

Fair Trials

Sarah J. Summers,

(Hart, Oxford 2007)

ISBN 978-1-84113-730-8 (Hardback)

Book review by Sally Ramage

This delightful little book is an exploration of Article 6 of the European Convention on Human Rights. Part One examines the work of various important European Jurists of the nineteenth century. These include the French jurist Bonnier, jurists. Foucault, Vargha and the German Baden.

Examine the wording of Article 6, The right to a fair trial:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.

Summers says that the wording of Article 6 does not provide much guidance on the foundation of the notion of a fair trial in criminal proceedings in the sense of determining the form that the proceedings should take, although the notion of fair criminal proceedings in Article 6(1) is supplemented by two further paragraphs guaranteeing the presumption of innocence and the rights of the defence.

Summers states that at the heart of much of Article 6 case-law on criminal proceedings is the belief that systems need not be procedurally identical to be fair. Then there is the notion of 'equality of arms' which was introduced into the European Court of Human Rights in *Offner v Austria*; *Hopfinger v Austria*, *Pataki v Austria* and *Dunshirn v Austria*. However, 'equality of arms' does not guarantee specific rights Summer says but seeks to ensure that rights are fairly applied. There are imbalances in the system, imbalances such as unequal access to the file, inequalities in submitting arguments and observations, failure to disclose relevant evidence and the unequal status of expert witnesses. Summer examines the Convention's caselaw to determine the scope of 'equality of arms' and quotes from the decision in *Rowe and David v United Kingdom* are included in her argument.

Summers discusses the right to be present at trial and asserts that in the UK, the presence of the accused is not always required at appeal hearings and leave to appeal. She states that the right to be present has been linked to various other aspects of the right to a fair trial and in the European court's caselaw, the right to be present has been considered under Article 6(1) as part of the right to public hearings as part of the 'equality of arms' and as part of the right guaranteed by Article 6(3)(c).'

In Part Two of the book, the author discusses the fair trials jurisprudence of the European Court of Human Rights and the criminal procedures in Europe. Summers argues that fair trials jurisprudence has been influenced by the nineteenth century writers. The implications associated with construing fairness principally in terms of individual rights are assessed. Summers claims that the fairness of the trial continues to be the primary means of legitimising the criminal process, but that the trial is nevertheless heavily dependent on the under-regulated investigation to ensure the effectiveness of the system of prosecution. If the public hearing requirement as discussed in Part One, cannot be construed as a 'right', this has serious ramifications for a system, even for the ECHR system which is dependent on individual applicants claiming their rights. The failure to recognise the relationship between individual rights and the institutional form of the proceedings is a failure to understand that rights alone offer insufficient restraints on the procedural law to guarantee procedural fairness.

This book is a gem and is necessary reading for all those lawyers who think beyond the cases they undertake.