



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty- fourth session
11 – 29 July 2005

VIEWS

Communication No. 1061/2002

<u>Submitted by:</u>	Bozena Fijalkowska (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Poland
<u>Date of communication:</u>	19 August 1999 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 12 March 2002. (not issued in document form)
	CCPR/C/80/D/1061/2002, decision on admissibility adopted on 9 March 2004.
<u>Date of adoption of Views:</u>	26 July 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Arbitrary detention in psychiatric institution

Procedural issues: Request from Committee to State party for further information on the merits in admissibility decision

Substantive issues: Arbitrary detention; right to take proceedings before court to challenge lawfulness of detention

Articles of the Covenant: 9; 14

Articles of the Optional Protocol: 2

On 26 July 2005 the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1061/2002. The text of the Views is appended to the present document.

[ANNEX]

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

Eighty- fourth session

concerning

Communication No. 1061/2002*

Submitted by: Bozena Fijalkowska (not represented by counsel)

Alleged victim: The author

State party: Poland

Date of communication: 19 August 1999 (initial submission)

Decision on admissibility: 9 March 2004

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

Meeting on 26 July 2005

Having concluded its consideration of communication No. 1061/2002, submitted to the Human Rights Committee by Bozena Fijalkowska 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:

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

1. The author of the communication is Ms. Bozena Fijalkowska, a Polish citizen, currently residing in Torun, Poland. She claims to be a victim of a violation by Poland of article 7 of the International Covenant on Civil and Political Rights. The case also appears to raise issues under articles 9 and 14 of the Covenant. She is not represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Ms. Ruth Wedgwood.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Roman Wieruszewski did not participate in the adoption of the present Views.

Factual background

2.1 The author has been suffering from schizophrenic paranoia since 1986. On 12 February 1998, she was committed to the Provincial Psychiatric Therapeutic Centre (hereinafter the “psychiatric institution”) in Torun. She was committed under article 29 of the Law on Psychiatric Health Protection, by order of the Torun District Court of 5 February 1998.

2.2 On 29 April 1998, the author was permitted to leave the psychiatric institution, but continued her treatment as an outpatient; treatment was completed on 22 July 1998.

2.3 On 1 June 1998, the author went to the court registry to examine her case file and requested copies of the transcript of the court hearing and decision of 5 February 1998. She received a copy of the decision on 18 June 1998 at the psychiatric institution. On 24 June 1998, she lodged an appeal against the Torun District Court’s decision of 5 February 1998. On 26 June 1998, the Regional Court dismissed her appeal as she had missed the statutory deadline.¹

2.4 On 1 July 1998, the author applied to the Regional Court to establish a new time-limit for lodging her appeal. On 16 September 1998, the Regional Court refused her request. On 19 October 1998, the Torun Provincial Court similarly rejected the author’s appeal against the decision of the Regional Court. The decision contained instructions on how to appeal to the Supreme Court.

2.5 On 24 November 1998 and following a decision of the Provincial Court of 20 October 1998, the author was assigned a legal aid lawyer to prepare her appeal to the Supreme Court. On 21 April 1999, the Supreme Court rejected the author’s appeal.

2.6 On 1 September 1999, the Supreme Court rejected, for lack of competence, the author’s request to review the constitutionality of the provisions of the Law on Psychiatric Health Protection.

The complaint

3. The author claims that her committal to a psychiatric institution against her will amounted to a violation of article 7 of the Covenant. In particular, she claims that provisions of the Mental Health Protection Act, under which the decision to confine her was taken, are incompatible with article 7 of the Covenant. She also claims that during her detention the treatment she received amounted to cruel, inhuman or degrading treatment.

State party’s submission on admissibility and merits and author’s comment thereon

4.1 By submission of 11 September 2002, the State party submitted that the communication is inadmissible for failure to exhaust domestic remedies. It argued that the author could have filed a constitutional complaint pursuant to article 79 (1)² of the new Polish Constitution of 2

¹ According to the decision, dated 26 June 1998, of the Regional Court, the statutory deadline was 26 February 1998.

² This article provides that “In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of the statute

April 1997. Her claim that confinement to a psychiatric institution without her consent amounted to cruel, inhuman and degrading treatment could have been examined as an infringement of her rights under articles 39, 40, and 41³ of the Constitution. Such a complaint would have tested the constitutionality of article 29⁴ of the *Mental Health Protection Act 1994*.

4.2 On the merits and in particular the alleged violation of article 7, the State party noted that the author does not raise any complaints about ill-treatment during her compulsory hospitalization, but simply considered that confinement to a psychiatric institution by the court, without her free consent, in itself, amounts to a violation of article 7.

4.3 The State party considered the communication to be “manifestly ill-founded”, and noted that on 17 December 1997, the author’s sister had requested the Torun District Court, under article 29 of the Mental Health Protection Act, to commit the author to a psychiatric institution as she suffered from schizophrenia. She had previously been hospitalized from 29 November 1996 to 18 February 1997, when her illness was brought under control. However, a few weeks after her discharge from hospital, her state of health deteriorated as she stopped taking her medication. She also became aggressive. In support of her application, the author’s sister submitted a medical certificate issued by a psychiatrist, who stated that failure to confine the author to a psychiatric institution would cause serious deterioration of her mental health. He also confirmed that such treatment would help improve her mental health.

4.4 On 17 December 1997, and in order to corroborate the evidence submitted by the author’s sister, the Torun District Court ordered that the author be independently examined. On 22 December 1997, the court-appointed medical expert informed the court that the author had not appeared when summoned for the examination. On the same day, the court ordered the author to appear for an examination on 30 December 1997. The author again ignored the summons. The court scheduled another psychiatric examination for 12 January 1998; on that day, the author was escorted to the examination by the police.

4.5 The expert who conducted the examination concluded that the author needed treatment in a psychiatric institution. On 5 February 1998 and on the basis of this evidence, the Torun District Court ordered the author’s committal. The author failed to appear in court. Thus, the

or another normative act upon which basis a court or organ of public administration has given a final decision on his freedoms, rights or obligations as specified in the Constitution.”

³ Articles 39 provides that, “No one shall be subjected to scientific experimentation, including medical experimentation, without his voluntary consent.”

Article 40 provides that, “No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited.”

Article 41 provides, “1. Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute.”

⁴ Article 29 provides « 1. A person mentally ill may also be confined to psychiatric hospital, without the consent required in article 22; a. Whose hitherto behaviour have indicated that a failure to confine him/her to hospital will cause substantial deterioration of his/her state of health, b. who is unable to provide by himself/herself his/her basic needs, and it is justified to anticipate that treatment in a psychiatric hospital will bring about improvement of his/her state of health”.

State party argued that there were serious grounds for subjecting the author to compulsory treatment and the decision was taken in accordance with the relevant provisions of Polish law. It concluded that the author has not submitted any reliable arguments in support of her submission concerning allegedly cruel, inhuman or degrading treatment.

4.6 On 30 January 2003, the author reiterated her previous claims and maintained that she has exhausted domestic remedies.

State party's supplementary submission

5. By submission of 16 December 2003 and following a request by the Secretariat for further clarification of the facts of the case, the State party submitted the following information on the author's legal representation: the author did not request the court to grant her legal counsel until the Torun Regional Court refused her request to extend the time limit to lodge an appeal against the decision of the District Court. On 20 October 1998, the Regional Court granted her request and on 24 November 1998, the Regional Bar Association appointed counsel for the author. The State party argued that legal representation is not obligatory and that the author "as a person enjoying full capacity for legal deeds could successfully plead her case before the courts by herself." In this context, it referred to the decision of the Supreme Court of 21 April 1999, which held that, in the circumstances of the case, a lawyer was not necessary as the author "enjoyed full capacity of legal deeds" and "mental illness cannot be equated to a lack of legal capacity."

Committee's admissibility decision

6.1 During its 80th session, the Committee considered the admissibility of the communication.

6.2 The Committee noted the author's claim that her commitment to the psychiatric institution against her will violated article 7 of the Covenant, and that the treatment she received during her confinement also violated article 7. The Committee noted that the author had provided no arguments or further information to demonstrate how her rights under the provision had been violated and reiterated that a mere allegation that the Covenant had been violated is insufficient to substantiate a claim under the Optional Protocol. Consequently, the Committee considered both of these claims inadmissible, under article 2 of the Optional Protocol.

6.3 Notwithstanding the above, the Committee considered that the facts before it raised issues under the Covenant that were admissible and should be considered on the merits. The Committee noted that the circumstances under which the author was committed to a psychiatric institution, in particular the fact that she was committed without legal representation and without receiving a copy of the committal order until 18 June 1998, more than four months after the order was issued and after the expiry of the deadline to file an appeal, may raise issues under articles 9 and 14 of the Covenant.

6.4 On 9 March 2004, the Human Rights Committee decided that the communication was admissible in so far as it appeared to raise issues under articles 9 and 14 of the Covenant. The State party was requested to comment on whether the author's detention was conducted in accordance with procedures "established by law" pursuant to article 9 of the Covenant and, if submitted to be lawful, whether the failure to provide her with legal representation and with

a copy of the committal order at the time of her committal and only after expiry of the deadline for lodging an appeal, amounted to arbitrary detention pursuant to article 9. It was also requested to comment on whether the procedures established by law and their application in the instant case amounted to a violation of article 14 of the Covenant.

State party's merits submission

7.1 On 1 October 2004, the State party responded to the Committee's request for information and submitted that the case does not raise issues under articles 9 or 14 of the Covenant and that there were no violations of the Covenant in this case. As to whether the author's detention was conducted in accordance with procedures "established by law" pursuant to article 9, the State party submits that the complainant's confinement in a psychiatric institution from 12 February until 29 April 1998 was conducted in accordance with the procedure provided for in the Mental Health Protection Act of 1994, and in particular with Article 29, which stipulates that:

"1. A person mentally ill may also be confined to psychiatric hospital, without the consent required in Article 22:

- 1) whose hitherto behaviour has indicated that a failure to confine him/her to hospital will cause substantial deterioration of his/her state of mental health,
- 2) who is unable to provide by himself/herself his/her basic needs, and it is justified to anticipate that treatment in psychiatric hospital will bring about improvement of his/her state of health.

2. A custody court competent as to the place of residence of that person is to decide on a need of confinement to a psychiatric hospital of a person as described in paragraph 1, without his/her consent - upon a request of his/her spouse, relatives in direct line, siblings, his/her statutory representative or person exercising effective custody of him/her."

7.2 According to the State party, it was under this provision of the Mental Health Protection Act that the Torun District Court restricted the author's right to liberty by the decision of 5 February 1998. The committal order was at the request of the author's sister and followed a hearing at which an expert psychiatrist gave evidence. The State party submits that the decision of the Torun District Court was in compliance with the relevant provisions of Polish law and thus within the meaning of a "procedure as is established in law" pursuant to article 9, paragraph 1.

7.3 As to whether the failure to provide the complainant with legal representation and with a copy of the committal order at the time of her committal and only after expiry of the deadline for lodging an appeal, amounted to arbitrary detention pursuant to article 9, the State party observes that there was no legal obligation to provide the author with legal representation at the time of examining by the Torun District Court. Thus, the State party argues, no such obligation may be inferred from article 9. It refers to the Supreme Court's opinion that "mental illness cannot be equated to a lack of legal capacity". The complainant was neither incapacitated nor unable to discern the nature of her actions, including possible consequences of her failure to appear before the Torun District Court at the hearing on 5 February 1998. She deliberately chose not to participate in that hearing by refusing to be

served a summons and a psychiatrist's opinion. In addition, the State party submits that the author herself did not request the court to grant her legal counsel during the consideration of her case by the Torun District Court.

7.4 As regards the date of providing the complainant with a copy of the committal order, the State party notes that according to Article 357 § 1 of the Code of Civil Procedure: "The court shall attach the reasons to the rulings pronounced at a public hearing only when they are subject to an interlocutory appeal and only upon a demand from a party, lodged within one week of the date of the pronouncement of the ruling. These rulings shall be served only on the party which demanded the drawing up of the reasons and service of the ruling with reasons." Therefore, as the author only requested a copy of the decision on 1 June 1998, four months after it was handed down, the Court was not obliged to send a copy of the decision together with the reasons for the decision *ex officio*. In the State party's view, the prohibition of arbitrary detention in article 9 does not imply an obligation to serve judicial decisions concerning the committal of an individual to a psychiatric institution automatically on the person concerned.

7.5 The State party denies that the procedures established by law and their application in the instant case amounted to a violation of article 14. The author's committal to a psychiatric institution was ordered by a competent, independent and impartial court established by law. The Court adopted its decision having heard an expert psychiatrist, and having carefully examined the grounds for the author's committal provided in the Mental Health Protection Act. The other judicial procedures in the instant case, i.e. concerning the author's motion for establishing a new time-limit for lodging an appeal, fulfilled all the guarantees enshrined in article 14. Her motion was considered by both the Torun District Court and the Torun Provincial Court and sufficient reasons were adduced for not allowing the complainant's motion. Moreover, the author has also availed herself of the cassation procedure in the Supreme Court, which decided on 21 April 1999 that the complaint was unfounded.

Consideration of the merits

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

8.2 As to whether the State party violated article 9 of the Covenant by committing the author to a psychiatric institution, the Committee notes its prior jurisprudence that treatment in a psychiatric institution against the will of the patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant.⁵ As to whether the committal was lawful, the Committee notes that it was carried out in accordance with the relevant articles of the Mental Health Protection Act and was, thus, lawfully carried out.

8.3 Concerning the possible arbitrary nature of the author's committal, the Committee finds it difficult to reconcile the State party's view that although the author was recognized, in accordance with the Act, to suffer from deteriorating mental health and inability to provide for her basic needs, she was at the same time considered to be legally capable of acting on her own behalf. As to the State party's argument that "mental illness cannot be equated to a lack of legal capacity", the Committee considers that confinement of an individual to a psychiatric

⁵ Communication No. 754/1997, *A. v. New Zealand*, Views adopted on 15 July 1999.

institution amounts to an acknowledgement of that individual's diminished capacity, legal and otherwise. The Committee considers that the State party has a particular obligation to protect vulnerable persons within its jurisdiction, including the mentally impaired. It considers that as the author suffered from diminished capacity that might have affected her ability to take part effectively in the proceedings herself, the court should have been in a position to ensure that she was assisted or represented in a way sufficient to safeguard her rights throughout the proceedings. The Committee considers that the author's sister was not in a position to provide such assistance or representation, as she had herself requested the committal order in the first place. The Committee acknowledges that circumstances may arise in which an individual's mental health is so impaired that so as to avoid harm to the individual or others, the issuance of a committal order, without assistance or representation sufficient to safeguard her rights, may be unavoidable. In the present case, no such special circumstances have been advanced. For these reasons, the Committee finds that the author's committal was arbitrary under article 9, paragraph 1, of the Covenant.

8.4 The Committee further notes that although a committal order may be appealed to a court, thereby allowing the individual to challenge the order, in this case, the author, who had not even been served with a copy of the order, nor been assisted or represented by anyone during the hearing who could have informed her of such a possibility, had to wait until after her release before becoming aware of the possibility of, and actually pursuing, such an appeal. Her appeal was ultimately dismissed as having been filed outside the statutory deadline. In the Committee's view, the author's right to challenge her detention was rendered ineffective by the State party's failure to serve the committal order on her prior to the deadline to lodge an appeal. Therefore, in the circumstances of the case, the Committee, finds a violation of article 9, paragraph 4, of the Covenant.

8.5 In light of a finding of a violation of article 9, the Committee need not consider whether there was also a violation of article 14 of the Covenant.

9. 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 State party has violated article 9, paragraphs 1 and 4, of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future. The State party is under an obligation to avoid similar violations in the future.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2, of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

[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.]