HUMAN RIGHTS COMMITTEE

Hart v. Australia

Communication No 947/2000

25 October 2000

CCPR/C/70/D/947/2000

ADMISSIBILITY

Submitted by: Mr. Barry Hart

Alleged victim: The author

State party: Australia

Date of communication: 31 January 2000 (initial submission)

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

Meeting on 25 October 2000,

Adopts the following:

Decision on admissibility

1. The author of the communication is Barry Hart, an Australian citizen, born on 20 August 1935. He claims to be a victim of a violation by Australia of Articles 2(1), (2) and (3)(a), 14, 17(1) and (2), 18(1), 19(1) and (2) and 26 of the International Covenant on Civil and Political Rights. The International Covenant on Civil and Political Rights entered into force for the State party on 12 November 1980 and the Optional Protocol entered into force on 25 December 1991.

The facts as presented

2.1 In 1973, the author voluntarily attended Chelmsford private hospital for a psychiatric appointment with a Dr Herron, a leading doctor in deep-sleep treatment at Chelmsford. The author contends that he was involuntarily rendered unconscious by staff at Chelmsford. Over the following 10 days, the author alleges that he was treated with large and potentially toxic quantities of nasally-administered drugs (including barbiturates) without his consent. Electro-convulsive therapy

was also administered to the author without relaxants. The author suffered double pneumonia, pleurisy, deep vein thrombosis, pulmonary embolis and anoxic brain damage as a result of these treatments. On 20 March 1973, the author was transferred to Hornsby Public Hospital with bilateral pneumonia and pulmonary embolus, before being discharged on 3 April 1973. Following discharge, the author suffered convulsions, sensitivity to noise, heightened startle response, nightmares, dry retching and continual psychological arousal. This was diagnosed as severe, chronic post traumatic stress disorder. These effects are stated to have rendered the author virtually unemployable, with the result that he now lives on a disability pension. Over the years, the author contends that this symptom has become exacerbated to the point now of being untreatable.

2.2 The author commenced legal proceedings by statement of claim in the District Court of New South Wales in November 1976. These proceedings were transferred to the Supreme Court of New South Wales in 1979.

2.3 In March 1980, civil proceedings against Chelmsford and Dr Herron before Judge Fisher and a jury began in the Supreme Court of New South Wales. The author contends that the hearing was unfair in a variety of respects. The judge is said to have excluded important probative evidence as prejudicial, and inappropriate pressure was placed on the jury to reach a quick verdict. The defendants adduced no medical witnesses in support of their position, but the judge directed the jury on the medical evidence unfavourably to the plaintiff. The author states that post-traumatic stress disorder from which he was suffering was not a recognised illness at that time. Exemplary (punitive) damages were withdrawn from the jury by the trial judge on the basis that there was no evidence of gross and callous malpractice and neglect which could warrant them. On 14 July 1980, the jury returned verdicts against Chelmsford for false imprisonment and Dr Heron for false imprisonment, assault and battery and negligence. The author was awarded damages of $6,000 for false imprisonment against both defendants, $18,000 for assault and battery against Dr Herron and $36,000 compensatory damages (for past and future loss of earnings) against both defendants. In August 1980, the defendants appealed the "excessive" damages, while the author also cross-appealed on quantum and the withdrawal of exemplary damages.

2.4 In 1983, the author complained to the Investigating Committee of the Medical Board about his treatment at Chelmsford and related issues arising out of the 1980 trial.

2.5 In March 1986, the Investigating Committee found a prima facie case of professional misconduct against Dr Herron warranting reference to a Disciplinary Tribunal. Dr Herron pursued a claim of abuse of process in the New South Wales Court of Appeal, which referred the matter to the Disciplinary Tribunal. In June 1986, Judge Ward of the Tribunal held that there had been no delay by the author so as to constitute an abuse of process, citing the variety of legal action during that period.

2.6 In September 1986, on application by Dr Herron the New South Wales Court of Appeal (McHugh CJ, Priestley and Street JJA) permanently stayed the disciplinary proceedings, without reference to Judge Ward's judgement, on the basis that the author had abused the process by delaying a complaint to the investigating committee of the medical board for three years. The High Court of Australia, in December 1986, refused special leave by the author to appeal the Court of Appeal's judgement.

2.7 In August 1988, a Royal Commission of Inquiry was commissioned to investigate into practices at Chelmsford, including the deep sleep therapy practised and the large number of deaths that had occurred there. The Royal Commission examined the author's case, among others, in detail. In a very critical report of December 1990, the Commission considered that criminal conduct had occurred and that there was evidence of serious psychological damage. It found the defendants had conspired to pervert the course of justice, including by threatening an eye-witness nurse, and had forged the author's supposed consent to treatment, followed by deliberately lying about the incident of forgery.

2.8 In 1993, the author states that he was diagnosed with debilitating psychiatric illness for the first time. In June 1993, the New South Wales Court of Appeal dismissed Dr Herron's application that the author's appeal from the 1980 trial be dismissed for want of prosecution.

2.9 In August 1995, the author's appeal from the 1980 trial was heard in the New South Wales Court of Appeal, with the author appealing against an inadequate quantum of compensatory damages and the withdrawal of exemplary damages from the jury by the trial judge. Dr Herron's cross-appeal was not pursued. On 6 June 1996, the New South Wales Court of Appeal (Priestley, Clarke and Sheller JJA) dismissed the appeal, with costs against the author. The Court found, inter alia, that reports of psychological testing done in 1972 showed "many of the symptoms" subsequently attributed to the Chelmsford treatment. The Court considered that the Royal Commission of Inquiry's findings, combined with other evidence, only went so far as to support a conclusion that Dr Herron had "acted badly" in concert with others. Priestley JA, writing for the Court, found that "It does not seem to me that the further material relied on by the appellant could have taken the matter any further than the materials actually available at the trial". The Court held it could find no error in the trial judge's conduct.

2.10 In April 1997, an application to the High Court of Australia for special leave to appeal was denied (Brennan, Dawson and Toohey JJ), again with costs against the author. The Court held the author could not pursue exemplary damages so long after trial. The author states that the criminal activity concerned was only exposed at the Commission in1990 and that he had been engaged in protracted legal proceedings since that point.

The complaint

3. The author complains that the State failed to properly regulate the standards and practices at Chelmsford and to investigate a series of complaints from nursing staff and State inspectors. The author also complains that the judiciary and the legal profession was biased against him and stigmatised him on the basis of his psychiatric treatment, in particular in the 1980 civil trial against Dr Herron. Moreover, the author alleges that the New South Wales Court of Appeal is said to have ignored relevant evidence, fabricated facts and evidence and handed down false and misleading judgements in both the staying of disciplinary proceedings in 1986 and the substantive appeal in 1996. The author states that the State party has failed to provide and exercise appropriate regulatory and investigatory mechanisms over the judiciary and the legal profession. The courts also have failed to award fair and adequate compensation to him as a victim of stated psychiatric abuse and torture. The author claims that the above constitute violations of articles 2, 14, 17, 18, 19 and 26 of the ICCPR.

Issues and proceedings before the Committee

4.1 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.

4.2 As the Optional Protocol entered into force for Australia on 25 December 1991, the Committee is precluded *ratione temporis* from considering allegations that relate to events that occurred before this date, unless they had continuing effects that in themselves constitute a violation of the Covenant. Thus the author's complaints regarding his treatment at Chelmsford, the civil trial against Dr Herron and the decision of the New South Wales Court of Appeal staying the disciplinary proceedings against Dr Herron, which all occurred before 25 December 1991, must be considered inadmissible.

4.3 As regards the author's complaints relating to the decisions of the New South Wales Court of Appeal and the High Court of Australia, the Committee recalls that it is generally not for the Committee but for the courts of States parties to evaluate the facts and evidence in a specific case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. Furthermore, it is not for the Committee to review the interpretation of domestic law by the national courts. In the present case, the Committee notes that both the New South Wales Court of Appeal and the High Court of Australia considered the author's allegations and, on the basis of the available evidence, refused to disturb the lower court's findings of facts and law. The author's allegations and the information before the Committee do not substantiate that the Court of Appeal or the High Court's decisions were manifestly arbitrary or amounted to a denial of justice. In the circumstances, this part of the communication is inadmissible under Article 2 of the Optional Protocol.

4.4 With regard to the author's remaining allegations, the Committee considers that the author has failed to substantiate them, for purposes of admissibility. They are therefore also inadmissible under Article 2 of the Optional Protocol.

5. The Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the author and, for information, to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's Annual Report to the General Assembly.]

* The following members of the Committee participated in the examination of the communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Pilar Gaitan de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Martin

Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, and Mr. Abdallah Zakhia. Under rule 85 of the Committee's rules of procedure, Ms. Elizabeth Evatt did not participate in the examination of the case.