HUMAN RIGHTS COMMITTEE

K. L. B.-W. v. Australia

Communication No. 499/1992

30 March 1993

CCPR/C/47/D/499/1992

ADMISSIBILITY

Submitted by: K. L. B.-W. (name deleted)

Alleged victim: The author

State party: Australia

Date of communication: 15 November 1991 (initial submission)

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

Meeting on 30 March 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 15 November 1991) is Mrs. K. L. B.-W., an Australian citizen, born on 13 February 1942, currently residing in London, England. She claims to be a victim of a violation by Australia of articles 6, paragraph 1; 7; 9, paragraphs 1, 4, and 5; 10, paragraph 1; 16; 17, paragraphs 1 and 2; and 26; juncto article 2, paragraphs 2 and 3 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Australia on 25 December 1991.

Facts as submitted

2.1 The author states that she was pregnant in 1970 of her second child and experiencing heart problems, perhaps linked to her mental state, as she was going through a period of marital stress. She was referred to Dr. H. B., a psychiatrist working at Chelmsford Private

Hospital in New South Wales, Australia. The author submits that her physical complaints were never taken seriously, although later examination attributed the symptoms to a form of diabetes.

2.2 In April 1970, the author collapsed after having taken her son to school. She states that she awoke seven hours later in the psychiatrist's office, attached to an ECG machine. That night she was admitted to Chelmsford Private Hospital. She signed no admission papers, and was allegedly injected with pentothal, which made her lose consciousness.

2.3 The author contends that she was subjected to a regime of electroconvulsive therapy, being maintained in deep sleep therapy without food, on drug dosages that exceeded forensic limits and without being given muscle relaxants. She states that she was held against her will, sexually abused by the psychiatrist and assaulted by the nurses. Her physical problems were never attended to. After three weeks the author was released, after her mother had threatened the hospital with legal action.

2.4 The author's second son was born on 25 July 1970. The author states that the health of her son has always been and still is precarious. After a thorough examination, when he was 13 years old, doctors allegedly found inter alia that his nervous system and his muscle tissue had suffered as a result of the electric currents passing through them at the vital stage in their development. According to the author her son would need years of physiotherapy to get even a reasonable development of the muscle tissue.

2.5 The author further provides information which shows that a governmental investigation into abuses in Chelmsford Private Hospital was carried out in 1989. The results of the investigation show inter alia that 48 deaths had occurred, in which a link with deep sleep therapy could be proven; that Dr. H. B. was negligent and psychopathic in his treatment of patients; that patients were not given proper care and were undernourished; and that the Department of Health had not been careful enough in its supervision of the Hospital. The Royal Commission, which had carried out the investigation, recommended the criminal prosecution of the doctors involved.

2.6 The author concedes that she has not exhausted domestic remedies, but claims that the application of domestic remedies would be unreasonably prolonged, within the meaning of articles 5, paragraph 2, of the Optional Protocol. She states that Dr. H. B. committed suicide in 1985; none of the other doctors have been prosecuted; they are still in practice. She submits that court action has been initiated by some of the victims of malpractice at Chelmsford, to no avail; these cases have been before the Court for over 10 years. She estimates the litigation costs at $250,000 per suit and submits that no victim can afford this.

2.7 The author claims that the medical profession is a powerful political force in Australia, preventing the victims from obtaining an effective remedy, either through the courts or through an ex gratia payment by the government. She further submits that, because of the time lapse, much of the evidence is missing and witnesses have died or become senile. She points out that her case is now 21 years old, and that the length of time that has transpired has deeply and intrinsically restricted any effective opportunity for reasonable remedy.

2.8 The author states that she has applied to the Victims Compensation Tribunal, which can assess compensation for victims of violent crimes. However, none of the doctors have been convicted as yet, and the author does not expect to obtain effective compensation through the Tribunal.

2.9 She claims that the New South Wales government should give ex gratia payments to the victims, which, however, it refuses to do. She concedes that the Legislative Assembly, on 21 December 1991, agreed to a motion, providing for $10 million to compensate 200 out of the alleged 1,700 victims of the malpractices at Chelmsford. The author claims, however, that this does not constitute an effective remedy, as the amount is not sufficient and as it is not clear who would qualify for the compensation.

Complaint

3. The author alleges that the failure of the New South Wales government to provide an adequate remedy for the maltreatment she suffered constitutes an ongoing violation by Australia of articles 6, paragraph 1; 7; 9, paragraphs 1, 4, and 5; 10, paragraph 1; 16; 17, paragraphs 1 and 2; and 26; juncto article 2, paragraphs 2 and 3 of the International Covenant on Civil and Political Rights.

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 The Committee recalls that the Optional Protocol entered into force for Australia on 25 December 1991. It observes that the Optional Protocol cannot be applied retroactively and that the Committee is therefore precluded ratione temporis from examining events that occurred prior to 25 December 1991, unless they continue after the entry into force of the Optional Protocol or have effects that in themselves constitute a violation of the Covenant. Accordingly, the Committee finds that it is precluded ratione temporis from examining the author's allegations.

5. The Human Rights 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.

[Done in English, French and Spanish, the English text being the original version.]