

DISABILITY

III. JURISPRUDENCE

ICCPR

Drake et al. v. New Zealand (601/1994), ICCPR, A/52/40 vol. II (3 April 1997) 273 (CCPR/C/59/D/601/1994) at paras. 8.4-8.6.

...

8.4 The authors claim that the failure of New Zealand to provide a remedy for the injustices suffered by them during their incarceration by Japan, and for their residual disabilities and incapacities, violates article 26 of the Covenant. This claim relates to the distinction said to have been made between civilian and war veterans, and between military personnel who were prisoners of the Japanese and those who were prisoners of the Germans. The authors and the groups of whom they are representatives include both civilians and war veterans.

8.5 As regards the claim that the exclusion of civilian detainees from entitlements under the War Pensions Act is discriminatory, the Committee notes from the information before it that the purpose of the Act is specifically to provide pension entitlements for disability and death of those who were in the service of New Zealand in wartime overseas, not to provide compensation for incarceration or for human rights violations. In other words if disability arises from war service it is irrelevant to the entitlement to a pension whether the person suffered imprisonment or cruel treatment by captors. Keeping in mind the Committee's prior jurisprudence ^{12/} according to which a distinction based on objective and reasonable criteria does not constitute discrimination within the meaning of article 26 of the Covenant, the Committee considers that the authors' claim is incompatible with the provisions of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

8.6 The authors have further claimed that those who were in war service are victims of a violation of article 26 of the Covenant because of the narrow class of disability for which pensions are made available under the War Pensions Act. The Committee notes that the authors have failed to provide information as to how this affects their personal situation. The authors have thus failed to substantiate their claim, for purposes of admissibility, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

Notes

...

^{12/} See, *inter alia*, the Committee's Views concerning communications Nos. 172/1984 (*Broeks v. The Netherlands*), para. 13; 180/1984 (*Danning v. The Netherlands*), para. 13; 182/1984 (*Zwaan-de Vries v. The Netherlands*), para. 13; 415/1990 (*Pauger v. Austria*),

DISABILITY

para. 7.3; and 425/1990 (*Neefs v. The Netherlands*), para. 7.2 See also the Committee's General Comment No. 18 (Non-discrimination), para. 13.

Hamilton v. Jamaica (616/1995), ICCPR, A/54/40 vol. II (23 July 1999) 73 (CCPR/C/66/D/616/1995) at paras. 3.1 and 8.2.

...

3.1 Counsel explains that the author was shot, in the lower area of his spine by a police officer after a hearing by the Magistrate as part of the Preliminary Enquiry. He had, for other reasons, been in hospital prior to his arrest. He was then readmitted to hospital, because of the injury to his back, where he spent three months between his arrest and his trial. As a long term outcome, as a result of this, he is paralysed in both legs and is unable to move from his cell unless he is carried by other inmates. He is also unable to remove his slop bucket from the cell himself and he has therefore been obliged to pay other inmates to remove it. This means that sometimes it has to remain in his cell until he has obtained the necessary funds. The author complained several times to the superintendent about the conditions in which he is kept, to no avail. Furthermore, the London solicitors wrote twice to the Prison Governor on Mr. Hamilton's behalf, requesting him to ensure that the author is given proper assistance to enable him to leave his cell for some period during each day, and also to make proper arrangements for his slop bucket to be removed from his cell daily. To date no reply has been received. Counsel refers to a 1993 report from a non-governmental organisation in which it is stated that, although the Parliamentary Ombudsman seems to make a genuine effort to address the problems in the prisons of Jamaica, his office does not have sufficient funding to be effective, and the Ombudsman has no powers of enforcing his recommendations which are non-binding. Therefore, counsel argues, the office of the Parliamentary Ombudsman does not provide an effective remedy in the circumstances of the author's case. It is submitted that the author's rights under articles 7 and 10 of the Covenant have been violated, because of the prison authorities' failure to take into account the author's paralysed condition and to make proper arrangements for him. The lack of proper care is also said to be in violation of the UN Standard Minimum Rules for the treatment of Prisoners.

...

8.2 With regard to the author's complaints with respect to his conditions of detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the difficulties he has encountered as a disabled person (see paragraph 3.1 supra). All of this has not been contested by the State party, except to say that measures would have to be put in place to accommodate the author as a disabled person in prison. In the Committee's opinion, the conditions described in para 3.1, are such as to violate the author's right to be treated with humanity and with respect for the inherent

DISABILITY

dignity of the human person, and are therefore contrary to article 10, paragraph 1. *Hruska v. Czech Republic* (1191/2003), ICCPR, A/59/40 vol. II (30 October 2003) 565 (CCPR/C/79/D/1191/2003) at paras. 2.1-2.4, 4.2 and 5.

...

2.1 On 3 March 2001, the State Social Security Administration, Prague Office, (Ceska sprava socialniho zabezpeceni Praha) issued a decision regarding the calculation of the author's disability benefits.

2.2 On 13 April 2001, the author appealed this decision in the Regional Court at Brno requesting a review of the decision to the effect that it include an additional insurance period for purposes of calculating her disability benefits. The Regional Court at Brno, by judgement of 12 September 2002, upheld the decision of the Social Security Administration, considering the author's claim to be unreasonable.

2.3 The author appealed to the High Court at Olomouc on 24 October 2002, claiming that the decision of the Regional Court violated the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and article 95, paragraph 1, of the Czech Constitution.

2.4 On 16 December 2002, the High Court halted the proceedings and informed the author that as a consequence of an amendment of the law and the resulting expiry of the Court's jurisdiction in the matter, the author would need to submit her appeal to the Supreme Administrative Court. The author was also informed that complainants before the Supreme Administrative Court are required to have a representative who is a lawyer or has at least higher legal education.

...

4.2 The Committee recalls its jurisprudence to the effect that it does not consider that the requirement of legal representation before the highest national judicial instance is not based on objective and reasonable criteria.^{2/} The author has not advanced any arguments in support of her claim, beyond the mere assertion that this requirement was discriminatory. The Committee accordingly considers that she has not substantiated her claim, for purposes of admissibility.

5. Accordingly, the Committee decides:

(a) that the communication is inadmissible under article 2 of the Optional Protocol.

...

Notes

...

^{2/} See decision on case no. 866/1999, decision of 31 August 2001, *Marina Torregrosa*

DISABILITY

Lafuente et al. v. Spain, para. 6.3.
