Case summary:[[1]](#footnote-1) *Boris Makarov v Lithuania*

Case code: CRPD/C/18/D/30/2015

Communication no 30/2015

Date of communication (initial submission): 2 March 2015

Date of adoption of Views: 18 August 2017

Invoked provisions of the Convention: Articles [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [13](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13) and [23](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23)

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

Keywords: disability, access to justice, access to court, exercise of legal capacity, “reasonable accommodation”

Decision: Violation of Articles [12 (3)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12) and [13 (1)](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13) of the Convention

Full decision in HTML format (webpage): [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XfWHOnVAiiif0buk6hjS9HflWz6s1JKr3aBsQ%2fuAIWd5T%2fvP%2bCTvUR3tIsodC%2bkyT2t0fCNMuD%2bJ1m7TG6I%2f5ATuT%2fA6HxbsRGVtqk9A0Pl1Q%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XfWHOnVAiiif0buk6hjS9HflWz6s1JKr3aBsQ%2fuAIWd5QPdxdbAUWCNSjqvnkkwMbOb7WfEbEA7%2bVBzkWlED3Tusd7L8po8qfzBBVNoxQaH5g%3d%3d), [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XfWHOnVAiiif0buk6hjS9HflWz6s1JKr3aBsQ%2fuAIWd5b0A06q9qzSBtqS3Xa68m9N%2by9psPIQk0lTdkvmSjr406TzP95hU%2b2AXRZ%2b3fNlxFQ%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XfWHOnVAiiif0buk6hjS9HflWz6s1JKr3aBsQ%2fuAIWd5Z4peOWym%2bdGG5%2f3IyU%2bWBC1vVBLqVXIxCOjZHonIfvjFRR9KGunndV1A0XSEt5y6A%3d%3d) and [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoSrhwG9CrOqAWZMtC2E1XfWHOnVAiiif0buk6hjS9HflWz6s1JKr3aBsQ%2fuAIWd5b%2bmsi0g185%2blYFJeozD%2b%2fWMx5tE1AVd9yApxrFF5u5otkRXS2%2bZtlSlMzQDwgEJBw%3d%3d)

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Facts

The author is Boris Makarov, a citizen of Lithuania, who submitted his complaint on behalf of his deceased wife, Glafira Makarova, also a Lithuanian citizen. On 12 June 2005, his wife was the victim of a road accident which was caused by V.M. As a result, the author’s wife, 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, while on 19 January 2007 the “medical disability ratio” was established at 80 per cent. The condition of Ms Makarova continued to deteriorate until her death on 24 November 2011.

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 requested to be informed of the criminal investigation initiated against V.M. The prosecutor failed to inform the author’s wife of the indictment of V.M. on 2 May 2006 and, as a consequence, she was not able to challenge the decisions and conclusions of the prosecutor. Furthermore, Ms Makarova could not take part in the hearings of the court. It was impossible for the author’s wife to be present at the proceedings and she could not hire a lawyer on financial grounds.

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. Ms Makarova was never informed of that judgment. In fact, the author found out that the court had adopted a judgment, when he presented himself to the chancellery of the court on 7 November 2008.

The author appealed to the regional court, but his appeal was dismissed on 4 December 2008 based on the fact that the author had missed the deadline. 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 submitted to the Committee

The author claims that State has breached its obligations under Articles [12](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [13](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13) and [23](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#23) of the CRPD.

Regarding Articles 12 and 13, he argues 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 considers that the State party has violated the rights of his wife under articles 12 and 13 of the Convention.

Regarding Article 22, the author contends that during the public hearings, Judge P. disclosed confidential information on the state of Ms Makarova’s health without her informed consent. The author argues that the actions of the judge amount to a violation of his wife’s right to privacy under article 22 of the Convention.

State party’s observations on the admissibility and merits

The State set out some aspects of the legislative framework on free legal assistance, submitting that a victim has a right to such “State-guaranteed” legal aid. The State pointed out that the Criminal Procedure Code grants a victim the right to challenge the lawfulness and completeness of reports and forensic examinations; the right to access and make copies of the investigative file – with the authorization of the prosecutor; the right to address questions to an expert during the court hearings; the right to appeal against enforceable judgments or court rulings; the right to be represented by an advocate and to State-guaranteed free legal aid; and, the right of persons with disability to “secondary legal aid”, among others. The State noted that the legal framework 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.

The author’s comments on the State party’s observations

The author considered that the State had not addressed his allegations, failing to comment on the case itself. In addition, the author mentioned that the Stated had failed to provide important documents to the Committee, such as examination results, the verdict and sentence of the first district court of Vilnius, and the transcript of the court hearings relating to the injuries suffered by Ms Makarova, among others.

As additional information, 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.

The author reiterated 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.

Issues and proceedings before the Committee

Consideration of admissibility

First, 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).

Regarding inadmissibility for non-exhaustion of domestic remedies, the Committee noted that the State did not challenge 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.

Regarding inadmissibility due to failure to sufficiently substantiate claims, the Committee noted that the author did not provide specific information about his claims under article 22, and thus did not sufficiently substantiate his allegations under this article for the purpose of admissibility, concluding that they were not admissible under article 2 (e) of the Optional. By the contrary, the claims under articles 12 and 13 were sufficiently substantiated for the purpose of admissibility.

Finally, the Committee noted that the State did not raise objections to the admissibility of the author’s claims under articles 12, 13 and 22 of the CRPD. Consequently, claims under Articles 12 and 13 of the CRPD, were admitted, while claims under Article 22 were declared inadmissible, under article 2(e) of the OP.

Consideration of the merits

The issue before the Committee was to assess whether the decisions of the State in the case of the author’s wife had violated her rights to equal recognition before the law and access to justice. The Committee noted that Ms Makarova was the direct victim of the car accident at issue in the court hearings; and 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.

The Committee expressed that, 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. In that regard, the Committee considered clear that a lawyer was indeed appointed for Ms Makarova, but that the lawyer failed to appear at the hearings. Additionally, regarding the right to appeal, the Committee pointed out that 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.

The Committee considered that while States 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. 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” in the relevant legal proceedings. It was 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.

Conclusion

Considering that the State party did not provide any form of “reasonable accommodation” for Ms Makarova to take part in the court hearings and subsequent appeal procedure related to her case, the Committee concluded that the State had failed to fulfil its obligations under articles 12 (3) and 13 (1) of the Convention, and recommended:

Regarding the author: To provide the author with an effective remedy, including reimbursement of any legal costs incurred, together with compensation, as well as to 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.

As general measures: To take measures to prevent similar violations in the future, including (i) adopting the necessary amendments to the laws regulating the provision of legal assistance to include free legal assistance to persons with disability whenever necessary, (ii) adopting a national plan of action to build the capacity of judicial and law enforcement personnel 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, and (iii) promoting, ensuring, and monitoring 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.

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)