Case summary:[[1]](#footnote-1) *Ms. T.M. (represented by G.S) v Greece*

[CRPD/C/21/D/42/2017](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2f21%2fD%2f42%2f2017&Lang=en)

Communication No. 42/2017

Date of communication (initial submission): 21 March 2017

Date of adoption of Views: 2 April 2019

Invoked provisions of the Convention: [1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#1), [2](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2), [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17), [22](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#22), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25), [26](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28)

Provisions of the Optional Protocol: 2 (d)

Keywords: Freedom from exploitation, violence and abuse; protecting the integrity of the person; respect for privacy; right to health services; right to habilitation and rehabilitation services; adequate standards of living and social protection

Decision: The Committee considers the communication inadmissible pursuant to article 2 (d) of the Optional Protocol.

Full decision in [PDF English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjUFu35WL78LztCL12TZZECBJUC2aSSht6SLgfcjapzYQNxp1XpV7Gb7KnNwwIBwt786yM2Q1LixCs0eYa%2bG982qXWlSZEPbD9myV4ntBPQq8UVnuOQgKnMMZzr03ihj9g%3d%3d)

**Facts**

The author is Ms. T.M, a Greek citizen born in 1973, represented by her husband.   
In January 2016, she was diagnosed with Asperger syndrome and applied for a disability certification with a Disability Certification Centre (KEPA), a structure, overseen by the Ministry of Labour and Social Security, in charge of disability assessment. To receive social benefits under the KEPA, a disabled person needs to acquire a KEPA certification with at least 67% disability rate assessment. According to the Greek Law, the Asperger Syndrome is considered an irreversible, life-long disability with a 67% to 80% disability rate assessment.

After being interviewed by the KEPA Disability Verification Committee on 22 July 2016 and 22 August 2016, Ms. T.M claimed that the Committee distorted her diagnosis by identifying a severe borderline personality disorder with a 50% disability assessment rate, not taking into account her doctor’s diagnosis of 2016.

The author claims she does not have access to available and effective remedies in the State Party. After submitting a written objection to the findings of the Verification Committee to the Review Committee, she received no response. Because of the unresponsiveness of this Review Committee, she cannot appeal the decision of the Verification Committee to an Administrative Court. She also claims that the Review Committee is compelled to decide cases decided by the Verification Committee, and that the Review Committee could not rectify the error made in her case because it cannot provide her with the correct certification, being allowed to decide only on the disability percentage. Accordingly, the author requested the intervention of the Special Scientific Committee and that the Administration Board discusses her case. She did not receive responses from any of the contacted authorities. On October 2016, she also submitted a complaint to the public prosecutor against the members of the Verification Committee; however, the case has not yet been assigned to a prosecutor, a procedure that could take up to eight months. The author claimed that, according to statistics, an inquiry into her complaint might last from two to six years; in the same way, an appeal to the Administrative Court could take seven years on average.

**The complaints**

The author claims violations of her rights under articles [1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#1), [2](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2), [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16), [17](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#17), [22](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#22), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25), [26](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#26) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28) of the Convention.

With regard to articles 1 and 3, the author claims that the diagnosis of borderline personality disorder, instead of Asperger Syndrome, made by the KEPA Disability Verification Committee excluded her from equal and full participation in the society.

With regard to article 16(1) and (4-5), she claims to have suffered a psychological harm as the State Party, after incorrectly indicating her diagnosis on the certificate, has taken no measures to correct the incorrect diagnosis.

With regard to article 17, she claims that the State authorities’ actions constitute a severe offence to her personality and integrity.

With regard to article 22, she claims that the State Party violates her right to privacy as the KEPA medical file database (containing her health information) is interlinked to the State party tax revenue service, allowing thousands of public servants to access KEPA diagnosis.

With regard to article 25(b) and (d), she claims a violation consequent to the misdiagnosis under the KEPA system.

With regard to article 26(1-2), she claims that the State Party has been indifferent in recognising and enabling her as a person with disability in attaining and maintaining social and vocational ability and full inclusion and participation in the society.

With regard to article 28(1-2), she claims the State Party has prevented her to access social security as a person with autism, causing a deterioration in her standards of living.

With regard to article 30(2), she claims that she was forced to leave the School of fine Arts (a State University) because she was discriminated and encountered difficulties in dealing with teachers at the school.

**State Party’s observations on admissibility**

On 6 September 2017, the State Party submitted that the communication should be held inadmissible under article 2(d) of the OP due to non-exhaustion of domestic remedies.

The State also notes that the KEPA was established to provide a uniform health assessment of the degree of disability and that the Health Committees are composed by certified and competent doctors that take into account both the applicant’s medical data as well as the clinical situation. The applicant can appeal against the assessment made by the first degree Health Committee to the second degree Health Committee, which can either uphold or amend the original decision. If the applicant disagrees with the decision of the second degree Committee, he or she can take the decision to the administrative courts under the Code of Administrative Procedure.

The State Party notes that the author was examined by the Health Committee and diagnosed with “severe personality disorder, with behavioural disorders and very limited functionality”, with an overall disability rate of 50% for a fixed period of one year. The State party notes that the author lodged an appeal against this decision before the second degree Committee, and that she was invited twice, on 7 October and 1 December 2016, to attend a scheduled meeting before the Committee. She informed the Committee in writing that she would not attend. After a third invitation on 9 February 2017, she appeared before the Committee but did not comply with the procedure for confirming her presence and identity and she left the meeting, refusing to be examined, making it impossible to re-examine the author.

The State Party also note that, instead of filing a new application to KEPA for a new health assessment certification after the expiration of the first one on 31 May 2017, the author filed lawsuits against KEPA members of the first degree Health Committee before the Public Prosecutor of the Athens Court of first instance, which is currently pending.

Hence, the State Party argues that the author has failed to comply with the administrative procedures by not allowing the examination of her case before the second degree Health Committee and by failing to contest any potential negative decision before administrative courts. The State party further notes that the author has not submitted any request to any administrative body for any applicable disability benefit. It also notes that her complaint against the members of the Health Committee for breach of duty does not result in the restoration of her rights relating to her diagnosed disability, and can thus not lead to the conclusion that the admissibility requirement was fulfilled. As concerns the author’s claim that any administrative proceeding would be unduly prolonged, the State party argues that her claims in this regard are general and vague and that mere subjective doubts about the effectiveness of domestic remedies does not absolve the author of the duty to exhaust them.

**Author’s comments on the State party’s submission**

On 18 October 2017, the author maintained that her communication is admissible, expressing disagreement with the State Party’s description of the KEPA system. She further submits that she did not appeal the decision of the first degree Health Committee for disagreeing with the assessed disability rate, but because the Committee had issued an incorrect diagnosis.

As concerns the request that she should appear before the second degree Committee, the author fears that this was a trap and that this Committee would simply reaffirm the incorrect diagnosis. She refers to the Supreme Administrative Court decision 29/2017, and notes that this case, which concerned disability benefits, was initiated in 2003 and was finalized only in 2017. She further states that she filed a lawsuit against KEPA for “insult of personality” before the Athens Administrative Court of First Instance on 15 May 2017 claiming that she had been subjected to psychological violence, abuse and bullying by State officials. She notes that she expects the case to be decided by the Court in five to seven years’ time.

**Committee’s consideration of admissibility**

In accordance with article 2 of the OP and with rule 65 of the rules of procedure, the Committee has to decide on the admissibility of the communication before considering any claim in a communication.

The Committee established that the same matter was not been examined and it is not being examined under another procedural of international investigation or settlement.

The Committee notes the State Party’s argument on the inadmissibility of the complaint due to non-exhaustion of domestic remedies. The Committee also notes the author’s claim that no domestic remedy was available and effective in her case as well as her fear that the second degree Committee would simply reaffirm the incorrect diagnosis of the first degree Committee.

By recalling its jurisprudence that there is no obligation to exhaust domestic remedies if they have no reasonable prospect of being successful, the Committee convenes that authors of communications must exercise due diligence in the pursuit of available remedies, noting that the mere assumptions about domestic remedies’ effectiveness do not absolve the authors from exhausting them. With reference to the present case, the Committee considers that, by failing to comply with the administrative procedures related to her complaint before the second degree Committee, and by failing to appeal any negative finding before the administrative courts, the author failed to exhaust available domestic remedies.

With regard to the author’s submission that any potential appeal before the administrative courts would be unduly prolonged, the author’s argument that, as per current statistics, it would take on average seven years for the Administrative Court to decide on a case, and to the State’s party argument that the author’s claim in this regard are general, vague and mere assumptions, the Committee considers that, as the author has not initiated any appeal of the decision of the KEPA Committees before the competent administrative courts, it is not in conditions to reach any conclusions as to the alleged duration of the proceedings of reference.

**Conclusion**

The Committee has thus decided that: (1) the communication is inadmissible under article 2(d) of the OP; (2) that the present decision shall be communicated to the State Party and to the author.

1. This case 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, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp:/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)