer clarify its scope. The proposed development here would be grounded in existing jurisprudence and would align with the Court's main aim of strengthening the human rights protection. Therefore, even if the Court's interpretation would be characterized as "activist", it would be both justified and defensible.

That said, while linking the fair trial framework to the concept of good governance offers numerous advantages, the approach is not without potential risks and limitations. Although a comprehensive examination of them is beyond the scope of this thesis, they should be acknowledged.

One of them may be the potential overburdening of courts – particularly the ECtHR - which is already facing a significant cases overload. Applying Art. 6 ECHR to other branches of state power beyond the traditional judicial context may lead to an increased number of cases before the ECtHR, clashing with the Court's capacity. Therefore, it would be essential to formulate the standards precisely and emphasize the enforcement primarily at the national level.

Another risk may emerge from the fact that procedural fairness does not always necessarily guarantee substantively just governance outcomes. Public authorities may fully comply with all procedural standards, yet still reach a decision that is substantively unjust, harmful or contrary to human rights protection. This creates a tension between outcome-based governance, which puts emphasize on the substance and real impact of decisions, and the process-based one, which rather focuses on the formal correctness of the procedures used. While the letter is not inherently problematic – and this thesis exactly supports the broader

[179] Bošnjak and Zajac (n 170), 6.

application of fair trial standards across public decision-making – it may in certain situations conflict with the overall goal of strengthening the human rights protection.

This concern may be visible in the context of the above-mentioned ECtHR's procedural turn, where the Court prioritizes due process over the substantive outcomes.[180] This subsequently raises serious questions about the effectiveness of the human rights protection in practice. Therefore, even though this thesis advocates for the incorporation of procedural fairness across the whole public decision-making, it also underscores the importance of striking a balance between procedural guarantees and the substantive quality of decisions, so that the primary aim of good governance and human rights protection is not undermined.

Ultimately, expanding the scope and stretching the meaning of Art. 6 ECHR beyond its traditional judicial context may risk weakening its protective power. This may potentially undermine the coherence and legal certainty that is currently characteristic for this right. Therefore, it would be crucial to precisely formulate which fair trial standards are reflected in good governance elements and to what extend they can be aligned in a sustainable manner.

Conclusion

Good governance is a key pillar of a democratic society that upholds the rule of law and respect for human rights. As this thesis highlights on multiple occasions, it is an essential condition for effective realization of many fundamental rights. Its significance becomes even more pronounced in the current political environment, where several European countries are facing democratic erosion and rule of law backsliding. Recent examples from Slovakia or Hungary show that state institutions in some contexts appear to be increasingly marked by lack

[180] See for example *Animal Defenders International v the United Kingdom* [2013] ECtHR [GC] 48876/08; *S.a.s v France* [2014] ECtHR [GC] 43835/11; *Von Hannover v Germany (no 2)* [2012] ECtHR [GC] 40660/08, 60641/08; or Spano (n 167).

of accountability or reduced transparency. These developments raise serious concerns regarding the commitment to the core rule of law values, ultimately, undermining the effectiveness of overall human rights protection.

Good governance seeks to fight against such institutional failures. Yet, as this thesis demonstrates, the concept suffers from its vagueness, broadness and abstractness – which does not contribute to its legal enforceability and justiciability.

The absence of unified definition of good governance complicates the identification of legal obligations under this concept. Since good governance is frequently presented as a soft law policy guideline or an aspirational idea, its binding force and enforceability remains questionable.

As one possible way to strengthen the concept's enforceability, this thesis proposes to adopt a human rights-based approach and link the concept of good governance to the right to a fair trial. This right, established under Art. 6 ECHR, is considered as one of the most fundamental human rights and offers a well-established and justiciable legal framework promoting many of the same values as good governance.

As this thesis shows in the second chapter, although good governance and the right to a fair trial are rarely examined together in academic literature, they significantly overlap in practice. The analysis shows that six core good governance elements – properness, transparency, participation, effectiveness, accountability and human rights – are strongly reflected in fair trial standards. This alignment supports the feasibility of applying Art. 6 ECHR guarantees to promote and strengthen good governance.

Accordingly, the thesis aims to examine whether the ECtHR acknowledges the connection between these two concepts in its jurisprudence. While multiple definitions on good governance exist, in the *Moskal* case the Court adopts its own understanding, emphasizing three

main elements – to act in good time, in an appropriate manner and utmost consistency. Although this definition was applied in the context of the right to property, it already reveals significant parallels with fair trial standards – such as to act within reasonable time, appropriately and proportionally, ensuring legal certainty, clarity and coherence.

However, the key finding of this thesis is that the ECtHR rarely engages explicitly with good governance in its the fair trial rulings. When references to good governance do appear, they are usually found only in the parties' submissions or relevant international materials, rather than in the Court's own reasoning. This observation directly addresses the central research question – whether the ECtHR explicitly considers the right to a fair trial as a component of good governance – and suggests that such recognition remains limited and largely implicit.

Nevertheless, an important finding emerging from the research is that, rather than invoking good governance in relation to the right to a fair trial, the ECtHR more frequently applies the concept within the context of the right to property under Art. 1 of Prot. 1 ECHR. Yet, this thesis argues that applying good governance under this right is not sufficient.

The main concern lies in the right's narrow scope. Good governance is a multidimensional concept encompassing a broad range of individuals' interactions with public officials. Restricting its application solely to property-related matters largely limits its practical relevance, and given that, only those with property claims can benefit from good governance.

For these reasons, the thesis rather advocates for extending the application of good governance to Art. 6 ECHR, which offers a robust legal basis grounded in values closely aligned with those of good governance. Such an extension would not only extend the scope of good governance within the ECHR level but also enhance the concept's overall enforceability through established legal mechanisms.

This thesis argues that this approach can strengthen several key areas of good governance. Firstly, it would establish concrete, precise and legally enforceable standards requiring all public bodies, in any interaction with citizens, to act transparently, effectively, properly – in accordance with good governance. This would promote a better understanding of the good governance's scope and its practical implications.

Secondly, this approach would provide an effective legal tool that could be used in cases of governance failures and individuals could invoke this principle before the courts. By framing good governance principles within the Art. 6 ECHR framework, individuals would gain access to both individual remedies and the potential for broader systemic change. Moreover, such an approach would also ensure scrutiny by the ECtHR, ultimately reinforcing institutional accountability, legal certainty, and predictability in state action.

Finally, in context where democratic backsliding is occurring in many countries, combating arbitrariness and abuse of power, this approach could reinforce procedural guarantees across all branches of power, contribute to stronger human rights protection and strengthen adherence to the rule of law and democratic principles.

These findings suggest that good governance should not be limited to a mere policy guideline or soft law ideal but rather recognized as a legal concept with binding force. Within the legal obligations, it should be focused beyond the narrow scope of property rights. Building on that, it opens door to addressing broader and complex issues and may have broader implications for legal practice.

It also reinforces the idea that procedural fairness should not be confined to judicial proceedings but should extend to all branches of power. It highlights that procedural guarantees serve as a universal tool against abuses of state power and public resources, while promoting human rights protection across the whole public sphere. Additionally, it empowers individuals

and civil society not only to hold state institutions accountable, but also to actively participate in shaping more transparent, competent and democratic governance.

This thesis may contribute to the broader discourse by showing the importance of human rights as such. Through adoption of human rights-based approach, it demonstrates how the human rights framework can improve justiciability of more abstract and broader - but equally important – concepts such as good governance.

At the same time, the thesis acknowledges that the fair trial is itself a relatively broad and complex concept, encompassing many elements, either concerning civil or criminal limb, or both together. It is therefore natural that there may be certain elements that do not directly overlap with good governance values. It would be therefore interesting to further explore the link between the two concepts in more detail and determine what specific fair trial standards may be reflected in the good governance.

Additionally, as outlined at the end of the final chapter, this thesis acknowledges several potential risks associated with the proposed approach - such as the risk of overburdening courts or diverting attention from substantive outcomes. Future research should address these concerns, elaborate the possible negative implications of linking good governance to Art. 6 ECHR in greater detail, and propose solutions to prevent these risks.

To conclude, while the ECtHR currently uses the concept of good governance in its fair trial jurisprudence sporadically and mostly implicitly, the overlaps between the two are significant and promising. This thesis shows that linking good governance to Art. 6 ECHR offers a practical legal pathway to strengthen the concept's enforceability and impact.

In a time when democratic institutions are under growing pressure, this approach offers a way to reinforce core rule of law values via the tools of binding legal protection. Good governance should no longer be treated as a vague aspiration - it should be recognized as a legal

standard embedded in everyday state-citizen interactions. If public power is to remain legitimate, it must be exercised transparently, properly, and fairly – and not only in the courtroom, but wherever fundamental rights are at stake.

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