

Distr.: General  
31 October 2023

Original: English

## Advance unedited version

### Human Rights Committee

#### Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3225/2018

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<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 Views:</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; fair trial – legal assistance
<i>Articles 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, paragraph 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 spinal pathology. In addition, she is half-blind.<sup>1</sup> On an unspecified date, she started working as a wardrobe worker and cleaner

\* 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, Laurence R. Helfer, Teraya Koji, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobayyah Tchamdja Kpatcha, Hélène Tigroudja and Imeru Tamerat Yigezu

<sup>1</sup> The blindness is mentioned only once. Neither of the disabilities is confirmed by a medical certificate. The author claims that, at the time of the events [she does not specify when exactly], her capacity to

at a public library and her work consisted of carrying heavy clothes and bags. She was dismissed from her work on 15 October 2012, allegedly due to her disability. The author had the spinal pathology already before 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, her only income being her monthly disability pension.<sup>2</sup>

2.2 The author applied for legal aid to the Vilnius State-Guaranteed Legal Aid Service on 3 October 2013. According to the decision of the Vilnius State-Guaranteed Legal Aid Service, the author argued that she had lost 55% of her working capacity and she sought to obtain non-pecuniary damages since her health was harmed<sup>3</sup> during her employment. She submitted that even though the weight she carried did not exceed the legally authorized limits, the number of visitors to the library was too high for a single cloakroom attendant. The Vilnius State-Guaranteed Legal Aid Service refused to grant the author legal aid on 18 October 2013<sup>4</sup>, as it found that no professional disease had been established in her case and that it was therefore not possible to establish from the documents presented that she had lost 55% of her capacity to work due to illegal acts by her employer. On 15 November 2013, the author appealed this decision before the Vilnius Regional Administrative Court, stating that she had lost 10% of her capacity to work and she was forced to work overtime in conditions that led to the disability and permanent pain in her whole body. The author also stated that she was unable to sue her employer due to extreme poverty and disability. The Court dismissed her complaint on 23 April 2014, arguing that the author had a disability already before her employment, and she had not proved that her disability was caused by her professional activity. In addition, the Court noted that the author had to challenge first the non-recognition of her professional disease by the public institutions because such recognition might facilitate her application for legal aid. The author argues that due to her level of education<sup>5</sup> and her financial situation, she did not understand this requirement, which is why she needed a lawyer.

2.3 On 7 May 2014, the author appealed the decision of the Vilnius Regional Administrative Court to the Lithuanian Supreme Administrative Court which on 27 August 2014 upheld the decision and considered that the Vilnius State-Guaranteed Legal Aid Service had not been provided evidence that the author's health issues were due to her employment, which meant that the preliminary conditions legally necessary were not established.

### Complaint

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

3.2 The author claims that the right to fair trial in a suit at law includes the right of access to court, which is not efficiently guaranteed without the representation of a lawyer. Therefore, the State party has a positive obligation to provide legal aid for the most endangered and impoverished parts of population. The author claims that the domestic authorities required her to provide in her application for legal aid a type of evidence that she is unable to provide without a lawyer. The author concludes that this is a vicious circle; as she cannot prove her claims because she does not have a lawyer, and conversely, she does not have a lawyer because she is unable to 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 professional 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 in the impossibility to find new work, and she is forced to live in extreme poverty.

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work was assessed at 40%, whereas it had deteriorated to 30% at the time of the submission of her communication. She refers to disability certificates, but these have not been provided to the Committee.

<sup>2</sup> 180,30 euros.

<sup>3</sup> According to the decision of the Vilnius State-Guaranteed Legal Aid Service, she claimed that her work "provoked pain in muscles, bones, heart, losing consciousness, bradycardia attacks, headaches continuing nonstop for three days, etc."

<sup>4</sup> In her communication the author states that the decision was taken on 15 October 2013.

<sup>5</sup> The author claims that she does not have higher education.

### State party's observations on admissibility and 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 due to the reorganization and structural changes of the public library during 2011-2014, which gradually repealed positions of cleaners and cloakroom attendants. On 21 August 2012, the author was delivered a notification of termination of her employment contract, which was coordinated with the representatives of the trade union. In accordance with domestic law, the author was informed two months in advance regarding the termination of her contract, and she was granted two hours per week to look for another work retaining her salary payment for this time. The author's dismissal was supposed to be effective as of 22 October 2012, but on 19 October she took a 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 she did not apply for state-guaranteed legal aid in this regard.

4.3 The State party submits that on 26 January 2012 the State Labour Inspectorate received a report from a doctor about suspected occupational disease. By order of the Head of the Vilnius Division of the State Labour Inspectorate, a commission was formed for the investigation into a possible occupational disease. The investigation was completed on 28 June 2012, whereby the doctor of the Vilnius University Hospital concluded that the origin of the author's disease was not occupational. The author appealed the decision to the Central Commission of Experts on Occupational Medicine, which concluded on 30 November 2012 that it was reasonable not to identify and recognize her disease as occupational. It noted that the spinal pathology occurred before the author's employment, the lifted weights were within permissible limits, and the suspected diseases<sup>6</sup> were not included in the list of occupational diseases. It was explicitly mentioned in the conclusions of the Commission that they were subject to appeal. On 6 February 2013, the author submitted a request for repeated 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 causes of alleged occupational disease were not violated and there were no grounds for repeated investigation in this regard. The author did not lodge a complaint against this decision before domestic courts, and she did not apply for state-guaranteed legal aid in this regard.

4.4 As to the author's application for state-guaranteed legal aid in the matter of this communication, the State party states that the author applied for state-guaranteed legal aid before the State-Guaranteed Legal Aid Service in order to initiate a civil case against her employer, so that she could seek compensation for allegedly sustained health impairment<sup>7</sup> due to occupational disease. On 4 October 2013 the State-Guaranteed Legal Aid Service informed the author that her request needed to be specified as it was not concrete; in particular, it was not clear who was responsible for the alleged health impairment. She was also informed that the State-Guaranteed Legal Aid Service had an obligation to assess the reasonableness of the claim and examine whether the submitted documents and provided facts and circumstances corresponded to the conditions provided by law. In addition, she was informed that she could be assisted in preparation of her application by the Legal Aid Service of Vilnius municipality, within the scheme of primary legal aid.<sup>8</sup> However, she did not use this opportunity. Instead, she submitted her request to be provided with so-called "secondary legal aid"<sup>9</sup> to the State-Guaranteed Legal Aid Service. This request was rejected, as her claim

<sup>6</sup> Myalgia, cervicgia and lumbar with neuralgia of sciatic nerve.

<sup>7</sup> The term used by the author according to the State party.

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

<sup>9</sup> According to the State party, secondary legal aid refers to drafting of documents, defence and representation in court, including the process of execution, representation in the event of preliminary extrajudicial consideration of a dispute, where such a procedure has been laid down by laws or by a

had no prospect of success due to the absence of recognition of occupational disease by the competent authority, which is a prerequisite instituting the claim for damages against the employer. The State-Guaranteed Legal Aid Service provided a detailed substantiation of reasons why her claim had no prospect of success, taking into account the burden of proof on the plaintiff in a case on damages according to domestic law.<sup>10</sup> The author appealed this decision to the Vilnius Regional Administrative Court and further to the Supreme Administrative Court which rejected her appeals.

4.5 The State party emphasizes that, according to domestic law and jurisprudence, the mere fact that a person's working capacity has reduced cannot prove the employer's liability for damages, as reduced working capacity must be directly related to working conditions, which could be substantiated by the identification and recognition of occupational disease by competent authorities. Domestic law requires persons applying for state-guaranteed legal aid with a purpose to institute civil proceedings to submit exhaustive and correct information proving their entitlement to get secondary legal aid, as well as all the necessary documents substantiating the claim. The State party argues that the author was not required to submit exhaustive evidence and to prove the case against the defendant, however she had to submit necessary information and evidence in order to prove that she had an arguable claim against her employer.

4.6 The State party submits that according to domestic law, the right of access to court is not absolute and may be subjected to restrictions. A requirement to provide state-guaranteed legal aid in all civil proceedings, especially in totally unsubstantiated cases or having no prospect of success, would impose a disproportional financial burden on the State party, thereby impairing the essence of the legal aid scheme as such. The restriction on legal aid imposed on the author was aimed to achieve legitimate goals in order to restrict litigation under the State expenses in relation to prospectless claims and the restriction in her case was reasonable.

4.7 In addition, the State party notes that the author also applied to the European Court of Human Rights, concerning refusal of state-guaranteed legal aid, which on 26 March 2015 declared her complaint inadmissible in a single-judge formation. The State party notes that the decision of the Court may not have any impact on the Committee, but it can however 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 merits**

5.1 On 7 May 2019 the author submitted her comments on the State party's observations on admissibility and merits of her communication. The author emphasizes that her proceedings concern damages for losing her working capacity.<sup>11</sup>

5.2 The author argues that the State party's claim that she could have appealed the conclusions of the Central Commission of Experts on Occupational Medicine is not pertinent, as the conclusions of the Commission are not binding for the domestic courts. The author submits that when assessing reasonableness of a request for legal aid, the State party has to take into consideration that i) the author was 54 years old and had decreased memory and working capacity and she is not able to litigate without legal assistance, ii) the way she articulated herself in her application for legal aid shows that she is unable to grasp the nature of the legal issue at stake. However, despite the wording in her application, her intent is clear, and iii) the question whether a domestic court would follow the conclusions of the Central

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court decision. This legal aid covers the litigation costs incurred in civil proceedings, the costs incurred in administrative proceedings and the costs related to the hearing of a civil action brought in a criminal case.

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

<sup>11</sup> And not to her dismissal.

Commission of Experts on Occupational Medicine is very disputable since the arguments of the Commission can be challenged before a court. The weights the author carried, even if they did not exceed the authorized limits, could provoke a disability. Even if the author was predisposed to a disability, her work accelerated 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 a potential employee may perform certain tasks in order to protect her from potential disability.<sup>12</sup>

5.3 The author argues that the State party is in breach of article 14, paragraph 1, also due to a vague presentation on domestic remedies in the conclusions of the Central Commission of Experts on Occupational Medicine, dated 30 November 2012, for not explaining i) the name of the court competent for hearing appeals, ii) the time-limit for the appeal and iii) the opportunities to apply for legal aid. However, according to the author this breach is auxiliary since the conclusions of the Commission are not binding for domestic courts.

#### **State party's additional observations**

6.1 On 23 June 2020 the State party submitted additional observations. It submits that the domestic law lists conditions that a person has to meet under the law to receive secondary legal aid. The circumstances submitted by the author, that is; i) her age, ii) the fact that she has decreased memory and reduced working capacity, and iii) that she was not able to understand the nature of the legal issue at stake, are not listed among the conditions that a person must meet under the law to receive secondary legal aid. The State party notes that the author was informed in detail what she had to do and that she had a right to receive primary legal aid, for which she had to address 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 relevant person providing primary legal aid would help the author to fill in the secondary legal aid request. The author did not use her opportunity to receive primary legal aid.

6.2 The State party reiterates that the author did not lodge a complaint against the conclusions of the Central Commission of Experts on Occupational Medicine or the decision of the State Labour Inspectorate before domestic courts, nor did she ask to be provided with state-guaranteed legal aid in order to appeal against these decisions, even though it was explicitly stated in both of these decisions that they were subject to appeal. The State party dismisses the author's argument that the domestic courts would not have necessarily followed the conclusions of the Commission as purely speculative. The State party states that the Commission is a compulsory out-of-court dispute settlement authority for disputes regarding occupational diseases, and therefore it must be used before applying to domestic courts.

6.3 As to the author's argument that it was the State's duty not to employ the author, the government states that at the moment the author was employed there were no legal grounds not to employ her. The author had to provide the employer with the certificate proving her ability to 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 she had to wear glasses or contact lenses, thus the indications were not related to her back pains. The State party argues that the author has back pains since 2003 and she knew that her work would entail cleaning the library and working as a cloakroom attendant, therefore she could have decided not to accept the employment. The State party emphasizes that domestic law encourages occupation of persons with disabilities, and in case any lower working capacity was known or comes to light later, it is left for the parties to agree on specific more favourable conditions of work. Therefore, the State party maintains its position that the author has not substantiated her claims regarding violations of article 14, paragraph 1, of the Covenant.

<sup>12</sup> The author states that she had no disabilities in 2008 and during the dismissal her working capacity had decreased to 45% and it is currently 30%. This differs from what the author states in her initial communication, in which she argues that she had a 40% working capacity at "the time of the events", and at the time of the submission of the communication her working capacity was 30%. She has not provided any medical certificate where this could be verified.

## Issues and proceedings before the Committee

### Considerations 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 complaint 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, paragraph 2 (a) of the Optional Protocol and that, as required by this article, that the same matter is not being examined at the moment under another procedure of international investigation or settlement. Therefore, the Committee considers that it is not precluded from examining the author's claim by the requirements of article 5, paragraph 2 (a) of the Optional Protocol.

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, paragraph 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, paragraph 1, of the Covenant by not providing her with free legal aid to request civil damages against her employer. 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 preparation of her application on secondary legal aid by the Legal Aid Service of Vilnius municipality within the scheme of primary legal aid. The Committee further notes that the author refers in her initial communication and comments on the State party's observations to secondary legal aid, but she does not refute the State party's argument regarding the possibility of requesting primary legal aid, nor does she explain why primary legal aid would not be available to her or whether she considers the primary legal aid scheme not to fulfil the requirements under article 14, paragraph 1 of the Covenant. Therefore, the Committee considers that this 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 that the author claims that in addition to not providing legal aid, the State party also violated her rights under article 14, paragraph 1, of the Covenant by providing a vague presentation of domestic remedies available to her in the conclusions of the Central Commission of Experts on Occupational Medicine. The Committee recalls its jurisprudence, in which it has stated that authors must raise all of their claims in their initial submission, before the State party is asked to provide its observations on 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.<sup>13</sup> In the present case, the author has not indicated why she could not have raised her claims regarding the alleged vagueness of the presentation of domestic remedies in the conclusions of the Central Commission of Experts on Occupational Medicine in her initial submission. Therefore, the Committee considers that this 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 communicated to the State party and to the author.

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<sup>13</sup> *Puigdemont v. Spain* (CCPR/C/137/D/3165/2018), para. 15.3.