



A v. New Zealand

CCPR/C/66/D/754/1997

Country: New Zealand

Region: Oceania

Year: 1999

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

Facts

The applicant, "A" (name withheld in decision), was born in December 1955. "A" had one prior criminal conviction for threatening to damage property of Television New Zealand and was sentenced in October 1982 to one year probation. He was arrested again in October 1983 for harassing a young woman (B, name withheld) whom he had met about five years before and for whom he had developed an obsessive interest, and persistently pursued her.

At the Court hearing, on 20 January 1984, "A" was searched and a 22 centimeter carving knife was found on his person. "A" was convicted for assault of the woman (he had grabbed her at the wrist in order to make her stop and talk to him) and remanded on the weapons charge. Additionally, a psychiatric examination was ordered and undertaken.

In the psychiatrist's opinion, "A" showed elements of a paranoid personality, but did not suffer from a mental disorder committable under the Mental Health Act. On 3 February 1984, the author was sentenced to four months' periodic detention. However, he failed to comply with his obligations under the sentence and continued to approach and follow the same young woman once he was released. On 12 March 1984, the author was arrested again on charges of intimidation.

"A" filed a claim with the United Nations Committee on Human Rights, claiming that his original detention under the Mental Health Act was unlawful, and that the district court judge, not being convinced that he was mentally disordered, had acted arbitrarily and unlawfully in not discharging him from committal.

"A" further contends that the yearly review hearings by a panel of psychiatrists were unfair, in that he had no access to the documents that they based their decisions on and could not call any witnesses on his behalf. In his opinion, the hearings were orchestrated to continue his unlawful detention.

Lastly, "A" claimed that he has no access to the information held about him by the Police and the Department of Health, and that his requests for disclosure of the files to him have been refused.

Decision and Reasoning

The United Nations Committee on Human Rights (the Committee) narrowed the legal issue in this case to whether the detention of "A," the applicant (name withheld in decision), under the Mental Health Act from 1984 to 1993 constituted a violation of the International Covenant on Civil and Political Rights (ICCPR), in particular a violation of article 9.

The Committee noted that "A's" assessment under the Mental Health Act was a consequence his threatening and aggressive behavior. The Committee found that the New Zealand District Court's committal order (finding that "A" should remain committed in a psychiatric hospital) was made according to law, based on an opinion of three psychiatrists. Furthermore, the Committee noted that a panel of psychiatrists had continued to review "A's" situation periodically while he was in detention, and each time confirmed that he should remain committed. The Committee was therefore of the opinion that the deprivation of "A's" liberty was neither unlawful nor arbitrary and thus not in violation of article 9, paragraph 1, of the Covenant.

The Committee further noted that "A's" continued detention was regularly reviewed by the Courts and that the facts of the communication thus do not disclose a violation of article 9, paragraph 4, of the Covenant. Article 9, paragraph 4 states, "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

In this context, the Committee noted that "A's" argument that the district court judge's decision not to dismiss him from compulsory status was arbitrary. However, the Committee observed that this decision and "A's" continued detention were reviewed by other courts, which all confirmed the district court judge's findings and confirmed the necessity of continuing "A's" compulsory status for "A."

The Committee referred to its constant jurisprudence and stated that it is for the courts of the States parties concerned, not for the Committee, to review the evaluation of the facts as well as the application of the law in a particular case, unless the States' courts' decisions are manifestly arbitrary or amount to a denial of justice. On the basis of the material before it, the Committee found that the Courts' reviews of "A's" compulsory status under the Mental Health Act did not suffer from such defects.

As a consequence of the above findings, "A's" claim under article 9, paragraph 5, was found to be without merit.

The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the ICCPR, held the view that the facts before it did not disclose a violation of any of the articles of the ICCPR.

Decision Excerpts

"Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant."

"The Committee considers that the author's claims that his detention under the Mental Health Act constituted violations under articles 7, 10, 17, 18, 19 and 26 of the Covenant, have not been substantiated by the facts or the arguments presented by him. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol."

"With regard to the author's claim under article 19 of the Covenant, because he was not given access to all information held by the Police and the Ministry of Health, the Committee notes that the author has failed to appeal the decision by the Complaints Review Tribunal of March 1997. This claim is thus inadmissible under article 5, paragraph 2(b), for failure to exhaust all available domestic remedies."

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