Case summary:[[1]](#footnote-1) *L.M.L v United Kingdom of Great Britain and Northern Ireland.*

[CRPD/C/17/D/27/2015](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/119/74/pdf/G1711974.pdf?OpenElement)

Communication n 27/2015

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Invoked provisions of the Convention: Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [10](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#10), [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [17](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17), [19](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [23](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23)-[27](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#27), [30](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#30)

Provisions of the Optional Protocol: [Article 2 (d) and (e)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx)

Keywords: Right to health services; right to habilitation and rehabilitation services; equality and non-discrimination; right to life; equal recognition before the law; freedom from cruel, inhuman or degrading treatment; protecting the integrity of the person; inclusion and participation in the community; respect for home and family life; right to education; right to work and employment; right to participation in cultural life

Full decision in [English](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/119/74/pdf/G1711974.pdf?OpenElement)

Facts

The author, a national of the United Kingdom of Great Britain and Northern Ireland, underwent L5/S1 discectomy procedure in Wales on 18 September 2007. She claims that because the surgeon was running late, she did not have enough time to read and discuss the benefits and risks of this intervention. After the surgery procedure, the author’s spinal cord membrane was ruptured, which led to a rare surgical complication in the form of a massive loss of cerebrospinal fluid and the subsequent development of a 8 cm by 4 cm tense pseudomeningocele. The author tried to get an appointment with a National Health Service, but did not succeed. The author visited more doctors and one of them referred her to the University Hospital of Wales for a diagnostical test, but it was not possible to give an explanation of it symptoms, and just after one diagnostical test, the neurologist recommended physical therapy. Two years after the intervention, the author´s health continues to deteriorate and new symptoms appear, for example nystagmus. On 6 August 2010, the Cardiff and Vale University Health Board **refused to fund any further private or National Health Service** inpatient or outpatient medical care at the National Hospital.

The author’s mother contacted the Board regarding the decision and was advised that the author could make an application to the individual request for treatment panel for the authorization of funding for private medical care at the National Hospital in London. The author made such a request, which was rejected by the panel on 14 September 2010, as the panel noted that it had received reassurance from the author’s general practitioner that the **author’s health was not deteriorating.** Her treatment was delayed even when her health was deteriorating and she was feeling more pain. After wrong diagnosis, the author was left without any treatment consultant for a whole year. The author went to United States for more consultations, and after two new diagnosis from different specialists, it was discovered she´s suffering from a high cerebrospinal fluid pressure and with extensive adhesive arachnoidids of the lumbar spine. Those new diagnosis were opposite to the ones done in the United Kingdom. The author returned to the United Kingdom due to financial constraints, but it was impossible to get more diagnosis. The family went to Germany to have an appointment with a doctor that suggested that she should have three different interventions. The three spinal procedures were carried out in Germany; however, the specialist was unable to offer the author a full diagnosis and treatment for her upper cervical spine and head pain symptoms.

On 17 June 2013, the author lodged a request for judicial review of the decision of the individual patient funding request panel before the Cardiff High Court. The request for judicial review was granted. However, on 19 December 2013, the High Court dismissed the author’s claim, finding that the panel decision was not unlawful. On 18 July 2013, the author lodged a separate **complaint before the Cardiff County Court** claiming **clinical negligence** due to complications suffered after the 2007 surgery. Her complaint was dismissed because the author did not provide expert support of the allegation of negligence. The author explain that she could not give evidence because nobody gave her a definitive diagnostic of her health situation.

The author´s health continues deteriorating causing her to be in full-time need of a wheelchair. No treatment was available in the United Kingdom for her. The author underwent a brain and spine scan at the National Magnetic Resonance Research Centre in Ankara and she also attended to an appointment with a doctor in United States giving her more diagnosis about her health condition. The author waited 7 years to get a professional that could address her medical condition. She requests the Committee to order 19 remedies from the State party.

The complaint submitted to the Committee

The author claims that State has breached its obligations under Articles [5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [10](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#10), [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [15](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [17](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17), [19](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#19), [23](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23)-[27](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#27) and [30](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#30) in conjunction with [Article 2 (d) and (e)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx)

In connection with [article 5](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), she claims that she has not received equal protection and equal benefit of the law and that she has been subjected to continuous discrimination for seven years. She also claims that she faced many barriers and denial by the State Party to get medical consultant.

In connection with [article 10](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#10), the author further claims that since 2007 she has been deprived of a life and of effective participation and inclusion in society due to her post-surgical illness, in breach of her rights under article 10 of the Convention.

In connection with [article 12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), the author claims it has been violated as the court system failed to acknowledge the serious concerns that she had raised in relation to her clinical negligence claim before the County Court in 2013. Due to the lack of determined information of her health situation, the court decline her judicial request. She also claims that the High Court failed to uphold her right to exercise legal capacity.

In connection with article 15, the author claims that’s she has been “continuously punished” due to medical negligence. She also claims she has been treated in a cruel and inhuman way by the state cause by an unnecessary deterioration of her health. Regarding article 17, the State party did not take the necessary steps to protect the author´s integrity, protecting her from abusive methodology.

In connection with article 19, she has been deprived of the right to live independently, due to the serious impact on her quality of life her new health condition. Regarding article 23, it is argued that author´s mother had to leave her job to take care of her, and many of the treatments and test were abroad, so her family’s finances have been exhausted. In connection with article 24, the author claims she had to give up her post-graduates studies, due to the pain she was suffering.

Regarding article 25, the author claims she did not have access to specialist health services needed. State party has also failed not giving the health-care services of a high standards and quality; while regarding article 26, the author claims she did not have access to a final diagnostic in the State Party and also it was impossible to access rehabilitation, and under articles 27 and 30, as her deteriorating health has prevented her from obtaining employment and from enjoying cultural life.

State party’s observations on admissibility

The State party submits that the communication should be declare inadmissible under article 2(e) for being ill-founded or nor sufficiently substantiated and under article 2 (d) due to the failure to exhaust domestic remedies. The State party also claims that author´s definition of disability does not match with the Convention. The State Party argues about the disagreements between the author and medical professionals, and that the author has received appropriate test and treatments.

State Party also denied the lack of response and treatment by the National Health System. Due to the multiple test and diagnosis given to the author many of them oppose to other previous diagnosis, it was difficult to give her a final and determined explanation. The State Party also claims the author requested a global consulting of her choice, and this request has to be in accordance with the limited State resources. The state also claims that apparently, the author did not check if the treatment she needed was available under the National Health System.

Author’s comments on the State party’s submission

The author claims that she has provided reliable evidence that the State party has continuously violated her human rights and access to specialist medical care. After the State party allegation, the author claims that she had 2 medical interventions within the State party, but none of those were successful and her situation has continued to deteriorate. She further claims that State party has violated her right to receive relevant information about her medical condition and has denied her legal redress and support.

The author maintains that she has exhausted all available domestic remedies, she and their family paid for the travels and the accommodation costs to get test and specialist appointments abroad. She agrees that she had a successful use of the individual patient funding request application to be treated in London, but it took 14 months of stifling bureaucracy before the request was approved. The lack of definite diagnosis aggravated her health and also **appear new multiple rare neurological diseases.**

Committee’s consideration of admissibility

The Committee ascertained that the same matter has not already been examined by it and has not been or is not being examined under another procedure of international investigation or settlement, as required by [article 2(c) of the OP](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx).

The Committee observes that it is not a final instance competent to re- evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.

In the present case, the Committee considers that the author has failed to substantiate, for purposes of admissibility, that the conduct of State party authorities amounted to arbitrariness or a denial of justice. Accordingly, the Committee considered that the claims are **inadmissible under article 2 of the Optional Protocol.**

The Committee will not examine separately the State party’s inadmissibility ground under article 2 (d) of the Optional Protocol.

C. Conclusion

The Committee concludes that **the communication is inadmissible** under article 2 (e) of the Optional Protocol.

That the present decision shall be communicated to the State party and to the author.

1. This summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, visit [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/es/node/105)  [↑](#footnote-ref-1)