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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 25/2014*, **

Communication submitted by:	R.I.
Alleged victim:	The author
State party:	Ecuador
Date of communication:	18 August 2014 (initial submission)
Document references:	Special Rapporteur rule 70 decision, transmitted to the State party on 15 December 2014 (not issued in document form)
Date of adoption of decision:	6 September 2019
Subject matter:	Amount of disability benefit in accordance with international standards applicable in the State party
Procedural issues:	Substantiation, competence of the Committee *ratione temporis*
Articles of the Convention:	2, 4 (2) and (4), 5 (1), 12 (5), 13 (1), 27 (1) (c) and 28 (1) and (2) (e)
Articles of the Optional Protocol:	1 and 2

1. The author of the communication is R.I., a national of Ecuador born in 1955. He claims to be the victim of a violation, by the State party, of his rights under articles 2, 4 (2) and (4), 5 (1), 12 (5), 13 (1), 27 (c) and 28 (1) and (2) (e) of the Convention. The Optional Protocol entered into force for the State party on 3 May 2008.

* 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; Danlami Umaru Basharu; Monthian Buntan; Imed Eddine Chaker; Gertrude Oforiwa Fefoame; Amalia Eva Gamio Ríos; Samuel Njuguna Kabue; Rosemary Kayess; Mi Yeon Kim; László Gábor Lovászy; Robert George Martin; Dmitry Rebrov; Jonas Ruskus; Markus Schefer; and Risnawati Utami.

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

The facts as submitted by the author

2.1 On 9 March 2001, while in the exercise of his functions as an employee of Pichincha Bank C.A., the author was involved in a traffic accident, which caused degenerative physical and neurological damage. In November 2005, he stopped working and, since he was a member of the Ecuadorian Social Security Institute, began to receive a temporary disability allowance as established under the General Regulations on Workplace Hazard Insurance.

2.2 Pursuant to decision No. 2008 RT-040 of 19 February 2008, the Directorate of General Workplace Hazard Insurance under the Ecuadorian Social Security Institute in Guayas Province granted the author a disability benefit on account of his total permanent incapacity for work (disability benefit) in keeping with article 32 of the General Regulations on Workplace Hazard Insurance, in the initial amount of US$ 750, retroactive to 1 December 2005, the day following the end of his employment.

2.3 The author filed administrative challenges and appeals on the grounds that there had been an error in the calculation of his benefit and that its payment should have been retroactive to the date of the traffic accident, i.e. to 9 March 2001. First, he challenged decision No. 2008 RT-040 before the Services and Dispute Board of El Oro Province. By decision No. 028-CPPCL of 30 April 2008, the Services and Dispute Board of Loja upheld decision No. 2008 RT-040 and dismissed the author's claims. The author then appealed decision No. 028-CPPCL before the Services and Dispute Board of the Ecuadorian Social Security Institute, which, in decision No. 08495 C.N.A. of 16 July 2008, rejected the appeal and upheld the first-instance decision.

2.4 Once he had exhausted these remedies, the author applied for a remedy of full administrative jurisdiction before the administrative courts, requesting that the decision be found illegal and that he receive $2,428.26, plus interest, in other words the amount of the benefit from the date of his workplace accident. In a ruling of 24 June 2010, District Administrative Court No. 2 of Guayaquil found decision No. 080195 C.N.A. of the National Appeals Board to be illegal and admitted the author's claims. In its ruling, the Court applied article 32 of the General Regulations on Workplace Hazard Insurance (decision No. 741), which sets the monthly benefit at 80 per cent of the average monthly wages or salary during the final year of contributions to the Ecuadorian Social Security Institute. The Court indicated that the author's average salary during his final year of contributions (January 2005 to December 2005) was $2,889.16 and that 80 per cent of this total amounted to $2,311.32. Accordingly, the Court ordered that the author be paid a lifelong monthly disability pension from 9 March 2001, the date of the workplace accident, in the amount of $2,311.32.

2.5 The Ecuadorian Social Security Institute appealed the ruling of District Administrative Court No. 2 of Guayaquil, claiming that the Court had incorrectly interpreted a number of rules, namely article 183 of the Codified Statute of the Ecuadorian Social Security Institute, article 32 of the General Regulations on Workplace Hazards Insurance and provisions 11, 12 and 14 of the transitional provisions of decision No. 100 C.D. of 21 February 2006.

2.6 In a judgment of 22 May 2012, the Administrative Chamber of the National Court of Justice overturned the ruling of District Administrative Court No. 2 of Guayaquil and upheld the impugned decision. The judgment notes that District Administrative Court No. 2 incorrectly interpreted decision No. 100 C.D. of 21 February 2006, which sets the floor and ceiling of monthly disability benefits. In addition, the payment ordered by District Administrative Court No. 2 was improper given that the author had continued to work and had received a temporary disability allowance from the Ecuadorian Social Security Institute on a monthly basis.

2.7 The author filed for a special protective remedy with the Constitutional Court, claiming that his constitutional right to legal certainty had been violated inasmuch as the judgment of the National Court of Justice was insufficiently reasoned and contained an

erroneous interpretation of the law whereby the interpretation of administrative decisions of the Ecuadorian Social Security Institute, including decision No. 100 C.D. of 21 February 2006, had precedence over laws of supra-constitutional rank, such as International Labour Organization (ILO) Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). The author also claimed that his right to equality had been violated given that in a similar case, No. 1394-RA of 19 February 2008, the Constitutional Court had granted constitutional protection and had recognized a violation of the right to an adequate standard of living, noting that the amount of the benefit in that case was insufficient to cover the costs associated with disability and household obligations.

2.8 In a judgment of 9 January 2014,[1] the Constitutional Court ruled that the author's constitutional rights had not been violated and dismissed his claims. The judgment stresses that the Constitutional Court is not an additional level in the administrative process and is not, therefore, competent to rule on the interpretation of administrative provisions governing the amount of the disability benefit granted to the author. The judgment further notes that the right to access to justice and thorough reasoning were not infringed since the author applied for the available administrative remedies and the National Court of Justice, in its appeal judgment, identified and resolved the legal issues in question and developed its reasoning on the basis of its interpretation of applicable law.

2.9 Given that the Constitutional Court's judgment has been notified, the author is of the view that he has exhausted all available domestic remedies.

2.10 The author asserts that the facts of the present communication took place after the entry into force of the Optional Protocol in the State party.

The complaint

3.1 The author claims that his rights under articles 2, 4 (2) and (4), 5 (1), 12 (5), 13 (1), 27 (1) (c) and 28 (1) and (2) (e) of the Convention were violated.

3.2 Regarding article 2, the author notes that he was discriminated against on grounds of disability in the decisions of the Ecuadorian Social Security Institute, the National Court of Justice and the Constitutional Court concerning the recognition of his right to a disability benefit and the amount thereof.

3.3 In relation to article 4 (2) and (4), the author notes that the State party disregarded its obligations to realize his economic, social and cultural rights and to implement laws enabling persons with disabilities to enjoy their rights. In particular, he notes that the State party, when determining the amount of his disability benefit, omitted to apply the domestic laws that better protect entitlements in the event of industrial accidents and occupational diseases, including ILO Convention No. 121, which the State party has ratified and incorporated into its domestic legislation, the Labour Code and the Regulations and Statute of the Ecuadorian Social Security Institute.[2]

3.4 Concerning article 5 (1), the author believes that the State party disregarded his right to equality inasmuch as, in case No. 1394-RA, which was "exactly the same" as his case, the Constitutional Court overturned decisions that reduced the retirement pension of another member of the Ecuadorian Social Security Institute, noting in its judgment that "the guarantee of legal certainty had been violated, thereby undermining a right established in a law of superior rank".[3]

3.5 As for article 12 (5), the author is of the opinion that the State party failed to safeguard his right not to be arbitrarily deprived of his assets. He explains that, prior to his workplace accident, his only asset was his ability to work, which was how he ensured his family's livelihood. Thus, the State party "arbitrarily" deprived him of protection by

[1] Judgment No. 005-14-SEP-CC, case No. 0937-12-EP.

[2] The author explains that the Labour Code of 2005 establishes a monthly disability pension of 66 per cent of monthly wages for workers not affiliated with the Ecuadorian Social Security Institute and of 80 per cent for affiliated workers.

[3] In the judgment in that case, the laws of superior rank that were breached were the Labour Code and ILO Convention No. 121.

disregarding his acquired right to workplace hazard insurance and by undermining the legal certainty established in that connection.

3.6 With regard to article 13 (1), the author submits that his right to access to justice on an equal basis with others was violated by the fact that the Constitutional Court came to different conclusions in his case and a similar case, No. 1394-RA. In the latter case, the ordinary courts had ruled against a member of the Ecuadorian Social Security Institute whose pension amount had been reduced through administrative decisions of the Institute. However, the Constitutional Court had ordered a review of these judicial decisions to ensure respect for the "worker's acquired rights as enshrined in a pre-existing law that has legal precedence over the unfavourable administrative decision". In that case, the Constitutional Court ruled that the pension granted by an administrative decision of the Institute did not uphold the member's rights and set the amount of the pension on the basis of a pre-existing law of superior rank.

3.7 The author submits that the National Court of Justice proceeded arbitrarily, without providing a reasoned judgment or taking into account the pre-eminence of more favourable international laws. He also submits that the Constitutional Court did not rule on his fundamental rights to equality and an adequate standard of living, which were infringed by the decisions of the ordinary courts. He claims that the judgment of the Constitutional Court resulted in unequal and discriminatory treatment, as it denied his application despite the Court's ruling in favour of the applicant in case No. 1394-RA and that the situation of the applicants, the subject matter and the legal argument were the same in both cases.

3.8 Concerning article 27 (1) (c), the author notes that by leaving him without protection during the disability calculation procedure, the Ecuadorian Social Security Institute failed to adhere to the standards set in ILO Convention No. 121 and infringed his labour rights as a worker with a disability.

3.9 Regarding article 28 (1), the author submits that his income prior to the accident enabled him to meet his family's financial obligations; however, the reduced benefit "had a drastically adverse effect on his own standard of living and that of his family".

3.10 In relation to article 28 (2) (e), the author notes that the reduction of his retirement pension to less than one third of the amount he was legally entitled to is a violation of the Convention and of ILO Convention No. 121 on benefits in the case of industrial accidents and occupational diseases and the mechanisms to oversee their application.

State party's observations on admissibility and merits

4.1 On 12 June 2015, the State party submitted its observations on the admissibility and merits of the communication. It begins by indicating that the Optional Protocol entered into force in the State party on 3 May 2008 and that, in accordance with article 2 (f) of the Optional Protocol, the communications procedure applies only to events having taken place from that date onward.

4.2 The State party confirms the information provided by the author regarding his disability, the recognition of his entitlement to the disability benefits and the administrative and judicial remedies that he has sought at the national level. In addition, it notes that the administrative decision allegedly violating the author's rights, namely decision No. 2008-RT-040 of the Ecuadorian Social Security Institute granting the disability benefit, was dated 19 February 2008, in other words prior to the entry into force of the Convention and the Optional Protocol for the State party, neither of which can be applied retroactively. Although the appeals against the administrative decision were lodged after the entry into force of the Convention, these procedures do not constitute violations of the author's rights under the Convention. Therefore, the State party is of the view that, pursuant to the principle of competence *ratione temporis* established in article 2 (f) of the Optional Protocol, the Committee should declare itself incompetent to examine the author's case.

4.3 The State party claims that the communication is ill-founded and provides insufficient evidence of the alleged violations of rights under the Convention. It recalls specifically the judgment of the Constitutional Court concerning the special protective remedy, in which the Court had found "no violation of the author's constitutional rights in

terms of the monthly disability benefit because, having been granted in accordance with the established legal framework, the benefit was legally valid even if it did not meet his economic needs".

4.4 The State party submits that the author applied for the administrative and judicial remedies available at the domestic level to challenge the administrative decision of the Ecuadorian Social Security Institute, and that his appeals were adjudicated in accordance with the principle of due process and the constitutional and legal framework in force. Although the lower level of the ordinary courts, specifically the District Administrative Court of Guayaquil, ruled in favour of the author, the decision was overturned on appeal by the National Court of Justice and the application for special protection against the appeal ruling was later dismissed. Accordingly, the State party submits that the communication should be found inadmissible because the Committee is not an appellate body competent to rule on the domestic application of the law by the authorities of the State party.

4.5 The State party recalls that it has a margin of discretion when interpreting human rights. It submits that the lifelong disability benefit that was granted to the author is in line with the relevant provisions of the Labour Code and the internal regulations of the Ecuadorian Social Security Institute, which are in keeping with ILO Convention No. 121. In addition, it notes that the author's monthly disability benefit is higher than originally calculated and stands at an amount that considerably exceeds the basic household food basket. Consequently, the State party is of the view that the author's communication is *ultra petita* inasmuch as he is seeking to obtain an amount substantially greater than that to which he is entitled by law.

4.6 Regarding the author's claims under article 4 (2) of the Convention, the State party is of the opinion that it has not violated its general obligations under this provision since, pursuant to constitutional laws, it has implemented legislation and public policies identifying persons with disabilities as a priority group. The State party cites various rights of persons with disabilities enshrined in the domestic legal order, including the right to specialized assistance, employment, comprehensive rehabilitation, adequate housing, education, social inclusion and participation in political, social and cultural affairs. The Disability Act guarantees the full enjoyment of the rights of persons with disabilities enshrined in the Constitution, treaties and international instruments.

4.7 The State party claims that it has not violated the author's right to equality and non-discrimination under article 5 (1) of the Convention since the author's situation and that of the applicant in the cited case (decision No. 1394-2006-RA of 19 February 2008) involved different demands and bore no subjective or objective similarity. The author's petition before the Constitutional Court related to the type of retirement pension granted in the event of a workplace accident, while decision No. 1394-2006-RA dealt with the reassessment of a monthly retirement pension. Furthermore, in the other case, a constitutional remedy of *amparo* was being sought in relation to an administrative decision that had never been challenged, whereas the author was seeking a special protection remedy against an appeal judgment upholding the administrative decision that he had challenged before the courts.

4.8 The State party is of the view that there is insufficient evidence of how it violated the author's rights under article 12 (5) of the Convention. The Constitution recognizes the right to non-discrimination on grounds of disability (art. 11 (2)) as well as the obligation to design special programmes to support persons with severe or profound disabilities (art. 48 (5)). The State party considers that its legislation guarantees persons with disabilities the full enjoyment of their legal capacity, except in the event of court-ordered restrictions such as the exemption from liability.

4.9 Concerning the author's claims under article 13 (1) of the Convention, the State party submits that there is no evidence of any violation whatsoever in the present case. The author received support from the National Council for Persons with Disabilities, through the Office of the Advocate for Persons with Disabilities, which ensures that due process is respected and that persons with disabilities receive effective, impartial and prompt assistance.

4.10 The State party is of the opinion that the author's claims under article 27 (1) (c) of the Convention are ill-founded and should be dismissed. It recalls various legislative and public policy measures recognizing the right to work and associated guarantees for persons with disabilities. It refers to article 4 (5) of the Constitution on the right to work under equal conditions and to the compulsory 4 per cent quota for the permanent employment of persons with disabilities established under article 42 (33) of the Labour Code.

4.11 As for the author's claims about his rights under article 28 (2) (e), the State party submits that the approval procedure for the disability benefit was found to be valid and in line with domestic law by the national authorities. The approval of retirement for reason of total permanent incapacity for work is subject to eligibility criteria, in particular having made a minimum of 60 monthly contributions (five years), and to an assessment by the disability determination board. The author was granted a disability benefit and there is no evidence of any breach of his right to an adequate standard of living and to social protection.

4.12 In the light of the foregoing, the State party requests the Committee to find the communication inadmissible under article 2 (e) and (f) of the Optional Protocol on the grounds that the Committee lacks temporal jurisdiction, the facts have not been shown to constitute violations of the Convention and the Committee cannot act as an appellate body.

Author's comments on the State party's submission

5.1 On 4 August 2015, the author submitted his comments on the State party's submission.

5.2 The author rejects the State party's characterization of the Committee's temporal mandate. He refers to article 2 (h) of the Optional Protocol on facts that occurred prior to the entry into force of the Protocol but continue after this date. He also refers to ongoing violations of international obligations, in other words violations that continue as long as their effects persist, and maintains that the State party is in breach of its international obligations. He is of the view, therefore, that his case falls under the exception provided for in the Optional Protocol with regard to ongoing facts and violations of international obligations.

5.3 The author is of the view that the administrative decisions concerning his disability resulting from a workplace accident and the judicial process disregard constitutional and international principles and obligations of a protective nature that are designed to better uphold the principles of legal certainty and due process. He submits that, as part of the reassessment of his disability benefit, the Ecuadorian Social Security Institute calculated two amounts: the first using the criteria set in ILO Convention No. 121 and the second, which was lower, on the basis of decision No. 100 C.D. of the Institute's Board. The application of decision No. 100 C.D. resulted in a drastic reduction of his benefit that undermined his and his family's standard of living.

5.4 Concerning the State party's argument that the Committee cannot act as an appellate body, the author is of the opinion that the Committee was established pursuant to an international treaty that is binding on Ecuador. At the national level, he has filed numerous petitions in order to have the relevant international laws applied to the calculation of his benefit, but the authorities did not take these into account, applying instead a decision of lower legislative rank and reducing his benefit.

5.5 The author considers that the State party's margin of discretion with regard to his entitlement to a disability benefit breaches its obligations and commitments under international labour law. He recalls various reports of the ILO Committee of Experts on the Application of Conventions and Recommendations that note the failure of Ecuador to meet its obligations under article 19 of ILO Convention No. 121 with regard to monetary benefits in cases, like his, of total incapacity for work.

5.6 The author reiterates that the administrative decision granting him his disability benefit does not meet the standards under the Constitution or ILO Convention No. 121 and is, therefore, illegitimate and unlawful.

5.7 Regarding the legal assistance mentioned by the State party, the author notes that he was provided with legal advice and representation by the National Council for Persons with

Disabilities but only in connection with another labour dispute he initiated against his former employer.[4] In response to his request for assistance in the procedure relating to his disability benefit, the National Council informed him verbally that its remit had changed following the adoption of the Disability Act and that, since his application was against another State entity, it could not accede to his request.

Additional observations by the State party

6.1 On 16 October 2015, the State party submitted additional observations on the author's comments, repeating its view that the Committee's temporal jurisdiction applies to events that took place from 3 May 2008. The State party is of the opinion that the facts related in the present communication do not constitute an ongoing violation since the author is receiving a disability benefit of $1,046, which is transferred into his personal bank account monthly.

6.2 The State party reiterates that the facts as presented by the author do not amount to a human rights violation. It indicates that the matter of the amount of his benefit is a financial issue that has been dealt with by the domestic courts, which found his petition inadmissible. The State party further submits that, in his petition, the author "did not claim an omission on the part of the State with regard to its failure to provide him with the benefits to which he was legally entitled; therefore, access to social security benefits was not hindered".[5]

6.3 Regarding the decisions of the national courts, the State party stresses that the author has applied for the available domestic remedies before the labour court and the constitutional court. It is of the view that the author's goal is to have the decisions and findings of the national courts concerning his financial claims overturned, even though the Committee is not an appellate body.

6.4 The State party submits that the law applied to the calculation of the author's benefit is in line with the Constitution, the Labour Code and international laws, including ILO Convention No. 121, and emphasizes that the Committee's jurisdiction is limited to monitoring the implementation and observance of the Convention on the Rights of Persons with Disabilities, not of any other laws.

6.5 Concerning the alleged violations of articles 4 (2), 5 (1) and 12 (5), the State party repeats the information regarding the legislative and policy measures adopted in line with its international obligations. In addition, it submits that persons with disabilities in Ecuador have a right to take part in administrative, judicial and constitutional procedures in keeping with article 13 (1) of the Convention. The author was able to take part in the judicial procedures, so there cannot be said to have been any violation of his rights in this regard.

6.6 The State party is of the view that the decision of the administrative authorities in the procedure to grant the author a disability benefit is in line with current legislation. It submits that the amount of the disability benefit has gradually increased by 40 per cent. Therefore, the author may disagree with the calculation, but his rights under article 28 of the Convention have not been infringed.

6.7 The State party reiterates its request to find the communication inadmissible on the grounds that there is a lack of jurisdiction *ratione temporis*, the facts have not been shown to constitute violations of the State party's obligations under the Convention and the Committee cannot act as an appellate body. Should the Committee consider itself competent to examine the merits, the State party is of the view that the facts do not support its having violated its obligations.

[4] The National Council for Persons with Disabilities provided the author with legal assistance in connection with case No. 0635-09-EP relating to his 2009 application to the Constitutional Court for special protection. His application for special protection against the decisions on his disability benefit is contained in the file for case No. 0937-12-EP of 2012.

[5] Submission of the Counsel General's Office of 16 October 2015, p. 3.

Additional comments by the author

7.1 On 2 May 2016, the author reiterated that the State party breached the Constitution, which establishes the precedence of fundamental rights set forth in the Constitution and international conventions ratified by the State party.

7.2 The author is of the view that the decisions of the national courts constituted a denial of justice insofar as they failed to uphold the principle of legal certainty, the constitutional framework or relevant international law with regard to the calculation of his benefit. Therefore, his communication is not intended to treat the Committee as an appellate body but to seek the effective protection of rights violated by the State party.

7.3 The author repeats his initial claims regarding the articles of the Convention he considers to have been infringed.

Additional information from the parties

8.1 On 14 July 2016, the State party submitted additional observations on the author's comments. It considers that the author has not provided any new information and clarifies the Committee's temporal and material jurisdiction.

8.2 With regard to the Committee's jurisdiction *ratione temporis*, the State party submits that, in the light of principles of international law, in particular article 28 of the Vienna Convention on the Law of Treaties, the Convention and the Optional Protocol cannot be applied retroactively. Moreover, the State party became bound by the Convention and the Optional Protocol only after they entered into force, in other words from 3 May 2008. However, the decision the author claims violated his rights was adopted on 19 February 2008. The alleged violation of the author's rights stemmed from a one-time event, not from ongoing actions of the State party.

8.3 The State party notes that the Committee's material jurisdiction is restricted to violations of the provisions of the Convention and that the exposition of alleged violations of ILO Convention No. 121 should be disregarded by the Committee.

9. On 18 July 2016, 5 November 2016 and 13 February 2017, the author submitted additional information. He repeats his assertions regarding the rights violations and the impact on his standard of living caused as a result of how the authorities applied the law at the time his benefit was calculated. He notes that his right to due process was breached by the State party during the domestic judicial procedure in connection with his challenges of the disability benefit.

10.1 On 26 October 2016 and 5 January 2017, the State party reiterated its position regarding the author's initial claims, noting that there are no new facts requiring comment.

10.2 The State party requests the Committee to find the communication inadmissible under articles 1 and 2 (e) and (f) of the Optional Protocol and rule 65 of its rules of procedure.

B. Committee's consideration of admissibility and the merits

Issues and proceedings before the Committee

Consideration of admissibility

11.1 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 communication is admissible under the Optional Protocol.

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

11.3 The Committee takes note of the information provided by the author, according to which he has exhausted all available domestic remedies. The Committee also notes that the State party has not made any objection in this regard. Accordingly, the Committee concludes that article 2 (c) of the Optional Protocol does not preclude it from examining the author's communication.

11.4 The Committee takes note of the State party's submission that the decision relating to his "disability benefit on account of his total permanent incapacity for work" was issued on 19 February 2008, prior to the entry into force of the Convention and the Optional Protocol and that, therefore, claims relating to it should be considered inadmissible under article 2 (f) of the Optional Protocol. The Committee takes note, however, of the author's argument that, although the administrative act that he considers to be a violation of his rights under the Convention took place before the entry into force of the Convention and the Optional Protocol, it falls within the competence of the Committee, as it has resulted in an ongoing violation of his rights.

11.5 The Committee recalls that under article 2 (f) of the Optional Protocol, the Committee considers a communication inadmissible when "the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned unless those facts continued after that date". The Committee also recalls that an ongoing violation is to be interpreted as a reaffirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations.[6]

11.6 In the present case, the Covenant and the Optional Protocol entered into force for the State party on 3 May 2008. The Committee notes that the Ecuadorian Social Security Institute recognized the author's right to a disability benefit and the calculation of the amount thereof in decision No. 2008-RT-040 of 19 February 2008, which predates the entry into force of the Convention and the Optional Protocol.

11.7 However, the Committee also notes the information provided by the author on the judicial and administrative proceedings and decisions that took place in response to his requests for modification of the disability benefit subsequent to the entry into force of the Convention and the Optional Protocol for the State party.[7] In this regard, the Committee notes that the Ecuadorian Social Security Institute, the District Administrative Court No. 2 of Guayaquil, the Administrative Chamber of the National Court of Justice and the Constitutional Court issued decisions on 16 July 2008, 24 June 2010, 22 May 2012 and 9 January 2014, all relating to the author's appeals against the administrative decision concerning his disability benefit.

11.8 The Committee also notes that the appeal to the Services and Dispute Board of the Ecuadorian Social Security Institute, the remedy of full administrative jurisdiction, and the special protection remedy all provided opportunities for the judicial and administrative authorities to examine the author's substantive points concerning the alleged violation of his rights to equality, an adequate standard of living and social protection, and to redress such violation if necessary.[8] Indeed, these authorities ruled on the dispute associated with the author's right to a disability benefit and the amount thereof, as established by the decision of 19 February 2008, and not only on its formal validity. Consequently, those authorities' decisions are considered as part of the facts that fall within the competence of the Committee, insofar as they are the result of proceedings that are directly related to the administrative act that gave rise to the alleged violation of the author's rights and they reaffirmed that act subsequent to the entry into force of the Convention and the Optional Protocol for the State party. The Committee therefore concludes that it is competent *ratione temporis* to consider the present communication.

11.9 The Committee notes the State party's submission that the author's claims should be found inadmissible under article 2 (e) of the Optional Protocol, as it is ill-founded and not sufficiently substantiated.

[6] *Noble v. Australia* (CRPD/C/16/D/7/2012), para 7.4; *Könye v. Hungary* (CCPR/C/50/D/520/1992), para. 6.4.

[7] *Bacher v. Austria* (CRPD/C/19/D/26/2014), para. 8.5.

[8] *Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para. 9.5.

11.10 As regards the author's claims under article 2 and article 4 (2) and (4) of the Convention, the Committee recalls that, in view of their general character, these articles do not in principle give rise to free-standing claims, and can be invoked only in conjunction with other substantive rights guaranteed under the Convention.[9] The Committee thus finds that the author's claims under article 2 and article 4 (2) and (4), read alone, are inadmissible under article 2 (e) of the Optional Protocol.

11.11 As regards the author's claims concerning his right to equality and non-discrimination under article 5 (1) of the Convention, the Committee recalls the author's submission that the ruling of the Constitutional Court against the author failed to follow precedents involving former members of the Ecuadorian Social Security Institute who had claimed social benefits in circumstances equivalent to his own, and who were granted the requested constitutional protection of their rights (para. 3.6 above). The Committee notes that the State party denies this allegation, submitting that the judicial authorities ruled differently in two separate cases, in which the facts were not identical (para. 4.7 above): the granting of old-age pensions in case No. 1394-2006-RA and the assessment of the amount of and regulations applicable to the disability pension in his own case (Judgment No. 005-14-SEP-CC).

11.12 With regard to the author's claim that his right to access to justice on an equal basis with others, under article 13 of the Convention, was violated, the Committee notes the information provided by the author, according to which the National Court of Justice and the Constitutional Court allegedly denied his right to access to justice in that they failed to issue thoroughly reasoned judgments, to provide legal assistance and to remove obstacles to access to judicial bodies, given the distance between his place of residence and the location of the courts. The Committee notes the State party's submission that the judicial authorities followed the procedures laid down by domestic law and that the author obtained legal advice in the judicial proceedings. The Committee also notes the information provided by the author, according to which the National Council for Persons with Disabilities provided legal assistance in connection with separate proceedings involving his former employer, and not in the context of the judicial proceedings concerning the disability benefit (para. 5.7 above). The Committee notes that no further information was provided with regard to possible violations of the author's right to access to justice, such as the denial of procedural accommodations that were allegedly requested and denied by judicial bodies. Consequently, the Committee finds that the author's complaint under article 13 (1) has not been sufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

11.13 With regard to the author's claims concerning his right to equal recognition as a person before the law under article 12 (5) of the Convention, the Committee notes the author's statement that decisions relating to his disability benefit disregarded his acquired right, as a worker, to access such a benefit and arbitrarily deprived him of the benefit that was necessary to meet his financial needs and which he considers to be his sole asset. The Committee also notes the State party's submission that there is no evidence of the alleged violation of this right since the legal capacity of persons with disabilities is recognized under domestic law, except in cases of exemption from liability. The Committee notes that no information was provided on any limitation placed on the author's right to equal recognition before the law, in particular his legal capacity, which might have had an impact on the recognition of the author's right to a disability benefit or which might have arbitrarily deprived him of such a benefit. Consequently, the Committee finds that the author's complaint under article 12 (5) has not been sufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

11.14 With regard to the violation of the author's rights under article 27 of the Convention (Work and employment), the Committee notes the author's submission that the proceedings associated with the disability benefit violated his enjoyment of labour and trade union rights on an equal basis with others, because ILO Convention No. 121 establishes a minimum amount for workers' disability benefits. The Committee notes the State party's statements

[9] *Lockrey v. Australia* (CRPD/C/15/D/13/2013), para. 7.5; *H.M. v. Sweden* (CRPD/C/7/D/3/2011), para. 7.3, and *Gröninger v. Germany* (CRPD/C/D/2/2010), para. 6.2.

regarding the legislative and public policy that affords persons with disabilities the right to work and related guarantees (para. 4.10 above). The Committee considers that there is no information about the author's current employment status that would enable it to find any violations in connection with such status. Consequently, the Committee finds that the author's complaint under article 27 (1) (c) has not been sufficiently substantiated and declares it inadmissible under article 2 (e) of the Optional Protocol.

11.15 With regard to the author's allegations concerning his right to an adequate standard of living and to the social protection described in article 28 (2) (e) of the Convention, the Committee notes the author's claims, according to which the disability benefit does not afford him an adequate standard of living that meets the standards established by the Convention, in particular, equal access by persons with disabilities to retirement benefits and programmes. The Committee also notes the author's statement that the reduced disability benefit has drastically affected his living conditions and those of his family, since the benefit is their sole source of income and livelihood. The Committee notes the State party's submission that it applied the relevant legislation in determining the amount of social disability benefits to be paid, and the information provided on the payments made to the author since the date he was granted a disability benefit and the annual increases in the monthly amount paid, which take into account the cost of living in the State party. The Committee considers that the author has not provided sufficient information on how the amount of his disability benefit affects him, on a practical level, or makes it impossible for him to support himself and any persons under his charge. In particular, the Committee considers that no specific information has been provided with regard to a possible infringement of the author's right to an adequate standard of living. The Committee also notes that no evidence was provided for determining whether or not the author suffered discrimination on grounds of disability, as currently defined in article 2 of the Convention, in the proceedings and decisions concerning his disability benefit.

11.16 The Committee also notes the author's submissions regarding the application of rules that were less favourable to his rights as recognized in the Convention, in particular decision No. 100 C.D. of 21 February 2006, which was allegedly applied retroactively, to the detriment of his acquired rights to a disability benefit, and which was set at $2,311.32 per month by decision No. 741 (General Regulations on Workplace Hazard Insurance) (para. 2.4 above). The Committee notes, on the basis of the information provided by the author, that decision No. 100 C.D. of 21 February 2006 established a transitional scheme for retroactively approving and paying benefits of applicants; it also established a ceiling of $750 per month for benefits granted under that scheme, which was lower than under previous legislation.

11.17 For the purpose of admissibility, the Committee recalls that it is possible to examine the findings of fact or the application of domestic legislation only where it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice[10] and constituted a violation of a right under the Convention.[11] In the case under examination, the Committee considers that the author's claims relate to the interpretation and application of domestic law and that there is no information or evidence to conclude that the application of the regulations in force in the determination of the author's disability benefit was arbitrary or constituted a denial of justice. The Committee therefore considers these claims to be inadmissible under article 2 (e) of the Optional Protocol.

[10] *L.M.L. v. United Kingdom* (CRPD/C/17/D/27/2015), para. 6.3.

[11] *Y.B. and N.S. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4.

C. Conclusion

12. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 (e) of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author of the communication.