



Julian, et al. v. New Zealand

Communication No. 601/1994

Country: New Zealand

Region: Oceania

Year: 1997

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

Health Topics: Disabilities, Health systems and financing

Facts

Julian (J), a former fighter pilot, and Drake (D), who had become a naturalized New Zealand citizen in 1964, had been incarcerated by Japan during the Second World War in conditions where torture and maltreatment took place regularly. It was claimed that, as a direct consequence of this, they still suffered residual disabilities and incapacities. They alleged that New Zealand had, by entering into a Peace Treaty with Japan in 1952 that released Japan from further reparation obligations, deprived them of their right to a remedy under Article 2 of the International Covenant on Civil and Political Rights ("ICCPR"). They also alleged that they had been discriminated against as a result of the failure to provide appropriate financial assistance and compensation for the residual disabilities and incapacities they suffered. In particular, war pensions were only provided for service personnel and their dependents. Furthermore, it was submitted that the pensions were not granted to persons who had not lived in New Zealand at the outbreak of the war and that war pensions were available only for narrowly defined specific forms of disability. In addition an ex gratia payment (a payment made out of moral, not legal, obligation) had been made in 1988 to persons detained in Germany but not in Japan. It was also claimed that, because of their experience, they had different needs than ordinary citizens that the public health system did not take into account.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Committee held:

- (1) that the authors had not shown any acts by New Zealand in affirmation of the Peace Treaty after the entry into force of the ICCPR that had effects which would constitute violations of it;
- (2) that, although the ICCPR entered into force for New Zealand in 1979, because the Optional Protocol only entered into force in 1989., the Committee did not have jurisdiction to examine the merits of the claim that the ex gratia payment to service personnel incarcerated in German concentration camps was discriminatory;
- (3) that, as the war pensions law had the specific purpose of providing pension entitlements for the disability and death of those in wartime service overseas and not to provide compensation for incarceration or for human rights violations, the exclusion of civilian detainees from any entitlement was based on objective and reasonable criteria and did not constitute discrimination within Article 26 of the ICCPR; and
- (4) that, as the authors had failed to provide information as to how their personal situation was affected by the narrow class of disability for which pensions were available under the law, they had failed to substantiate their claim.

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Decision Excerpts

"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 jurisprudence¹⁰ 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." Para. 8.5.

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