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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3162/2018*, **

Communication submitted by:	Camille Iriana Thompson (represented by counsel, Douglas A. Ewen)
Alleged victim:	The author
State party:	New Zealand
Date of communication:	21 February 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 27 March 2018 (not issued in document form)
Date of adoption of Views:	2 July 2021
Subject matter:	Compensation for wrongful arrest and detention
Procedural issues:	None
Substantive issues:	Arbitrary detention; effective remedy
Articles of the Covenant:	2 (3) read in conjunction with 9 (1); and 9 (1) and (5)
Articles of the Optional Protocol:	None

1. The author of the communication is Camille Iriana Thompson, a national of New Zealand born on 28 September 1986. She claims that the State party has violated her rights under article 2 (3) read in conjunction with article 9 (1), and article 9 (1) and (5), of the Covenant. The Optional Protocol entered into force for the State party on 26 August 1989. The author is represented by counsel.

Facts as submitted by the author

2.1 On 28 July 2010, the author was sentenced to 100 hours of community work and nine months of supervision by probation officers, for an unspecified offence. On 15 May 2012, a probation officer filed an application with Wellington District Court for cancellation of the community work sentence. On 6 June 2012, the application was considered by a judge, who

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

adjourned the matter until 25 June 2012 on the grounds that the court had not been provided with proof of service of the application. On 9 June and 23 July 2012, the matter was adjourned again for the same reason.

2.2 On 18 July 2012, the author appeared before Wellington District Court on unrelated, unspecified charges and was sentenced to 15 months of intensive supervision. A corrections officer then asked the judge to simultaneously process the application to cancel the author's prior community work sentence. The judge agreed, granted the application and cancelled the community work sentence. Later that day, the charges for which the author had been sentenced were updated in the court's electronic case management system. An order sentencing the author to 15 months of intensive supervision was prepared and was signed by the registrar. However, in an apparent clerical error, the community work sentence relating to the prior offence was not cancelled by the court either in its record sheets or in its electronic case management system.

2.3 On 23 July 2012, the application to cancel the author's community work sentence was examined again by a different judge at Wellington District Court. That judge was unaware that the same sentence had been cancelled five days earlier. When the author did not appear before the judge, the latter issued a warrant for the author's arrest.

2.4 On 31 July 2012, at 6.50 p.m., the author was arrested pursuant to the warrant. She was searched upon arrival at the police station and was held overnight. The next morning, on 1 August 2012 at 10.12 a.m., she appeared before Wellington District Court, whereupon she was promptly released by the presiding judge. She had spent approximately 15 hours and 22 minutes in custody.

2.5 The author sought compensation for her arrest and detention. On 24 August 2012, she sent a statement of her claims to the Crown Law Office seeking an amiable solution; she then sent a reminder on 26 February 2013. The author claims that she did not receive any response to her statement.[1]

2.6 On 10 April 2013, the author filed a civil claim for compensation before the High Court of New Zealand. Because district court judges enjoy immunity from civil suits when acting in their judicial capacity, the author named the Attorney-General as the defendant in her claim. The author presented tort-based claims of false imprisonment, breach of statutory duty, negligence by court staff, systemic negligence in failing to train court staff properly, and arbitrary arrest and detention in breach of section 22 of the New Zealand Bill of Rights Act 1990. Under that provision, "everyone has the right not to be arbitrarily arrested or detained". On 24 September 2014, the High Court dismissed the author's claims. The claims of false imprisonment, breach of statutory duty, negligence and systemic negligence were dismissed on the ground that section 6 (5) of the Crown Proceedings Act 1950 barred all tort-based claims against the Crown for judicial acts or omissions.[2] The claims of arbitrary arrest and detention were dismissed on the grounds that the author's detention was not unlawful, because it had been effected pursuant to a warrant issued by a judge. While the factual basis on which the warrant was issued was wrong, the judge in question had acted on a reasonable assumption based on the evidence known to her.

2.7 On 23 May 2016, the Court of Appeal dismissed the author's appeal against the decision of the High Court. However, in its decision, the Court of Appeal reversed the finding of the High Court that the author had not been unlawfully and arbitrarily arrested and detained. The Court of Appeal found that the author's arrest and detention were arbitrary and unlawful for two reasons: (a) when the warrant was issued, there was no outstanding application for the author to be brought before the court; and (b) the judge had issued the warrant of her own

[1] The author provided a copy of a response from the Crown Law Office regarding her claim dated 10 April 2012. In the response, the Crown Law Office stated that the author's claim had no realistic prospect of success on account of prior jurisprudence on the same issue, and that there would be no costs if the author discontinued her claim.

[2] Sect. 6 (5) of the Crown Proceedings Act 1950 provides: "No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process."

motion, not pursuant to an application by a probation officer as required under section 72 (3) of the Sentencing Act. The Court of Appeal therefore concluded that the author's rights under article 22 of the Bill of Rights Act had been violated.

2.8 Nevertheless, the Court of Appeal considered that the author was not entitled to compensation for the period of her unlawful detention, unless the Crown considered it appropriate to make an ex gratia payment. The Court of Appeal noted that the proximate or effective cause of the author's unlawful arrest and detention was the issuance of the warrant, which was a judicial act. The Court of Appeal then reasoned that pursuant to the judgment of the Supreme Court in a separate case, *Attorney-General v. Chapman*,[3] there was no State liability for actions of the judiciary that resulted in a breach of the Bill of Rights Act. The Court of Appeal recalled that in *Attorney-General v. Chapman*, the Supreme Court had determined that: (a) broad common law judicial immunity applied to actions taken in the bona fide discharge of judicial responsibilities; (b) the judiciary was independent from the executive branch, and its members were not employees or agents of the Crown; (c) under the principle of judicial immunity, the Crown could not be held vicariously liable for the acts of persons discharging functions of a judicial nature; (d) as a matter of policy, to allow compensation claims for judicial breach of the Bill of Rights Act would be "as inimical to judicial independence as permitting claims to be advanced against judges personally"; and (e) it was unnecessary to provide financial remedies for judicial acts, because of remedial protections, such as the ex gratia compensation scheme available to individuals who had served all or part of a prison sentence before the conviction was quashed on appeal, and the habeas corpus petition procedure available to individuals alleging a breach of section 22 of the Bill of Rights Act. The Court of Appeal acknowledged that the fact that the author had no right to damages in respect of the period for which she had been unlawfully detained seemed unsatisfactory, but it did not consider that the law allowed for such relief.

2.9 On 17 June 2016, the author applied for leave to appeal the decision of the Court of Appeal to the Supreme Court. On 7 October 2016, the Supreme Court denied her application on the grounds that her claim was governed by its recent judgment in *Attorney-General v. Chapman*, from which she had not sufficiently distinguished her case. The author maintains that she has exhausted domestic remedies.

Complaint

3.1 The author alleges that by arbitrarily arresting and detaining her, and by failing to subsequently compensate her, the State party violated her rights under article 2 (3) read in conjunction with article 9 (1), and article 9 (1) and (5), of the Covenant. The Court of Appeal acknowledged that the author's arrest and detention from 31 July 2012 to 1 August 2012 had been arbitrary and unlawful. Thus, her arrest and detention constitute a violation of article 9 (1) of the Covenant.

3.2 The State party's failure to compensate the author constitutes a violation of article 9 (5) of the Covenant. The Court of Appeal erroneously considered that there was a tension between the need to ensure judicial independence and the fair trial rights of criminal defendants. There is no such tension, as those two guarantees operate in harmony with each other.

3.3 The reliance of the domestic courts on the jurisprudence of the Supreme Court in *Attorney-General v. Chapman* is misplaced, because in that case, the claimant was not exonerated after having been wrongfully convicted; thus, the State party did not have an obligation to compensate him under article 14 (6) of the Covenant. The State party has entered a reservation to article 14 (6) of the Covenant, stating that it "reserves the right not to apply article 14 (6) to the extent that it is not satisfied by the existing system for ex gratia payments to persons who suffer as a result of a miscarriage of justice". While article 14 (6) of the Covenant may have been applicable in *Attorney-General v. Chapman*, it is not applicable in the author's case, which gives rights to obligations of the State party under article 9 (5) of the Covenant.

[3] *Attorney-General v. Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 and [2011] 9 HRNZ 257.

3.4 Moreover, the rule in *Attorney-General v. Chapman* constitutes common law, not statutory authority. It is inconsistent with previous jurisprudence (*Simpson v. Attorney-General* (Baigent's case)),[4] in which the Court of Appeal confirmed that the enactment of the Bill of Rights Act 1990 required the award of an effective remedy.

3.5 By failing to compensate the author, the State party has committed a serious and continuing violation of the Covenant and customary international law, under the formulation adopted in the International Law Commission's articles on responsibility of States for internationally wrongful acts.

3.6 The author has been deprived not only of compensation to which she is entitled under article 9 (5) of the Covenant, but also of any other remedy to this date for her arbitrary and unlawful detention and arrest. This amounts to a violation of article 2 (3), read in conjunction with article 9, of the Covenant. To date, no one in the Ministry of Justice has so much as offered an apology for her arrest and detention. She had no right of appeal against the issue of the warrant. Furthermore, the warrant was issued ex parte, so she was unaware of its existence. An application for judicial review or habeas corpus, while theoretically available, could not have been drafted and filed prior to the unlawfulness of her detention becoming apparent, let alone heard and disposed of by the High Court. The theoretical nature of these avenues of challenge cannot be viewed as effective within the meaning of article 2 (3) of the Covenant. The author could not have filed a complaint against the judge under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. It is stated in section 16 (1) (f) of that Act that the Act does not apply to a judicial decision, or other judicial function, that is or was subject to a right of appeal or right to apply for judicial review. The Act does not make any provision for remedies for individuals who have been aggrieved by a judge's conduct. At most, the Act may lead to a recommendation to the Attorney-General that the judge's conduct warrants removal from office. Had the author recovered compensation, based on comparable awards in superior courts, she would have likely received payment of over $NZ 20,000, in addition to the payment of legal costs.

3.7 In a further submission dated 14 August 2018, the author states that as remedies, she wishes to receive compensation of $NZ 20,000 (approximately equivalent to US$ 14,384), plus interest accruing from the date of the violation. In domestic law, contumelious disregard of a legal obligation may give rise to an award of exemplary damages. The ongoing, conscious and flagrant breaches of the obligation under article 9 (5) of the Covenant exhibit such contumely. However, in the context of proceedings before the Committee, exemplary damages may be viewed as paradigmatically inapt. The author recognizes that the amount of compensation would be for the State party to address, should the Committee find that her rights were violated. The author also seeks an appropriate apology and reimbursement of her legal costs. She requests that the Committee declare that the State party should harmonize its domestic law (specifically by amending the New Zealand Bill of Rights Act 1990) with the obligation under the Covenant to provide compensation for unlawful arrest and detention, even when such arrest and detention is attributable to the judicial branch of government.

State party's observations on the merits[5]

4.1 In its observations dated 26 September 2018, the State party recalls the facts of the case and admits that it violated the author's rights under article 9 (1) of the Covenant by arbitrarily and unlawfully arresting and detaining her. This breach was already established by domestic courts, in the judgment of the Court of Appeal. The author was detained overnight, pursuant to an invalid warrant for her arrest. The warrant had been issued due to a judicial error. The author spent approximately 15 hours and 22 minutes in custody.

4.2 Apart from the violation of article 9 (1) of the Covenant, already established at the domestic level, the State party maintains that the communication is without merit. The State party did not violate the author's rights under articles 2 (3) or 9 (5) of the Covenant. The author has received an effective remedy for the breach of article 9 (1) of the Covenant. For the reasons explained below, the absence of an enforceable right to compensation in the

[4] *Simpson v. Attorney-General* (Baigent's case) [1994] 3 NZLR 667.

[5] The State party does not contest the admissibility of the communication.

narrow circumstances of the author's case does not breach her rights under article 9 (5) of the Covenant, which must be read so as to prevent erosion of judicial independence. A limited reading of article 9 (5) of the Covenant is necessary in order to ensure that other rights requiring a fair and dispassionate legal system, including those under article 14 of the Covenant, are not impaired by the erosion of judicial independence.

4.3 Remedies, including an enforceable right to public law damages where the breach is occasioned by the executive branch of government, are available for arbitrary detention that is in breach of section 22 of the Bill of Rights Act. These remedies were developed by the courts as a means of giving effect to article 2 (3) of the Covenant. However, the Supreme Court concluded in *Attorney-General v. Chapman*[6] that the remedy of damages may not be awarded in relation to unlawful conduct resulting from judicial error. The Supreme Court concluded that the availability of such a remedy would undermine judicial independence in New Zealand, which would impact on other protected interests such as fair trial rights. The author's case fell into the narrow set of circumstances in which a remedy of damages could not be awarded. However, there are other effective remedies for judicial error such that a remedy of damages is not necessary.

4.4 In the present case, despite the unavailability of damages, the author did receive an effective remedy, and the State party did not violate article 2 (3) of the Covenant. The author was arrested pursuant to the erroneous warrant on the evening of 31 July 2012, after the district court sitting hours had concluded. Her case was called in the district court the following morning, and she was released as soon as the mistake leading to the warrant being issued was recognized. Thus, the author obtained an appropriate remedy through her swift release at the earliest possible opportunity. Had she not been released, she could have filed an application for a writ of habeas corpus. However, her release from custody was prompt, and there was therefore no need for her to seek that remedy. The author also obtained a determination by the Court of Appeal that her rights under section 22 of the Bill of Rights Act had been violated. Judicial recognition of breach of a protected right, and thus vindication of the claimant's rights, is an important remedy in New Zealand law.

4.5 The State party provides additional details about the decision of the Supreme Court in *Attorney-General v. Chapman*.[7] Mr. Chapman was convicted of sexual offending and was sentenced to six years' imprisonment. He appealed to the Court of Appeal. Legal aid was declined and the appeal was dismissed without an oral hearing, under procedures later found by the Privy Council to have been unlawful and in breach of the Bill of Rights Act. After a new appeal procedure, Mr. Chapman's conviction was quashed, and he was eventually discharged without a retrial when a key witness refused to testify. He then took action against the Attorney-General, claiming damages for the breaches of rights by the judges who had dismissed his initial appeal.

4.6 The Supreme Court accepted that the dismissal of Mr. Chapman's first appeal under the unlawful legal aid system had breached his rights under the Bill of Rights Act to a fair trial and to observance of the principles of natural justice. However, the Court also determined that Mr. Chapman did not have a viable claim against the Attorney-General for damages under the Bill of Rights Act. This was on the basis, principally, that allowing a claim of this kind to proceed would be "as inimical to those public interest considerations as allowing a personal claim against judges". The Court noted the well-established position at common law that the judges of superior courts have always had personal immunity from suit, and observed that the Crown could not be vicariously liable for the actions of judges. The independence of the judiciary from the executive branch, within a constitution that reflects the separation of powers, has long been seen as inconsistent with judges being employees or agents of the Crown who act on its behalf.

4.7 The Supreme Court then considered that among the various policy justifications that underpinned personal judicial immunity, three such justifications were of principal importance in a determination that a remedy of public law damages was not available for breaches of the Bill of Rights Act by the judiciary, namely: (a) the desirability of achieving

[6] *Attorney-General v. Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 and [2011] 9 HRNZ 257.
[7] Ibid.

finality; (b) the need to protect and promote judicial independence; and (c) the fact that alternative remedies for breaches of the Bill of Rights Act by the judiciary are available (including through the appellate process.) The Court then went on to examine each of those three factors in turn.

4.8 With respect to the desirability of achieving finality in the outcome of litigation, the Court explained that if civil actions against the State could be maintained on the grounds that the judge had breached the plaintiff's rights, collateral challenges would be brought with the same consequences that personal judicial immunity is designed to guard against. This would cause litigants to experience harassment by the justice system and lose confidence in the effective functioning of the rule of law. As a result, an institutional immunity is necessary in order to preserve public confidence in the fair and effective administration of justice.

4.9 With respect to the need to promote and protect judicial independence, the Court stated that when discharging its obligations under the Bill of Rights Act, the judiciary must always act and be seen to act independently of extraneous influences, in particular of the executive branch. If the executive government became liable for damages for judicial breaches of rights, members of the public engaged in or observing litigation would likely become concerned that the prospect of future litigation might distract the judge from acting in an entirely independent way. The judge could be exposed to indirect pressure to minimize the risk of claims based on government liability. Accordingly, public confidence in the effective administration of the law would diminish. The Court further stated that if such claims were permitted, judges would be pressed by the defendant Government to be witnesses in proceedings brought as a result of their actions. It is undesirable to have judges give evidence concerning their conduct and such a prospect would in itself give rise to a perception that judges may come under pressure in their decision-making if they believe they may be questioned concerning it at a later stage.

4.10 The Supreme Court also stated that it would be unwise to assume that claims in relation to judicial conduct would be rare. Despite the bar on bringing personal claims against judges, proceedings against judges from disaffected litigants, as well as repeated and hopeless recall applications, are a regular feature of litigation. There is also occasional personal harassment of judges. The Court concluded that there would be no shortage of potential plaintiffs if litigation in relation to judicial conduct were held to be permissible. The Court reasoned that it would be speculative to assume that such claims would have no impact on judicial behaviour. Even though judges would ordinarily be entitled to be indemnified by the State, this would nonetheless still be inimical to judicial independence.

4.11 The Supreme Court also considered that allowing such claims to proceed would require the executive Government, as a defendant to such a claim, to defend actions brought in relation to judicial conduct. Judges would be required to cooperate with the State in defence of such actions. To an outside observer, the executive Government would appear to be defending the judge, and the judge would be helping the Government. Making the Attorney-General, a member of executive Government, financially responsible for judicial actions would imply that judges were acting on behalf of executive government when exercising judicial functions. Constitutionally, the Government may not interfere with the judicial process without breaching conventions. If, however, the executive branch became liable to compensate for judges' constitutionally wrongful acts, that would likely result in political pressures, direct and indirect, for accountability of judges to the executive. For those reasons, the Court concluded that "allowing compensation claims for judicial breach of the Bill of Rights Act would be as inimical to judicial independence as permitting claims to be advanced against judges personally".

4.12 The Court then explained that the following features of the justice system operated to prevent rights breaches and provide adequate remedies for such breaches when they did occur: (a) appeal against, review of, or rehearing of decisions; (b) civil proceedings in respect of actions of judicial officers not taken in the exercise of their judicial functions; (c) criminal prosecution in respect of the corrupt exercise of judicial functions; (d) removal processes for serious judicial misbehaviour or incapacity; and (e) the regime provided for under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, for investigating complaints against judges and addressing them according to the Commissioner's view of their seriousness.

4.13 The Supreme Court therefore concluded that the same public policy reasons supporting personal judicial immunity also justified excluding Crown liability for judicial breaches of the Bill of Rights Act. Rather than better protecting rights, the Court held that permitting payment of damages from the executive for judicial breaches "would be destructive of the administration of justice in New Zealand and ultimately judicial protection of human rights in our justice system". Further, damages for such breaches are unnecessary to ensure effective remedies for breaches.

Author's comments on the State party's observations on the merits

5.1 In her comments dated 23 November 2018, the author cites a dissenting opinion in *Attorney-General v. Chapman*.[8] The judge who authored the opinion considered that the principles of judicial independence were not compromised by allowing a compensatory remedy against the State for judicial breaches of the Bill of Rights Act. The author also cites a concurring opinion issued in the same case, in which a judge placed particular emphasis on the principle that judicial error amenable to appellate correction was unlikely to require a compensatory remedy. The author argues that in her case, appellate correction of the unlawful act in question was impossible. Indeed, the Court of Appeal accepted that no such avenue was available to her. The reasoning of the plurality of the Court in *Attorney-General v. Chapman* is permeated by the view that little weight should be placed on the State party's international legal obligations, including those under the Covenant, unless they are incorporated into domestic law and in the clearest of terms.

5.2 The Committee has previously determined that State liability attaches to judicial extensions of otherwise lawful and authorized detention.[9] The Court of Justice of the European Union has rejected the proposition that State liability encroaches on judicial independence.[10] Likewise, the Grand Chamber of the European Court of Human Rights has rejected the proposition that the State's fundamental obligation to ensure judicial independence and personal judicial immunity results in State immunity from the obligation to pay compensation.[11] The Basic Principles on the Independence of the Judiciary also support the existence of a compensatory right against the State for judicial breaches. Moreover, the Special Rapporteur on the independence of judges and lawyers has emphasized that because both the judiciary and the public prosecutor's office are State institutions, their actions or omissions directly engage the responsibility of the State.[12] The need for judicial accountability is also noted in the preamble to the Bangalore Principles of Judicial Conduct, which are applicable in New Zealand.[13] Neither judicial independence nor accountability constitutes an end in and of itself. Without accountability, judicial independence is dangerously weakened.

5.3 The practices of other States do not support the State party's contention that exceptions may apply to the obligation to pay compensation under article 9 (5) of the Covenant. The State party has been unable to identify uniform or prevailing State practices to support the contention that State immunity from suit for judicial acts is an essential component of judicial independence. In the case of *Köbler v. Republik Österreich* before the Court of Justice of the European Union, there was no State consensus on the issue of State liability for judicial acts. In the common law tradition, to which the State party belongs, effective remedy clauses in domestic constitutions have been interpreted as giving rise to State liability for judicial breach.[14] In the United Kingdom of Great Britain and Northern

[8] *Attorney-General v. Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 and [2011] 9 HRNZ 257.

[9] The author cites Human Rights Committee, *Van Alphen v. Netherlands*, communication No. 305/1988.

[10] The author cites Court of Justice of the European Union, *Köbler v. Republik Österreich*, case C-224/01, para. 42.

[11] The author cites European Court of Human Rights, *McFarlane v. Ireland*, application No. 31333/06, judgment of 10 September 2010, para. 121.

[12] The author cites A/HRC/26/32, para. 70.

[13] The author cites the Bangalore Principles (E/CN.4/2003/65).

[14] The author cites *Maharaj v. Attorney-General of Trinidad and Tobago* (No. 2) [1979] AC 385, [1978] 2 WLR 902 and [1978] 2 All ER 670 (Privy Council).

Ireland, compensatory remedies are available for judicial breaches.[15] The State party could legislate to implement a remedy regime in the same manner as the Parliament of the United Kingdom. It has yet to do so, and this gives rise to the likelihood of ongoing breaches of the obligation under article 9 (5) of the Covenant.

5.4 Contrary to the position taken by the State party and its courts, the possibility to apply for a writ of habeas corpus does not constitute compensation under article 9 (5) of the Covenant. Such an application would, at best, mitigate the damage caused. The argument of the Supreme Court that an action against the State for judicial error may require the judiciary to participate in litigation at the expense of its perceived independence is fallacious. There is no more need for a judge to become involved in litigation over a breach of article 9 of the Covenant than there is for judges to take an active role in an appeal against one of their judgments. At the appellate level, the appellate court looks to identify remediable error, and once an error has been established, an inquiry is made as to loss. This process does not require a judicial officer to support the defence of the State, or to give evidence in the appellate proceeding. The inquiry will, by its nature, focus less on the impugned judicial act and more on the effects that the act has had on the affected party.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the State party has not contested the admissibility of the communication, or the author's argument that she exhausted all available domestic remedies, as required under article 5 (2) (b) of the Optional Protocol. The Committee also notes that the author raised the substance of her claims under the Covenant before the Court of Appeal and the Supreme Court of New Zealand. Accordingly, the Committee considers that article 5 (2) (b) of the Optional Protocol does not constitute an obstacle to the examination of the present communication.

6.4 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under article 2 (3) read in conjunction with article 9 (1), and article 9 (1) and (5), of the Covenant. The Committee thus declares those claims admissible and proceeds to examine them on their merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes that during domestic proceedings, the Court of Appeal determined that the author's arrest and detention had been both unlawful and arbitrary. The Committee also notes that the State party acknowledges that it violated the author's rights under article 9 (1) of the Covenant by arbitrarily and unlawfully arresting and detaining her for approximately 15 hours and 22 minutes on 31 July and 1 August 2012. As there is no dispute between the parties on this issue, the Committee accepts their position that the facts before the Committee disclose a violation of the author's rights under article 9 (1) of the Covenant.

7.3 The Committee also takes note of the author's claim that she is entitled to compensation for the arrest and detention, under article 9 (5) of the Covenant. The Committee recalls that article 9 (5) of the Covenant obliges States parties to establish the legal framework

[15] The author cites the Human Rights Act 1998; and *LL v. Lord Chancellor* [2017] EWCA Civ 237, [2017] 4 WLR 162, [2017] 2 FLR 1429 and [2017] WLR (D) 259.

within which compensation may be afforded to victims of unlawful arrest or detention, as a matter of enforceable right and not as a matter of grace or discretion.[16] The remedy must not exist merely in theory but must operate effectively, and payment must be made within a reasonable period of time.[17] Article 9 (5) of the Covenant does not specify a precise form of procedure, which may include remedies against the State itself or against individual State officials responsible for the violation, so long as they are effective.[18] Article 9 (5) of the Covenant does not require that a single procedure be established providing compensation for all forms of unlawful arrest, but only that an effective system of procedures exist that provides compensation in all of the cases covered by article 9 (5) of the Covenant.[19] The latter provision does not oblige States parties to compensate victims *sua sponte*, but rather permits them to leave commencement of proceedings for compensation to the initiative of the victim.[20]

7.4 The Committee notes that while the State party's domestic legislation and common law generally provide for compensation for wrongful arrest and detention, an exception exists whereby compensation is not required to be paid where there has been a breach of the Bill of Rights Act by the judicial branch of government.[21] The Committee observes that the author commenced proceedings on her own initiative to request compensation from the domestic authorities, without success. The Committee notes the State party's argument that the author received an appropriate remedy through her swift release at the earliest possible opportunity, and, had she not been released, she would have had access to the separate remedy of an application for a writ of habeas corpus. The Committee observes that the author spent less than one full day in detention and was promptly released upon discovery by the court of the error that had prompted her arrest. However, the Committee notes that releasing an individual from unlawful detention – regardless of the duration of the detention – does not fulfil a State party's obligation to provide compensation within the meaning of article 9 (5) of the Covenant.[22]

7.5 The Committee notes the detailed policy arguments set forth by the State party and its courts, to the effect that payment of compensation for judicial breaches of rights would undermine judicial independence. Notwithstanding, the Committee observes that the plain language of article 9 (5) of the Covenant does not allow for exceptions to the requirement of States parties to pay compensation for unlawful arrest or detention. The Committee therefore considers that even in the present case, where the author's arrest and detention resulted from unintentional error by the State party's authorities, which promptly released her upon discovering the error, the obligation to pay compensation under article 9 (5) of the Covenant still applies.[23]

7.6 With respect to the State party's arguments regarding the potential of an unrestricted compensation requirement to adversely affect the decision-making of judges, the Committee also observes that the obligation under article 9 (5) of the Covenant does not require the establishment of individual liability of judges or other government agents. The Committee further recalls that the financial compensation required by article 9 (5) of the Covenant relates specifically to the pecuniary and non-pecuniary harm resulting from the unlawful arrest or detention.[24] The Committee therefore considers that article 9 (5) of the Covenant is concerned with providing redress for harm suffered, rather than with ascribing culpability to government actors for having caused that harm. Accordingly, the Committee considers that in cases where

[16] See the Committee's general comment No. 35 (2014), para. 50.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] See para. 4.13 above.
[22] See the Committee's general comment No. 35 (2014), para. 49: "Whereas paragraph 4 provides a swift remedy for release from ongoing unlawful detention, paragraph 5 clarifies that victims of unlawful arrest or detention are also entitled to financial compensation."
[23] See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), paras. 88 and 90.
[24] See the Committee's general comment No. 35 (2014), para. 52.

error by the judicial branch of government results in unlawful or arbitrary arrest or detention, compensation to the victim should not undermine judicial independence but rather should strengthen accountability and trust in the judiciary by providing a remedy for a wrong.

7.7 In the light of its previous findings, the Committee does not deem it necessary to examine the author's claim under article 2 (3) read in conjunction with article 9 (1) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 9 (1) and (5) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its domestic legislation, regulations and/or practices to ensure that individuals who have been unlawfully arrested or detained as a result of judicial acts or omissions may apply to receive adequate compensation, in accordance with the obligation set forth in the Covenant.

10. Bearing in mind that, by becoming a 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 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 and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.