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Sixty-sixth session
12 - 30 July 1999

VIEWS

Communication Nº 754/1997

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| Submitted by: | A (name withheld) |
| Alleged victim: | The author |
| State party: | New Zealand |
| Date of communication: | 19 April 1996 |
| Prior decisions: | - Rule 91 decision, transmitted to the State party on 28 May 1997 (not issued in document form) |
| Date of adoption of Views | 15 July 1999 |

On 15 July 1999, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 754/1997. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- Sixty-sixth session -

concerning

Communication Nº 754/1997**

Submitted by: A (name withheld)

Alleged victim: The author

State party: New Zealand

Date of communication: 19 April 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 15 July 1999,

Having concluded its consideration of communication No.754/1997 submitted to the Human Rights Committee by A (name withheld), under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

** The text of an individual opinion signed by two Committee members is appended to the present document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is A (name withheld) a citizen of New Zealand, residing in Herne Bay, Auckland. He claims to be a victim of violations of his human rights by New Zealand.

The facts as submitted

2.1 The author, who was born in December 1955, was arrested[1] 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, persistently pursuing her. At the Court hearing, on 20 January 1984, the author was searched and a 22 centimetre carving knife was found on his body. The author 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. A psychiatric examination was ordered and undertaken by a Dr. Gluckman. In the psychiatrist's opinion the author 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 young woman. On 12 March 1984, the author was arrested again on charges of intimidation.

2.2 Following an application under the Mental Health Act for a reception order to be made in respect of the author, the District Court, on 5 April 1984, ordered the author detained for observation at Carrington Hospital until the next hearing on 13 April 1984. The staff at the hospital examined him and concluded that he was not suffering from a committable mental disorder. Consequently, on 13 April 1984 he was released and the application for a reception order was dismissed.

2.3 On 18 May 1984, the author was convicted and sentenced to two months' imprisonment for breaching his obligations under the sentence of periodic detention. He was convicted and discharged on the charge of intimidation.

2.4 On 6 June 1984, while in the Mt Eden prison, the author was interviewed by a Dr. Whittington, who had already examined the author in 1983, and who opined that he was a paranoid personality, and that he contemplated killing the young woman and commit suicide. According to the author, the stress of being imprisoned had become so strong that he tried to obtain a transfer to Carrington Hospital from where he had been released on a previous occasion. Apparently, he was informed that he could not be transferred to Carrington as a voluntary patient, because his sentence had almost expired.

2.5 On 13 June 1984, the author was again interviewed by three psychiatrists, among whom Dr. Whittington, who concluded that his obsession had become so entrenched that it had assumed delusional intensity, and that he was committable

[1] The author had one prior criminal conviction for threatening to damage property of Television New Zealand and was sentenced in October 1982 to one year probation.

because of potential danger to himself and others. On 16 June 1984, a District Court Judge made a reception order under section 24 of the Mental Health Act, and directed that he be detained in Lake Alice Hospital, 500 kilometres away. He was placed in the Maximum Security section by the Director of Mental Health.

2.6 The author then requested the Minister of Health to intervene and an inquiry under section 73 of the Mental Health Act was held by District Court Judge Unwin on 16 November 1984. The judge concluded that the author should remain detained under the Mental Health Act, although he was not convinced that the author was mentally disordered.[2] Subsequently, the author refused cooperation with the medical and psychiatric staff at the hospital and tried to pursue his release through application for habeas corpus, all to no avail. It appears from the documents submitted by the author that conflicting psychiatric opinions with regard to the author's mental health existed. According to the author, the psychiatrists expressing a view that he had a mental disorder and should remain committed based themselves on single interviews with him and did not seriously examine him.

2.7 After the finding of Judge Unwin in 1984 that the author should remain committed, even though he might not be mentally disordered, articles appeared in the news media criticizing the committal policy and calling for the author's release, since his detention was considered illegal. After a seven day hearing in the High Court in April 1986, Judge Greig dismissed the application for the author's release and ordered a prohibition of publicity of the proceedings and of the names of the persons involved.

2.8 In the second half of 1986, the author was placed in a medium security ward. In November 1986, the review panel refused his request to be transferred to an institution in Auckland. In early December 1986, the author escaped, but

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[2] The judge considered:
"I have serious reservations about what he [A] may do if he is discharged, and just as serious reservations what may happen to him if he stays in the Maximum Security Villa. I think there is a build up of pressure in his mind, that needs to be treated and dissapated. At the present time, it would take some persuasion for me to be satisfied that Mr. [A] is mentally disordered. On the other hand, if his present situation continues for too long, he might well regress.
"Pursuant to section 73(a) I have to be satisfied that the patient is fit to be discharged. Subsection (13) reads "For the purposes of this section, a patient is fit to be discharged when his detention as a mentally disordered person is no longer necessary either for his own good or in the public interest."
"It seems therefore, that my duty is not to determine whether Mr. [A] is still certifiable, but whether his detention in a hospital is still necessary either for his own good or in the public interest.
"My view is that on both counts the detention is still necessary."

was arrested by the police some days later. He was then returned to the Maximum Security ward.

2.9 Following a letter in December 1987 from both the author and the superintendent of Lake Alice Hospital, Ellis J decided to conduct a further judicial inquiry. The hearing commenced on 26 September 1988 and was adjourned after an agreement was reached under which the author was to be returned to the community by degrees. The author was then transferred to Tokanni Hospital. The author, after having overheard a conversation between the Superintendent and the staff, was convinced that he would be returned to Lake Alice at the earliest opportunity and escaped on 24 December 1988. He went to his mother's house, but was arrested after thirteen days. He escaped again about a month later and was rearrested after six days. After yet another escape, the author negotiated that he would give himself up at Carrington Hospital.

2.10 After having been detained at Carrington for some weeks, in April 1989 the author was released on leave under the condition that he report for examination at a nearby clinic once a week. In desperation about not being discharged from compulsory status altogether, the author wrote to his Member of Parliament, threatening to shoot the police if they would force him back to Lake Alice. On 9 August 1989, the author was arrested by the police and found in possession of a loaded rifle with telescopic sights. His leave was then revoked and he was returned to Lake Alice Maximum Security wing.

2.11 Charges were laid against the author for threatening the police. The author initially pleaded not guilty, but found out that if convicted to imprisonment, his committal order would lapse automatically, pursuant to section 28(4)(b) of the Mental Health Act. He then decided to plea guilty. However, upon request from the Crown, the Judge convicted the author and discharged him and he was returned to Lake Alice Hospital. The author's appeal against his sentence was dismissed.

2.12 In April 1990, the adjourned judicial inquiry was reconvened. The author states that he had no legal representation, that he was only shown the papers at the hearing, and that he was not allowed to cross-examine the Director of Mental Health who was at the hearing. He had only been able to call his mother to give evidence on his behalf. According to the author, the hearing lasted only one and a half hour and the psychiatrists who gave evidence had not examined him for nearly two years. The judge found him mentally disordered and dismissed his application for release.

2.13 In September 1990, the author embarked on a hungerstrike which lasted 46 days. He was then transferred to Kingseat Hospital in November 1990. A few weeks later he escaped and was at large for three days. He was returned to Lake Alice. After 7 months in Lake Alice, he commenced another hungerstrike, which he ended when he received assurances he would be transferred to Kingseat. Recognizing that the author had not been represented by counsel at the reconvened enquiry by Ellis J, Gallen J agreed to conduct another s.74 enquiry, with representation for the author, but limited to questions of law. After having heard arguments whether or not his mental condition required detention, Gallen J concluded that the test was the potential for serious physical violence and held that the material before Ellis J was sufficient in law to meet the test. In June 1991, the author was transferred to Kingseat, and from there to Carrington. A review panel which met in December 1991 found that the author had made good progress

toward recovery and that “while we would not recommend his discharge from committal, if he was seen now de novo we all agreed that he would not be committable.” Subsequently, the author was allowed weekend leave.

2.14 On 30 April 1992, he was released on leave, under the condition that he report once a week to the out patient clinic. In July 1992, after a further judicial inquiry upon the author’s application, the judge refused to discharge the author, in order to ensure that he continued treatment. According to the author, the Judge based himself on evidence by doctors of the Auckland Hospital Board, who hardly knew him.

2.15 On 19 February 1993, upon application from the author under section 79(1)(a) of the Mental Health Act 1992, the Mental Health Review Tribunal discharged the author from compulsory status.

2.16 The author filed a claim for damages of NZ$ 5,000,000 with the High Court, for wrongful detention. In reply, the Crown requested the Court to strike out the claim on the ground that the statement of the claim disclosed no reasonable cause for action. The High Court, by decision of 28 October 1993, dismissed the Crown's application. The Court of Appeal however, by judgments dated 20 December 1994 and 19 May 1995, allowed the Crown's appeal and struck out the author's claims.

2.17 In the meantime, on 9 May 1994, the author was found guilty of sending letters containing threats to kill. He had sent a letter to a Member of Parliament threatening a blood bath if he would not get millions of dollars compensation. The author was sentenced to 15 months’ imprisonment.

2.18 In June 1995, the author was provided access to some of the information held by the Police and the Ministry of Health but refused access to other information pursuant to the Privacy Act 1993. Under the terms of the Privacy Act, both the Police’s and the Ministry’s decision to withhold information were investigated by the independent Office of the Privacy Commissioner, who concluded that there were sufficient justifications for withholding information in compliance with the Act. Subsequently, the Complaints Review Tribunal examined the author’s complaint under the Privacy Act. In the course of the hearing some additional information was made available to the author. In March 1997, the Complaints Review Tribunal rejected the author’s demand under the Privacy Act 1993 that he be provided with all the information the Ministry of Health and Police held concerning his arrests and compulsory treatment. The Tribunal determined that the agencies had acted appropriately in withholding certain information, since its disclosure would be likely to endanger the safety of some individuals and would trigger behaviour on the part of the author which would prejudice his rehabilitation.

The complaint

3.1 The author claims that his original detention under the Mental Health Act was unlawful, and that judge Unwin, not being convinced that he was mentally disordered, acted arbitrarily and unlawfully in not discharging him.

3.2 He further contends that the yearly review hearings by a panel of psychiatrists were unfair, in that he had no access to the documents they based

themselves on and could not call any witnesses on his behalf. In his opinion, the hearings were orchestrated to continue his unlawful detention.

3.3 In support, the author states that numerous psychiatrists testified that he was not mentally ill and not committable. He emphasizes that his incarceration continued in spite of medical evidence that his mental state did not warrant continued detention and in spite of the fact that he had not committed any act of violence. He argues that, if at any point after the beginning of his detention at Lake Alice Hospital, he suffered from a mental disorder, this was caused by his unlawful and unjustified detention among mentally ill people with a history of violence by whom he felt threatened.

3.4 The author submits that because of his long detention, he has found it difficult to reintegrate himself into community life, to have friendships and to get a job. He feels he is stigmatized for life as a dangerous madman.

3.5 The author further claims 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.

The State party's observations

4.1 By submission of 28 October 1997, the State party addresses both the admissibility and the merits of the communication.

4.2 First, the State party argues that the communication is inadmissible. The Optional Protocol entered into force for New Zealand on 26 August 1989 and, with reference to the Committee's jurisprudence in this regard, the State party argues that the Committee is thus precluded from examining complaints relating to alleged violations by New Zealand that occurred before that date. The State party notes that the original decisions to place the author under compulsory treatment and to detain him were made in 1984, that is before the entry into force of the Optional Protocol for New Zealand. According to the State party, no continuing effects exist, since under the Mental Health Act, each judicial and administrative review in the case constituted a fresh assessment of his mental health to determine what level of detention would be suitable, whether he should be granted probationary release into the community, whether the compulsory treatment order should be completely removed. In this context, the State party recalls that the author was released into the community in April 1989, but arrested on 9 August 1989 after having written a threatening letter and while in possession of a loaded rifle. He was then reassessed and returned to detention. The author's continued compulsory treatment must thus be seen as a consequence of his behaviour in 1989, according to the State party, and his complaints concerning the order of 1984 and the judicial reviews of that order before August 1989 must thus be deemed to be inadmissible ratione temporis.

4.3 Further, the State party argues that the author has not substantiated his claims for purposes of admissibility. According to the State party, the decisions in the author's case were taken in accordance with the law. In order to protect the author's right to liberty, several reviews were undertaken. The State party submits that at the relevant times, the mental health profession, the judiciary and the police had substantial grounds for believing that the author posed a distinct danger to B, the community and himself. The State party further notes that none of the independent judicial reviews of the author's

compulsory treatment regime found any wrong doing on the part of the authorities.[3]

4.4 With regard to the author's claim that he has no full access to the information held about him by the police and the Ministry of Health, the State party explains that after his application was rejected by the Complaints Review Tribunal, the author was informed that he could file an appeal from the Tribunal's decision within 30 days. Since he has failed to give notice of appeal, the State party argues that this part of the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, for non-exhaustion of domestic remedies.

4.5 With regard to the merits of the communication, the State party submits that the facts do not disclose a violation of any of the rights contained in the Covenant. According to the State party, at the time of his committal in 1984, the author had developed a serious mental disorder which posed a significant threat to himself and others. The State party submits that a careful and lengthy psychiatric examination was carried out by three specialists, one of whom had previously found that the author's condition did not require compulsory treatment. All three specialists formed the opinion that at the time the author's condition had deteriorated to a level requiring compulsory treatment in secure detention. Accordingly, a committal order was granted following the procedures required by the Mental Health Act 1969. The State party points out that several courts have since reviewed the use of this procedure in the author's case, and found that the legislative requirements were fully complied with. Further, to ensure the author's civil rights, the Mental Health Services administration set up regular reviews of his condition and recommended a judicial inquiry be conducted. This was done by Unwin DCJ in November 1984.

4.6 According to the State party, the author has failed to substantiate any accusations of unlawfulness, malice, unfairness or arbitrariness on behalf of the psychiatrists or the District Court Judge. The State party submits that in accordance with the legislative requirements, Unwin J found that the author's condition still required compulsory treatment and detention for his own good or in the public interest. The State party emphasizes that under section 73 (a) of the Mental Health Act 1969, it was not the judge's duty to determine whether the author was certifiable, but whether his detention in a hospital was still necessary either for his own good or for the public interest. In the further judicial reviews of the author's status under the compulsory treatment order, there was never any evidence that the Judge's findings were in any way arbitrary or inconsistent with his obligations under the Mental Health Act.

4.7 With regard to the author's complaint that the regular psychiatric reassessments of his condition by the Hospital's review panels were unfair hearings and designed to continue his detention, the State party recalls that the author's compulsory treatment status was independently and judicially reviewed on eight separate occasions. None of these reviews found any evidence

[3]The State party refers to the decision by the New Zealand Court of Appeal (1995) which described the author's allegations of conspiracy as "vexatious and an abuse of the Court's process".

to substantiate the author's criticism of the Hospital's psychiatric review panels. The State party submits that the record illustrates the various attempts to rehabilitate the author back into the community, which were all defeated by his repeat offending or breaking of the conditions of his transfer to the community or lower security hospitals.

4.8 With regard to the author's claim that he has been prevented from disclosing information concerning his case to the public, in relation to Grieg J's order in 1986 preventing publication of the proceedings, the State party notes that article 14, paragraph 1, provides that the press and the public may be excluded from all or part of the trial when the interest of private lives of the parties so requires. Further, the State party refers to article 19, paragraph 3, which states that freedom of expression may be subject to restrictions as provided by law and necessary for respect of the rights and reputations of others. The State party submits that Greig J's order that there would be no publication of the proceedings and that there would be no publication of anything which would lead to the identification of the author, B or her family, was done to protect the privacy, safety and reputation of others who had been affected by the author's actions.

4.9 With regard to the author's claim that he was not given access to all personal information kept about him by the Police and Ministry of Health, the State party refers to the findings of both the Privacy Commissioner and the Complaints Review Tribunal that there was proper justification for withholding the information, as its release would be likely to endanger the safety of some individuals or trigger behaviour on the part of the author which would prejudice his safe rehabilitation.

4.10 In general, to address the question whether the author, who had never actually committed a serious violent offence, should have been subjected to such a lengthy period of compulsory treatment in the presence of conflicting medical opinion as to the seriousness of his mental illness, the State notes that even those specialists who stated that the author should not be subjected to compulsory treatment, still agreed that the author suffered from a serious personality disorder. Some of those specialists altered their opinion upon further study of the author's behaviour and interviews. The author has been examined by a number of skilled psychiatrists with experience in dealing with personality disorders and the general conclusion is that he has not only a personality disorder, but also a mental (paranoid or delusional) disorder which can evolve under stress to a frankly psychotic illness. According to the State party, the only reason why the author has not committed a serious violent offence is due to the precautions and protective actions of Police and Mental Health authorities. The State party emphasizes that the periods of maximum security detention only followed instances where the author had displayed threatening behaviour associated with weapons or after he had absconded when attempts were made to treat him in lower security environments.

The author's comments

5.1 In his comments on the State party's submission, the author invokes violations of:

- article 7, because he was unlawfully imprisoned by the New Zealand Government and forced to go on a hunger-strike for 46 days to get out of maximum security psychiatric hospital;

- 9, paragraphs 1, 4 and 5, because he was unlawfully imprisoned from 1984 to 1993 in mental institutions and was then sentenced to 15 months' imprisonment for threatening those responsible for unlawfully imprisoning him. According to the author, the sentence was malicious and used to cover up his unlawful imprisonment. He further states that only 10% of his applications for judicial reviews were accepted, and that all hearings were whitewashes. Finally, he states that he has not received any compensation for his unlawful imprisonment.
- 10, paragraph 1, since he was detained in a maximum security psychiatric institution while he has never been mad.
- 12, paragraph 2, because in 1984 he requested from the Minister of Health permission to leave New Zealand, rather than stay in the psychiatric hospital, so that he could no longer be a threat to anyone in New Zealand, and this was refused.
- 14, paragraphs 1 and 7, because the courts perverted the course of justice to have him unlawfully imprisoned, and the hearings were not public and media access was denied. He further complains that seven and a half years were added to his sentence via unlawful committal.
- 17, paragraphs 1 and 2, because he was forced to answer questions by doctors and judges as a result of the unlawful committal. He also states that the State party continues to impugn his honour and reputation by claiming that he is mad and violent.
- 18, because he has been imprisoned on the basis that he has undesirable thoughts and because judges, psychiatrists and police have tried to coerce him into changing his beliefs.
- 19, because the State has tried to prevent him from holding opinions it did not like.
- 26, because he has been singled out for discrimination and has not been given equal protection under the law.

5.2 With regard to the State party's argument that part of his communication is inadmissible ratione temporis, the author recalls that the State party signed the Covenant in 1979, and that his complaints relate to events which started in 1983. He argues that the State party had a legal obligation to comply with the Covenant as from 1979. He further states that only one committal order was made in respect to him, which remained in force from 16 June 1984 to February 1993. When the Optional Protocol entered into force, he was still detained in the hospital's maximum security detention, and no new committal order was issued.

5.3 The author rejects the State party's argument that he has not substantiated his claims and submits that the evidence is overwhelming.

5.4 With regard to the State party's argument that he has not appealed the decision of the Complaints Tribunal, the author states that he did not appeal because he did not have money to pay for a lawyer, and because the courts in New Zealand do not follow proper and fair procedures.

5.5 The author maintains that the decision by Greig J to suppress publication of the proceedings was clearly intended to cover up his unlawful imprisonment. In this context, the author states that around the same time the hospital authorities did not allow him to send any mail outside or to make any phone calls.

5.6 The author rejects the State party's claim that he was detained for treatment, and states that he never required any medication. He submits that for the last five years he has refused any medication or any contact with psychiatric services and he has still not committed any serious offence. He claims that the State party's submissions are part of a propaganda campaign against him. He maintains that his committal was unlawful, and that despite opinions by psychiatrists that he should not remain committed, he was not discharged, because the authorities wanted to cover up his unlawful imprisonment.

5.7 With respect to the refusal to give him access to all information, the author states that this is done because the information is so defamatory that it cannot be released.

5.8 The author rejects the State party's argument that his rehabilitation has been halted several times because he did not comply with the conditions. According to the author, his undertaking to comply was invalid in law for being made under duress while in unlawful detention.

Issues and proceedings before the Committee

6.1 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.

6.2 With regard to the author's claim that he was not allowed to leave the country in 1984 in violation of article 12 (2) and his claim that the order by Greig J in 1986 not to disclose information about the procedure constituted a violation of article 19, the Committee notes that, although the Covenant entered into force for New Zealand in 1979, the Optional Protocol entered into force only in 1989. Having taken note of the State party's objection ratione temporis against the admissibility of these claims based on the prior jurisprudence of the Committee, the Committee considers that it is precluded from examining these claims on the merits. This part of the communication is therefore inadmissible.

6.3 With regard to the State party's argument, however, that the author's complaint concerning the committal hearing of 1984 and further reviews is inadmissible ratione temporis, the Committee notes that these hearings resulted in the continued detention of the author under the Mental Health Act and thus have continuing effects which in themselves may constitute violations of the Covenant. This part of the communication is thus admissible.

6.4 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.

6.5 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.

6.6 Concerning the author's claim that he is a victim of a violation of article 14, the Committee considers that this claim is inadmissible as being incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.7 The Committee finds the remaining claims admissible and proceeds without delay to a consideration of the merits of the communication.

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The main issue before the Committee is whether the author's detention under the Mental Health Act from 1984 to 1993 constituted a violation of the Covenant, in particular of article 9. The Committee notes that the author's assessment under the Mental Health Act followed threatening and aggressive behaviour on the author's part, and that the committal order was issued according to law, based on an opinion of three psychiatrists. Further, a panel of psychiatrists continued to review the author's situation periodically. The Committee is therefore of the opinion that the deprivation of the author's liberty was neither unlawful nor arbitrary and thus not in violation of article 9, paragraph 1, of the Covenant.

7.3 The Committee further notes that the author'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. In this context, the Committee has noted the author's argument that the decision by Unwin J not to dismiss him from compulsory status was arbitrary. The Committee observes, however, that this decision and the author's continued detention were reviewed by other courts, which confirmed Unwin J's findings and the necessity of continuation of compulsory status for the author. The Committee refers to its constant jurisprudence, that it is for the courts of States parties concerned to review the evaluation of the facts as well as the application of the law in a particular case, and not for the Committee, unless the Courts' decisions are manifestly arbitrary or amount to a denial of justice. On the basis of the material before it, the Committee finds that the Courts' reviews of the author's compulsory status under the Mental Health Act did not suffer from such defects.

7.4 As a consequence of the above findings, the author's claim under article 9, paragraph 5, is without merit.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual opinion by Committee members Fausto Pocar and Martin Scheinin (partly dissenting)

We associate ourselves with the general points of departure taken by the Committee. Treatment in a psychiatric institution against the will of the patient is a form of deprivation of liberty that falls under the terms of article 9 of the Covenant. In an individual case there might well be a legitimate ground for such detention, and domestic law should prescribe both the criteria and procedures for assigning a person to compulsory psychiatric treatment. As a consequence, such treatment can be seen as a legitimate deprivation of liberty under the terms of article 9, paragraph 1.

The special nature of compulsory psychiatric treatment as a form of deprivation of liberty lies in the fact that the treatment is legitimate only as long as the medical criteria necessitating it exist. In order to avoid compulsory psychiatric treatment from becoming arbitrary detention prohibited by article 9, paragraph 1, there must be a system of mandatory and periodic review of the medical-scientific grounds for continuing the detention.

In the present case we are satisfied that the law of New Zealand, as applied in the case, met with the requirements of article 9, paragraph 1. The author was subject to a system of periodic expert review by a board of psychiatrists. Although the periodicity of one year appears to be rather infrequent, the facts of the case do not support a conclusion that this in itself resulted in a violation of the Covenant.

Our concern lies in the fact that although there was periodic expert review of the author's status, his continued detention was not subject to effective and regular judicial review. In order for the author's treatment to meet the requirements of article 9, paragraph 4, not only the psychiatric review but also its judicial control should have been regular.

We find a violation of article 9, paragraph 4, in the case. Various mechanisms of judicial review on the lawfulness of the author's continued detention were provided by the law of New Zealand, but none of them was effective enough to provide for judicial review "without delay". Although there were several instances of judicial review, they were too irregular and too slow to meet the requirements of the Covenant. As the following account of the various instances of judicial review will show, this conclusion does not depend on the position one takes on the effect of the entry into force of the Optional Protocol in respect of New Zealand on 26 August 1989.

Between the original committal to compulsory psychiatric treatment in November 1984 and the decision by the Medical Health Review Tribunal, in February 1993 to discharge the author from compulsory status (before which decision he had already been released from a closed institution), there appears not to have been a single instance of judicial review that would have met the standards of article 9, paragraph 4, of the Covenant.

On 9 August 1985, the author submitted a writ of habeas corpus. Instead of resulting in a decision without delay, this writ was incorporated into

another procedure of judicial review that ended in the judicial determination of the author's continued detention as late as 21 April 1986.

Another set of judicial proceedings to review the author's detention was initiated by the author in early December 1987. Although the author himself contributed to the delay by, inter alia, escaping from an institution, he was rearrested on 9 August 1989, after which date it took still until 15 August 1990 before the proceedings ended in a judicial determination by the High Court.

A third set of judicial proceedings were completed by a High Court Decision on 24 April 1991. It is unclear from the file when the proceedings in question were initiated, but from the decision itself it transpires that the review was based on "an urgent enquiry" by the author and that a hearing had been conducted on 22 February 1991, i.e. a little more than two months prior to the decision.

Further judicial decisions on the author's compulsory status were made on 5 August 1992 and 19 February 1993. As the author at the time of these decisions had already been released into his community on a temporary basis, they are not of direct relevance for the legal issue under article 9 of the Covenant. It deserves, however, to be mentioned that the last-mentioned decision by the Medical Health Review Tribunal was based on the Mental Health (Compulsory Assessment and Treatment) Act of 1992 and that it was initiated by an application by the author received on 9 February 1993. This appears to us as the only set of proceedings in the author's case that complies with the requirement of a judicial decision "without delay", prescribed in article 9, paragraph 4, of the Covenant.

Our conclusion of a violation by New Zealand of the author's rights under article 9, paragraph 4, is based on the fact that prior to the author's provisional release in April 1992, the author's requests for a judicial determination of the lawfulness of his detention were not decided without delay. Consequently, the author has a right to compensation under article 9, paragraph 5.

Fausto Pocar
(signed)

Martin Scheinin
(signed)

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]