**CRPD/C/16/D/2012**

**Marlon James Noble v. Australia**

**Communication No. 7/2012**

**Decision Date:** 10 October 2016

**Subject -** Denial of legal capacity of persons with intellectual disabilitiesand lack of adequate support or accommodation to exercise one's rights to access to justice and a fair trial

**Facts -** Marlon Noble, an indigenous Australian national with intellectual disability. In 2001, he was charged with sexual crimes against children. He was arrested, and taken into custody at Hakea Prison. Between 2002 and 2003, he had appeared before courts in different hearings, after which he always remained in custody. In March 2003, the court found that the author was unfit to plead. Nevertheless, the Mentally Impaired Defendants Review Board determined that Marlon Noble was to be detained in custody at Greenough Regional Prison. The applicant remained there between 2003-2012. In 2011, the Review Board recommended to the authorities that the applicant be conditionally released, and he was released in 2012.

The applicant Marlon Noble claimed that the State Party has violated art. 5 (1) (equality before and under the law, equal protection and equal benefit of the law); art. 12 (equal recognition before the law); art. 13 (access to justice); art. 14 (1) (b) (the existence of a disability shall in no case justify a deprivation of liberty); art. 14 (2) (treatment of detained persons with disabilities with respect to human rights and the obligation to provide reasonable accommodation) and art. 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment) of the Convention on the Rights of Persons with Disabilities.

**Committee's Considerations:**

In its considerations on art. 5 of the Convention, the Committe noted that the applicant was denied the right to exercise his legal capacity, after and based on the decision that he was unfit to plead the charges. It was not proven that he had committed any crime; however he was also deprived of the opportunity to enter a plea of not guilty and to test the evidence that was presented against him. The Committee also noted that "the State party did not provide the author with the support or accommodation he required to exercise his legal capacity, and did not analyse which measures could be adopted to do so."

Under the national law, once the person is found unfit to plead, he or she can be maintained in custody for an unlimited period of time. Even though the author was not convicted of a crime, his freedom was restricted between 2003-2012. The Committee therefore considered that the national legislation which resulted in discriminatory treatment of the applicant’s case, was in violation of article 5 (1) and (2) of the Convention.

The Committee recalled that while under article 12 (2) of the Convention the States parties have the obligation to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; under article 12 (3), States parties have the obligation to provide access to the support that persons with disabilities may require to exercise their legal capacity. Under article 13 (1), States parties must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural accommodations. However, after the decision that the applicant was unfit to plead, he was denied of his right to exercise his legal capacity to plead not guilty and to test the evidence against him. According to the Committee "he was not provided with adequate support or accommodation to exercise his rights to access to justice and a fair trial." Consequently, the Committee considered that the applicant’s rights under articles 12 (2) and (3) and 13 (1) of the Convention.

As to the applicant’s detention, the Committee reaffirms that everyone is entitled to the right to liberty. It was not proven that the applicant had committed the crimes he was charged with. The basis of his detention for more than 10 years was the assessment by the State party’s authorities of potential consequences of his intellectual disability, thereby converting his disability into the core cause of his detention. The Committee therefore considered "that the author’s detention amounted to a violation of article 14 (1) (b) of the Convention according to which “the existence of a disability shall in no case justify a deprivation of liberty”.

The Committee had considered the applicant's allegations under art. 15 on two grounds. First of all, the applicant had been subjected to violence and abuse throughout the time his liberty was restricted and the State Party did not take any measures to punish those responsible or to protect the applicant therefrom. Secondly, he was detained for more than 13 years, without having any indication as to the duration of his detention. This obviously has irreparable psychological effects. Consequently, art. 15 of the Convention was found to be violated for two reasons.

The Committee for reasons explained briefly above found the the State Party had violated articles 5 (1) and (2), 12 (2) and (3), 13 (1), 14 (1)(b) and 15.