



## Convention on the Rights of Persons with Disabilities

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### Committee on the Rights of Persons with Disabilities

#### Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 32/2015\*, \*\*

<i>Communication submitted by:</i>	Arturo Medina Vela (represented by counsel, Eunice Leyva García and María Sirvent Bravo-Ahuja)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Mexico
<i>Date of communication:</i>	19 August 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 16 September 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	6 September 2019
<i>Subject matter:</i>	Right to enjoy legal capacity on an equal basis with others
<i>Procedural issues:</i>	Admissibility; exhaustion of domestic remedies
<i>Substantive issues:</i>	Access to the courts; intellectual and psychosocial disability; exercise of legal capacity; deprivation of liberty; discrimination on grounds of disability; restrictions on rights
<i>Articles of the Convention:</i>	5, 9, 12, 13, 14 and 19, read in conjunction with article 4
<i>Articles of the Optional Protocol:</i>	1 and 2

1. The author of the communication is Arturo Medina Vela, a Mexican national born on 1 August 1990. He has an intellectual and psychosocial disability that does not require constant medical treatment. The author has always lived with his mother and sister, who have been his main support when taking decisions. At the time of submission of the

\* Adopted by the Committee at its twenty-second session (26 August–20 September 2019).

\*\* The following members of the Committee participated in the examination of the communication: Ahmad Alsaif, Martin Mwesigwa Babu, Monthian Buntan, Imed Eddine Chaker, Jun Ishikawa, Samuel Njuguna Kabue, Mi Yeon Kim, László Gábor Lovász, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer and Risnawati Utami. Pursuant to rule 60 (1) (c) of the Committee's rules of procedure, Amalia Eva Gamio Ríos did not participate in the examination of the present communication.



communication, Mr. Medina Vela was deprived of his liberty at the men's psychosocial rehabilitation centre in Mexico City. He claims that he is the victim of a violation by the State party of his rights under articles 5, 9, 12, 13, 14 and 19, read in conjunction with article 4, of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 3 May 2008.

## **A. Summary of the information and arguments submitted by the parties**

### **The facts as submitted by the author**

2.1 On 14 September 2011, between noon and 1 p.m., the author was arrested by the police on suspicion of having stolen a vehicle, as attested to by security camera footage from where the vehicle was parked. The author submits that his court-appointed defence lawyer requested that the footage be presented during the trial, but this was never done. On the same day, the author was handed over to the public prosecutor's office, specifically the Venustiano Carranza Prosecution Division of the Office of the Attorney General of the Federal District. At approximately 10 p.m., the public prosecutor notified the family of the charges against him.

2.2 The author's mother contacted the public prosecutor's office to tell them that, owing to his disability, the author did not know how to drive a vehicle and had never driven one. She also submitted documentation attesting to the author's disability. The author claims that the account of events was changed to indicate that he had stolen the car by pushing rather than driving it and that there were contradictions in the statements of the police officers who arrested him.<sup>1</sup>

2.3 On 15 and 16 September 2011, at the request of the public prosecutor, the author underwent a psychiatric evaluation, which found a personality disorder and probable mental retardation. An examination was also carried out by a forensic doctor, who determined that the author presented an antisocial personality disorder and possible slight mental retardation and was, therefore, unfit to testify. On 16 September, the public prosecutor decided to initiate criminal proceedings against the author and ordered his detention at the men's psychosocial rehabilitation centre.

2.4 On 22 September 2011, the Ninth Criminal Court of the Federal District decided to apply the special procedure for persons exempt from criminal liability to the author and ordered the Director of the Forensics Service of the High Court of Justice to designate psychiatric experts to evaluate the author's criminal liability. The results of the evaluation were presented on 11 October 2011 and showed that the author has a permanent mental disability that prevents him from understanding the unlawfulness of his actions and from testifying before the judicial authorities, and that he would require "close, ongoing psychiatric treatment and appropriate monitoring".

2.5 The author claims that he was not permitted to testify and that he was not informed of what was happening in the proceedings or notified that he was being tried under the special procedure. On the day of his arrest, the author's mother requested that the Ninth Criminal Court dismiss the court-appointed lawyer and designate private lawyers to defend him. However, on 23 September, the judge rejected the designation of the private lawyers on the grounds that, under article 462 of the Civil Code of the Federal District, the mother was not the legal guardian of the author, who was an adult and had not been declared legally incapable.

2.6 On 26 September 2011, the author made two written submissions to the Ninth Criminal Court, the first designating a new defence lawyer and requesting the dismissal of the court-appointed defence lawyer and the second appealing the decision of 22 September 2011. On 28 September 2011, the Court dismissed the appeal, noting that it should have been filed by the court-appointed defence lawyer and that it was not aware that the author

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<sup>1</sup> The author does not give details of the contradictions. Some contradictions come to light in reading the trial documents.

had designated a private lawyer.<sup>2</sup> In addition, the Court rejected the author's request to designate a defence lawyer of his own choosing.

2.7 On 13 October 2011, the author's mother, through the court-appointed defence lawyer, applied to the Ninth Criminal Court for the author's release, saying that she would take responsibility for his care, treatment and supervision.<sup>3</sup> On 17 October 2011, the judge rejected the application on the grounds that the mother had failed to demonstrate what form of treatment and supervision she would provide, and that the application did not, therefore, meet the requirements set out in the medical report of 11 October 2011.

2.8 The main hearing was held on 20 and 26 October 2011 and the oral hearing was held on 11 November under the special procedure for persons exempt from criminal liability. The author was not invited to, and did not attend, any of these hearings.

2.9 On 5 December 2011, the Ninth Criminal Court convicted the author of theft and imposed a security measure on him, namely four years in a psychosocial rehabilitation institution or facility run by the criminal justice system. In addition, the Court decided that, once he had served his sentence, the author would be placed in the custody of his family or, in the absence thereof, in the custody of the health authorities or a care institution. The judgment was transmitted only to the court-appointed defence lawyer and not to the author, who was not informed of the remedies open to him.

2.10 On 13 December 2011, the judgment of the lower court became enforceable, as no appeal had been filed. The author was not informed of the decision declaring the judgment enforceable.

2.11 It was not until January 2012, during a meeting with the court-appointed defence lawyer, that the author's mother was told that the judgment of the lower court had become enforceable. She then requested the court-appointed lawyer to file an incidental motion to obtain a non-custodial placement for the author.<sup>4</sup> The request was denied by the Ninth Criminal Court.

2.12 In June 2012, the author's mother once again applied for a non-custodial placement but was denied by the Criminal Court. In addition, she requested copies of his case file from the court-appointed defence lawyer in order to find alternative solutions, but she was never given them.

2.13 In 2014, the author's mother sought help from the social justice organization Documenta. In October of that year, Documenta lawyers filed a direct *amparo* petition against the conviction of 5 December 2011.

2.14 In the petition, the author claimed that due process guarantees had not been respected, as he had not been heard during the trial. He complained that he had not been permitted to designate a defence lawyer of his choosing or to present evidence in his defence, and that the presumption of innocence, among other rights, was infringed when he was declared exempt from criminal liability.<sup>5</sup> The author requested the court to make an

<sup>2</sup> The Court dismissed the author's appeal because of a procedural error: the author filed an appeal against a decision with a constitutional time limit, rather than against a decision under the special procedure for persons exempt from criminal liability. The author argues that he made the error because he did not know that the special procedure had been applied to him.

<sup>3</sup> Article 63 of the Criminal Code of the Federal District, in pertinent part, reads: "The judge or, where appropriate, the competent authority may release a person exempt from criminal liability into the care of his or her relatives or of the persons who, under the law, have the obligation to take responsibility for him or her, provided that they make reparation for the harm caused, that they promise to take the appropriate steps to ensure the person is treated and supervised, and that they guarantee, to the satisfaction of the judge, the fulfilment of the obligations they have undertaken."

<sup>4</sup> "Criminal law provides for non-custodial placement in cases where there is the possibility of 'releasing the person exempt from criminal liability into the care of someone who, by law, is responsible for the person'" (initial submission, para. 41). The author argues that this was the only viable way of recovering his liberty, if not establishing his innocence.

<sup>5</sup> By being tried as a person exempt from criminal liability and being considered "unfit to testify", the author was deprived of his capacity to take part in his trial.

exception to the “principle of finality”<sup>6</sup> on the grounds that the failure to recognize his legal capacity had led to serious due process violations, as he had not been given the opportunity to appeal the judgment of the lower court. In addition, the author pointed out the unconstitutionality of the provisions of the Criminal Code and Code of Criminal Procedure of the Federal District concerning exemption from criminal liability and the special procedure for persons exempt from criminal liability.

2.15 The petition was transmitted to the Seventh Collegiate Court for Criminal Matters of the Federal District. On 24 November 2014, the Collegiate Court declared that it did not have jurisdiction because the impugned judgment was not final and direct *amparo* applied only to final judgments. In order to “not leave the author without a proper remedy”, it decided to transfer the petition to a district court with a view to reaching a resolution through indirect *amparo* proceedings.<sup>7</sup>

2.16 On 1 December 2014, the author filed a procedural complaint against the decision of the Collegiate Court, noting that indirect *amparo* proceedings could not address all the claims and violations raised by the case. In his complaint, the author argued that the impugned judgment was final as it had been declared enforceable and was not subject to ordinary appeal. The author was also precluded from filing an appeal because he had been excluded from the trial and did not know what had happened in the course of the proceedings. However, the Collegiate Court had already referred the case to the Thirteenth District *Amparo* Court for Criminal Matters. On 26 November 2014, the District *Amparo* Court agreed to hear the case, but dismissed the petition on the grounds that “the principle of ‘finality’ had not been satisfied”. On 9 December 2014, the author applied for the remedy of complaint with the Collegiate Court against the decision of the District *Amparo* Court, claiming that he was left without a proper remedy since he had been denied access to all forms of appeal.

2.17 On 22 January 2015, the Collegiate Court ruled on the procedural complaint against its declaration that it did not have jurisdiction, and maintained its position on the grounds that the impugned judgment was not “final” and that the District *Amparo* Court to which it had referred the case had declared itself competent to hear the case.

2.18 On 29 January 2015, the Collegiate Court ruled on the remedy of complaint, establishing that the District *Amparo* Court was competent to hear the case but not the entirety of the judgment. It ordered the District *Amparo* Court to rule on the failure to notify the author of the lower court’s judgment and on whether or not the author had been prevented from filing an appeal. At the request of the defence, the Collegiate Court made a reasonable accommodation by drafting a simplified version of its decision. However, it failed to do so for the other decisions taken in the proceedings.

2.19 The author submitted an expanded petition for indirect *amparo* with a view to challenging the constitutionality of the laws on exemption of criminal liability and security measures in the context of criminal proceedings against persons exempt from criminal liability.<sup>8</sup> In addition, he requested that all the documents relating to the proceedings be drafted in simplified form to facilitate his comprehension.

2.20 On 12 February 2015, the expanded petition was dismissed by the District *Amparo* Court on the grounds that the constitutionality suit was unrelated to the case. The Court noted that the request for reasonable accommodation was inadmissible since the author had received the assistance of two individuals to exercise his legal capacity during the trial. On

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<sup>6</sup> The principle of finality establishes that all domestic remedies – in this case, an appeal – must be exhausted beforehand.

<sup>7</sup> The Court modified the remedy being sought on the understanding that domestic remedies had not been exhausted, given that direct *amparo* (the remedy sought by the author) applies to decisions that put an end to the proceedings, whereas indirect *amparo* applies to all other cases.

<sup>8</sup> Specifically, the author requested that the articles of the Criminal Code of the Federal District that refer to exemption from criminal liability, security measures and the need for a guardian, or a person who takes legal responsibility for the person declared exempt, be declared unconstitutional. He also denounced the articles of the Code of Criminal Procedure of the Federal District regarding the special procedure for persons exempt from criminal liability. The unconstitutionality of both laws had already been raised in the direct *amparo* petition.

25 February 2015, the author applied again for the remedy of complaint against the aforementioned decision, arguing that his right to an effective remedy had been violated by not being able to challenge laws that were contrary to the Convention because they violated his right to access to justice. The remedy of complaint was referred to the Seventh Collegiate *Amparo* Court of the Federal District and the indirect *amparo* proceedings were suspended until the Collegiate Court issued its decision.

2.21 On 5 June 2015, the Seventh Collegiate *Amparo* Court issued its decision concerning the remedy of complaint, finding that the complaint was partially founded and requesting that the criminal court rule on the failure to notify the author of the judgment and of the decision that the judgment was enforceable. Furthermore, the District *Amparo* Court ruled that the author's initial grievances were unrelated to the articles of the Criminal Code and Code of Criminal Procedure that he contended were unconstitutional. As for his grievance concerning the district court's refusal to produce a simplified version of all the decisions, including the judgment, the Collegiate Court determined that it was partially founded, though it applied only with regard to the trial judgment.

2.22 On the basis of the aforementioned decision, on 29 June 2015, the District *Amparo* Court ruled on the indirect *amparo* petition, finding that the Ninth Criminal Court had violated the author's right under article 20 of the Constitution by not notifying his legal representative of the judgment. In addition, it ordered the Ninth Criminal Court to annul the decision declaring the final judgment enforceable and to notify the author's legal representative of this fact.

2.23 The author applied to the Criminal Sentence Enforcement Courts of the Federal District for partial remission of his sentence on the basis of the work he had done at the men's psychosocial rehabilitation centre with a view to obtaining early release.<sup>9</sup> The judge asked the author to provide further details, because the application did not meet the requirements under the law. The author inferred from this that his application for partial remission could be denied and that any dispute regarding his entitlement to remission would not be resolved before he had served the entirety of his sentence. Therefore, he decided to request a non-custodial placement for persons with psychosocial disabilities, as provided for in article 55 of the Sentence Enforcement Act.<sup>10</sup> However, on the basis of the medical reports drawn up by the board of the men's psychosocial rehabilitation centre, the judge denied the author's request on the grounds that the prospects for his rehabilitation were slim.

2.24 The author claims that he was excluded from the criminal proceedings against him. He points out that he was not notified of the decisions or the final judgment and that, consequently, he was unable to appeal the decision of the lower court or petition for direct *amparo*, since this requires a decision to have first been appealed. The author requested that an exception be made to this rule, taking into account that it was the criminal law and judicial practices that had left him without a remedy by failing to recognize his legal capacity.

<sup>9</sup> Partial remission of sentence can be granted by the enforcement judge and consists in deducting one day of imprisonment from a sentence for every two days of work, provided that the following requirements are met: the offender must have demonstrated good behaviour; he or she must have regularly taken part in the work, educational, sports or other activities offered at the prison; and the technical assessments carried out by the prison must demonstrate the viability of his or her social reintegration.

<sup>10</sup> The enforcement judge can approve temporary non-custodial placement for persons with psychosocial disabilities under the supervision of the Office of the Under-Secretary when: a psychiatric assessment establishes that an adequate level of rehabilitation has been achieved and the person is undergoing psychological treatment and is on medication; a technical evaluation has determined that the family will provide adequate supervision and emotional support and that the person presents a low risk to society; and a person legally responsible for the person with disabilities has been designated to ensure that the person fulfils the obligations established by the enforcement judge.

### **The complaint**

3.1 The author contends that the State party violated his rights under articles 5, 9, 12, 13, 14 and 19, read in conjunction with article 4, of the Convention.

3.2 The author submits that, by not being tried on an equal basis with others because he had been declared exempt from criminal liability and was therefore subject to the relevant special procedure, he was a victim of discrimination on grounds of disability. He claims that he was excluded from the proceedings and was not given the opportunity to be tried by a competent impartial court, to attend his own trial, to present evidence in his defence, to designate a defence counsel of his choice or to access the ordinary remedies provided for under criminal law, in particular the appeal. The author also claims that the security measure that was imposed on him was discriminatory. Not only was the measure a criminal penalty, it consisted in psychiatric and drug treatment to which he was subjected involuntarily for being considered a danger to society. Because of his disability, he was denied access to early release despite meeting the legal requirements. He further claims that the State party failed to discharge its obligation to make the necessary reasonable accommodations he requested and to amend or repeal legislation that encourages discrimination against persons with disabilities, in violation of article 5, read alone and in conjunction with article 4, of the Convention.

3.3 Regarding the violation of article 9, read alone and in conjunction with article 4, of the Convention, the author argues that the State party failed to meet its obligation to ensure access to information during judicial procedures. As things stand, no information is accessible by persons with disabilities regarding the course of judicial proceedings or the content of criminal laws. Furthermore, the State party has not adopted legislative, administrative or other measures to ensure the accessibility of information on proceedings involving persons with disabilities or to ensure communication between accused persons with disabilities and the judicial system since, as in his case, they are denied the right to attend their trial.

3.4 The author contends that the State party violated article 12, read in conjunction with article 4, of the Convention by not recognizing his legal capacity. He claims that procedural safeguards were violated by the fact that he was considered exempt from criminal liability and unfit to testify. Current criminal legislation and judicial practices allow for persons with disabilities to be excluded from proceedings because they are considered unfit to stand trial.

3.5 The author claims that his exclusion from the proceedings resulted in a violation of article 13, read in conjunction with article 4, of the Convention. He notes that the centre for the enforcement of criminal penalties where he is deprived of his liberty does not have an area allowing for confidential communication between inmates and their lawyers. In addition, he submits that he was never read the documents related to the judicial proceedings or received a simplified version that would have helped him understand them better; the accommodation measures he needed in order to express himself were not taken either.

3.6 The author claims that the imposition of the security measure consisting of temporary committal, from the time of his arrest, for the purpose of medical treatment, as well as the security measure consisting of committal once he was found guilty of the offence of theft, constitute a violation of article 14, read in conjunction with article 4, of the Convention. In his opinion, he was tried without the benefit of procedural safeguards. He refers to the Committee's concluding observations of September 2014, in which it expressed concern about persons with disabilities being declared exempt from criminal liability and the absence of procedural safeguards, and requested the State party to eliminate security measures involving forced medical treatment (CRPD/C/MEX/CO/1, paras. 27 and 30 (a)).

3.7 The author submits that the current criminal legislation violates article 19, read in conjunction with article 4, inasmuch as it establishes that persons exempt from criminal liability must be "handed over" to the person who, by law, must take responsibility for them. Thus, when the author completes his sentence, his mother will have to come to the men's psychosocial rehabilitation centre for him to be released. Otherwise, he will not be released.

The author argues that, by denying him early release, the State party has prevented him from accessing community services that would promote his development and inclusion, in breach of article 19 of the Convention. Furthermore, persons with disabilities who complete their sentences face a double stigma: that of being considered as “delinquents” but also as “dangerous” and “unfit”.

3.8 The author requests the Committee to find a violation of the aforementioned articles, as well as the following: (a) a public acknowledgement in the media that the State party violated his rights; (b) a public apology from the President of the High Court of Justice of the Federal District, the Ninth Criminal Court and the clerk responsible for handling his case for considering him “unfit”, for convicting him with no regard for the fundamental safeguards of due process and for the systematic discrimination he experienced during the proceedings; (c) compensation for the time he spent unjustly deprived of liberty; (d) a plan, in keeping with the principles of the Convention, to enable him to access inclusive education, inclusive recreational activities and job training, as well as the guarantee of a decently paid job of his choosing; (e) guarantees of non-repetition, including the amendment of current legislation on exemption from criminal liability and the related special procedure with a view to harmonizing it with the Convention; a ban on denying the legal capacity of persons with disabilities facing trial until the National Code of Criminal Procedure enters into force; and the roll-out of training and awareness-raising campaigns on the rights of persons with disabilities aimed at the judicial authorities, the judiciary, public defenders and public prosecutors.

#### **State party’s observations on admissibility and the merits**

4.1 On 16 November 2015, the State party submitted its observations on the admissibility of the communication and requested that the admissibility of the communication be considered separately from the merits, in keeping with rule 70 (5) of the Committee’s rules of procedure.

4.2 The State party submits that the communication is inadmissible because the author has not exhausted domestic remedies despite having had full access to them. Furthermore, the reviews conducted by the courts did not establish that the author’s human rights had been violated. Although the author was subject to a special procedure for persons exempt from criminal liability, the procedure was not conducted differently because of his disability. On the contrary, he was provided with the necessary tools to make it easier for him to follow the proceedings, thereby affording him the same rights and legal capacity as any person involved in a judicial procedure.

4.3 The State party submits that the author did not seek the appropriate remedy to address his grievances insofar as he did not appeal the judgment of 5 December 2011. Direct *amparo* petitions can be filed only if all definitive remedies – an appeal in this case – applicable to first-instance decisions have been exhausted. The author attempted to file a direct *amparo* petition against the judgment of 5 December 2011, despite it being obviously inadmissible. Although the author, through his legal representative, was notified of the judgment of 5 December 2011, as ordered by the District *Amparo* Court, the author did not file the corresponding appeal. Therefore, on 5 August 2015, the *amparo* decision was held to have been enforced, given that the author’s grievances had been addressed. Lastly, the author did not file an objection against the decision of 5 August 2015 which held that the *amparo* decision had been enforced in accordance with the *Amparo* Act.

4.4 Accordingly, the State party requests the Committee to find the present communication inadmissible for non-exhaustion of domestic remedies and for being manifestly unfounded.

4.5 On 16 March 2016, the State party submitted additional information on admissibility and its observations on the merits. Concerning admissibility, the State party adds that the author did not exhaust domestic remedies with regard to the judge’s denial of his request to designate private lawyers of his own choosing. In response to this denial, the author had the opportunity to file an incidental motion, after which, in the event that the decision went against him, he could have filed an appeal, followed by an indirect *amparo* petition. The

State party adds that the author's mother has not exhausted available domestic remedies either.

4.6 Concerning the merits, the State party notes that the decision to apply the special procedure to the author was not taken on impulse by the competent authorities: the decision was based on medical certificates provided by the author's relatives, his medical history and medical reports produced by specialists in the field. All these steps were taken with a view to determining and putting in place the most appropriate measures to ensure the author enjoyed access to justice on an equal basis with others.

4.7 The State party emphasizes that the committal to an institution of persons with disabilities is designed to ensure that they have access to justice on an equal basis with others, including through procedural accommodations. In the present case, the reports submitted by the doctors and the author's medical history showed that he has an antisocial personality disorder and probable "slight mental retardation" and is, therefore, unfit to testify. The judge determined that the author was accountable to society for committing aggravated theft and ordered his committal to a facility where he would be provided with appropriate treatment for four years. The State party contends that committal to a psychiatric institution and the assignment of a public defender met the standards of the Convention and other international legal instruments.

4.8 The State party submits that the decision to apply the special procedure to the author was based on his ability to understand the unlawfulness of the act he had committed, which does not imply that any determination was made regarding his legal capacity. In addition, he was assigned a guardian, in this case the court-appointed defence lawyer, to assist him. This was done to facilitate the access to justice of a person who has legal capacity but has difficulty understanding the unlawfulness of the act committed by giving him the means to defend himself. The defence lawyer submitted evidence, arguments and motions on behalf of the author. On a number of occasions, he informed the author and his relatives of the status of the proceedings. Furthermore, the author sought various remedies through both his private lawyers and the court-appointed lawyer. Therefore, the State party is of the view that the special procedure was an appropriate tool for giving the author access to justice on an equal basis with others, and requests the Committee to find that the author's rights were not violated.

#### **Authors' comments on the State party's observations**

5.1 On 22 March 2016, the author submitted his comments on the State party's observations. He notes that the remedies that the State party considers appropriate are not effective insofar as the lack of recognition of his legal capacity prevented him from accessing justice on an equal basis with others.

5.2 Although under Mexican criminal law an appeal is the appropriate remedy for challenging the decision of a lower criminal court, this remedy is not effective for persons declared exempt from criminal liability since it hinders their access to remedies and, more broadly, to justice. The author was never notified personally of the decisions or informed of the available remedies. Therefore, it cannot be said that he decided not to file an appeal.

5.3 In addition, the author is of the view that an appeal does not establish whether or not there has been a violation of the rights under the Convention or remedy the infringements of judicial safeguards that persons with disabilities experience under the special procedure for persons exempt from criminal liability.

5.4 According to the author, the denial of the legal capacity of persons declared exempt from criminal liability contravenes the State party's obligation to guarantee equal conditions and non-discrimination. This type of discrimination is legally condoned, since the application of the special procedure is permitted under the Code of Criminal Procedure. The District *Amparo* Court, in ordering that the failure to notify the author of the judgment should be rectified, in its decision in the *amparo* proceedings, did so by ordering that he should be notified through his legal representative, not directly. When the notification was delivered, the author was in State custody and the notification was sent to his mother's home. Therefore, the judgment was not notified to him personally and he was unable to appeal it.



5.5 According to the author, this constitutes a violation of his right to be personally notified of the judgment and to have it explained to him. He is of the view that he did not file challenges incorrectly since, not having access to the appeal procedure, he remained without a remedy. The authorities did not rectify their mistakes and he did not have access to an effective remedy.

5.6 On 18 May 2016, the author submitted additional comments. Regarding the State party's argument that he should have exhausted all remedies in relation to the denial of his request to designate a defence lawyer of his choosing, the author states that he was not notified of this decision or provided with the necessary means of defence. He claims that his mother cannot be required to exhaust remedies in respect of that decision since the State party has an obligation to respect the author's legal capacity to act on his own behalf.

5.7 The author adds that the special procedure for persons exempt from liability amounts to a form of procedure for declaring a person legally incompetent, since it involves the imposition of a third party to act in the person's stead and "assume responsibility" for him or her. The "exempt from liability" concept implies subjecting a person to criminal proceedings without procedural safeguards and imposing security measures supposedly designed to protect society and the person concerned from the alleged danger he or she represents. The application of the special procedure is based solely on medical examinations. The moment a medical examination reveals that a person cannot testify, it is used as justification for the judge to exclude the person from his or her own trial.

5.8 In addition, the author believes that the imposition of security measures during criminal proceedings brought against persons declared exempt from criminal liability leads to persons with disabilities being deprived of their liberty for an indeterminate period. The imposition of security measures also limits the possibility of accessing early release as a way of reducing a sentence. The Criminal Code of the Federal District requires that once the period of treatment is over, the competent authority must release a person exempt from criminal liability into the care of his or her relatives; in the absence of relatives, the person is released into the care of the health authorities or a welfare institution, which then acts in accordance with the applicable laws.<sup>11</sup> Lastly, the author notes that his case illustrates how the right to access to justice and procedural safeguards and the right to liberty and personal safety are undermined extensively and systematically by the State party's failure to discharge its obligations under the Convention and by the social model of disability.

#### **Additional submissions by the parties**

6.1 On 27 May 2016, the State party repeated that the communication is inadmissible on grounds of non-exhaustion of domestic remedies. It submits that the decision to apply the special procedure for persons exempt from criminal liability to the author does not mean his legal capacity was revoked. For this to happen, interdiction proceedings must be initiated pursuant to article 904 of the Code of Civil Procedure, which was not done in the present case. The author had appropriate assistance from a court-appointed defence lawyer.

6.2 The State party claims that, on 23 July 2015, the Ninth Criminal Court notified the author's legal representative of the final judgment of 5 December 2011 at the address listed in the case file. In the absence of a response, an official notice was left at the address on four occasions, in keeping with articles 80 and 86 of the Code of Criminal Procedure of the Federal District. Armed with this notice, the author and his legal representatives could have appealed the judgment. However, they did not do so, and hence could not have exhausted domestic remedies.

6.3 On 16 August 2016, the author submitted his additional observations, repeating his arguments regarding the lack of recognition of his legal capacity and the failure to notify him personally.

6.4 In a submission dated 5 September 2016, the State party repeated its earlier arguments.

<sup>11</sup> Criminal Code of the Federal District, art. 66.

### **Third-party interventions**

7.1 On 13 June 2017, two lawyers, María Florencia Hegglin and Lucila Bernardini, and a doctor, Ezequiel Mercurio, submitted three interventions, with the author's written consent. On 15 June 2017, the working group on communications accepted the interventions pursuant to rule 72 (3) of the Committee's rules of procedure.

7.2 The first intervention<sup>12</sup> refers to the obligation of States parties to introduce measures to promote the rights of persons with disabilities and combat discrimination. This implies making the necessary and appropriate procedural accommodations, in all judicial proceedings, including at the investigation and other preliminary stages.

7.3 The second intervention<sup>13</sup> presents arguments that show how the special procedure for persons exempt from criminal liability infringes the rights of persons with disabilities. The exemption from liability is decided on the basis of a medical diagnosis. From that point on, the person is excluded from criminal proceedings and his or her fundamental rights are restricted: the person loses the status of rights-holder and becomes an object of guardianship on whose behalf others have the authority to act. In the present case, psychosocial disability was the only reason for imposing restrictions on rights and safeguards. Furthermore, the imposition of security measures based on the risk posed by a person infringes the Convention inasmuch as it is founded on a medical model in which psychosocial and intellectual disabilities are automatically grounds for permanent exemption from criminal liability. The person ceases to be a subject of rights and becomes an object of guardianship.

7.4 The third intervention<sup>14</sup> focuses on the fact that a security measure based on the risk posed by the author and motivated by a concern for public protection and defence is not in line with international standards on the treatment of persons with disabilities. The use of the security measure in the present case goes against the spirit of articles 9, 12, 14, 19 and 25 of the Convention since there were other, less restrictive measures available that were more respectful of a person's autonomy and dignity, such as outpatient hospital treatment and supervised treatment at home.

### **State party's comments on the third-party interventions**

8.1 On 18 August 2017, the State party submitted its comments on the third-party interventions. It reiterates that the special procedure for persons exempt from criminal liability does not exclude the persons concerned, since they are assigned a representative and are subject to the procedure precisely to ensure they are treated on an equal basis with anyone else suspected of committing an offence.

8.2 The State party submits that, as part of its international commitments, it has undertaken significant legislative reforms to improve the justice system. Under the new adversarial criminal justice system now in place, the section on the procedure for persons exempt from criminal liability has been amended.<sup>15</sup> Although the previous law did not infringe human rights, the reforms have introduced new requirements that enable the parties to have greater legal certainty about the mechanisms applied to determine such exemptions.

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<sup>12</sup> From Lucila Bernardini, a lawyer at the Catholic University of Argentina, public defender at the Chief Public Defender's Office of Argentina and board member of the Mexican Institute for Human Rights Research and Studies.

<sup>13</sup> From María Florencia Hegglin, a lawyer at the Faculty of Law of the University of Buenos Aires and official public defender at hearings before the criminal courts of Argentina.

<sup>14</sup> From Ezequiel Mercurio, a doctor specialized in forensic medicine and psychiatry, head of the Psychiatry Department of the Consultants and Experts Section of the Chief Public Defender's Office of Argentina, and associate professor at the University Institute of the Federal Police of Argentina.

<sup>15</sup> The State party reproduces title IX, on the procedure for persons exempt from criminal liability. It points out that, following the reform, reasonable accommodation must be made to ensure access to justice. It does not, however, explain how this changes the situation reported by the author.

## B. Committee's consideration of admissibility and the merits

### Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the case is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been and is not being examined under another procedure of international investigation or settlement.

9.3 As for the author's claims regarding the violation of article 19, read in conjunction with article 4, of the Convention (para. 3.7 above), the Committee notes that no specific information has been provided on the alleged violation of the author's right to live independently and be included in the community. Consequently, the Committee finds that this part of the complaint has not been sufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

9.4 The Committee notes the arguments of the State party regarding the failure to exhaust domestic remedies, according to which the author had access to all the remedies and legal challenges provided for under procedural law and at no point was his right to exercise them restricted. The State party contends that the author did not seek the appropriate remedy for his grievances: he had the opportunity to challenge the final judgment by filing an appeal but did not do so. According to the State party, the author had a second opportunity to appeal against his conviction when the District *Amparo* Court ordered that the author be notified of the conviction through his legal representative. However, the Committee notes the author's argument that the lack of recognition of his legal capacity impeded his access to justice on an equal basis with others in that he was excluded from the criminal proceedings and was denied the possibility of seeking remedies on his own behalf. The Committee also notes the author's claim that he cannot be said to have declined to apply for a remedy since he was not officially notified of the judgment or informed that it was open to appeal.

9.5 The Committee notes that, according to the information provided, the author was unable to participate directly in the proceedings and that, consequently, he did not have access to the available legal remedies. It also notes that all the notifications related to the proceedings, including notification of the judgment convicting the author of theft, were sent to his court-appointed defence lawyer. The author was therefore unable to appeal the judgment of the lower court because he was not informed about it in a timely manner. The Committee further notes that the author petitioned for *amparo*, requesting an exception to the principle of finality on the grounds that he had not had the possibility of filing an appeal since he had not been notified of the judgment. However, the court denied the request, stating that it was not competent to hear a petition for direct *amparo*, and referred the case for indirect *amparo* proceedings. The court designated to adjudicate the indirect *amparo* petition also declared that it was not competent to do so and, in order to avoid leaving the author without a remedy, ordered the Ninth Criminal Court to notify him, through his legal representative, of the conviction of 5 December 2011. The Committee is of the view that the failure to notify the author personally of the final judgment and the fact that it was impossible for him to participate directly in the various stages of the judicial proceedings against him constituted a barrier to access to the legal remedies available. Moreover, the author cannot be expected to file an appeal when the notification of the conviction was made to his legal representative on 23 July 2015, in other words nearly four years after the conviction was handed down. In this connection, the Committee recalls that, under article 2 (d) of the Optional Protocol, only remedies which provide a reasonable expectation of effective relief and are not unjustifiably prolonged must have been exhausted. In the light of the above and bearing in mind the limitations imposed on the author under the special procedure for persons exempt from criminal liability, the Committee is of the view that the author made sufficient efforts to bring his complaints before the national authorities. Accordingly, the communication is admissible under article 2 (d) of the Optional Protocol.

9.6 Consequently, and in the absence of any other obstacles to admissibility, the Committee finds the communication admissible under article 2 of the Optional Protocol as regards the author's claims of a violation of articles 5, 9, 12, 13 and 14, read in conjunction with article 4, of the Convention and proceeds to its consideration of the merits.

### **Consideration of the merits**

10.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure.

10.2 Regarding the claims of a violation of article 5, read in conjunction with article 4, of the Convention, the Committee notes that, according to the author, the special procedure for persons exempt from criminal liability discriminates against persons with disabilities and that its application restricts the rights of such persons when they are on trial. The Committee also notes the State party's claim that the application of the special procedure did not entail the author being treated differently because of his disability; and that, on the contrary, he was given the necessary tools to enable him to follow the proceedings and was afforded the same rights as any other person involved in judicial proceedings.

10.3 The Committee recalls that, under article 5 of the Convention, States parties must recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. In order to promote equality and eliminate discrimination, States parties must take all appropriate steps to ensure that reasonable accommodation is provided. The Committee also recalls that discrimination can result from the discriminatory effect of a rule or measure that is not intended to discriminate, but that disproportionately affects persons with disabilities.<sup>16</sup> In the present case, the special procedure for persons exempt from criminal liability, provided for in the Code of Criminal Procedure of the Federal District, establishes the rules governing proceedings against persons with psychosocial and intellectual disabilities. Consequently, the matter before the Committee is to determine whether the differential treatment under the special procedure applied to the author was discriminatory.

10.4 The Committee notes that, under the special procedure, the judicial authority must evaluate how a person exempt from criminal liability conducts and expresses him or herself, assign the person a defence lawyer and issue the order to apply the special procedure for persons permanently exempt from criminal liability. In order to evaluate the "degree of liability or insanity, the judge 'may take the measures he or she sees fit'". In the present case, the author was charged on 14 September 2011 with stealing a vehicle. In the course of the steps taken by both the public prosecutor's office and the criminal court, it was determined that it was apposite to apply the special procedure to the author on the basis of an assessment by an expert forensic doctor according to whom the author has a "antisocial personality disorder" and "possible slight retardation" and was, therefore, "unfit to testify". According to the information provided by the author, he was never given the opportunity to testify or to refute the statements of the police officers who arrested him. Nor was he permitted to designate his own defence lawyer as one was appointed for him by the judicial authority. Furthermore, he was not provided with support or reasonable accommodation to enable him to mount a substantive defence. The information provided also shows that the author never received a summons to the hearings conducted in the course of the proceedings. Owing to his psychosocial and intellectual disability, he was subject to a special procedure which prevented him from participating directly and seeking remedies, thereby undermining his right to due process. Although the Committee acknowledges that, in some cases, exceptions can be made to due process safeguards,<sup>17</sup> it observes that, in the present case, there is no reason whatsoever to justify the failure to comply with these safeguards. Moreover, the procedure did not guarantee that procedural accommodations would be provided for the author. Consequently, the Committee is of the view that the

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<sup>16</sup> *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.4; and *Noble v. Australia* (CRPD/C/16/D/7/2012), para. 8.4.

<sup>17</sup> European Court of Human Rights, *Meftah and others v. France*, judgment 32911/96 of 26 July 2002, para. 45.

application of the special procedure for persons exempt from criminal liability, as provided for in the Code of Criminal Procedure of the Federal District, led to discriminatory treatment of the author, in violation of article 5, read in conjunction with article 4, of the Convention.

10.5 As for the allegations related to article 9, read in conjunction with article 4, the Committee notes the author's claim that the State party failed to discharge its obligation to ensure the accessibility of information during the criminal proceedings, since no information on criminal legislation is available in an accessible format. The Committee also notes that the State party omitted to describe how it provided information on the author's trial in an accessible format. Under article 9 (1) and (2) (f) of the Convention, States parties must take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to information and must promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information. In the present case, the Committee notes that, owing to his intellectual and psychosocial disability, the author was not included in the proceedings and he did not have access to information on them. All the information on the judicial proceedings and procedure was conveyed to the court-appointed defence lawyer. The Committee further notes that the author's request to the District *Amparo* Court for a simplified version of the decisions was denied on the grounds that he "received appropriate assistance from the lawyers he had designated". Only one of the decisions handed down by the Collegiate Court was drafted in an accessible format. For the reasons explained previously, the Committee is of the view that the author's lack of participation in the proceedings and the refusal to draft a simplified version of the decisions in the *amparo* proceedings constitute a violation of article 9, read in conjunction with article 4, of the Convention.

10.6 The Committee notes the author's claims that, because he was considered exempt from criminal liability, his legal capacity to stand trial on an equal basis with others was denied. In this connection, it recalls that, under article 12 of the Convention, States parties are obliged to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. They are also obliged to provide access by persons with disabilities to the support they may require in exercising their legal capacity. According to the State party, the decision to apply the special procedure for persons exempt from criminal liability to the author was based on his ability to understand the unlawfulness of his acts and did not imply any determination about his legal capacity. The Committee is of the opinion that the author, by being declared "unfit to testify", was denied the possibility of exercising his legal capacity to plead not guilty, challenge the evidence against him, designate a defence lawyer of his choosing and challenge any decisions not in his favour. It is also of the opinion that, while States parties have some leeway to determine what procedural arrangements could enable persons with disabilities to exercise their legal capacity,<sup>18</sup> they must respect procedural safeguards and the person's rights. In the author's case, he was not given that opportunity or provided with the support or necessary accommodations to exercise his rights. The Committee recalls that, in keeping with its general comment No. 1 (2014) on equal recognition before the law, in order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals (para. 38). The Committee is, therefore, of the view that the situation before it constitutes a violation of article 12, read in conjunction with article 4, of the Convention.

10.7 Concerning the violation of article 13, read in conjunction with article 4, of the Convention, the Committee notes that, according to the author, he was excluded from the criminal proceedings brought against him. It also notes the State party's argument that the decision to apply the special procedure for persons exempt from criminal liability to the author was based on medical reports and was intended to ensure his access to justice on an equal basis with others. The Committee is of the opinion that this was not achieved since the information that it received does not suggest that the actions of the court-appointed lawyer enabled the author to effectively take part in the proceedings. It recalls that, under article 13 of the Convention, States parties must ensure effective access to justice for

<sup>18</sup> *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

persons with disabilities on an equal basis with others, including through the provision of procedural accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings. In the present case, the judicial authorities repeatedly denied the author the possibility of exercising his rights in that: (a) the author, from the outset of the criminal proceedings, did not have the opportunity to participate in the judicial proceedings and was not permitted to testify, refute evidence or attend the hearings; (b) he was not notified of the decisions taken; (c) the author's attempts to intervene in the proceedings, such as when he filed an appeal against the decision of the Ninth Criminal Court of 22 September 2011 and when he requested the dismissal of the court-appointed defence lawyer so that he could designate a private lawyer of his own choosing, were rejected by the judge; and (d) the application of the special procedure did not guarantee that procedural accommodations would be made to enable the author to access justice on an equal basis with others. Even in rectifying the failure to notify the author of the final judgment, the court ordered that the notification be carried out, once again, through his legal representative, thereby denying him the opportunity to actively participate in the proceedings. Therefore, the Committee is of the view that the State party violated article 13, read in conjunction with article 4, of the Convention.

10.8 As for the author's allegations relating to his detention, the Committee reaffirms that liberty and security of the person is one of the most precious rights to which everyone is entitled. All persons with disabilities, and especially persons with intellectual and psychosocial disabilities, are entitled to liberty pursuant to article 14 of the Convention.<sup>19</sup> In the present case, the Committee notes that a temporary security measure was imposed on the author from the outset of the proceedings and continued after he was convicted (security measure and committal for four years). Even though the judge who ruled on his criminal liability found that the risk posed by the author was "minimal", he ordered his committal to a psychosocial rehabilitation facility under the criminal justice system of the Federal District. In this connection, the Committee notes that, from the beginning, the author's committal was based solely on medical reports and the potential danger he posed to society.<sup>20</sup> The Committee recalls that article 14 (1) (b) of the Convention stipulates that the existence of a disability in no case justifies a deprivation of liberty. Similarly, under 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, committal on the basis of psychosocial or intellectual disability, whether real or perceived, is prohibited and States must take the necessary measures to prevent and provide compensation for involuntary committals and committals on grounds of disability. According to the information provided, the main argument used to justify the committal of the author was that he had a disability that required medical treatment. The Committee further notes that the request for early release submitted by the author and his mother was dismissed by the judge because it had not been determined how the treatment the author needed would be provided. Thus, the Committee notes that the author's disability became the chief reason for his deprivation of liberty, resulting in a violation of article 14 (1) (b) of the Convention.

10.9 The Committee recalls that, pursuant to article 4 of the Convention, States parties have the general obligation to take all necessary measures to ensure and promote the full realization of all human rights and fundamental freedoms of persons with disabilities. Thus, in the light of the arguments set forth in the preceding paragraphs, the Committee finds that the State party failed to discharge its obligations under articles 5, 9, 12, 13, 14 and 19, read in conjunction with article 4, of the Convention.

## **C. Conclusion and recommendations**

11. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5, 9, 12, 13 and 14, read in

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<sup>19</sup> Committee's guidelines on article 14 on the right to liberty and security of persons with disabilities, para. 3.

<sup>20</sup> Decision No. 218/11 issued by the Criminal Court of the Federal District on 5 December 2011.

conjunction with article 4, of the Convention. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning the author, the State party is under an obligation to:
  - (i) Provide him with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;
  - (ii) Make a public acknowledgement of the violation of the author's rights in accordance with the present Views and adopt any other appropriate measure of satisfaction;
  - (iii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.
- (b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations contained in its concluding observations (CRPD/C/MEX/CO/1, paras. 28 and 30) and requires the State party to:
  - (i) In close consultation with persons with disabilities and the organizations that represent them, make all necessary amendments to the criminal law of the Federal District and all equivalent or related federal and state laws with regard to the "exempt from liability" concept and the special procedure for persons exempt from criminal liability, with a view to bringing them into line with the principles of the Convention and ensuring respect for due process in cases involving persons with disabilities;
  - (ii) Review the application of security measures involving committal for the purposes of medical and psychiatric treatment and take the necessary steps to promote alternatives in line with the principles of the Convention;
  - (iii) Ensure that persons with intellectual and psychosocial disabilities are provided with appropriate support and reasonable accommodations to enable them to exercise their legal capacity before the courts;
  - (iv) Ensure that judges, judicial officials, public prosecutors and public servants working to facilitate the work of the judiciary are provided with appropriate and regular training on the scope of the Convention and its Optional Protocol.

12. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including any information on action taken in the light of the present Views and recommendations of the Committee.