

ICCPR Case Digest

CCPR/C/112/D/1998/2010

Communication
No. 1998/2010

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A.W.K v New Zealand

Failure to show the domestic court's decision amounted to a denial of justice rendered the claim inadmissible

Substantive Issues

- Right to fair hearing
- right to effective remedy
- right to interpreter
- right to know the nature and cause of charges
- opportunity to present a defence
- right to counsel
- right to face accusers
- right to appeal conviction

Relevant Articles

- Art. 2 (3)
- Art. 14 (1) (3) (a), (b), (d), (e) and (f)
- Art. 5

Violations

- N/A

Facts

The author, a New Zealand national, was convicted in June 2006 of having imported and possessed methamphetamine drugs in July 2004. The drugs were destroyed after the trial at the request of the police. He was sentenced to 17 years imprisonment but the Supreme Court granted his appeal and ordered a retrial in 2008.

The author submits that during the second trial the judge committed a number of errors resulting in violations of his rights under article 14. He claims that upon receiving a note that the jury was unable to reach a unanimous verdict and that "any further effort would resulting bullying" the judge sent a "Papadopoulos direction" instructing them to retire again and see if they could reach a unanimous verdict but stressing that no one should give in or changes views merely for the sake of agreement or to avoid inconvenience. The jury returned a guilty verdict just under an hour later. When the foreperson delivered the verdict she appeared distressed and started crying. The author was sentenced to 14 years and 6 months imprisonment. The author appealed but this appeal was rejected on the basis that the note given to the judge did not indicate there had been bullying but merely there was a risk of intimidation if they were to continue and that the wailing of the author's mother rather than dissent triggered the foreperson's tears after delivery of the verdict. The author appealed to the Supreme Court which dismissed his application for leave to appeal.

The author asserts that the procedural errors violated his right to a fair hearing as set out in article 14 (1). He also claims a violation of article 14 (3) (b) as he was denied adequate facilities for the preparation of his defence as he was unable to have the drug evidence independently retested before his second trial. He also claims

violation of article 2 (3) as the state party denied him an effective remedy as an appellate court denied him permission to interview jurors in order to obtain evidence of bullying.

Committee's View

Consideration of admissibility

The Committee recalls that it has repeatedly held that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice. The Committee considers that the author has failed to substantiate that the conduct of the domestic courts amounted to arbitrariness or a denial of justice. Accordingly, these claims are inadmissible under article 2 of the Optional Protocol. With regards to his claim under article 2 (3) the Committee recalls that this article can be invoked by individuals only in conjunction with other articles of the Covenant, and cannot, in and of itself, give rise to a claim under the Optional Protocol. The Committee therefore considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

Consideration of merits

N/A

Recommendation

N/A

Deadline to Submit the Report on the Implementation of the Recommendations

N/A