
Jessop vs. New Zealand

Facts

The author, at age of 14, was witnessed conducting an aggravated robbery together with her cousin on 2 June 1988 and soon was brought to police station. Despite her initial denial of the alleged robbery, she confessed later and was then formally arrested and charged. According to her, the confession results from pressure from police and her mother.

The author was initially sentenced to 4 years imprisonment by the High Court on 22 July 1998. After her appeal, the case was remitted from the Youth Court to the High Court (due to the fact that the initial proceeding at the Youth Court was not in accordance with the law.) The latter delivered a sentence of 4 year and 8 months imprisonment on 14 December 1999. Her further appeal was dismissed by the Court of Appeal on 30 March 2000. The author completed her sentence and was released in January 2002.

In March 2002 the Privy Council found the dismissal of her appeals by the Court of Appeal to be illegal and remitted the case to the latter. On 19 December 2005 the Court of Appeal dismissed this appeal again. On 16 August 2007 she filed a subsequent application to the Supreme Court on the ground that the same Court had not acted impartially due to its composition.

The author alleged a large number of procedural breaches by the State party, including those in the police identification parade and the transportation to the police station (Art.9 §1), the interviews at the police station (Art.9 §1; Art.10 §1; Art.14 §3(b)(g) §4); presumption of innocence before Courts (Art.14 §2); fair hearing (Art. 14 §2 §3(d) §4; Art.16; Art.24 and Art.26); delays in proceedings (Art.9 §3; Art.10 §2 (b); Art.14 §3(c) §4 §5); judicial bias (Art.14 §1 §5); ability to examine witness (Art.14 §3 (e)); and so on. Her claims also include issues regarding the penalty imposed on her (Art.9 §3; Art.10 §3; Art.14 §4 and Art.24); right to review sentence (Art.14 §3(d)(e) §5 and Art.26) and right to privacy (Art.14 §4 and Art.17).

The State claims that some of the author's claims on the review of her case have already been remedied by domestic courts. Others are either not supported by evidence or not raised or requested by the author before domestic courts.

The author commented on the State's claim that it 'relied on the findings of domestic courts and failed to respond to her central contention, that the proceedings were not child-friendly and not consistent with the Covenant'.

Consideration of admissibility

Article 14 §2 §3 (d)(e) §5 and Article 26: The Committee finds that the claims under these Articles have already been remedied by domestic courts. Therefore there is no violation under the same Articles and the claims are inadmissible.

Key words

- Fair hearing
- Expeditionness of the trial
- Access to witnesses
- Juvenile trials
- Right to appeal

Relevant Provisions

- Article 14 §1
- Article 14 §3(c)(e)
- Article 14 §4
- Article 14 §5

Violated Provisions

- None

In addition the Committee finds that the author also failed to substantiate a number of her claims which are found to be inadmissible as well. They include those claims under Art.9 §3; Art.10 §2(b); Art.14 §3(d); Art.16 and Art.26.

The author's claims under Art.9 §1; Art.10 §1; Art.14 §3(b)(g) §4 are found inadmissible *ratione materiae* since during the alleged period (from the identification parade by the police to the end of the 2nd video interview) the author was neither formally arrested, detained nor subject to any other criminal proceedings.

Regarding the author's claims on the length of the sentence, her right to privacy, judicial bias due to the nomination of several judges and the delay in a part of judicial proceedings – under Art.9 §3; Art.10 §2(b); Art.14 §1 §4 and Art.17 – the Committee found them also inadmissible because either she failed to file relevant requests before the domestic courts or the claims are not well substantiated by the author.

With respect to most of the author's remaining claims – under Art.10 §3 §4; Art.14 §3 (g) §4 and Art.24 – they relate to the evaluation of facts and evidence by the State party's Courts. As both jurisprudence (No. 541/1993 [Errol Simms v. Jamaica](#) 1995) and general comment ([General Comment No. 32](#)) show, it is generally for the courts of the State Party to evaluate such facts unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. In this case the Committee found that the State courts' examination did not suffer from such defect. Therefore this part of claims is found inadmissible.

The Committee proceeds to examine the merits of the remaining claims, namely delay in judicial proceedings under Art.14 §3 (c) §4 §5; the inability of the author to cross-examine the witness at trial under Art.14 §3(e); and the dismissal of her appeal by the Supreme Court under Art.14 §1.

Consideration of merits

Article 14 §3(c) §4 55: The Committee considers that the issue of delay in criminal proceedings should be examined case by case basing on the factual and legal complexity of each case. In the present case, the Committee does not consider the alleged delay – which is largely due to the negligence of the counsel – a violation of the Covenant in light of its specific circumstance.

Art.14 §3(e): The Committee finds no violation of this Article in this case, basing on its particular circumstances that the victim of the robbery was not able to attend the hearing for health reasons; that the author was convicted basing on her confession; and that the victim's statement was not read before the jury.

Art.14 §1: The Committee finds no violation of this Article basing on the facts that her trial and appeal were openly and publicly conducted. The jurisprudence of the Committee also shows that 'the disposition of an appeal does not necessarily require an oral hearing' (No. 1374/2005 [Dudko v. Australia](#) 2006; No.301/1988 [R.M. v. Finland](#) 1989; No.819/1998 [Kavanagh v. Ireland](#) 2001).

Conclusions

The Committee finds no violation by the State party in the present case.

Dissent/Concurrence

N/A