Case summary:[[1]](#footnote-1) **R.I. v. Ecuador** [CRPD/C/22/D/25/2014](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxg5R6waKax70821F32G9RxBluS%2fy4gwgA2J%2b5jLjQB5x85hUHT6qp4pzlRaLpdJyY%2fA%3d%3d)

Communication No. 25/2014

Date of communication (initial submission): 18 August 2014

Date of adoption of Views: 6 September 2019

Invoked provisions of the Convention: [2](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#2), [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [5](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#5), [12](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12), [13](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13), [27,](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#27) and [28](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#28).

Provisions of the Optional Protocol: [1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#1) and [2](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx#2)

Keywords: Disability; benefits; social security; economic, social and cultural rights; pension; discrimination on the basis of disability;

Decision: The communication is inadmissible under article 2 (e) of the Optional Protocol

Full decision in PDF format: [English](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxg5R6waKax70821F32G9RxBluS%2fy4gwgA2J%2b5jLjQB5x85hUHT6qp4pzlRaLpdJyY%2fA%3d%3d), [Spanish](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxg7z9FX23XgjCjGZAxpnP80SVGRmcFf6%2fS2qi9yXRU%2b%2fn8uHNUbJpSWvP%2bq%2fOJl3wEA%3d%3d), [Arabic](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxgw6i4Uue9J2pBnlT0aqYanTAopNFHAhNMwGsHwMZJnyvyRlWZgvQ7aeCX2NLsKRmPQ%3d%3d), [Russian](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxg6YeIIyNsERT1p3niZszSa4firvc2fEIPnbKOvIBoO4vAcbSJ7b0IhwNl8QnGPkEJg%3d%3d), [Chinese](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiXdyxfsUw0Uwnk5uW2OiRSmLNZCX82kb26gs%2f6e9mKxKo%2f07x4NVrYK1a9RpzJxg2RH5XoyMqJp%2fizQtnDkPyzg1rVok6xXclq5xGYo177u0FtzIUi1R5ei%2bCtmVu1UUw%3d%3d).

**Facts:**

The author is an Ecuadorian born in 1955. In 2001, during work duties, the author was involved in a traffic accident, which caused degenerative physical and neurological damage. In November 2005, he stopped working and, since he was a member of the Ecuadorian Social Security Institute, began to receive a temporary disability allowance as established under the law. In February 2008, the Directorate of General Workplace Hazard Insurance granted the author a disability benefit on account of his total permanent incapacity for work (disability benefit), in the initial amount of US$ 750, retroactive to 1 December 2005, the day following the end of his employment.

The author filed different administrative challenges and appeals on the grounds that there had been an error in the calculation of his benefit and that its payment should have been retroactive to the date of the traffic accident (9 March 2001). The author challenged the first decision, which was upheld by a superior body and his claims were dismissed. Thus, the author appealed the latter decision, which was rejected, and the first-instance decision was upheld.

Later, the author applied for a remedy before the administrative courts, requesting that the decision be found illegal and that he receives $2,428.26, plus interest (the amount of the benefit from the date of his workplace accident).

In June 2010, District Administrative Court No. 2 of Guayaquil found the decision of the National Appeals Board to be illegal and admitted the author’s claims. In its ruling, the Court applied Article 32 of the General Regulations on Workplace Hazard Insurance, which sets the monthly benefit at 80 percent of the average monthly wages or salary during the final year of contributions to the Ecuadorian Social Security Institute. The Court indicated that the author’s average salary during his final year of contributions (January 2005 to December 2005) was $2,889.16 and that 80 percent of this total amounted to $2,311.32. Accordingly, the Court ordered that the author be paid a lifelong monthly disability pension from 9 March 2001, the date of the workplace accident, in the amount of $2,311.32.

The Ecuadorian Social Security Institute appealed the latter ruling claiming that the Court had incorrectly interpreted a number of rules, including decision No. 100 C.D. of 21 February 2006. In a judgment of 22 May 2012, the Administrative Chamber of the National Court of Justice overturned the ruling of District Administrative Court No. 2 of Guayaquil and upheld the impugned decision. The judgment notes that District Administrative Court No. 2 incorrectly interpreted decision No. 100 C.D., which sets the limits of monthly disability benefits. In addition, the payment ordered by District Administrative Court No. 2 was improper given that the author had continued to work and had received a temporary disability allowance from the Ecuadorian Social Security Institute on a monthly basis.

The author filed for a special protective remedy with the Constitutional Court, claiming that his constitutional right to legal certainty had been violated inasmuch as the judgment of the National Court of Justice was insufficiently reasoned and contained an erroneous interpretation of the law whereby the interpretation of administrative decisions of the Ecuadorian Social Security Institute. The author invoked the International Labour Organization (ILO) Employment Injury Benefits Convention, 1964, and claimed that his right to equality had been violated given that in a similar case the Constitutional Court had granted constitutional protection and had recognized a violation of the right to an adequate standard of living, noting that the amount of the benefit, in that case, was insufficient to cover the costs associated with disability and household obligations.

In January 2014, the Constitutional Court ruled against the author and dismissed his claims under the argument that this Court is not an additional level in the administrative process and is not, therefore competent to rule on the interpretation of administrative provisions governing the amount of the disability granted by the author.

The judgment further notes that the right to access to justice and thorough reasoning were not infringed since the author applied for the available administrative remedies. Since his claims were dismissed by the highest judicial body, the author claims that he has exhausted all the available domestic remedies.

**The complaint:**

The author claims that his rights under articles 2, 4 (2) and (4), 5 (1), 12 (5), 13 (1), 27 (1) (c) and 28 (1) and (2) (e) of the Convention were violated.

Regarding article 2, the author claims that he was discriminated against on grounds of disability in the decisions of the Ecuadorian Social Security Institute, the National Court of Justice and the Constitutional Court concerning the recognition of his right to a disability benefit and the amount thereof.

Regarding article 4(2) and 4, the author claims that the State party ignored its obligations to realize his economic, social and cultural rights. In particular, that the State, when determining the amount of his disability benefit, omitted to apply the domestic laws that better protect entitlements in the event of industrial accidents and occupational diseases, including ILO Convention No. 121, which the State party has ratified and incorporated into its domestic legislation, the Labour Code and the Regulations and Statute of the Ecuadorian Social Security Institute.

Concerning article 5 (1), the author claims that the State violated his right to equality as the Constitutional Court decided on an ‘identical’ case as his, but in the previous case, the Court overturned decisions that reduced the retirement pension of another member of the Ecuadorian Social Security Institute, noting in its judgment that “the guarantee of legal certainty had been violated, thereby undermining a right established in a law of superior rank”.

Regarding article 12(5), the author claims that the State party failed to safeguard his right to not be arbitrarily deprived of his assets, as prior to his accident his only asset was his ability to work. Also, that the State ‘arbitrarily’ deprived him of protection by disregarding his acquired tight to workplace hazard insurance and by undermining the legal certainty established in that connection.

Concerning article 13(1), the author claims that his right to access justice on an equal basis with others was violated since the Constitutional Court came to different conclusions in his case and a similar one.[[2]](#footnote-2) Moreover, that the lower courts failed to take into account the pre-eminence of more favorable international laws. Also, that the Constitutional Court did not rule on his fundamental rights to equality and an adequate standard of living, which were infringed by the decisions of the ordinary courts.

Concerning article 27 (1) (c), the author notes that by leaving him without protection during the disability calculation procedure, the Ecuadorian Social Security Institute failed to adhere to the standards set in ILO Convention No. 121 and infringed his labor rights as a worker with a disability.

Regarding article 28 (1), the author claims that the reduced benefit that was imposed on him does not enable him to meet his family’s financial obligations, as he did prior to the accident.

Regarding article 28 (2) (e), the author claims that the reduction of his retirement pension to less than one-third of the amount he was legally entitled to, is a violation of the Convention and of ILO Convention No. 121 on benefits in the case of industrial accidents and occupational diseases and the mechanisms to oversee their application.

### State party’s observations on admissibility and merits

The State party confirmed the information provided by the author regarding his disability, the recognition of his entitlement to the disability benefits and the administrative and judicial remedies that he sought at the national level.

**Regarding the admissibility of the communication, the State party submitted that under the *ratione temporis* principle established in article 2(f) of the Optional Protocol, the Committee should declare itself incompetent to examine the communication. The latter because the Optional Protocol entered into force in Ecuador on 3 May 2008 and the administrative decision of the Ecuadorian Social Security Institute granting the disability benefit was dated 19 February 2008.**

The State party claimed that the communication was ill-founded and lacked sufficient evidence of the alleged violations under the Convention. The State recalled that its Constitutional Court judgment had found “no violation of the author’s constitutional rights in terms of the monthly disability benefit because, having been granted in accordance with the established legal framework, the benefit was legally valid even if it did not meet his economic needs”.

The State also argued that since the author had applied for all the administrative and judicial remedies available at the domestic level, where both due process and the constitutional and legal framework in force were respected, the communication should be found inadmissible because the Committee is not an appellate body competent to rule on the domestic application of the law by the authorities of the State party.

The State party recalled that it has a margin of discretion when interpreting human rights and the lifelong disability benefit that was granted to the author is in line with the Labour Code and the regulations of the Ecuadorian Social Security Institute, which are harmonized with ILO Convention No. 121. The State also noted that the author’s monthly disability benefit is higher than originally calculated and considerably exceeds the basic household food basket. Thus, the State claimed that the author’s communication is seeking to obtain an amount substantially greater than that to which he is entitled by law (*ultra petita*).

Regarding the claims under article 4(2) of the CRPD, the State asserted that it did not violate its obligations under this provision because it has implemented legislation and public policies identifying persons with disabilities as a priority group and cited them.

Concerning the violations of article 5(1) of the Convention, the State denied the that the Constitutional Court ruled differently in two identical cases (decision No. 1394-2006-RA of February 2008 and his own petition). According to the State, both cases involved different demands and bore no subjective or objective similarity. The author’s petition before the Constitutional Court related to the type of retirement pension granted in the event of a workplace accident, while decision No. 1394-2006-RA dealt with the reassessment of a monthly retirement pension. Also, in the other case, an *amparo* was being sought in relation to an administrative decision that had never been challenged, whereas the author sought a special protection remedy against an appeal judgment upholding the administrative decision that he had challenged before the courts.

Regarding violations of article 12(5), the State argued that there is insufficient evidence of how it violated the author’s rights under this provision. Also, that the Constitution has specific provisions recognizing the right to non-discrimination on grounds of disability as well as the obligation to design special programs to support persons with disabilities.

Regarding the author’s claims under article 13(1) of the CRPD, the State submits that there is no evidence of such violation, as the author received support and legal advice from different institutions.

Regarding the claims under article 27(1)(c) of the Convention, the State argued that they are ill-founded and should be dismissed. It recalled different legislative and public policy measures on the right to work and relevant guarantees for persons with disabilities.

Regarding the claims under article 28(2)(e), the State submits that the disability benefit was granted by the competent authorities in line with domestic law, as the approval of retirement for total permanent incapacity for work is subject to eligibility criteria, in particular having made a minimum of 60 monthly contributions (five years), and to an assessment by the disability determination board. There is no evidence of any breach of his right to an adequate standard of living and to social protection.

**The State requested to the Committee to declare the communication inadmissible under article 2(e) and (f) of the OP due to the lack of temporal jurisdiction and the lack of evidence of violation to the rights under the CRPD.**

**Issues and proceeding before the Committee**

Consideration of admissibility. The Committee ascertained that the same matter has not already been examined by itself and has not been and is not being examined under another procedure of international investigation or settlement. The Committee noted that the author claimed that he had exhausted all available domestic remedies and that the State did not make any objection in this regard.

The Committee also noted that the State argued that there was a ratione temporis impediment to review this case. The State stated that since the Optional Protocol entered into force on 3 May 2008, the communications procedure applies only to events having taken place from that date onward, under article 2(f) of the Optional Protocol (OP). The State highlighted that the decision granting the disability benefit by the Social Security Institute was dated 19 February 2008, in other words, prior to the entry into force of the CRPD and its Protocol.

However, the Committee recalled that under article 2 (f) of the Optional Protocol, a communication is considered inadmissible when “the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned unless those facts continued after that date”. The Committee also recalls that an ongoing violation is to be interpreted as a reaffirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations. The Committee also said that all the authorities that decided on the remedies exhausted by the author (the Services and Dispute Board of the Ecuadorian Social Security Institute, the remedy of full administrative jurisdiction, and the special protection remedy) are considered as part of the facts that fall within the competence of the Committee, insofar as they are the result of proceedings that are directly related to the administrative act that gave rise to the alleged violation of the author’s rights and they reaffirmed that act subsequent to the entry into force of the Convention and the Optional Protocol for the State party. The Committee concluded that it is competent ratione temporis to consider this communication.

Regarding the author’s claims, the Committee recalled that article 2 and article 4 do not in principle give rise to free-standing claims and should be invoked only in conjunction with other substantive rights guaranteed under the Convention. The Committee thus found that the author’s claims under article 2 and article 4(2) and 4, read alone, are inadmissible under article 2(e) of the OP.

Regarding the alleged violations to article 13(1) of the CRPD (access to justice), the Committee found that the allegations were not sufficiently substantiated.

According to the author’s allegations, the National Court of Justice and the Constitutional Court allegedly denied the author’s right to access to justice in that they failed to issue thoroughly reasoned judgments, to provide legal assistance and to remove obstacles to access to judicial bodies, given the distance between his place of residence and the location of the courts. On the other hand, the State submitted that the Constitutional Court ruled differently in the alleged identical cases as both of them had different facts, different subject matter, and the remedies that the Court decided on were different; also, that the judicial authorities followed the procedures laid down by domestic law and that the author obtained legal advice in the judicial proceedings. The Committee noted the information provided by the author, according to which the National Council for Persons with Disabilities provided legal assistance in connection with separate proceedings involving his former employer, and not in the context of the judicial proceedings concerning the disability benefit. However, no additional information was provided on possible violations of the author’s right to access to justice, including the denial of procedural accommodations that were allegedly requested and denied by judicial bodies.

**The Committee found no violation to article 12 of the CRPD** (equal recognition before the law) as there is no evidence to declare a violation to this disposition, since the legal capacity of persons with disabilities is recognized under domestic law, except in cases of exemption from liability and no further information was provided on any limitation on the author’s right to equal recognition before the law, in particular his legal capacity.

**The Committee also found no violation of article 27 of the CRPD** (work and employment) as there was not enough information about the author’s current employment status that would enable it to find any violations in connection with such status.

With regard to article 28(2) (e) of the Convention, the Committee considered that no specific information has been provided on how the amount of his disability benefit affects him, on a practical level, or makes it impossible for him to support himself and any persons under his charge. Also, that no specific information has been provided with regard to a possible infringement of the author’s right to an adequate standard of living. Additionally, the Committee noted that no evidence was provided for determining whether or not the author suffered discrimination on grounds of disability, as currently defined in article 2 of the Convention, in the proceedings and decisions concerning his disability benefit.

Similarly, the Committee noted, on the basis of the information provided by the author, that decision No. 100 C.D. of 21 February 2006 established a transitional scheme for retroactively approving and paying benefits of applicants; it also established a ceiling of $750 per month for benefits granted under that scheme, which was lower than under previous legislation.

Finally, the Committee considered that the author’s claims relate to the interpretation and application of domestic law and that there is no information or evidence to conclude that the application of the regulations in force in the determination of the author’s disability benefit was arbitrary or constituted a denial of justice.

**Conclusion:**

**The Committee, therefore, considered the communication to be inadmissible under article 2 (e) of the Optional Protocol.**

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)
2. In the similar decision, the Constitutional Court ordered a review of previous judicial decisions (that ruled against an individual whose pension amount had been reduced through administrative decisions) to ensure respect for the “worker’s acquired rights as enshrined in a pre-existing law that has legal precedence over the unfavorable administrative decision”. In that case, the Constitutional Court ruled that the pension granted by an administrative decision of the Social Security Institute did not uphold the member’s rights and set the amount of the pension on the basis of a pre-existing law of superior rank. [↑](#footnote-ref-2)