***Case summary:[[1]](#footnote-1) Mr Christopher Leo v Australia***

Case code: [CRPD/C/22/D/17/2013](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f22%2fD%2f17%2f2013&Lang=en)

Communication No. 17/2013

Date of communication (initial submission): 19 September 2019

Date of adoption of Views: 30 August 2019

Invoked provisions of the Convention: [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [12](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13), [14](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#14), [15,](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15) [19](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [26](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19)

Provisions of the Optional Protocol: 2

Keywords: Access to court, psychosocial disability; legal capacity; deprivation of liberty; discrimination on the ground of disability; restrictions of rights

Decision: The State violated articles 5, 12, 13, 14 and 15 of the Convention

Full decision in [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus443oJtbu0Jv80vGXuZOJv7cv%2bA6jjFXPEtO%2bweJ3wEAUE2hK8NReqTUQxow7niRl7zQ%3d%3d), [French](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus44z%2f08kPJH8dB3bqoRl310diICdKbE%2fG%2fItqPdy9Y70bQLPrAXiW%2f1vVsjT5bzdvZQA%3d%3d), [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus446iBIutMlcKP%2bOcWMQtyQeNQL3iEiwMy21%2b4Nfhi32bJxLQZ1tBZniP%2fNapSHijKmw%3d%3d), [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus44%2frbBJ2oM7GaHHuDH%2f3N1n4Q7QT33SSY7uQvUf0UxbbZQjjfIHfPpWPp4vWM4CR%2bfw%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus444PmUhQUaep3DMdFC8QLmpbhIkncXIkwl3FBkdXVgztMAhnM6JGYA39QX2VprkmMJw%3d%3d) and [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRQBQYP83MUMvKmSDanl2p6lsvhfGGNfvT80%2fje9Sus4424Hn6pAms4i3WqT5tJGt0hODkI8JTtrwLCqyS1G%2fR2E%2fHJDZIvHEIDPmcE6I8iH8w%3d%3d)

Facts

The author is an Aboriginal national of Australia with psychosocial disability who was receiving limited support services from the Tangentyere Council in 2007 when he assaulted a staff member, causing her minor injuries and significant mental distress.

The author was arrested, charged with assault, remanded in custody and incarcerated in a high security section of a Correctional Centre. In December 2007, the Supreme Court of the Northern Territory (NT) of Australia determined that the author was unfit to stand trial, and subsequently found him not guilty due its disability. As a consequence, the author was declared to be liable to supervision and remanded in custody until December 2008, where the Court placed him under a Custodial Supervision Order and committed him to custody in prison for 12 months (the appropriate term for the offence concerned if the author had been held guilty). In November 2009, the Court ordered that the author remain in custody even if he had served 26 months (more than twice the period to which he would have been sentenced if convicted). For most of the time, the author was held in maximum security, confined to his cell in isolation and provided with limited access to mental health services, which deteriorated his mental health. He spent atotal of five years and ten months in custody in prison. In June 2013, the author was transferred to Kwiyernpe House, a custodial facility, where he stayed until November 2016 when he was relocated to a community residence.

The complaints

The author claimed that article 5 (in connection with 14 and 15) was breached because a person without a disability could not be committed to indefinite custody in prison without conviction and since the NT Criminal Code was a discriminatory law since it only applied to persons with disability.

The author claimed violations to articles 12 and 13 (in connection with 5, 14 and 15) since he was held in custody for six times more than he would have been with conviction and since the Court determined him “unfit to stand trial” for lacking legal capacity, thus subjecting him to custody without support to exercise his capacity and challenge the charges.

Regarding article 14 (and article 5), the author claimed that his right to liberty and security was breached since his deprivation of liberty was arbitrarily based on disability, disproportionate to the justifying factor, and based on his Aboriginal origins. Moreover, the Court had decided there was no practical alternative, since he is a poor Aboriginal homeless.

Regarding articles 19 and 28 (and 15), the author claimed he was held with convicted persons and was not provided with adequate housing in the community. Moreover, he claimed that conditions of detention were harsh, he was subject to involuntary treatment, and mostly detained in isolation within a maximum-security setting

Regarding article 25 and 26, the author claimed he was neither provided with social, daily living and communication skills nor with behaviour support or rehabilitation programs. He also claimed the lack of mental health services for his effective treatment and support.

State Party’s observations on admissibility and the merits

The State considered the communication should be inadmissible given the powers of the NT Anti-Discrimination Commissioner to investigate and conciliate complaints of discrimination, and to make binding orders. It also mentioned that the author never challenged his declaration of unfitness to stand trial, made a complaint under the Anti-Discrimination Act, nor disputed that he required a high level of care and supervision.

The State considered that the author’s claim of discrimination in relation to his Aboriginal status was inadmissible since the CRPD only covers discrimination on the basis of disability and that the author failed to provide evidence of his rights under articles 25, 26 and 28.

Regarding article 5, the State insisted that the NT Criminal Code does not treat persons differently, but solely for those found “unfit to stand trial.” While it acknowledged that the Code is likely to disproportionately affect persons with disabilities, such differential treatment is legitimate under international law and article 5 should be interpreted accordingly.

As to the violation of article 12, the State considered the author has not provided any information on the measures required to exercise legal capacity. Moreover, it contended that the NT justice system provides persons with disabilities the same access to services, buildings, information, and the opportunity to participate in relevant public consultation. For the State, rights enshrined under article 13 were accorded to the author since criminal counsel represented him throughout proceedings and a guardian was appointed to him.

Regarding article 14, the State agreed that detention on the basis of disability alone would be contrary to the Convention, but not in relation to the author’s circumstances. It also insisted article 14 should be interpreted consistently with the International Covenant on Civil and Political Rights, and following this interpretation, the detention was not arbitrary, since it was authorised under Custodial Supervision Order by the Court. It also alleged this amounted to legitimate differential treatment for particular persons with disabilities because a Custodial Supervision Order is only imposed if there is no other practicable alternative which will ensure the safety of supervised persons or the safety of the community.

As to article 15, the State considered that, while it is undesirable for non-convicted to be detained, exceptional circumstances might warrant such detention in correctional centres if places in specialised facilities are unavailable. For it, the fact that the author was held in custody for long time without being separated from convicted offenders did not violate article 15. It also held that evidence suggested that care was necessary in the author’s case and that treatment may, from time to time, be administered involuntarily. It considered that, as per its interpretive declaration, this was necessary, proportionate and used as a last resort.

Concerning article 19, the State affirmed that the author is currently housed in a new purpose-built facility with a high-level of care and support services. Concerning article 26, the State contested the lack or inadequate services claimed by the author and noted they were available at the Correctional Centre included through regular medical and psychological assessment, support from support workers, and community access.

For the State, article 28 does not require States to provide housing on demand and even though the author has expressed a desire to be accommodated in his community, this would result in a reduction in care, supervision and disability-related services provided to him.

Author’s comments on the State party’s submission

The author held that, while the Anti-Discrimination Act prohibits discrimination on the ground of disability, it is not a fundamental law that can over-ride other laws of the NT - such as the Criminal Code. He also claimed he complained to the Human Rights Commission, which it found that articles 14(1), 19, 25, 26(1) and 28(1) of the Convention were violated and made recommendations that the Government rejected.

The author contended that the NT Criminal Code is a discriminatory law since it does not provide for adaptations and adjustments that would enable his culpability to be determined taking into account his impairment. He accepted the NT Criminal Code was duly applied and hence any appeal would be futile.

The author held that the practical effect of him being found not guilty was to be confined in detention for a period far in excess of any term of regular imprisonment. For him, the Criminal Code’s provisions do not constitute a legitimate differential treatment for protecting the community against dangers since only persons with disability may be subjected to them.

State party’s additional observations

The State noted that in September 2015, the author was gradually relocated to a community residence and that since November 2016 two workers support him. It added that in December 2017 the author’s Custodial Supervision Order was varied to a Non-Custodial Supervision Order and that he continues to engage in occupational and educational activities and be subject to a Guardianship Order.

Committee’s consideration of admissibility

The Committee noted that, since the Anti-Discrimination Act is not a fundamental law that can invalidate the NT Criminal Code, and given the unsuccessful complaints of the author before the Human Rights Commission, the complaint is admissible under article 5.

Regarding articles 12, 13 and 14, the Committee noted that, while the author never appealed against the Supreme Court the finding that he was unfit to stand trial (art.12), requested special accommodation (art.13) or challenged the custodial supervision orders (art.14), local remedies do not need be exhausted if they objectively have no prospect of success. Hence, the Committee considered that no additional effective remedies were available to the author and that claims under articles 12, 13 and 14 were also admissible. The Committee also recalled that, while all possible grounds of discrimination and their intersections must be taken into account, including indigenous origin, such claim was inadmissible since the author failed to explain the extent to which his origin impacted his rights. Finally, the Committee found that, for the purposes of admissibility, the author had sufficiently substantiated his claims under articles 14 (unrelated to racial discrimination), 15 and 19.

Committee’s consideration of the merits

The Committee recalled that, under article 5(1) and (2) of the CRPD, States must ensure that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. For the Committee, discrimination can result from the effect of a rule or measure not intended to discriminate, such as the NT Criminal Code, under which once a person is found unfit to stand trial she can be maintained in custody indefinitely.

The Committee noted that, throughout the author’s detention, the judicial procedure focused on his capacity to stand trial and the State neither gave him chance to plead not guilty or challenge his charges, nor provided measures to support him in exercising legal capacity. Recalling its General Comment No. 6, the Committee, the Committee considered that the NT Criminal Code resulted in discriminatory treatment, in violation of article 5(1) and 5(2).

The Committee held the, while the author was housed in a facility with a high-level of disability-related care and subsequently relocated to a community residence, the author was never consulted on his custody and accommodation. It also held that, since the Convention recognizes the right not to be obliged to live in a particular living arrangement and that institutionalization as a condition to receive mental health services constitutes differential treatment on the basis of disability, confining the author to live in a special institution on account of his disability amounted to a violation of article 5.

The Committee recalled that States have an obligation to recognize that persons with disabilities enjoy legal capacity on an equal basis with others, and must provide them with support to exercise such capacity. It also recalled that, under article 13(1), States must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations. For the Committee, the decision that the author was unfit to stand trial resulted in a denial of his right to exercise legal capacity, plead not guilty and challenge evidence against him. Furthermore, and considering that no support or accommodation was provided to the author to stand trial and exercise his legal capacity, the Committee found a violation of the author’s rights under articles 12(2) and (3) and 13(1).

The Committee noted that -following the declaration of unfitness to stand trial- the author was committed to custody in prison given the lack of available alternatives and support services. For the Committee, the detention was decided on the basis of the assessment of potential consequences of his disability, thereby converting disability into the core cause of his detention and violating article 14(1)(b).

The Committee recalled that the failure to adopt relevant measures and provide reasonable accommodation required by persons with disabilities breach article 15(2). Additionally, it considered that, since the author was committed to indefinite custody for more than nine years and such detention may have irreparable psychological effects on the author, this amounts to inhuman and degrading treatment. Regardless of whether the author demonstrated violence from other prisoners, the indefinite character of his custody, his detention in a correctional centre without being convicted, periodic isolation, involuntary treatment and detention with convicted offenders violated article 15 of the Convention.

Noting the States’ submissions that periodic reviews had concluded that there was no alternative to custody, but also that the State’s decided to grant the author the possibility of living in a community residence, the Committee held that the claim on article 19 had became moot.

Finally, the Committee noted the State’s arguments that it had allocated expenditure on health and disability support services, that the author received adequate health, services and accommodation, that the Secure Care Facility was built in part to provide appropriate accommodation to the author, and that he was eventually relocated to a community residence. Given the statements received on these matters were not consistent, it found that information provided did not enable it to conclude violations to articles 25, 26 and 28.

Conclusion

The Committee found that the State violated articles 5, 12, 13, 14 and 15.

(a) Concerning the author, the Committee recommended the State to:

(i) Provide him with an effective remedy, including reimbursement of legal costs and compensation;

(ii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) General measures: the Committee found that the State party was under an obligation to take measures to prevent similar violations in the future. It also referred the State to the recommendations contained in its concluding observations and required it to:

(i) Adopt the necessary amendments of the NT Criminal Code and all related federal and state legislation, in close consultation with persons with disabilities and their representative organizations, ensuring its compliance with the CRPD;

(ii) Ensure without further delay that adequate support and accommodation measures are provided to persons with psychosocial disabilities to enable them to exercise their legal capacity before the courts whenever necessary;

(iii) Allow the exercise of the right to live independently and be included in the community, taking steps to the maximum of available resources to create community residences to replace institutionalized settings with support services;

(iv) Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol is provided to administrative and judicial staff.

1. This case summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp%3A/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)