



## 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 2 of the Optional Protocol, concerning communication No. 30/2015\*\*, \*\*\*

<i>Communication submitted by:</i>	Boris Makarov, on behalf of his deceased wife, Glafira Makarova (not represented by counsel)
<i>Alleged victim:</i>	The author and his deceased wife
<i>State party:</i>	Lithuania
<i>Date of communication:</i>	2 March 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 25 June 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	18 August 2017
<i>Subject matter:</i>	Right to enjoy legal capacity on an equal basis with others
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Access to court, exercise of legal capacity, reasonable accommodation
<i>Articles of the Convention:</i>	12, 13, 22
<i>Article of the Optional Protocol:</i>	2

1. The author of the communication is Boris Makarov, a citizen of Lithuania, who is submitting his claim on behalf of his deceased wife, Glafira Makarova, also a Lithuanian citizen. The author submits that his wife's rights under articles 12, 13 and 22 of the Convention were violated by Lithuania. The Optional Protocol entered into force for Lithuania on 18 September 2010. The author is not represented by counsel.

\* Reissued for technical reasons on 16 October 2017.

\*\* Adopted by the Committee at its eighteenth session (14-31 August 2017).

\*\*\* The following members of the Committee participated in the examination of the communication: Ahmad Al-Saif, Danlami Umaru Basharu, Monthian Buntan, Imed Eddine Chaker, Theresia Degener, Samuel Njuguna Kabue, Kim Hyung Shik, Stig Langvad, László Gábor Lovászy, Robert George Martin, Martin Babu Mwesigwa, Carlos Alberto Parra Dussan, Coomaravel Pyaneandee, Valery Nikitich Rukhledev and Damjan Tatić.

Pursuant to rule 60 of the Committee's rules of procedure, Jonas Ruskus did not participate in the consideration of this communication.



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

### The facts as submitted by the author

2.1 The author submits that on 12 June 2005, his wife was the victim of a road accident which was caused by V.M.<sup>1</sup> As a result, the author's wife, Glafira Makarova, suffered multiple bodily injuries, including a head injury. On 9 January 2006, a government medical commission established a medical disability ratio of 60 per cent for Ms. Makarova. Subsequently, she also suffered from headaches. According to the author, her disability, headaches and loss of memory and capacity were a direct consequence of the head injury she sustained in the traffic incident.

2.2 The author contends that by 19 January 2007, the consequences of the head injury had aggravated to the point where his wife was diagnosed with a disability ratio of 80 per cent. According to the author, the condition of Ms. Makarova continued to deteriorate until her death on 24 November 2011, when she succumbed to the consequences of her traumatic brain injury.

2.3 The author further submits that due to Ms. Makarova's health condition, she was unable to come to the police station in person. By letters of 25 January 2006 and 15 April 2006, she therefore requested to be informed of the criminal investigation initiated against V.M. The author contends that the requests were ignored by the authorities. The author contends that the actions of the prosecutor's office were unlawful, as the prosecutor failed to inform the author's wife of the indictment of V.M. on 2 May 2006 and that, as a consequence, she was unlawfully deprived of her right to challenge the decisions and conclusions of the prosecutor.

2.4 Likewise, owing to her worsening condition, Ms. Makarova could not take part in the hearings of the court. By a letter of 30 June 2006, Judge P. of the first district court of Vilnius was informed that it would be impossible for the author's wife to be present at the proceedings and of her inability to hire a lawyer on financial grounds. The author contends that article 118 of the Constitution of Lithuania places the prosecutor under an obligation to defend the position of the victim if he or she cannot afford counsel and places the judge under an obligation to make that right available to the victim.

2.5 The author submits, however, that those requirements were ignored, and that Judge P. officially refused to provide his wife with legal assistance.<sup>2</sup> As a result, the author contends that his wife was unlawfully denied access to justice and was left without legal assistance, which deprived her of her right to equal protection under the law. The author thus takes the position that the State party has violated the rights of his wife under articles 12 and 13 of the Convention.

2.6 The author contends, moreover, that during the public hearings at the first district court of the city of Vilnius, Judge P. disclosed confidential information on the state of Ms. Makarova's health, including to the accused party, without her informed consent. According to the author, the actions of the judge amount to a violation of his wife's right to privacy under article 22 of the Convention.

2.7 The author is of the view that Judge P. and the prosecutor constantly favoured the accused party, in violation of domestic and international law. In particular, the author contends that at the trial evidence establishing the disability of his wife and the history of administrative violations of V.M. was ignored, fabricated evidence diminishing the fault of the accused was used and the physical harm to which his wife had been subjected was described as "light" and unrelated to her deteriorating state of health.<sup>3</sup> Consequently, the

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<sup>1</sup> The author submits that V.M. is a well-known entrepreneur and political activist. The collision took place on a crossroads in Vilnius, when V.M.'s abrupt manoeuvre forced the author to hit V.M.'s car, leading to the injury of the author's passenger, Glafira Makarova.

<sup>2</sup> The author also contends that the actions of the judge and the prosecutor amount to a violation of his wife's rights under the Constitution and article 14 of the International Covenant on Civil and Political Rights. The Committee is incompetent *ratione materiae* to address those claims and therefore does not take them into account.

<sup>3</sup> The evidence on the state of health of Ms. Makarova used by the court is the result of two medical

author challenged the impartiality of the prosecutor and the judge in the complaint he made on 26 March 2008, but without success.

2.8 On 22 May 2008, Judge P. ruled that V.M. was guilty of committing a traffic violation and imposed on him a light charge in the form of a fine, having reached the conclusion that the disability of Ms. Makarova was not related to the incident. The author contends that, while his wife was the victim of the collision, she was never informed of that judgment. In fact, the author only found out that a judgment had been adopted by the court, when he presented himself to the chancellery of the court on 7 November 2008.

2.9 The author submits that by that time, the judgment of the district court could no longer be challenged by an appeal. Nevertheless, the author appealed to the regional court of Vilnius. On 4 December 2008, his appeal was dismissed, as the author could not prove that he had missed the deadline to file an appeal because of the health problems he had experienced. In spite of the fact that the regional court dismissed the author's complaint and that this decision could not be appealed, the author still attempted to appeal to the Supreme Court of Lithuania and other instances, to no avail. The author thus contends that all domestic remedies have been exhausted.

### **The complaint**

3.1 The author claims that the State party has violated his spouse's rights under articles 12, 13 and 22 of the Convention.

3.2 Furthermore, the author requests the Committee to recommend that the Government of Lithuania reform its domestic legislation in order to provide persons with disability with effective legal protection and that it implement the Convention unconditionally.

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

4.1 On 4 April 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party informed the Committee that the Ministry of Social Security and Labour had been appointed as the government authority responsible for the coordination of the implementation of the provisions of the Convention and its Optional Protocol. Regarding the present complaint, the information has been provided by the Ministry of Justice.

4.2 The State party submits that expert examinations are regulated by various provisions of the Criminal Procedure Code and the law on forensic examinations. The Criminal Procedure Code grants a victim who disagrees with the result of a report the right to challenge the lawfulness and completeness of the report. The investigator or the court must then decide whether to order a new forensic examination. The victim's right to gain access to information relating to the pretrial investigation, including the results of the forensic examination, is regulated by article 181 of the Criminal Procedure Code.

4.3 The victim, or his or her representative, can make copies. The request for access to the investigative file must be made before a prosecutor. The prosecutor can reject such a request, if he or she considers that it is "detrimental" to an ongoing investigation. Such a decision must be made in writing, and must be reasoned. The decision can be appealed before a court within seven days of the decision. The State party submits that "it should be noted that the victim was also allowed access to the case file at court".

4.4 In accordance with article 286 (5) and 286 (6) of the Criminal Procedure Code, the expert testimony was made public during the court hearings, and "participants in the hearings" could address oral questions to the expert to clarify "or supplement the report". Furthermore, according to article 312 of the Criminal Procedure Code, "victims had the right to appeal against enforceable judgments or court rulings".

4.5 In accordance with article 55 of the Criminal Procedure Code, the victim could be represented by an "advocate" or "assistant advocate when instructed by an advocate"; with

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examinations, which were contested by the author as untrue, unlawful and contrary to the wishes of the victim and the opinion of other medical experts.

permission of the pretrial investigator, a prosecutor or a judge; the victim can also be represented by a person “with a higher degree in law” who has been issued with a power of attorney. The victim is free to change representatives. The State party reports that “in cases provided for by the law regulating the provision of State-guaranteed legal aid, victims and civil claimants have the right to State-guaranteed free legal aid”.

4.6 The law on the provision of State-guaranteed legal aid foresees the right of a disabled person to “secondary legal aid”, if the person satisfies the legal criteria. The person wishing to have access to such legal aid must apply to the office in charge of State-guaranteed legal aid.

4.7 The law does not regulate the time limits, procedure or methodology for completion of specific types of forensic examinations. Those are regulated via “internal acts” of the organizations that conduct such examinations. The Ministry of Justice does not coordinate its activities with the State Forensic Medicine Service and therefore cannot comment on examinations that were carried out on Ms. Makarova.

4.8 The State party finally notes that the “legal regulation” ensures persons with disabilities have the same procedural rights to submit evidence, take part in the examination of evidence, make requests and dispute evidence, including the results of expert examinations.

#### **Author’s comments on the State party’s observations**

5.1 On 26 February 2016, the author submitted additional information. He considers that the State party authorities have not addressed his allegations and have failed to provide important documents to the Committee, such as examination results dated 16 June 2005 and 6 December 2007, the decision issued by the Minister of Justice on 4 September 2007, the verdict and sentence of the first district court of Vilnius, dated 22 May 2008 and the transcript of the court hearings relating to the injuries suffered by Ms. Makarova.

5.2 On 25 January 2016, the author requested the chair of the Vilnius district court to provide copies of the above-mentioned documents in relation to his complaint to the Committee. The court refused and requested the author to obtain copies by paying for them. The author contends that he cannot afford to pay for the copies.

5.3 The author submits that in its observations, the State party presents some provisions of the national legislation, but fails to comment on the case itself. The author has the impression that State party authorities never read the criminal case underlying his complaint. He submits that the records of the court hearings clearly show that the rights of Ms. Makarova as a person with a disability have been violated.

5.4 According to a decision dated 12 November 2007, the author was assigned State-guaranteed legal assistance. However, the lawyer failed to show up for court hearings and Judge P. never took any steps to protect the rights of Ms. Makarova. At the same time, the perpetrator, whom the author describes as the “all-powerful” V.M., was treated very kindly by the judge: he was given permission not to be present at the court hearings and instead went on holiday.

5.5 The author reiterates his claims that Ms. Makarova was not given a copy of the court verdict; that, as a victim, she was denied the right to file an appeal; that she was denied legal assistance; that the prosecutor failed to file a civil lawsuit on her behalf; that during the court hearings, confidential health information was read out in public; that the court failed to include compensation for the victim in the verdict; and that, generally, Ms. Makarova experienced a “denial of justice” by the State party authorities.

## **B. Committee’s consideration of admissibility and the merits**

### *Consideration of admissibility*

6.1 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 the Committee’s rules of procedure, whether the case is admissible under the Optional Protocol.

6.2 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 or has been or is being examined under another procedure of international investigation or settlement.

6.3 The State party has not challenged the admissibility of the communication for the lack of exhaustion of domestic remedies and the information provided by the author demonstrates that, together with his wife, he exhausted all available domestic remedies. The Committee therefore concludes that the author's claims are admissible under article 2 (d) of the Optional Protocol.

6.4 As regards the author's claims under article 22 of the Convention, the Committee notes that the author does not provide specific information. The Committee therefore considers that the author has not sufficiently substantiated his allegations under article 22 for the purpose of admissibility and concludes that they are not admissible under article 2 (e) of the Optional Protocol.

6.5 Accordingly, and in the absence of other obstacles to admissibility, the Committee declares the communication admissible insofar as it concerns the author's claims under articles 12 (3) and 13 (1) of the Convention. The Committee therefore proceeds to the consideration of those allegations on the merits.

#### *Consideration of the merits*

7.1 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.

7.2 As regards the author's claims under articles 12 (3) and 13 (1), the issue before the Committee is to assess whether the decisions of the State party in the case of the author's wife have violated her rights to equal recognition before the law and access to justice. The Committee notes that Ms. Makarova was the direct victim of the car accident at issue in the court hearings. The Committee further notes as an undisputed fact that the author's wife could not participate in the court hearings because of her disability and that she was not represented, despite her request for legal representation. If present or properly represented, Ms. Makarova could have posed questions to witnesses, she could have challenged the findings of expert examination reports regarding her health and she could have testified to provide a first-hand account of the accident.

7.3 The Committee notes that the author, acting on behalf of his wife, asked the courts to file an appeal after the court decision of 22 May 2008 came into force. The Committee also notes that the district court denied this request on 12 November 2008 and that subsequently that rejection was confirmed by the Vilnius regional court on 4 December 2008. In addition, the court declared its decision final and not subject to appeal, which was confirmed by the Supreme Court of Lithuania on 1 March 2012. Despite presenting strong evidence that the author and his wife never received a copy of the court verdict, the courts did not find "satisfactory reasons" to reinstate the appeal period of 20 days.

7.4 Furthermore, from the submissions made by the author, it is also obvious to the Committee that Ms. Makarova requested representation at the court hearings that directly affected her rights because, as a result of her disability, she could not take part herself. The Committee notes that, according to the documentation submitted to the Committee, her request was officially presented to the first district court through letters of 25 January 2006 and 15 April 2006, in which the author asked for protection of his wife's lawful interests as a victim.

7.5 The Committee notes that the State party's observations do not address the author's allegations. In its submission in the present communication, the State party sets out some aspects of the legislative framework on providing free legal assistance, submitting that a victim has a right to such "State-guaranteed" legal aid. From the submissions of the author, it is also clear that a lawyer was indeed appointed for Ms. Makarova, but that the lawyer failed to appear at the hearings.

7.6 The Committee recalls that under article 12 (3) of the Convention, States parties have an obligation to "take appropriate measures to provide access by persons with

disabilities to the support they may require in exercising their legal capacity”. it also recalls that under article 13 (1), “States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”. The Committee considers that while States parties have a certain margin of appreciation to determine the procedural arrangements to enable persons with disabilities to exercise their legal capacity, the relevant rights of the person concerned must be respected.<sup>4</sup> That did not happen in Ms. Makarova’s case while, as the direct victim of the accident at issue, she was clearly a “direct participant” of the relevant legal proceedings.<sup>5</sup> It is also clear to the Committee that Ms. Makarova wanted her position to be heard during the court hearings, but that she was not provided with any form of accommodation to enable her to do so: she was not able to attend the hearings because of her disability; she informed the State party in that regard, and asked the State party to provide her with legal representation in the first instance and for the appeal, but she was not provided with any support. Considering that the State party did not provide any form of “reasonable accommodation”<sup>6</sup> for Ms. Makarova to take part in the court hearings and subsequent appeal procedure related to her case, the Committee considers that the State party violated her rights under articles 12 (3) and 13 (1) of the Convention.

7.7 In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under articles 12 (3) and 13 (1) of the Convention.

### C. Conclusion and recommendations

8. 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 12 (3) and 13 (1) 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 and his wife throughout the legal proceedings at national level, together with compensation;
  - (ii) Provide him with access to court and investigation records, including, but not limited to, the transcripts of all court hearings and the results of expert examinations, and to all relevant documentation;
  - (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 also refers to the recommendations contained in its concluding observations (CRPD/C/LTU/CO/1) and requires the State party to:

- (i) Adopt the necessary amendments to the laws regulating the provision of legal assistance to include free legal assistance to persons with disability whenever necessary;
- (ii) Adopt a national plan of action to build the capacity of judicial and law enforcement personnel, including judges, prosecutors, police officers and prison

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<sup>4</sup> See communication No. 7/2012, *Marlon James Noble v. Australia*, Views adopted on 2 September 2016, para. 8.6.

<sup>5</sup> See communication No. 11/2013, *Gemma Beasley v. Australia*, Views adopted on 1 April 2016, para. 8.9.

<sup>6</sup> Under article 2 of the Convention, “reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that persons with disabilities have the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

staff, to enhance their knowledge of the rights of persons with disabilities and to ensure the provision of procedural and age-appropriate accommodation in all legal procedures (para. 28);

(iii) Promote, ensure and monitor the provision of reasonable accommodation for persons with disabilities across all public and private sectors and recognize the denial of reasonable accommodation as a form of discrimination on the basis of disability (para. 14).

9. 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 information on any action taken in the light of the present Views and recommendations of the Committee.

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