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**Human Rights Committee**

Decision adopted by the Committee under the Optional Protocol, concerning Communication No. 3050/2017[[1]](#footnote-1)\*’[[2]](#footnote-2)\*\*

*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 issues:* 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., 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 article 2 (1), and of article 26 of Covenant. He is not represented by counsel. The Optional Protocol entered into force for the State party on 23 April 2008.

The facts as presented by the author

2.1 The author is a Lithuanian national. He notes that he wishes to practice law in Moldova and in order to do so to be able to apply for membership of the Bar Association in Chisinau, Moldova. He however notes 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 have Moldovan citizenship.[[3]](#footnote-3) The author claims that he fulfils all other requirements to be admitted to the bar, except for the requirement of citizenship.

2.2 The author requested the Moldovan 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 suit 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 the Administrative Litigation Act no. 793 as a complaint claiming a contradiction between a legislative act and an international treaty may only be examined by the Constitutional Court. The author however claims that, under article 25 of the Constitutional Court Act, only the President of the Republic, the Government, the Minister of Justice, the Prosecutor General, a Member of Parliament or a parliamentary group, as well as 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 breached his rights under article 2 (3) of the Covenant. On 2 February 2016 the Appellate Court upheld the decision of the first instance court.

The 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 Moldovan Bar Association on grounds of nationality and that the prohibition for foreign nationals to practice law in 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 the Administrative Litigation Act, courts cannot assess the legality of domestic legislation since this is within the exclusive competence of the Constitutional Court. He claims that, under the Constitutional Court Act, he is unable to challenge law no. 1260 before the Constitutional Court and 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 the 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, on the ‘Organization of the Legal Profession’, dated 19 July 2002, the profession of lawyer can be practiced by a person who: is a citizen of the Republic of Moldova; has full capacity to practice; 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 practice 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 a lawyer who is not a national of the State party can practice 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 of the Republic of Moldova. Under article 6 (3) 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 practice the profession of lawyer in the State party, namely qualification to practice 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 practice 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*[[4]](#footnote-4) in which the question of citizenship for access to the legal profession was also raised and in which the Court found that States have a certain margin of appreciation in determining whether and to what extent differences between otherwise similar situations justify distinctions in treatment, and that the European Convention on Human Rights does 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 practicing law in its territory, including the question as to whether citizenship should be a requirement in this respect. Legislation excluding non-nationals from practicing law in a State party cannot therefore, in and of itself, amount to a discriminatory distinction. It argues that State party authorities are therefore entitled to impose conditions on the exercise of the profession of lawyer, in particular with regard to nationality, and to exclude non-nationals from it. The State party further submits that the conditions to practice law in the State party are in no way arbitrary and corresponded to the legal provisions to that effect.

Author’s comments on the State party’s observations

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: “Holders of the grade of doctor, as well as persons with a professional experience of a judge or prosecutor not shorter than 10 years in a case of applying for the advocate licence within six months after dismissal, are liberated from performing professional traineeship and passing the Bar exam. The same rights are extended to the persons who have continued working in the field of law after dismissal from the function of a judge or a prosecutor.”. The author notes that he acquired a PhD in law in November 2010 at the University of Paris I Sorbonne and has therefore fulfilled the requirements for becoming an advocate in the State party, except the requirement of nationality. After obtaining his PhD the author moved to Moldova. Due to his inability to be admitted to the Bar Association in Chisinau, in June 2012, he became an advocate at the Bar of the Moldovan Republic of Transnistria and has continued to work as a Transnistrian advocate, which he argues is a proof of his attachment to 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 nationality. The author further notes that he has three titles of professor of law awarded in 2014 by the Russian New University, Moscow, the Narxoz University, Almaty and the Eurasian Academy of Law, Almaty.

5.3 The author reiterates his argument that the State party legislation on the regulation of the practice of 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 exercise of the profession by independent persons, to allow the State party breach human rights on a large scale, to discriminate 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 the practice of law in the State party does not pursue a legitimate aim, and he argues that it aims at: “a) prohibiting establishment of independent advocates in Moldova, since this would disturb the Moldovan Government to conduct large-scale human rights breaches, to operate in a corruptive manner, to threaten and punish advocates for human rights defence; b) protecting the job market from highly qualified foreign nationals; c) lowering the quality of legal services to Moldovan residents in order to prevent development of democracy; d) maintaining a mono-ethnic and mono-cultural society; e) enforcing xenophobia, 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 disproportional to the aim pursued, as he argues that the requirements referred to by the State party under article 6 of law no. 1260 would require an applicant to go back to his country of origin in order to qualify in that country. He claims that this requirement is a disproportional intervention in the privacy of a person as an applicant might not wish to leave Moldova, but to seek his professional and cultural integration in Moldova. He further argues that moreover, a person loses the right to exercise as a foreign State advocate in Moldova at the point where he or she stops their membership in a foreign Bar Association. He claims that this rule is disproportional, since it requires the advocate to be integrated in 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 disproportional when the advocate is a refugee or is afraid to return to a foreign State due to persecution. He further claims that practicing law as a foreign State advocate in the State party implies lower rights both in representing clients, as well as “in self-government of the Advocates Union of Moldova”.

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 nationality. He reiterates his argument that his rights under article 2 (3) of the Covenant have been violated as article 4 (c) of the Administrative Litigation Act 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 Constitutional Court Act prevents him from lodging a petition before the Constitutional Court (see para. 2.3).

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 to the Covenant.

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 the Administrative Litigation Act 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.[[5]](#footnote-5) Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

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 practice 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 practice law in the State party due to his inability to apply for membership of the Bar Association of Chisinau, based on not being a national 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 nationality and that the prohibition for foreign nationals to practice 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-nationals who would like to practice the profession of lawyer in the State party, namely qualification to practice 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 practice law in the State party are therefore unfounded. The Committee also notes that the author has not refuted that he could practice law in the State party under the conditions prescribed by article 6 of law no. 1260, but notes his claim that the conditions prescribed under law no. 1260 would not allow him to practice law in the State party on the same conditions as a national 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 which is 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 has 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.[[6]](#footnote-6) 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.[[7]](#footnote-7) In the present case, the Committee notes that the parties disagree as to the conditions for non-nationals to practice law in the State party. The Committee however, notes that the author has not refuted the State party’s information that non-nationals of the State party are able to practice law in the State party under the conditions prescribed by law no. 1260, but that he has argued that said conditions are not proportional and are unduly burdensome. The Committee however notes that the author has not provided any further specific information and argumentation to said 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 for meeting the conditions of law no. 1260. It considers therefore that the author has failed, based on the information on file, to substantiate, for purposes of admissibility, that the differentiation in treatment based on nationality 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.

1. \* 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,](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/CV_ABDO_ROCHOLL.docx) Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gomez Martinez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernan Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Chongrok Soh, Kobaujah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. The author notes that Chapter II, article 10 (1) of law no. 1260 stipulates that: “Advocate’s activity may be performed by a person who is a national of the Republic of Moldova […]”. [↑](#footnote-ref-3)
4. Application No. 26713/05, judgement of 28 May 2009. [↑](#footnote-ref-4)
5. 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. [↑](#footnote-ref-5)
6. See general comment No. 18, para. 7. [↑](#footnote-ref-6)
7. 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*;* *Danning v. Netherlands* (CCPR/C/29/D/180/1984), paras. 13−14. [↑](#footnote-ref-7)