



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3225/2018*, **

<i>Communication submitted by:</i>	R.J. (represented by counsel, Stanislovas Tomas)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Lithuania
<i>Date of communication:</i>	22 July 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 17 August 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	31 October 2023
<i>Subject matter:</i>	Lack of access to legal aid
<i>Procedural issues:</i>	Substantiation of claims; abuse of the right of submission
<i>Substantive issues:</i>	Legal assistance; access to court; fair trial
<i>Article of the Covenant:</i>	14 (1)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a)

1. The author of the communication is R.J., a national of Lithuania born on 29 March 1958. She claims that the State party has violated her rights under article 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 20 February 1992. The author is represented by counsel.

Factual background

2.1 The author has a physical disability in the form of a spinal pathology. In addition, she has a visual impairment.¹ On an unspecified date, she started working as a cloakroom attendant and cleaner at a public library, and her work consisted of carrying heavy clothes

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

¹ The author's blindness is mentioned only once. Neither of her disabilities is confirmed by a medical certificate. The author claims that, at the time of the events, although she does not specify the exact date, her capacity to work was assessed to be 40 per cent, whereas it had deteriorated to 30 per cent by the time of the submission of her communication. She refers to disability certificates, but they have not been provided to the Committee.



and bags. She was dismissed on 15 October 2012, allegedly as a result of her disability. The author's spinal pathology predated her employment, but she claims that her employer did not conduct a prior assessment of the state of her health or the risks of the employment for her health. The author lives in extreme poverty, in precarious conditions, and her only income is her monthly disability pension.²

2.2 The author applied for legal aid from the Legal Aid Service of Vilnius municipality on 3 October 2013. According to the Service's decision, the author argued that she had lost 55 per cent of her capacity to work and sought to obtain non-pecuniary damages, since her health had been harmed³ during her employment. She submitted that, even though the weight that she had been required to lift had not exceeded the legally authorized limit, the number of visitors to the library had been too high for a single cloakroom attendant. On 18 October 2013, the Legal Aid Service of Vilnius municipality refused to grant the author legal aid,⁴ finding that no occupational disease had been established in her case and that it was therefore not possible to establish on the basis of the documents presented that she had lost 55 per cent of her capacity to work as a result of illegal acts by her employer. On 15 November 2013, the author appealed that decision to the Vilnius Regional Administrative Court, stating that she had lost 10 per cent of her capacity to work and that she had been forced to work overtime in conditions that had led to disability and permanent pain throughout her body. The author also stated that she was unable to sue her employer owing to extreme poverty and disability. The Court dismissed her complaint on 23 April 2014, arguing that the author's disability predated her employment and that she had not proved that her disability was caused by her professional activity. In addition, the Court noted that the author would first need to challenge the non-recognition of her occupational disease by the competent public institutions because such recognition was a prerequisite for the award of legal aid. The author argues that, owing to her level of education⁵ and her financial situation, she had not understood that requirement, which demonstrates her need for a lawyer.

2.3 On 7 May 2014, the author appealed the decision of the Vilnius Regional Administrative Court to the Supreme Administrative Court of Lithuania, which, on 27 August 2014, upheld that decision and considered that the Legal Aid Service of Vilnius municipality had not been provided with evidence that the author's health issues were due to her employment, which meant that the preliminary legal requirements had not been met.

Complaint

3.1 The author alleges that the State party has violated her rights under article 14 (1) of the Covenant by denying her legal aid.

3.2 The author claims that the right to a fair trial in a lawsuit includes the right of access to a court, which is not efficiently guaranteed without representation by a lawyer. Therefore, the State party has a positive obligation to provide legal aid for the most endangered and impoverished segments of the population. The author claims that the domestic authorities required her to provide, in her application for legal aid, evidence of a kind that she was unable to provide without a lawyer. The author concludes that such a requirement produces a vicious circle: she cannot prove her claims because she does not have a lawyer, yet she does not have a lawyer because she cannot prove her claims. She submits that, without a lawyer, she was unable to understand that she first had to challenge the non-recognition of her occupational disease. In addition, the author claims that the consequences of the decision to deny her legal aid are very painful for her, as she is a person with a disability who is unable to find alternative employment and is forced to live in extreme poverty.

² Her monthly disability pension amounts to €180.30.

³ According to the decision of the Legal Aid Service of Vilnius municipality, the author claimed that her work had, inter alia, provoked pain in her muscles, bones and heart and caused her to lose consciousness and experience bradycardia attacks and headaches lasting for three days at a time.

⁴ In her submission, the author states that the decision was taken on 15 October 2013.

⁵ The author claims that she does not have higher education.

State party's observations on admissibility and the merits

4.1 On 18 February 2019, the State party provided its observations on the admissibility and merits of the communication.

4.2 The State party submits that, contrary to her statements, the author was dismissed from her work as a result of the reorganization of and structural changes to the public library during the period 2011–2014, which involved the gradual abolition of positions of cleaners and cloakroom attendants. On 21 August 2012, the author was notified of the termination of her employment contract, which had been coordinated with representatives of the trade union. In accordance with domestic law, the author was informed of the termination of her contract two months in advance and, during that time, was granted two hours per week to look for alternative employment while retaining her salary. The author's dismissal was supposed to have been effective from 22 October 2012 but, on 19 October 2012, she went on sick leave. Eventually, on 22 January 2013, she was dismissed. The State party argues that the author did not complain about her dismissal either before the State Labour Inspectorate or before a domestic court and that she did not apply for State-guaranteed legal aid for that purpose.

4.3 The State party submits that, on 26 January 2012, the State Labour Inspectorate received a report from a doctor about a suspected case of occupational disease. By order of the head of the Vilnius Division of the State Labour Inspectorate, a commission was formed to investigate. The investigation was completed on 28 June 2012, with a doctor from the Vilnius University Hospital concluding that the author's disease was not occupational in origin. The author appealed that decision to the Central Occupational Medicine Experts Commission, which concluded, on 30 November 2012, that it was reasonable to identify and recognize her disease as non-occupational. The Commission noted that the author's spinal pathology predated her employment, that the weight that she was required to lift was within the permissible limit and that the suspected diseases⁶ were not included in the list of occupational diseases. It was stated explicitly in the Commission's conclusions that they were subject to appeal. On 6 February 2013, the author submitted a request for a new investigation into the causes of the alleged occupational disease to the State Labour Inspectorate, which concluded, on 5 March 2013, that the applicable rules for the determination of the causes of alleged occupational diseases had not been violated and that there were no grounds for a new investigation. The author did not lodge a complaint against that decision before the domestic courts and did not apply for State-guaranteed legal aid for that purpose.

4.4 With regard to the author's application for State-guaranteed legal aid in the matter of the present communication, the State party states that the author applied for State-guaranteed legal aid from the State-Guaranteed Legal Aid Service in order to initiate a civil case against her employer so that she could seek compensation for the health impairment⁷ that she had allegedly sustained as a result of her occupational disease. On 4 October 2013, the State-Guaranteed Legal Aid Service informed the author that her application was insufficiently specific. In particular, it was not clear who was responsible for the alleged health impairment. She was informed that the State-Guaranteed Legal Aid Service had an obligation to assess the reasonableness of the claim and examine whether the documents submitted and facts and circumstances provided met the conditions established by law. She was also informed that she could be assisted in the preparation of her application by the Legal Aid Service of Vilnius municipality within the framework of the primary legal aid scheme.⁸ However, she did not avail herself of that opportunity. Instead, she submitted a request to the State-Guaranteed Legal Aid Service for secondary legal aid.⁹ Her application was rejected, as her claim had no

⁶ The suspected diseases were myalgia, cervicgia and lumbar sciatic neuralgia.

⁷ The term "health impairment" was used by the author, according to the State party.

⁸ According to the State party, primary legal aid means the provision of legal information in accordance with the procedure laid down by law, the provision of legal advice and the drafting of documents to be submitted to State and municipal institutions, with the exception of procedural documents. Such legal aid covers advice on out-of-court dispute settlement, actions for amicable dispute settlement and the drafting of a settlement agreement.

⁹ According to the State party, secondary legal aid means the drafting of documents, defence and representation in court, including the process of execution, and representation in the event of preliminary extrajudicial consideration of a dispute, where such a procedure has been laid down by law or by a court decision. Such legal aid covers the litigation costs incurred in civil proceedings, the

prospect of success owing to the fact that she had not been recognized as having an occupational disease by the competent authority, which is a prerequisite for instituting a claim for damages against an employer. The State-Guaranteed Legal Aid Service set out in detail the reasons why her claim had no prospect of success, taking into account the fact that the burden of proof lies with the plaintiff in cases concerning the award of damages according to domestic law.¹⁰ The author appealed that decision to the Vilnius Regional Administrative Court and subsequently to the Supreme Administrative Court, both of which rejected her appeals.

4.5 The State party emphasizes that, according to domestic law and jurisprudence, the mere fact that a person has suffered a loss of capacity to work is insufficient to prove an employer's liability, as the reduced capacity to work must be directly related to working conditions, and such a relation must be substantiated through the identification and recognition of an occupational disease by the competent authorities. Domestic law requires persons applying for State-guaranteed legal aid with a view to instituting civil proceedings to submit exhaustive and accurate information proving their entitlement to secondary legal aid and all the necessary supporting documents. The State party argues that the author was not required to submit exhaustive evidence to prove the case against her employer. However, she was required to submit the information and evidence necessary to prove that she had an arguable claim.

4.6 The State party submits that, according to domestic law, the right of access to a court is not absolute and may be subject to restrictions. A requirement to provide State-guaranteed legal aid in all civil proceedings, in particular in totally unsubstantiated cases or cases having no prospect of success, would impose a disproportionate financial burden on the State, thereby undermining the legal aid scheme as a whole. The restriction on the provision of legal aid to the author was intended to achieve legitimate goals, namely, to restrict the litigation at the State's expense of claims with no prospect of success, and the restriction in her case was reasonable.

4.7 In addition, the State party notes that the author applied to the European Court of Human Rights concerning the refusal of State-guaranteed legal aid. On 26 March 2015, the Court, sitting in a single-judge formation, declared her complaint inadmissible. The State party notes that, while the decision of the Court may not have any impact on the Committee, it can nevertheless be presumed that the author is using international courts and tribunals as courts of "fourth instance".

Author's comments on the State party's observations on admissibility and the merits

5.1 On 7 May 2019, the author submitted her comments on the State party's observations on the admissibility and merits of her communication. The author emphasizes that her communication concerns damages for her loss of capacity to work and not for her dismissal.

5.2 The author argues that the State party's claim that she could have appealed the conclusions of the Central Occupational Medicine Experts Commission is not pertinent, as the Commission's conclusions are not binding on the domestic courts. The author submits that, when assessing the reasonableness of a request for legal aid, the State party has to take into consideration: (a) that the author was 54 at the time of her dismissal and had decreased memory and a reduced capacity to work and that she is not able to litigate without legal assistance; (b) that the way in which she expressed herself in her application for legal aid shows that she is unable to grasp the nature of the legal issues at stake, although, despite the wording of her application, her intent is clear; and (c) that the question of whether a domestic

costs incurred in administrative proceedings and the costs related to the hearing of a civil action brought in a criminal case.

¹⁰ The State party refers to the provisions of the Labour Code, the Civil Code and the Civil Procedure Code regulating the grounds and conditions for incurring liability. According to article 246 of the Labour Code, liability is incurred when the following conditions are all present: (1) damage has been caused; (2) the damage was caused through illegal activity; (3) there is a causal relationship between the illegal activity and the damage; (4) the offender is guilty; (5) the offender and victim were in a labour relationship during the violation of the law; and (6) the resulting damage relates to work activities.

court would follow the Commission's conclusions remains open, since the Commission's arguments can be challenged before a court. The weight that the author was required to lift, even if it did not exceed the authorized limit, could lead to a disability. Even if the author was predisposed to develop a disability, her work accelerated the progression of her disease. It was the duty of the State party not to employ her, as the State party has a duty of care to verify whether potential employees can perform certain tasks in order to protect them from developing a disability.¹¹

5.3 The author argues that the State party is in breach of article 14 (1) for another reason, namely the vague presentation, in the conclusions of the Central Occupational Medicine Experts Commission of 30 November 2012, of the available domestic remedies. It was not explained: (a) which court was competent to hear an appeal; (b) what time limit was applicable to the submission of an appeal; and (c) what opportunities to apply for legal aid existed. However, according to the author, that breach is auxiliary, since the Commission's conclusions are not binding on domestic courts.

State party's additional observations

6.1 On 23 June 2020, the State party submitted additional observations. It submits that the criteria that a person has to meet in order to receive secondary legal aid are set down in domestic law. The circumstances submitted by the author, namely her age, the fact that she has decreased memory and a reduced capacity to work and the fact that she was not able to understand the nature of the legal issues at stake, are not listed among the criteria in question. The State party notes that the author was informed in detail of what she had to do and of the fact that she had a right to receive primary legal aid, for which she had to apply to the Legal Aid Service of Vilnius municipality. It was explained to her that, if, during the provision of primary legal aid, it became clear that secondary legal aid was needed, the person providing primary legal aid would help the author to make a request for secondary legal aid. The author did not avail herself of the opportunity to receive primary legal aid.

6.2 The State party reiterates that the author neither lodged a complaint against the conclusions of the Central Occupational Medicine Experts Commission or the decision of the State Labour Inspectorate before the domestic courts nor requested State-guaranteed legal aid in order to appeal against those findings, even though it was explicitly stated in both cases that they were subject to appeal. The State party dismisses the author's argument that the domestic courts would not necessarily have followed the Commission's conclusions as purely speculative. The State party states that the Commission is a compulsory out-of-court dispute settlement authority for disputes regarding occupational diseases; therefore, those who wish to apply to the domestic courts must first apply to the Commission.

6.3 With regard to the author's argument that it was the State's duty not to employ the author, the Government states that, when the author was hired, there were no legal obstacles to employing her. The author had to provide the employer with a certificate proving her fitness for work, and health check-ups are mandatory for employees. The author's health was checked in 2012, and it was indicated that she could work but had to wear glasses or contact lenses. Those indications were unrelated to her back pain. The State party argues that the author has had back pain since 2003 and knew that her work would entail cleaning the library and working as a cloakroom attendant. She could have decided not to accept the employment. The State party emphasizes that domestic law encourages the employment of persons with disabilities and that, if it is known or comes to light that a person has a reduced capacity to work, it is for the parties to agree on specific working conditions that are more favourable. Therefore, the State party maintains its position that the author has not substantiated her claims regarding violations of article 14 (1) of the Covenant.

¹¹ The author states that she had no disabilities in 2008, that, during the dismissal process, her capacity to work decreased to 45 per cent and that it currently stands at 30 per cent. That statement differs from the statement that she made in her initial submission, in which she argued that she had a 40 per cent capacity to work at "the time of the events" and that, at the time of the submission of the present communication, her capacity to work was 30 per cent. She has not provided any medical certificate that could be used to verify those statements.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim 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.

7.2 The Committee notes that the author's application to the European Court of Human Rights was found to be manifestly ill-founded and declared inadmissible on 26 March 2015. The Committee notes that the State party has not introduced a reservation to article 5 (2) (a) of the Optional Protocol and that, as required by that article, the same matter is not currently being examined under another procedure of international investigation or settlement. Therefore, the Committee considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the author's claim.

7.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. 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.

7.4 The Committee takes note of the author's claim that the State party violated her rights under article 14 (1) of the Covenant by not providing her with free legal aid to sue her employer for civil damages. At the same time, the Committee notes the State party's argument that primary legal aid was available to the author and that, when the author applied for secondary legal aid, she was informed that she could be assisted in the preparation of her application for secondary legal aid by the Legal Aid Service of Vilnius municipality within the framework of the primary legal aid scheme. The Committee also notes that the author refers, in her initial submission and in her comments on the State party's observations, to secondary legal aid but does not refute the State party's argument regarding the possibility of requesting primary legal aid and does not explain why primary legal aid would not have been available to her or whether she considers the primary legal aid scheme not to fulfil the requirements of article 14 (1) of the Covenant. Therefore, the Committee considers that that claim has not been sufficiently substantiated for the purposes of admissibility and concludes that it is inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim that, in addition to not providing legal aid, the State party violated her rights under article 14 (1) of the Covenant, as the domestic remedies available to her were presented vaguely in the conclusions of the Central Occupational Medicine Experts Commission. The Committee recalls its jurisprudence, in which it has stated that authors must raise all their claims in their initial submission, before the State party is asked to provide its observations on the admissibility and merits of the communication, unless they can demonstrate why they were unable to raise all their claims at the time of the initial submission.¹² In the present case, the author has not indicated why, in her initial submission, she could not have raised her claims regarding the alleged vagueness of the presentation of the available domestic remedies in the conclusions of the Commission. Therefore, the Committee considers that that claim constitutes an abuse of the right of submission and is consequently inadmissible under article 3 of the Optional Protocol.

7.6 The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

¹² *Puigdemont i Casamajó v. Spain* (CCPR/C/137/D/3165/2018), para. 15.3.