

(a) ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...«

Om forholdet mellem denne bestemmelse og FN-konventionens art. 14, stk. 3, litra d, hedder det i den nævnte betænkning:

»Article 14, paragraph 3

140. Paragraph 3 of Article 14 of the U.N. Covenant, which has its counterpart in paragraph 3 of Article 6 of the European Convention, enumerates minimum rights of a person charged with a criminal offence. The text of the U.N. Covenant is in some respects more explicit and thus goes further than that of the European Convention; but the experts considered that these additional safeguards are for the most part implicit in the European Convention. [See, in particular, the Report of the European Commission on the Nielsen case, Yearbook, Volume IV, at page 548.]

141. The following points are mentioned expressly in the U.N. Covenant but not in the European Convention:

(i) ...

(iv) The right to be »tried in his presence« (Article 14, paragraph 3 (d), first sentence). On the other hand, according to the jurisprudence of the European Commission of Human Rights, the right to be present or be represented at the trial may be deduced, at least in certain circumstances, from the principle of equality of arms.

(v) The right of the accused to be informed if he does not have legal assistance, of his right to have legal assistance (Article 14, paragraph 3 (d), second sentence). This provision imposes an obligation which has no counterpart in the European Convention ...«

Ekspertkomiteen var således af den opfattelse, at der ikke, for så vidt angår det element i FN-konventionens art. 14, stk. 3, litra d, der er fremdraget i retsudvalgets spørgsmål, kunne antages at være nogen realitetsforskel mellem de to konventioner.

90 Udvalgenes betænkninger m. m.

3. På den anførte baggrund kan det være af interesse at redegøre for den fortolkning, der i den europæiske menneskerettighedskommissions praksis er anlagt af den tilsvarende bestemmelse i den europæiske menneskerettighedskonventionens art. 6, stk. 3, litra c.

Allerede i Schouw Nielsen-sagen fremkom kommissionen med et mere generelt holdt fortolkningsbidrag til bestemmelserne i konventionens art. 6:

»Article 6 of the Convention does not define the notion of »fair trial« in a criminal case. Paragraph 3 of the Article enumerates certain specific rights which constitute essential elements of that general notion, and paragraph 2 may be considered to add another element. The words »minimum rights«, however, clearly indicate that the six rights specifically enumerated in paragraph 3 are not exhaustive, and that a trial may not conform to the general standard of a »fair trial«, even if the minimum rights guaranteed by paragraph 3 – and also the right set forth in paragraph 2 – have been respected. The relationship between the general provision of paragraph 1 and the specific provisions of paragraph 3, seem to be as follows:

In a case where no violation of paragraph 3 is found to have taken place, the question whether the trial conforms to the standard laid down by paragraph 1 must be decided on the basis of a consideration of the trial as a whole, and not on the basis of an isolated consideration of one particular aspect of the trial or one particular incident. Admittedly, one particular incident or one particular aspect even if not falling within the provisions of paragraph 2 or 3, may have been so prominent or may have been of such importance as to be decisive for the general evaluation of the trial as a whole. Nevertheless, even in this contingency, it is on the basis of an evaluation of the trial in its entirety that the answer must be given to the question whether or not there has been a fair trial.« (Rapporten side 80).

Dette grundsynspunkt synes imidlertid også i et vist omfang at have indvirket på fastlæggelsen af rækkevidden af de enkelte led i art. 6, stk. 3, således at omfanget af de forpligtelser, bestemmelserne indebærer, ikke alene kan bedømmes efter ordlyden.