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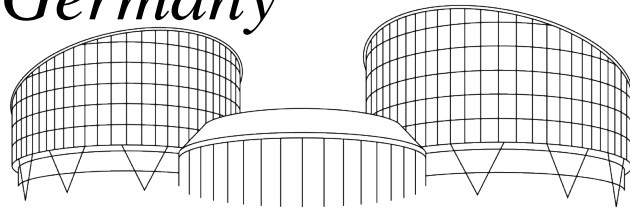
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International Human Rights Litigation

- Reading List

- *Rameka* Article Professor Geiringer

- *M v Germany*



EUROPEAN COURT OF HUMAN RIGHTS

- *Fardon v Australia*

- *A v New Zealand* UN Working Group on Arbitrary Detention





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International Human Rights Litigation

- Extra Material
 - *R v Taito* [2003] 3 NZLR 577
 - *Miller & Carroll v New Zealand*
 - Organ Harvesting and *Kim v Minister of Justice* July 2017





International Human Rights Litigation

- R v Taito
 - The successful appeals of Taito Bennett and 10 others is an unambiguous humiliation for the Court of Appeal of New Zealand
 - [2002] NZLJ 149 When Good Courts Go Bad





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International Human Rights Litigation

- Chief Justice Dame **Sian Elias**

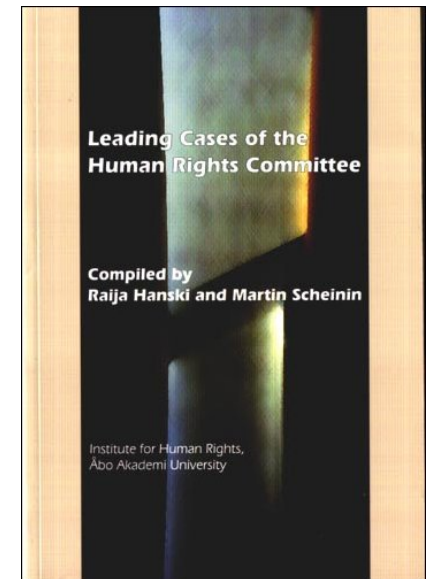


Victoria University Law Faculty International Dispute Resolution 29 September 2017



International Human Rights Litigation

- *Rameka* 7 HRNZ 663
 - Lost at Privy Council
 - Went to UNHRC
 - In Leading Cases of the Human Rights Committee p 191/192



Supported by only seven of the 16 members who participated in the examination of the communication. The other nine distanced themselves from the Committee's view by subscribing to one of the five dissenting opinions.



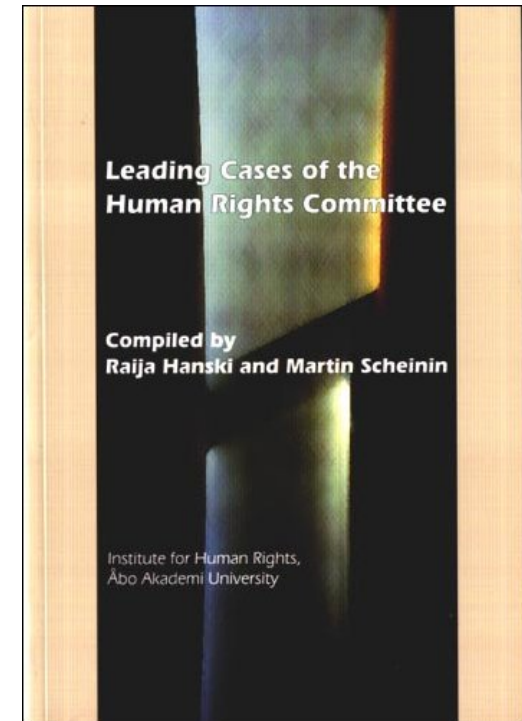
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International Human Rights Litigation

The other five went further and concluded that preventive detention is per se violative of the Covenant. For Committee members Bhagwati, Chanet, Ahanhanzo and Yrigoyen Detention bases solely on an assessment of Potential future dangerousness is necessarily Arbitrary.





International Human Rights Litigation

- *M v Germany* Appl no 19359/04



EUROPEAN COURT OF HUMAN RIGHTS

128...It observes, in particular that there appear to be no special measures, instruments or institutions in place, other than those available to ordinary long-term prisoners, directed at persons subject to preventive detention and aimed at reducing the danger they present and thus limiting the duration of their detention to what is strictly necessary in order to prevent them from committing further offences.

129...in view of its potentially indefinite duration, are in particular need of psychological care and support. The achievement of the objective of crime prevention would require, as stated convincingly by the CPT, a “high level of care involving a team of multi-disciplinary staff, intensive work with inmates on an individual basis (via promptly-prepared individualised plans), within a coherent framework for progression towards release, which should be a real option”.



International Human Rights Litigation

- *Fardon v Australia* CCPR/C/98/D/1629/2007

The concept of feared or predicted dangerousness to the community applicable in the case of past offences is inherently problematical... To avoid arbitrariness, in these circumstances, the State Party should have demonstrated that the author's rehabilitation could not have been achieved by means less intrusive than continued imprisonment or even detention, particularly as the State Party had a continuing obligation under Article 10 paragraph 3 of the Covenant to adopt meaningful measures for the reformation, if indeed it was needed, of the author throughout the 14 years during which he was in prison.





International Human Rights Litigation

- *A v New Zealand* A/HRC/WGAD/2015

27. The Working Group concludes that the continuation of Mr. A's incarceration after 2004 for the protection of the public constitutes arbitrary deprivation of liberty under category I and a violation of international law for reasons of discrimination under category V.

30...the adequate remedy would be to release Mr. A from prison and accord him an enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights.



Now in High Court
Judicial Review.



International Human Rights Litigation

- *Miller & Carroll v New Zealand* 2502/14
- *Kim v Minister of Justice*
 - Extradition to China, death penalty, torture, fair trial
 - Organ Harvest Diplomatic Assurances
 - Torture Committee 11 countries 9 NGOs
 - Terrorists barbarians and mass murderers
 - Other economic criminals
 - Special Rapporteurs (Tony)
 - Crimes Against Humanity (Petra)

