



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Follow-up progress report on individual communications*

A. Introduction

1. The present report was prepared pursuant to article 5 of the Optional Protocol to the Convention, which states that the Committee will hold closed meetings when examining communications under the Optional Protocol and, after examining a communication, will forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner. The report is also prepared in line with rule 75, paragraph 7, of the rules of procedure of the Committee, which stipulates that the Special Rapporteur or working group will regularly report to the Committee on follow-up activities, to ascertain the measures to be taken by States parties to give effect to the Committee's Views.

2. The present report sets out the information received by the Special Rapporteur for follow-up on Views between the twenty-second and twenty-third sessions pursuant to the Committee's rules of procedure, and her recommendations to the Committee. The assessment criteria were as follows:

Assessment criteria

Compliance

A Measures taken are largely satisfactory

Partial compliance

B Substantive measure(s) taken, but additional information and/or action is required

Non-compliance

C Reply received but measures taken do not implement the Views/recommendations

No reply

D No reply to all or parts of recommendations following reminder(s)

B. Communications

1. *Makarov v. Lithuania* (CRPD/C/18/D/30/2015)

Views adopted:

18 August 2017

* Adopted by the Committee at its twenty-third session (17 August–4 September 2020).



1. *Makarov v. Lithuania* (CRPD/C/18/D/30/2015)

First reply from the State party: Received on 12 February 2018 (see CRPD/C/21/3).
Author's comments (first and second sets): Received on 18 March 2018 (see CRPD/C/21/3).
Decision adopted at the twenty-first session: "B" assessment: follow-up ongoing.

Action taken

The Special Rapporteur sent a follow-up letter on 14 June 2019, with a deadline for response of 13 August 2019. The State party was requested to indicate to the Committee under which national procedure the author could be compensated. It was also requested to provide information on the measures taken, including legislative amendments, to ensure the regular provision of free legal assistance to persons with disabilities and the monitoring of provision of reasonable accommodation for persons with disabilities to ensure their access to justice on an equal basis with others.

Second reply from the State party: Received on 20 August 2019.

The State party recalled its comment in its first reply, of 12 February 2018 (see CRPD/C/21/3), that the Ministry of Justice had, on 21 December 2017, requested the author to submit all relevant information to determine the amount of damages incurred. In his answer to the request, the author had stated that the compensation for damages should be determined by law, and that he had filed a claim with regard to his right to compensation for damages incurred. The State party noted that that civil case was currently pending on appeal in Vilnius Regional Court. Given the circumstances and in accordance with national legislation regarding compensation for damages resulting from unlawful action of the State, the Ministry of Justice would assess the author's request for damages after Vilnius Regional Court had rendered a decision.

The State party drew attention to particular acts under the national legislation regarding State-guaranteed legal aid for persons with disabilities, according to which legal aid might be available for "persons with severe disability, or persons declared incapable of work, or persons who have reached the age of retirement and for whom the level of special needs has been determined", as well as for guardians of such persons.

The State party referred to the Law on Equal Opportunities, which prohibited direct or indirect discrimination, and noted that the definition of discrimination covered, inter alia, refusal to provide reasonable accommodation for persons with disabilities. The Law on the Social Integration of Disabled Persons had been amended after the State party's ratification of the Convention, incorporating the definition of reasonable accommodation provided for under article 2 of the Convention. Additionally, all persons, including persons with disabilities, had the right to receive social services according to their needs.

Author's comments (third set): Received on 9 November 2019.

The author claimed that the follow-up response of the State party is formalistic. He recalls that on 18 September 2017, he had filed a claim for material and moral damages with Vilnius District Court. On 29 December 2017, he received a proposal from the Ministry of Justice that the matter of compensation should be resolved by means of an out-of-court settlement. The author argued that, in accordance with the provisions of the law on compensation for damage caused by the illegal action of State institutions, it was impossible for him to be provided with any compensation in the course of out-of-court settlement proceedings unless the Committee itself complemented its recommendation in its Views by stipulating the amount of compensation to be awarded.

The author notes that, on the basis of the Committee's findings in its Views, he had also filed a claim for reconsideration of the criminal case with the Supreme Court on 15 February 2018. On 23 April 2018, the Supreme Court ruled that the Views of the Committee were not to be regarded as a basis for reconsidering a criminal case. On 22 February 2018, the author had filed a claim for damages before Vilnius District Court. His complaint had been rejected on 13 February 2019. The author had appealed the decision before Vilnius Regional Court, where it was currently pending.

The author argued that, owing to the cumbersome procedures established by law, persons with disabilities, and especially those who did not have a legal guardian, were generally unable to benefit from free legal assistance in the State party, even though the right to free legal aid was ensured de jure by the Law on

1. *Makarov v. Lithuania* (CRPD/C/18/D/30/2015)

State-guaranteed Legal Aid. The author challenged the State party's statement that the Law on Equal Opportunities prohibited all discrimination against persons with disabilities, and he argued that the Law on the Social Integration of Disabled Persons was irrelevant to the need to ensure the right of access to justice and equality before a court. The State party had failed to implement the Committee's recommendation, by failing to reimburse the author for the legal costs that he and his wife had incurred throughout the legal proceedings, failing to provide him with access to the minutes of the court hearings, and failing to amend its legislation concerning the procedural rights of persons with disabilities.

Recommendation of the Special Rapporteur

"B" assessment: follow-up ongoing. The Special Rapporteur recommends that a follow-up letter be sent requesting the State party to provide further information to the Committee regarding the domestic proceedings on the author's right to compensation, and regarding the monitoring of provision of reasonable accommodation for persons with disabilities to ensure their access to justice on an equal basis with others, in the light of the Committee's recommendations.

2. *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015)

Views adopted: 6 September 2019

First reply from the State party: Due on 25 March 2020. Received on 24 March 2020.

The State party expressed its commitment to implementing the Committee's Views. It recognized that the Committee's general recommendations were long-term in character and that efforts were required to harmonize the national legislation with the content of the Convention.

The State party informed the Committee that the Ministry of the Interior would work with officials from the High Court of Justice in Mexico City, the Attorney General in Mexico City and the Executive Commission for Victim Support to formulate a proposal in order to provide the author with an effective and comprehensive remedy.

The State party, in coordination with the author and his counsel, would formulate a proposal to publicly acknowledge the violations of his rights, in accordance with the Committee's Views. The aim would be for that measure to be both restorative and emblematic. The acknowledgement would be made at an event that could be either public or private, involving various government agencies in Mexico City. It would be widely broadcast over various media outlets, such as radio, television and the Internet and in print.

The State party had organized a meeting of officials from various organizations to compose an executive version of the Committee's Views to be approved for publication on various government sources, similar to a daily, nationally-circulated newspaper. The State party planned to create accessible versions of the Committee's Views for nationwide distribution, and would ensure that the Views were available in Braille, plain-language, video with audio, subtitled and Mexican sign language formats. In addition, they would be translated into two indigenous languages.

The State party noted that the judiciary in Mexico City had authorized the creation of a programme focused on issues of gender and human rights in 2019. The programme included various online courses, in-person courses, workshops and forums focusing on equality and human rights of persons with disabilities. That training provided public servants with an understanding of theoretical practices that guaranteed access to justice for underrepresented groups and recognized their human rights.

The State party also highlighted various measures – such as the creation of courses, workshops and a booklet – taken by the Attorney General in Mexico City in relation to the rights of persons with disabilities. The Attorney General's office had also collaborated with the Institute of Persons with Disabilities of Mexico City in creating courses and workshops with a focus on issues concerning persons with disabilities.

The State party informed the Committee that it had come to an agreement with the author's counsel to work together to create a proposal to implement the Committee's Views. Once the State party had

2. *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015)

overcome the health situation related to the coronavirus disease (COVID-19) pandemic, it would be able to conduct the first meeting with the author and his counsel to address the Committee's Views.

Action taken

On 25 March 2020, an acknowledgement of the follow-up information was sent to the State party, and the State party's follow-up information was transmitted to the author for comments, with a deadline for response of 27 July 2020.

Author's comments:

Received on 14 August 2020.

The author submitted that the State party had failed so far to implement the Committee's Views, despite the fact that he had had three meetings with State party representatives to address the issue of the outstanding reparation measures.

The author submitted that the State party had not fulfilled its obligation to provide the author with comprehensive and effective reparation according to his needs, including the reimbursement of legal costs incurred during the criminal proceedings, together with compensation. While the State party had indicated that it was in the process of implementing the recommendation, the document submitted as evidence – the minutes of a meeting of relevant authorities – demonstrated that it was far from doing so. The author pointed out that only the organization Documenta was supporting him in his endeavours to achieve reparation. There had been no approaches or direct communication of any kind by the representatives of the State party with respect to the author in that regard, which was regrettable.

The author submitted that the State party had not fulfilled its obligation to make a public acknowledgement of its responsibility, as demonstrated in the State party's reply, which did not refer to any specific action taken. The same applied to implementation of the recommendation for the State party to publish and circulate the Committee's Views.

The author noted that, as indicated in the State party's reply, the recommendation for the State party to make the necessary amendments to the criminal legislation with a view to guaranteeing its conformity with the principles of the Convention had not been fulfilled to date. The State party had provided no information to suggest that the obligation was in the process of being fulfilled. On the other hand, the author recognized the efforts made by the High Court of Justice in Mexico City to make adjustments to the procedure through a facilitators programme, which had been designed as a good practice to eliminate the barriers that people with disabilities faced in the justice system and which could be replicated in other states in Mexico and at the federal level.

Concerning the recommendation to ensure that judges, judicial officials, public prosecutors and public servants working to facilitate the work of the judiciary were provided with training on the Convention and its Optional Protocol, the author also recognized the efforts that the High Court of Justice in Mexico City had been making for approximately four years to provide training to its personnel on the human rights of persons with disabilities. However, the author claimed that, although that training constituted a valuable effort, it was taken mostly by administrative personnel who had little impact on the transformation of judicial practices in favour of persons with disabilities, and only on a few occasions by judges. The author considered that the training should also be conducted for personnel from public prosecutors' offices at both the local and the federal levels.

The author claimed that the State party had not implemented the recommendations that it should review the application of security measures involving committal for the purposes of medical and psychiatric treatment and ensure that persons with intellectual and psychosocial disabilities were provided with appropriate support and reasonable accommodation to enable them to exercise their legal capacity before the courts. The author argued that security measures continued to be the State party's sole response with respect to persons with disabilities who came into conflict with the law.

With respect to legislative harmonization, not only had there been no progress in reforms, but, on the contrary, legislation was being proposed that did not comply with the Convention. According to the author, on 24 March 2020 an initiative had been presented in the Senate to adopt a general act on mental health, which aimed to reproduce a biomedical vision of mental health that promoted the exclusion of people who used mental health services by considering them objects of treatment and not subjects of

2. *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015)

rights. The bill had not been subject to any consultation process that would legitimize its approval, as demonstrated in a communiqué attached by the author. On 26 June 2020 and 17 July 2020, various civil society organizations had held meetings with the legislators who had promoted the initiative, in order to express their disagreement with its form and content, but to no avail. The author considered that in order to guarantee the non-repetition of human rights violations, the State party was obliged to create the necessary legislative conditions, and he argued that the proposed mental health act was another barrier to the harmonization of legislation with the Convention.

Recommendation of the Special Rapporteur

Follow-up ongoing. The Special Rapporteur recommends that a follow-up letter be sent requesting the State party to provide further information on the implementation of the Committee's Views in the light of the author's comments. In particular, information would be requested on the author's right to compensation for any legal costs incurred; on whether a public acknowledgement of the violation of the author's rights has been made; on whether the Committee's Views have been published and circulated in accessible formats; on efforts made to bring federal and state laws with regard to the special procedure for persons exempt from criminal liability into line with the principles of the Convention; and on efforts made to 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.

3. *V.F.C. v. Spain* (CRPD/C/21/D/34/2015)

Views adopted:	2 April 2019
First reply from the State party:	Due on 9 October 2019. Received on 7 October 2019.

The State party informed the Committee that Barcelona City Council had not implemented any regulatory changes, and the State party concurred with the City Council's reasoning that it was unable to do so. Implementing the Committee's Views would require modification of the legal order, which would be outside of the City Council's powers.

The State party notes that city councils must follow State-level regulations. The Public Service Regulations Act states that public servants had the right to retire according to the established terms and conditions of the applicable regulations. Under article 63, public servants lost their status as such upon mandatory retirement. Furthermore, mandatory retirement could result from a finding of "permanent total disability" in relation to their usual occupation. Based on the author's disability status, it would not be possible for him to continue his service on modified duty without a re-evaluation of his abilities.

The competent State authority to determine the degree of work-related permanent disability was the Social Security Institute. The author had been injured in a workplace accident, and consequently the Social Security Institute was the competent authority under Spanish law to determine his disability status. The Committee's Views emphasized the need to allow the author to undergo a fitness assessment for alternative duties to evaluate his potential to undertake modified duty, without necessarily changing the finding regarding the degree of disability. However, the State party argued that Barcelona City Council must abide by State laws.

The State party argued that Barcelona City Council was not the competent authority to modify a disability status determination by the Social Security Institute. Local governments did not have the legislative authority to alter the regulatory scheme in conformity with the constitutional framework, which was what implementing the Committee's Views would require. Legislative amendments in the area of public servants, social security or retirees were the State's responsibility. The State party emphasized that Committee's Views demanded amendments to State law. However, there was not sufficient consensus or political will among the authorities concerned to do so.

The State party submitted the Social Security Institute's administrative judgment with respect to its obligation to prevent future similar violations from occurring. The judgment enumerated the process for cases involving the granting of permanent total disability status and the subsequent assignment of the

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individual to modified duty. Based on the Supreme Court's doctrine, the individual would continue in the same occupation that had led to the disability status. Proceedings would be initiated to determine whether the initial degree of disability should be reviewed by the corresponding disability evaluation committee. The individual would then be able to file an application for the remedy of *amparo* and claim the right to have the pension award reinstated owing to an error in the determination of the degree of permanent disability.

Action taken

On 25 October 2019, an acknowledgement of the follow-up information was sent to the State party, and the State party's follow-up information was transmitted to the author for comments, with a deadline for response of 26 December 2019.

Authors' comments:

Received on 23 December 2019.

The author submitted that the State party had failed to implement the Committee's Views. He argued that it was not necessary to amend State legislation to do so. The author interpreted Royal Legislative Decree No. 5/2015 of 30 October 2015 approving the consolidated text of the Public Service Regulations Act as establishing that permanent disabilities were compatible with other workplace assignments. That Act provided that individuals with permanent total disability status may perform work-related duties other than those that caused the permanent disability. Therefore, one with a permanent disability may be assigned to modified duty.

The author submitted that it was clear from article 63 of the Act that retirement did not automatically apply, despite Barcelona City Council's interpretation. He argued that his interpretation was supported by a recent decision of the High Court of Catalonia, which also perceived the Act's language as not necessarily entailing retirement. The courts had recognized the right of police officers with permanent disability status to be assigned to modified duty, regardless of the degree of disability. Judgments from the High Court of Catalonia emphasized that Barcelona City Council must permit the assignment of police officers with permanent disability status to modified duty. The High Courts in other autonomous communities, such as those of Madrid, Murcia and Valencia, had come to similar conclusions.

The author emphasized that the State and autonomous community regulatory schemes were compatible with assignment to modified duty. Assignment to modified duty for police officers with permanent disability status had been legally recognized without legislative amendments by other city councils in Catalonia. The City Councils of Palafrugell and Cerdanyola del Vallès had passed ordinances regulating assignments to modified duty in compliance with the Convention. Thus, Barcelona City Council had the ability to modify its local regulations or to interpret them in a way that conformed with the Convention.

The author argued that the State party should require Barcelona City Council to proceed immediately with an evaluation of the author for possible adjustment to assign him to modified duty. He wished to be evaluated for modified duty in a manner that was both fair and non-discriminatory. The evaluation would be undertaken by an ad hoc medical board under the scope of Barcelona City Council. Under Catalan law, assignment to modified duty would require an evaluation by a medical board of the individual's concrete abilities with respect to the essential duties that they would perform under modified duty. The author further noted that the State party did not acknowledge its obligation to compensate him for any legal costs incurred in filing the communication.

Recommendation of the Special Rapporteur

Follow-up ongoing. The Special Rapporteur recommends that a follow-up letter be sent requesting the State party to provide further information on the implementation of the Committee's Views in the light of the author's comments. In particular, information would be requested on the author's right to compensation for any legal costs incurred, on efforts made to ensure that the author is given the opportunity to undergo an assessment of fitness for alternative duties, and on measures taken to align applicable ordinances and regulations with the principles enshrined in the Convention and the recommendations contained in the Committee's Views.
