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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3050/2017*, **

Communication submitted by:	S.T. (not represented by counsel)
Alleged victim:	The author
State party:	Republic of Moldova
Date of communication:	24 July 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 1 March 2017 (not issued in document form)
Date of adoption of decision:	27 July 2022
Subject matter:	Denial of membership of Bar Association
Procedural issue:	Level of substantiation of claims
Substantive issues:	Discrimination based on nationality; right to privacy; right to an effective remedy
Articles of the Covenant:	2 (1) and (3), 17 and 26
Article of the Optional Protocol:	2

1. The author of the communication is S.T., a national of Lithuania born in 1983. He claims to be a victim of a violation by the State party of his rights under articles 2 (3), 17, read alone and in conjunction with 2 (1), and 26 of Covenant. The Optional Protocol entered into force for the State party on 23 April 2008. The author is not represented by counsel.

Facts as submitted by the author

2.1 The author is a national of Lithuania. He notes that he wishes to practise law in the Republic of Moldova and, in order to do so, to be able to apply for membership of the Bar Association in Chisinau. He notes, however, that under article 10 (1) of Law No. 1260 on the organization of the legal profession, a prerequisite to be admitted to the Bar is to be a citizen of the Republic of Moldova. The author claims that he fulfils all other requirements to be admitted to the Bar, except for the requirement of citizenship.

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

2.2 The author requested the Bar Association to clarify the membership requirements. He was informed, on 8 November 2012, that it was not possible for him to become a member of the Bar. The author submitted further requests for clarification on the possibility of admission to the Bar in 2013 and 2014, however, he did not receive replies to his letters.

2.3 On 10 September 2015, the author lodged a lawsuit against the State party before the Tribunal of Buiucani, claiming that article 10 (1) of Law No. 1260 was contrary to article 26 of the Covenant. On 18 September 2015, the Tribunal found the author's claim to be inadmissible under article 4 (c) of Law No. 793 on administrative courts as a complaint claiming a contradiction between a legislative act and an international treaty may only be examined by the Constitutional Court. The author claims, however, that, under article 25 of the Law on the Organization and Operation of the Constitutional Court, only the President of the Republic of Moldova, the Government, the Minister of Justice, the Supreme Court of Justice, the Court of Audit, the Prosecutor General, a Member of Parliament, a parliamentary group, the Ombudsman and the National Assembly of Gagauzia have the right to lodge a petition before the Constitutional Court. He therefore argues that he was unable to challenge Law No. 1260 before the Constitutional Court.

2.4 The author appealed the decision of the Tribunal of Buiucani to the Appellate Court of Chisinau, before which he also submitted that the absence of an effective remedy violated his rights under article 2 (3) of the Covenant. On 2 February 2016, the Appellate Court upheld the decision of the court of first instance.

Complaint

3.1 The author claims that his rights under article 26 of the Covenant have been violated due to discrimination based on nationality. He claims that there are no objective and reasonable grounds for denying him membership of the Bar Association on grounds of nationality and that the prohibition on foreign nationals practising law in the Republic of Moldova is arbitrary and discriminatory.

3.2 The author also claims that his right to an effective remedy has been violated. He notes that, under Law No. 793, courts cannot assess the legality of domestic legislation since this is within the exclusive competence of the Constitutional Court. He claims that, under the Law on the Organization and Operation of the Constitutional Court, he is unable to challenge Law No. 1260 before the Constitutional Court and is therefore denied an effective remedy.

State party's observations on admissibility and the merits

4.1 On 22 December 2017, the State party submitted its observations on admissibility and the merits of the communication. It submits that the communication should be found inadmissible as being manifestly ill-founded. The State party notes that, under article 10 (1) of Law No. 1260, dated 19 July 2002, the profession of lawyer can be practised by a person who: is a citizen of the Republic of Moldova; has full capacity to practise; has a degree in law or its equivalent; has an impeccable reputation; and has been admitted to the profession of lawyer after passing the qualification examination. Under article 6 (1) of Law No. 1260, lawyers who are not nationals of the Republic of Moldova may practise law in the State party if they meet the remaining conditions provided by article 10 (1). In this regard, the State party notes that article 6 (2) of Law No. 1260 stipulates that lawyers who are not nationals of the State party can practise law in the State party if they meet the qualification criteria in their country of origin and are registered in the special register kept by the Council of the Union of Lawyers (Bar Association) of the Republic of Moldova. Under article 6 (3) of Law No. 1260, a lawyer who is not a national of the State party cannot represent the interests of natural or legal persons before domestic courts and in relations with other public authorities, except for international arbitration. When the interests of the client so require or at the client's request, a lawyer who is not a national of the State party may assist a lawyer who is a national of the State party.

4.2 The State party refutes the author's claim that the citizenship requirement for admission to the Bar amounts to a violation of article 26 of the Covenant. It notes that article 6 of Law No. 1260 provides special provisions applicable to foreign citizens who would like to practise the profession of lawyer in the State party, namely a qualification to practise law

in their country of origin and to be registered in the register kept by the Council of the Union of Lawyers. It therefore submits that the author's claims that he would have no opportunity to practise law in the State party are unfounded, as are his claims of his alleged discrimination.

4.3 The State party refers to the jurisprudence of the European Court of Human Rights in *Bigaeva v. Greece*,[1] in which the question of citizenship in accessing the legal profession was also raised and in which the Court found that States had a certain margin of appreciation in determining whether and to what extent differences between otherwise similar situations justified distinctions in treatment, and that the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) did not guarantee the freedom to exercise a particular profession.

4.4 The State party further argues that a lawyer exercises a liberal profession in the service of the public interest. It argues that, even if this may not be comparable to an activity carried out in public service, the lawyer is an auxiliary of justice, which includes specific obligations. It argues that, consequently, States parties have a margin of discretion in defining the conditions for practising law in its territory, including the question of whether citizenship should be a requirement in this respect. Legislation excluding non-nationals from practising law in a State party cannot therefore, in and of itself, amount to a discriminatory distinction. It argues that the State party's authorities are therefore entitled to impose conditions on the exercise of the profession of lawyer, in particular with regard to citizenship, and to exclude non-nationals from it. The State party further submits that the conditions to practise law in the State party are in no way arbitrary and correspond to the legal provisions to that effect.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 16 June 2018, the author submitted his comments on the State party's observations. He maintains that the communication is admissible.

5.2 The author provides further information on the domestic legislation and notes that, under article 10 (2) of Law No. 1260, those with a PhD, as well as persons with professional experience as a judge or prosecutor for at least 10 years in the situation in which they are applying for an advocate's licence within six months after their resignation, are exempted from performing a professional traineeship and passing the Bar examination. The same rights are extended to persons who have continued working in the field of law after resigning from the post of judge or prosecutor. The author notes that he obtained a PhD in law in November 2010 at the University of Paris 1 Panthéon-Sorbonne and therefore fulfils the requirements for becoming an advocate in the State party, except the citizenship requirement. After obtaining his PhD, the author moved to the Republic of Moldova. Due to his inability to be admitted to the Bar Association in Chisinau, in June 2012, he became an advocate at the Bar Association of Transnistria and has continued to work as a Transnistrian advocate, which he argues is proof of his attachment to the Republic of Moldova. He notes that he would be happy to move from Transnistria to Chisinau, but argues that article 10 (1) of Law No. 1260 prohibits him from doing so due to his citizenship. The author also notes that he has three professorships in law awarded in 2014 by the Russian New University, Moscow; Narxoz University, Almaty, Kazakhstan; and the Eurasian Academy of Law, Almaty.

5.3 The author reiterates his argument that the State party's legislation on practising law in the State party is arbitrary and discriminatory, the aims of which are neither reasonable nor objective. He claims that the only aim of this discrimination is to prohibit the exercise of the profession by independent persons, to allow the State party to violate human rights on a large scale, to discriminate against all inhabitants of the country and to abuse law.

5.4 The author further reiterates his argument that the domestic legislation on the conditions for practising law in the State party does not pursue a legitimate aim. He argues that it aims at: (a) prohibiting the establishment of independent advocates in the Republic of Moldova, since this would disrupt the Government in conducting large-scale human rights violations, operating in a corruptive manner, and threatening and punishing advocates for defending human rights; (b) protecting the job market from highly qualified foreign nationals; (c) lowering the quality of legal services to Moldovan residents in order to prevent the

[1] Application No. 26713/05, judgment of 28 May 2009.

development of democracy; (d) maintaining a mono-ethnic and monocultural society; and (e) promoting xenophobia and creating obstacles to peace and global cultural integration. He argues that as such the objective of this discrimination is absolutely illegitimate and not necessary in a democratic society.

5.5 The author further submits that the conditions under Law No. 1260 are disproportionate to the aim pursued, as he argues that the requirements referred to by the State party under article 6 of the Law would require applicants to go back to their country of origin in order to qualify in that country. He claims that this requirement is a disproportionate intervention in the privacy of a person as an applicant might not wish to leave the Republic of Moldova, but to seek his professional and cultural integration in the country. He further argues that, moreover, persons lose the right to practise as foreign State advocates in the Republic of Moldova at the point at which they end their membership of a foreign Bar Association. He claims that this rule is disproportionate, since it requires the advocate to be integrated into a foreign State, to pay taxes in the foreign State and to have an address in the foreign State. He claims that this is particularly disproportionate when the advocate is a refugee or is afraid to return to a foreign State due to persecution. He further claims that practising law as a foreign State advocate in the State party implies fewer rights both in representing clients and in the self-government of the Union of Lawyers.

5.6 The author submits that the right to privacy and to private life under article 17 of the Covenant includes the right to exercise any profession in the private sector and that his right to private life under article 17, read in conjunction with article 2 (1), of the Covenant has therefore been violated, as the only justification for the breach is his foreign citizenship. He reiterates his argument that his rights under article 2 (3) of the Covenant have been violated as article 4 (c) of Law No. 793 on administrative courts prevents domestic courts from examining the legality of domestic legislative acts as this is within the exclusive competence of the Constitutional Court and as article 25 of the Law on the Organization and Operation of the Constitutional Court prevents him from lodging a petition before the Constitutional Court (see para. 2.3 above).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the State party's submission that the communication is inadmissible due to insufficient substantiation. The Committee notes the author's claim that his right to an effective remedy under article 2 (3) of the Covenant has been violated as Law No. 793 on administrative courts stipulates that examination of the legality of domestic legislation is within the exclusive competence of the Constitutional Court, and as he lacks standing to bring such a petition before the Constitutional Court. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[2] Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

[2] For example, *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

6.5 The Committee further notes the author's claim that his right to private life under article 17, read alone and in conjunction with article 2 (1), of the Covenant has been violated due to his inability to practise law in the State party. The Committee notes that the author has not provided any further specific information or argumentation to justify this claim and therefore finds it inadmissible for lack of sufficient substantiation under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claims that his rights under article 26 of the Covenant have been violated as he has been denied the possibility to practise law in the State party due to his inability to apply for membership of the Bar Association of Chisinau, based on not being a citizen of the State party. It notes his claims that there are no objective and reasonable grounds for denying him membership of the Bar Association on grounds of citizenship and that the prohibition on foreign nationals practising law in the State party is therefore arbitrary and discriminatory. The Committee notes the State party's submission that article 6 of Law No. 1260 provides special provisions applicable to non-citizens who would like to practise the profession of lawyer in the State party, namely a qualification to practise law in their country of origin and to be registered in the register kept by the Council of the Union of Lawyers, and that the author's claims that he would have no opportunity to practise law in the State party are therefore unfounded. The Committee also notes that the author has not refuted that he could practise law in the State party under the conditions prescribed by article 6 of Law No. 1260, but notes his claim that those conditions would not allow him to practise law in the State party under the same conditions as a citizen of the State party.

6.7 The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which it stated that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference that was based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which had the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[3] However, not every differentiation in treatment based on the grounds listed in article 26 amounts to discrimination, as long as it is based on reasonable and objective criteria and is in pursuit of an aim that is legitimate under the Covenant.[4] In the present case, the Committee notes that the parties disagree as to the conditions for non-citizens to practise law in the State party. The Committee notes, however, that the author has not refuted the State party's information that non-citizens of the State party are able to practise law in the State party under the conditions prescribed by Law No. 1260, but that he has argued that said conditions are not proportionate and are unduly burdensome. The Committee notes, however, that the author has not provided any further specific information and argumentation on those claims, nor any information on whether he has applied for registration in the register kept by the Council of the Union of Lawyers as prescribed under Law No. 1260. Neither has he justified that he would be prevented from becoming a qualified lawyer in his country of origin so as to meet the conditions of Law No. 1260. It considers therefore that the author has failed, based on the information on file, to substantiate, for the purposes of admissibility, that the differentiation in treatment based on citizenship was not based on reasonable and objective criteria and in pursuit of a legitimate aim. The Committee therefore declares the author's claims under article 26 of the Covenant insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

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

(b) That the decision shall be communicated to the State party and to the author.

[3] See general comment No. 18 (1989), para. 7.

[4] Ibid., para. 13. See also, inter alia, *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 7.12; *Drda v. Czech Republic* (CCPR/C/100/D/1581/2007), para. 7.2; and *Danning v. Netherlands*, communication No. 180/1984, paras. 13−14.