



Blessington, et al. v. Australia

Communication No. 1968/2010; CCPR/C/112/D/1968/2010

Country: Australia

Region: Oceania

Year: 2014

Court: United Nations Human Rights Committee United Nations Human Rights Committee

Health Topics: Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

The claimants, who were serving life imprisonment sentences, claimed that the state of Australia had violated articles 7, 10, 15 and 24 of the International Covenant on Civil and Political Rights (â€œCovenantâ€•), particularly the right to freedom from torture and cruel, inhuman, and/or degrading treatment.

The claimants were jointly tried for the murder, abduction, and rape and were convicted of rape and murder.Â The claimants were juveniles at the time of the assault.Â The claimants were tried as adults. The appropriate legislation and criminal proceedings were complied with, and the judge took into account their youth when handing down the sentences of life imprisonment.

At the time that the offences were committed, murder was punishable by mandatory life in prison for adult offenders. That penalty was discretionary for juvenile offenders.Â At that time, a life sentence did not mean for the term of someoneâ€™s â€œnatural lifeâ€™; rather it depended upon judicial and administrative processes.Â After years had been served, the person could apply for release on licence.Â In 1990, that scheme was abolished and replaced with a right to apply for a determination of the life sentence after eight years had been served.Â Between 1997 and 2005 numerous legislative changes were made in Australia to sentencing legislation which amongst other things, the claimants claimed, meant that they had no possibility of parole.

The claimants claimed that the imposition of a life sentence without possibility of parole for crimes committed as juveniles: (1) was incompatible with obligations under article 24 paragraph 1 of the Covenant; (2) was in breach of article 10 paragraph 3 of the Covenant as it is incompatible with the requirement that the essential aims of the penitentiary system be â€œreformation and social rehabilitationâ€•; and (3) constituted cruel, inhuman and/or degrading punishment and imposing such a sentence breaches article 7 of the Covenant; and

They further claimed that by failing to ensure that the claimants did not become subject to a heavier penalty than the one that was applicable to them at the time the crime was committed, Australia was in breach of its obligations under article 15 of the Covenant.

Decision and Reasoning

The Committee held that Australia violated the authorsâ€™ rights under articles 7, 10 and 24 of the Covenant.

The Committee considered that the imposition of life sentences on the claimants as juveniles could only be compatible with article 7, read together with articles 10 and 24 of the Covenant â€œif there is a real possibility of review and a prospect of release, notwithstanding the gravity of the crime they committed and the circumstances around it.Â That does not mean that release should be necessarily granted.Â It rather means that release should not be a mere theoretical possibility and the review procedure should be a thorough one â€œ.â€•

The Committee noted that the review procedure was subjected to such restrictive conditions that the prospect of release seemed extremely remote.Â Furthermore, the release, if it ever occurred, would be based on the impending death or physical incapacitation of a claimant rather than on the principles of reformation and social rehabilitation, which are contained in Article 10 of the Covenant.

The Committee recalled its general comment given previously that no penitentiary system should be only retributory and that it should seek to reform and socially rehabilitate the prisoner.

The Committee considered that taking into account the lengthy period prescribed before the claimants were entitled to apply for release on parole, the restrictive conditions imposed by the law to obtain such release, and the fact that the authors were minors at the time they committed their crimes, the life sentences being served did not meet the obligations of the State party under article 7 and subjected the claimants to cruel, inhuman and/or degrading punishment.

The Committee stated that Australia is under an obligation to provide the claimants with an effective remedy, including compensation, and must take steps to prevent similar violations in the future.Â It ordered Australia to review its legislation to ensure its conformity with the Covenant without delay and allow the claimants to benefit from the new legislation.Â Australia was required to take such measures to give effect to the Committeeâ€™s views within 180 days.

The Committee did not examine the claims of violations of article 15 of the Covenant.

Decision Excerpts

â€œthe imposition ofÂ life sentences on the authors, as juveniles, can only be compatible with article 7, read together with articles 10, paragraph 3, and 24 of the Covenant if there is a possibility of review and a prospect of release, notwithstanding the gravity of the crime they committed and the circumstances around it.Â That does not mean that release should necessarily be granted.Â It rather means that release should not be a mere theoretical possibility and that the review procedure should be a thorough one â€ Para. 7.7.

â€œthe review procedure in the case of the authors is subject, through various amendments of the relevant legislation, to such restrictive conditions that the prospect of release seems extremely remote . . . Furthermore, the release, if it ever took place, would be based on the impending death or physical incapacitation of the authors, rather than on the principles of the reformation and social rehabilitation contained in article 10, paragraph 3 of the Covenantâ€•.Â Para. 7.8.

â€œno penitentiary system should only be retributory and that it should essentially seek the reformation and social rehabilitation of the prisoner.Â The Committee emphasises that this principle applies with particular force in connection with juvenilesâ€• Para. 7.8.

â€œtreating juvenile offenders in a manner appropriate to their age and legal status precludes a definitive conclusion that a juvenileâ€™s actions make that person incapable of rehabilitation and undeserving of release, regardless of any future personal and social development, for the entire length of a lifetime.â€• Para. 7.11.