



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 69/2019*, **

<i>Communication submitted by:</i>	Esteban Ruiz Suárez (represented by Santiago López Noguera of the organization Plena Inclusión)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Spain
<i>Date of communication:</i>	17 April 2019 (initial submission)
<i>Date of adoption of Views:</i>	29 August 2024
<i>Subject matter:</i>	Accessibility; procedural accommodations and support to ensure access to justice for a person with intellectual disabilities
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation; abuse of rights
<i>Substantive issues:</i>	Discrimination on grounds of disability; access to justice; exercise of legal capacity
<i>Articles of the Convention:</i>	5, 9, 12–14 and 21
<i>Article of the Optional Protocol:</i>	2 (b), (d) and (e)

1. The author of the communication is Esteban Ruiz Suárez, a national of Spain born on 23 July 1980. He claims that the State party violated his rights under article 13 of the Convention, read in conjunction with articles 5, 9, 12, 14 and 21. The Optional Protocol entered into force for the State party on 3 May 2008. The author is represented by counsel.

A. Summary of the information and arguments submitted by the parties

Facts as submitted by the author

2.1 The author has an intellectual disability. His official disability rating of 73 per cent was determined in accordance with Spanish regulations. In addition, the author is a member of the ethnic or social minority group known as *mercheros*, a traditionally nomadic group

* Adopted by the Committee at its thirty-first session (12 August–5 September 2024).

** The following members of the Committee participated in the consideration of the communication: Muhannad Salah Al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Amalia Eva Gamio Ríos, Laverne Jacobs, Samuel Njuguna Kabue, Kim Mi Yeon, Alfred Kouadio Kouassi, Abdelmajid Makni, Floyd Morris, Markus Schefer and Saowalak Thongkuay.



dedicated to trading in metal objects of little value, as a result of which they are also referred to as *quincalleros* (tinkers).

2.2 On 5 March 2013, three people wearing ski masks attempted to burgle a home in the town of El Carpio de Tajo in the Province of Toledo. At the time of the attempted burglary, there was a family of three in the house, and in the ensuing struggle the son, who later died, and the father were seriously wounded.

2.3 On 26 July 2013, the Civil Guard arrested the author for his alleged involvement in the crime. He was charged with the crimes of murder, attempted murder, attempted robbery and illegal possession of weapons. The author's fingerprints on the bag in which the weapons used during the robbery were found were the main evidence for the charges. On 28 July 2013, the judge ordered him into pretrial detention.

2.4 During the initial stages of the criminal proceedings – the arrest and the taking of statements at the police station, the taking of statements before the judge and the hearing held to decide whether to place the author in pretrial detention – no account was taken of the author's intellectual disability, which went unnoticed. No reasonable adjustments were made to ensure that he could participate in the proceedings, and technical vocabulary hard to understand for a person with an intellectual disability was used.

2.5 The author's disability became apparent after his imprisonment. On 2 September 2013, the author gained access to the programme, administered by the organization Plena Inclusión, for the care of persons with intellectual or developmental disabilities who are in prison. He did not, however, receive information about how his disability could be relevant to or have an effect on the charges he was facing and the criminal proceedings brought against him. Moreover, the judicial authority conducting the criminal proceedings was not informed of the author's disability.

2.6 On 30 November 2013, the author, in his statement as the accused, gave an exculpatory explanation for the evidence allegedly implicating him in the crimes under investigation. The author explained that he collected scrap metal and that, as a result, he could have touched the bag containing the weapons by chance.

2.7 A Plena Inclusión employee noticed that the author's lawyers were unaware of his disability. After requesting permission from the author, Plena Inclusión informed the lawyers of his disability and of the existence of his official disability certificate, which was incorporated into the criminal proceedings. In addition, the author's lawyers asked Plena Inclusión for a report on the author's intellectual disability, which was submitted to the judicial authorities on 24 June 2014. The report notes that the author has deficits in academic and functional skills, communication skills, social skills and employment and occupational skills.

2.8 On 13 April 2015, the Institute of Forensic Medicine of Toledo issued a forensic psychological report, based exclusively on a semi-structured interview conducted on 9 April 2015, intended specifically to determine whether or not, in the author's case, liability for the crimes should, according to Spanish law, be extinguished or mitigated. In the report, for which a Beta III test, which is a measure of non-verbal cognitive ability, was used, the author's intellectual disability is referred to as "mild mental retardation". According to the results of this test, the author has an IQ of 55. Consequently, the report concludes that with this IQ, supervision, guidance and assistance may be required, especially in situations of social stress. It is noted in the report, however, that the author's impairment appears feigned.

2.9 On 22 and 23 April 2015, the author was tried in the Provincial Court of Toledo, but no account was taken of his disability, even though it was known to the Court (see para. 3.7).

2.10 On 5 May 2015, the Provincial Court of Toledo sentenced the author to 25 years and 8 months in prison for murder aggravated by having been committed while in disguise, attempted murder with the same aggravating factor and attempted robbery in an inhabited dwelling with the aggravating factor of having been committed with dangerous weapons or by dangerous means and while in disguise. The Court also rejected the notion that a "mental anomaly or alteration" was a factor mitigating the author's liability for the crimes. In addition to rejecting the mitigating factor, the Court, adopting the opinion expressed in the expert report and pointing to the signs that the author was feigning, failed, on the basis of his two

contradictory explanations – one given in the statement he made as a suspect and one given in court – to presume the author innocent. In his statement, the author said that he was a scrap metal collector and that he could have touched the bag with the weapons, whereas at trial he said that the person F asked him to keep something and gave him a bag that the weapons were in. The author notes that no consideration was given to whether this inconsistency was the result of his disability.

2.11 The author, together with the three other people convicted in the case, filed an appeal in cassation against the judgment of 5 May 2015. In the appeal, he argued that it had been impossible to know who had actually fired the shots and that his disability should be considered a mitigating factor. On 25 February 2016, the Criminal Chamber of the Supreme Court dismissed the appeal, accepting the lower court's reasoning in relation to the author, finding it logical and ruling that, since it was proved that the author had handled the weapons used in the crime, he had been presumed innocent as far as was reasonable and that the author's diminished mental faculties, which, it was claimed, were a mitigating factor, did not exist.

2.12 On 27 March 2016, the author filed an application for a remedy of *amparo*, alleging violation of the rights to effective judicial protection and to the presumption of innocence. In particular, the author claimed that he was not provided with the necessary procedural accommodations and that his contradictory statements were used against him without taking into account the impact that his intellectual disability may have had on them. On 13 July 2016, the First Section of the Constitutional Court found the application inadmissible for want of sufficient constitutional significance.

Complaint

3.1 The author claims that the failure to take accessibility measures for him or to provide him with procedural accommodations and support during the criminal proceedings against him was a violation of his rights under article 13 of the Convention, read in conjunction with articles 5, 9, 12, 14 and 21.

3.2 The author contends that, as the account of the facts shows, the general inaccessibility of the criminal proceedings to which he was a party, in particular with regard to information and communication, and the lack of specific adjustments, including procedural accommodations and the provision of support, are obvious. The author also contends that lack of training on disability matters of the judicial officials involved in the trial seems to have had a clear impact on it.

3.3 The author notes that, as can be seen from his disability certificate, the expert report produced by Plena Inclusión and even the expert report of the Institute of Forensic Medicine of Toledo, his support needs clearly affected his ability to participate in the criminal proceedings on an equal basis with others.

3.4 The author refers to the various moments during the trial in which he had trouble understanding the information and communicating with the others involved. An assessment of the need to make adjustments should have involved consideration not only of his disability but also of his interaction with the procedural environment, in particular in view of the complexity of the proceedings.

3.5 The author states that, although article 13 (1) of the Convention does not contain a list of measures that may be understood as accessibility measures, procedural accommodations or support in the context of access to justice, the Committee, in its concluding observations on the initial reports submitted by States parties, has provided numerous examples,¹ some of which would have been appropriate in his case. They include using clear and understandable language, using accessible information and communication formats, including Easy Read, adopting alternative means of communication,² taking flexible procedural measures – such as changing procedural deadlines or planning oral proceedings in such a way as to ensure that there is time for the breaks that are needed to promote understanding of the proceedings –,

¹ See, for example, [CRPD/C/LVA/CO/1](#), para. 23. See also [A/HRC/37/25](#).

² See, for example, [CRPD/C/MNE/CO/1](#), para. 27.

adjusting, for example, how statements are made at police stations, during investigations and on the stand, what interrogation techniques are used and how questions are asked, and ensuring that interpreters or support personnel are available when statements are taken, while according particular importance to any necessary personal or intermediary assistance.³ In this respect, offering the services of intermediaries or facilitators, who play a role for which provision is made in the laws of some countries, is a particularly appropriate adjustment to be made for persons with intellectual disabilities; it can be likened to the right to an interpreter recognized in other human rights instruments.

3.6 The author submits that the failure to take any of these measures constitutes a violation of articles 9, 12 and 21 of the Convention insofar as it made the proceedings generally inaccessible, in particular with regard to information and communication, and that, as he was not guaranteed access to the support he needed, he was prevented from participating in the proceedings on an equal basis with others. Together with the absence of any procedural accommodation, these failures, which undermine equality of arms and the author's right of defence, are a clear violation of the right of access to justice enshrined in article 13 of the Convention. As the author, denied the adjustments that should have been made for him as a result of his disability, was unable to participate in the proceedings effectively and on an equal basis with others, he was also subjected to discrimination on the basis of disability, which is prohibited under article 5 of the Convention.

3.7 The author claims that his intellectual disability went unnoticed by those working in the field of administration of justice during part of the criminal proceedings, although it appears that his disability was fairly obvious and should have been noticed. He adds that the steps taken by those judicial officials clearly reveal their complete lack of training on disability issues. He notes that the conduct of some officials was especially counterproductive and had a particularly adverse impact on his right of access to justice. First, his lawyers, lacking knowledge of the rights of persons with disabilities, failed to ask that appropriate measures be taken to modify the criminal proceedings as required by his disability. Second, the author points out that the forensic report prepared by the Institute of Forensic Medicine of Toledo should be singled out for particular criticism since, in its insufficient consideration of the factors related to his environment and its conclusion that that he appeared to be feigning, it makes clear that its expert authors lacked knowledge of disability issues. The report's conclusion fails to take account of the author's difficulty with abstract reasoning or to acknowledge that disability is a dynamic phenomenon. The author claims that the report was the determining factor in the conviction, as the judges tended to rely on reports produced by experts without analysing them critically and to reject the report proposed by the defence. Lastly, the author finds particularly objectionable the attitude of the judge during the oral proceedings, who, influenced in all likelihood by the expert report's conclusion that he appeared to be feigning, interrupted the author's statement at a crucial moment to say, "just because you're playing dumb doesn't mean I'm going to believe it". The author states that this attitude, which is indicative of an utter lack of sensitivity and respect, had a negative impact on his delivery of his statement, as it increased his anxiety and confusion and caused him to freeze. It is also an openly hostile expression that casts doubt on the impartiality of the trial.

3.8 The author claims that his disability, in combination with his *merchero* ethnicity, had an impact on the overall treatment he received during the proceedings. People of his ethnicity are subjected to significant social marginalization and discrimination, and there are long-standing beliefs and stereotypes in respect of their purported ability to take advantage of welfare benefits. The author contends that no consideration was ever given to the particular disadvantage caused by the intersection of his disability and his *merchero* identity during the criminal proceedings. The author believes that his *merchero* identity may have activated prejudiced beliefs in relation to his alleged feigning or exaggeration of his intellectual disability that contributed to the violation of his right of access to justice on an equal basis with others, and that his case is one of intersectional discrimination prohibited under article 5 of the Convention.

³ See, for example, [CRPD/C/PAN/CO/1](#), para. 33.

3.9 The author also claims that the treatment and inadequate assessment of his disability as the criminal proceedings unfolded resulted in a violation of his right to be presumed innocent. The possible impact of his intellectual disability on the contradictory statements he made and on his own perception of the relevance and significance of his statements was not properly assessed. Nor was any consideration given to his ability, limited by his comprehension and communication difficulties, to contest the evidence allegedly incriminating him.

3.10 The author argues that all of the above stems from deficient legislation. The author notes that, in general, and in particular when it comes to persons with intellectual disabilities who are investigated or charged in criminal proceedings, the procedural rules do not meet the requirements of article 13 (1) of the Convention, read in conjunction with articles 5, 9, 12 and 21. Spanish procedural regulations – Organic Act No. 6/1985 of 1 July on the Judiciary and the laws that specifically regulate judicial proceedings – do not fully and effectively ensure that persons with disabilities participate in all judicial proceedings on an equal basis with others. The Criminal Procedure Act, for example, does not properly recognize the existence of needs arising from situations of intellectual disability or provide for the necessary adjustments in these situations. Despite some legislative reforms undertaken for the benefit of persons with disabilities after the author was prosecuted, the State party's legislation is still not in conformity with the Convention.⁴ The author points out that the reforms are clearly insufficient, as they do not introduce provisions to ensure that the needs of persons with disabilities are suitably assessed when they are investigated or charged with a crime. Likewise, they do not introduce provisions intended to ensure that persons with disabilities, intellectual disabilities in particular, who have been accused of a crime participate in all the stages of criminal proceedings – from the police investigation phase and the pretrial phase to the trial itself and the sentence enforcement phase – by making the necessary adjustments, including procedural accommodations and the provision of the relevant support. In addition to the lack of specific legal provisions, there are no official instructions, circulars, guidelines or protocols that those working in the field of administration of justice must follow in cases involving persons with disabilities, persons with intellectual disabilities in particular, who are under investigation or have been accused.

3.11 The author points out that his case demonstrates the State party's failure, in violation of article 13 (2) of the Convention, to comply with its obligation to provide training for those working in the field of administration of justice. He notes that the State party's efforts in this regard have been almost non-existent or only sporadic and of little significance, with such training often being voluntary and, in many cases, informed not by the Convention but by the medical and welfare model of disability. It is for that reason that the judges of the Court that convicted the author, the investigating judge, the forensic experts, the prosecutor and all those involved in the proceedings were unaware of the need to act in accordance with the Convention.

3.12 Lastly, the author claims that he is a victim of a violation of article 14 of the Convention, read in conjunction with article 13. He notes that the lack of necessary modifications that denied him access to justice also entailed a violation of the procedural guarantees of the lawfulness of deprivation of liberty. He also notes that, according to international human rights law, detention is arbitrary when, despite being permitted by law, it is imposed inappropriately, unjustly, unpredictably, in discriminatory fashion or in violation of the rules of due process. The author was deprived of his liberty within the

⁴ The author notes that Organic Act No. 5/2015 of 27 April, under which the Criminal Procedure Act and Organic Act No. 6/1985 of 1 July on the Judiciary were amended, and Act No. 13/2015 of 5 October, under which the Criminal Procedure Act was amended to make procedural guarantees and the regulation of technological investigative measures more robust, were adopted in 2015, after he was tried. Added to articles 118 and 520 of the Criminal Procedure Act under these amendments was a new regulation introducing guarantees of the accessibility of the information provided to arrested persons and prisoners on what they are accused of, why they have been deprived of their liberty and what their rights are; the guarantees state that "the information shall be provided in understandable and accessible terms" and that "for these purposes, the information shall be tailored to the age of the person for whom it is meant, his or her maturity, disability and any other personal circumstance from which a modification of the capacity to understand the information provided may derive".

framework of a trial in which no adjustments were made, thereby involving discrimination on the basis of disability, and in which the way he was treated was a manifestation of intersectional and structural discrimination resulting from prejudices and stereotypes.

3.13 For the redress of his grievances, the author requests: (a) a finding that the above-mentioned violations occurred; (b) a new trial in which he can participate on an equal basis with others, with guarantees of accessibility, procedural accommodations and the support that will enable him to exercise his right to a fair trial with equality of arms, impartiality and full respect for the right of defence and the presumption of innocence; (c) full compensation for damages, including the non-material damages caused by the discriminatory and hostile treatment he was subjected to during the trial; (d) that the State party be recommended to undertake, in close consultation with organizations of persons with disabilities, an urgent review of its procedural legislation with a view to ensuring effective access to justice for persons with disabilities, especially persons with disabilities who are under investigation or have been accused of a crime; and (e) that the State party be recommended to take effective and immediate measures to ensure that all those working in the field of administration of justice receive appropriate training through periodic, regulated and mandatory training programmes that take the Convention into account and include content considered relevant by the Committee.

State party's observations on admissibility and the merits

4.1 On 10 November 2020, the State party submitted its observations on the admissibility and merits of the communication.

4.2 The State party notes that the communication was submitted on 17 April 2019, nearly three years after 15 July 2016, the date on which the application for a remedy of *amparo* was found inadmissible. The State party also notes that the communication expressly fails to consider circumstances mitigating or aggravating liability for the crime. Whether the procedural accommodations and necessary support required under article 13 of the Convention were provided during the criminal proceedings, in particular the oral proceedings, is discussed in the communication, but the conviction and the evidence that it was based on are not.

4.3 With regard to the author's claims that his rights under article 13 (1) and (2), read in conjunction with articles 5, 9, 12 and 21, were violated as a result of the failure to provide him with the procedural accommodations or support warranted by his intellectual disability, the State party argues that the author, who simply lists a number of measures and mentions facilitators, for whom provision is made in the laws of other countries, does not specify what specific measures should have been taken. The State party contends that, during the investigative phase of the criminal proceedings and at the oral trial, neither the author's lawyers nor Plena Inclusión ever requested, within the framework of the Convention, any accommodation or support for the author.

4.4 Once this situation was known, the judicial authorities requested the report from the Institute of Forensic Medicine of Toledo that was issued on 13 April 2015 and in which the author's disability was characterized as mild, implying that he did not lack understanding of serious criminal behaviour. The State party notes that this conclusion is compatible with the statement made to the Court by a Plena Inclusión employee, who said that the author's disability was "mild mental retardation" and, in connection with his understanding of serious crimes, that "he may not understand right and wrong as an abstract concept, but he knows what the right thing to do is and what the wrong thing is".

4.5 The State party submits that the communication should be considered inadmissible, in accordance with article 2 (d) of the Optional Protocol, for failure to exhaust domestic remedies in relation to the author's claims of a violation of article 14 of the Convention and of what he refers to as ill-treatment. The State party notes that, in any event, the author has not asserted before the domestic courts that he is a victim of a violation of article 14 or that he considered his imprisonment arbitrary; nor has he claimed that he has been subjected to hostile treatment by the courts. His first claim to be a victim of a violation of article 14 and of ill-treatment throughout the oral proceedings appeared in the communication that was submitted to the Committee.

4.6 The State party is also of the view that the communication is inadmissible because it is an abuse of the right of submission and is manifestly ill-founded under article 2 (b) and (e) of the Optional Protocol.

4.7 The State party notes that the author does not provide any evidence or other indication as to how the failure to provide unspecified accommodations and support affected the judgment against him. Although the alleged violation of article 13 was raised before the Constitutional Court in the application for a remedy of *amparo*, the author made no claims about any need for accommodations or support at any time during the criminal proceedings. In addition, the State party is of the opinion that the main requests made by the author relate not to his particular situation but to the amendment and/or adaptation of legislation. The State party finds that, as a result, the communication ceases to be an individual communication and becomes a kind of legal action taken to promote, in the public interest, changes to Spanish law. It notes that such changes should be promoted not in an inappropriately submitted individual communication but in the State party's dialogue with the Committee within the framework of periodic reviews.

4.8 The State party is willing to put on record that the channel chosen by the author should have been the International Covenant on Civil and Political Rights, under which possible violations that could give rise to a review of the judgment could be considered.

4.9 The State party argues that it has not, in any event, violated the Convention. The communication focuses on article 13 and the failure to provide the author with procedural accommodations and specific support as a result of his intellectual disability. In support of his claims, the author refers to the Committee's general comments No. 2 (2014) and No. 6 (2018). The State party points out that the focus of general comment No. 2 (2014) is on identifying and eliminating physical obstacles to accessibility. It notes that none of the measures on possible support and accommodations refers to physical barriers. General comment No. 6 on equality and non-discrimination, in relation to the judicial system, focuses on the right to bring lawsuits to the courts under conditions of equality and access to justice (para. 31 (b) and (d)) and then expounds on article 13 as it pertains to the necessary support and accommodations (paras. 51–55). The main action is the delivery of information in an understandable and accessible manner (para. 52 (a)). The State party notes that the transcript of the first examination of the author and the trial record show that the language was simple and accessible, not technical, and focused on what had happened and, in particular, on why the author's fingerprints were found on the bag containing the murder weapon. In connection with recognition and accommodation of diverse forms of communication (para. 52 (b)), the State party argues that the author did not complain at any point during the proceedings or specify in the communication what measures should have been taken. Regarding physical accessibility throughout all stages of the process (para. 52 (c)), the State party notes that the author did not submit a complaint. It also notes that the right to legal aid (para. 52 (d)) was respected.

4.10 The State party notes that, according to the General Council of the Judiciary, various initiatives have been organized to provide training for judges on matters related to persons with disabilities. The State party also notes that the teaching plan of the Judicial Training College, where judicial officials receive their initial training, provides for training on the treatment of disability in all possible legal contexts and on the procedures that may affect persons with disabilities and the language that, in accordance with the Convention, is to be used in such cases. Under this plan, a full week is devoted to work on this issue, and prospective judges, who acquire the particular sensitivity needed to deal with it, draw up codes of good practice for conducting inquiries and other proceedings. The State party notes that the State In-Service Training Plan involves a disability forum within the framework of which four disability-specific activities a year were organized in 2019 and 2020, up from one in 2015. In addition, cross-cutting disability-related content has been introduced in many other training activities. The State party also reports that its guide to good practices in respect of access for and the protection of the rights of persons with disabilities in their dealings with the justice system is being brought up to date with the participation of experts from various fields. The State party notes that, in 2017, provision was made for the administrative division of the high court of justice of each autonomous community to appoint a judicial service disability representative. The representative is responsible for coordinating efforts to defend

and promote the right of persons with disabilities not to be subjected to discrimination on the basis of disability when dealing with the courts under the jurisdiction of the relevant high court of justice. The representative's responsibilities include promoting agreements for the implementation of the project Easy Read, which is intended to help persons with intellectual disabilities to understand court decisions by rewriting them or translating them into less technical and simpler language. Furthermore, the State party refers to framework agreements signed with Plena Inclusión. On 18 October 2018, the General Council of the Judiciary signed a framework agreement designed to make court decisions, especially those referring to or affecting persons with intellectual disabilities, fully accessible by having them translated into or rewritten in Easy Read. The objective of the agreement, which was renewed and expanded in 2020, was to establish a general framework of collaboration that makes it possible to take specific action to make all phases of judicial processes fully accessible to people with intellectual or developmental disabilities or people with comprehension difficulties. The agreement provides for collaboration in areas such as the preparation of guidelines and protocols on the provision of support to judges and magistrates in judicial proceedings, especially in relation to procedural accommodations. The State party concludes that it is thus demonstrated that there has been no violation of article 13 and related articles.

4.11 The State party asserts that, in addition to the fact that the claim of a violation of article 14 has not been made in the domestic courts and is manifestly unfounded, none of the acts referred to in paragraph 56 of general comment No. 6 (2018) occurred, since there are no allegations of torture, degrading treatment or forced treatment. The State party is of the view that the author does not explain why his being deprived of his liberty for the crimes he was convicted of committing, not for his disability, is a violation of article 14 of the Convention.

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

5.1 On 13 August 2021, the author submitted his comments on the State party's observations on admissibility and the merits. The author believes that none of the grounds for considering a communication inadmissible listed in article 2 of the Optional Protocol applies to the communication. He notes that neither the Optional Protocol nor the Committee's rules of procedure establish a specific time limit for the submission of communications, so the submission of the communication nearly three years after the rejection of the application for a remedy of *amparo* is not an abuse of the right of submission within the meaning of article 2 (b) of the Optional Protocol.

5.2 As for the failure to exhaust domestic remedies in relation to the violation of article 14, the author emphasizes that he is not contending that he was deprived of his liberty on account of his disability or that he was subjected to ill-treatment, torture or degrading treatment while deprived of his liberty. His claim focuses on accessibility and procedural accommodations, which are basic guarantees of a fair and equitable trial, as they are linked to safeguards such as the right to a fair trial, the right of defence, the presumption of innocence, the equality of arms and the adversarial principle. The author claims that the absence of such guarantees in the criminal proceedings that led to his being deprived of his liberty constitutes a violation of article 14 of the Convention and makes his detention arbitrary. The author submits that his claims under article 14 of the Convention should be considered admissible since they were, in substance, made in the domestic legal system.

5.3 In this regard, the author contends that, in the application for a remedy of *amparo*, he expressly claimed that the failure to make adjustments or provide procedural accommodations constituted a violation of the right to effective judicial protection and to a fair trial. In that application, he also contended that the impact of his intellectual disability was not taken into account when he made his statement, the contradictory elements of which were the main grounds for calling the presumption of innocence into question. It was also noted in the application that the author's comprehension and communication difficulties prevented him from contesting the evidence against him, thereby leading to his being convicted and, consequently, deprived of his liberty.

5.4 The author explains that his claim is not that he was subjected to ill-treatment, torture or degrading treatment but that he was treated in a discriminatory and hostile manner during the trial. As was noted in the application for a remedy of *amparo*, the submission of which

exhausted the domestic remedies available to the author, this discriminatory treatment stemmed directly from the lack of procedural accommodations, adjustments and support during the trial.

5.5 The author, responding to the State party's claim that his communication is an abuse of the right of submission and is ill-founded, believes that the Committee is competent to decide whether accessibility measures were taken during the criminal proceedings, whether procedural accommodations were provided and whether, in addition to the lack of appropriate training for those working in the field of administration of justice, support for the exercise of legal capacity was lacking.

5.6 In response to the State party's argument that the author made no claims about the need for accommodations and support, the author points out that, under the Convention, such omissions are imputable to the State party as the party primarily responsible for ensuring that persons with disabilities enjoy equality and freedom from discrimination in respect of access to justice. The State party is responsible for not having identified the author's support needs or taken the measures necessary to ensuring equal access to the proceedings.

5.7 The author believes that he has amply demonstrated that the State party should have taken steps to determine whether there was a need to provide procedural accommodations as part of the enhanced standard of diligence required of States parties to the Convention when persons with disabilities are parties to judicial proceedings.

5.8 The author notes that, the State party's argument to the contrary notwithstanding, it was not for him to specify in the communication what specific measures should have been taken. He points out that disability, intellectual disability in particular, is a dynamic phenomenon that must be considered in context. The author believes that the procedural accommodations to be provided should be determined following an interdisciplinary assessment of the individual's support needs that takes place before the proceedings and that those needs should be reviewed throughout the proceedings.

5.9 The author is of the opinion that the assessment of whether the language used was, as the State party argues, simple and accessible, must be based on the specific situation of the person concerned, who in this case repeatedly stated during the proceedings that he did not understand and who, as had been shown, had comprehension problems.

5.10 According to the author, training for those working in the field of administration of justice is clearly insufficient. The author claims that there is no formal training on disability affairs for judicial officials in first-level degree programmes, in master's programmes or in in-service educational offerings. He notes that such training as exists is provided thanks to the determination of professionals and entities representing persons with disabilities. In no case can it be considered sufficient that, under the recent teaching plan of the Judicial Training College, prospective judges acquire the particular sensitivity needed to deal with disability issues, as the issue is one of human rights, not sensitivity. Similarly, in-service training consisting of four disability-specific activities a year, lasting approximately eight hours, attended on a voluntary basis by an average of 40 judges, who, in most cases, are precisely those who least need it, cannot be considered appropriate and sufficient.

B. Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes the State party's argument that the communication was submitted on 17 April 2019, nearly three years after 15 July 2016, the date on which the application for a remedy of *amparo* was found inadmissible. However, the Committee notes that the Optional Protocol does not establish a time limit for the submission of a communication. In the present case, the Committee is of the opinion that there is no reason to suggest that the time it took to submit the communication was unreasonable, in particular

as the case is complex and the author is a person with an intellectual disability. The Committee finds that it is not precluded from considering this communication, as it does not constitute an abuse of the right of submission under article 2 (b) of the Optional Protocol.

6.3 The Committee notes the State party's argument that the communication should be found inadmissible for failure to exhaust domestic remedies in relation to the author's article 14 claims. The Committee also notes the author's contention that these claims were, in substance, made before the domestic courts, in particular in his application to the Constitutional Court for a remedy of *amparo*. The Committee notes, however, that a careful reading of the application does not appear to show that the author claimed, either expressly or in substance, that he was arbitrarily deprived of his liberty. In this respect, the Committee points out that the author should have made claims in substance at the national level to give the national authorities or courts the opportunity to examine them.⁵ The Committee is therefore of the view that the author's claims under article 14 of the Convention are inadmissible pursuant to article 2 (d) of the Optional Protocol.

6.4 The Committee also notes the State party's argument that the author's claims regarding what he calls ill-treatment should be found inadmissible for failure to exhaust domestic remedies. The Committee observes that the author explains that his claim is not that he was subjected to ill-treatment but that, as stated in the application for a remedy of *amparo*, he was treated in a discriminatory manner during the oral proceedings. Accordingly, the Committee is of the view that article 2 (d) of the Optional Protocol does not preclude it from considering the merits of the claim.

6.5 Lastly, the Committee notes the State party's argument that, because the author has not provided any evidence showing how the lack of accommodations and support affected the judgment handed down by the court, the communication should be found to be an abuse of the right of submission and manifestly ill-founded and thus declared inadmissible. The Committee also notes that the State party is of the view that the author's main request is for changes to be made to its legislation, a request that turns the communication into what it refers to as a legal action taken in the public interest. The Committee, however, is of the opinion that the author has sufficiently substantiated for purposes of admissibility his claims that the lack of procedural accommodations and support he required as a person with an intellectual disability during the criminal proceedings against him violated his rights under the Convention. Consequently, the Committee is of the view that the conditions set out in article 2 (b) and (e) of the Optional Protocol are not an obstacle to the admissibility of the communication.

6.6 Accordingly, and in the absence of any other obstacles to admissibility, the Committee declares the communication admissible with regard to the author's claims (in connection with the lack of procedural accommodations and discrimination on the basis of disability when he was on trial) under article 13 of the Convention, read in conjunction with articles 5, 9 and 12. The Committee therefore proceeds to its consideration of these claims on the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

7.2 The main issue before the Committee is whether the State party has violated the author's rights by failing to provide him with the procedural accommodations that he needed to ensure that, as a person with a disability, he had access to justice and to information and communication on an equal basis with others as he was being tried.

7.3 The Committee takes note of the author's argument that the judicial authorities, despite being aware of his disability, did not at any time provide the procedural accommodations and support he needed.

7.4 The Committee also takes note of the State party's argument that the author does not state what specific measures should have been taken and nor did he ever ask the judicial

⁵ *Bacher v. Austria* (CRPD/C/19/D/26/2014), para. 8.10.

authorities to take any measures. However, the Committee notes the author's argument that the State party, having been made aware of the author's disability, was obliged to take the measures that would have enabled him to participate in the proceedings on an equal basis with others. Furthermore, the Committee notes that the State party argues that, during the proceedings, the author also failed to complain about the recognition of different forms of communication or to specify which forms he needed. The Committee also notes the State party's argument that the transcript of the author's first statement as the accused and the trial record show that the language used was simple and accessible, not technical, and that it focused on the facts. In this respect, the Committee notes the author's argument that a determination of whether the language was simple and accessible must be assessed in the light of his particular situation and that he himself exhibited comprehension and communication difficulties during the proceedings that prevented him from understanding the implications of his statements and making arguments to contest the evidence against him.

7.5 The Committee also notes the author's argument that the failure to take his intellectual disability into account during the proceedings indicates a lack of disability training for those working in the field of administration of justice. The Committee notes in this respect that the State party contends that it has set in motion various initiatives to provide judges with training on disability issues, including as part of the teaching plan of the Judicial Training College. The Committee notes, however, that most of these initiatives are ad hoc initiatives that do not appear to be part of an in-service training programme for all those working in the field of administration of justice.

7.6 The Committee notes that, under article 13 (1) of the Convention, States parties must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings, including at investigative and other preliminary stages. The Committee notes, too, that, pursuant to article 13 (2), in order to help to ensure effective access to justice for persons with disabilities, States parties must promote appropriate training for those working in the field of administration of justice, including police and prison staff.

7.7 The Committee points out that, in its concluding observations on the combined second and third periodic reports of the State party, it expressed concern about the lack of procedural accommodations in judicial proceedings, including for persons with sensory, intellectual or psychosocial disabilities.⁶ The Committee also expressed concern about the overall lack of awareness of the provisions of the Convention among lawyers, court staff, judges, prosecutors and law enforcement officials.⁷

7.8 The Committee notes that failing to provide procedural accommodations when a particular person with a disability needs them is a form of discrimination on the basis of disability in relation to the right of access to justice.⁸ The Committee also notes that procedural accommodations in the context of access to justice and reasonable accommodation should not be confused; while reasonable accommodation is limited by the concept of disproportionality, procedural accommodations are not.⁹ An illustration of a procedural accommodation is the recognition of diverse communication methods of persons with disabilities standing in courts and tribunals.¹⁰ To ensure effective access to justice, processes must allow participation and be transparent, for example, by delivering information in an understandable and accessible manner or by recognizing and accommodating diverse forms of communication.¹¹ In addition, in order to provide transparency, a State party action must ensure that all relevant information is accessible and available and that there is adequate recording and reporting of all relevant claims, cases and court orders.

7.9 The Committee notes that, according to principle 3 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities, accommodations encompass

⁶ CRPD/C/ESP/CO/2-3, para. 24 (a).

⁷ Ibid., para. 24 (c).

⁸ A/HRC/37/25, para. 25.

⁹ General comment No. 6 (2018), para. 25 (d).

¹⁰ Ibid., para. 51.

¹¹ Ibid., para. 52.

all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organized before the commencement of proceedings. The recommended measures include establishing a programme of independent intermediaries or facilitators trained to provide communication assistance to parties to the proceedings and the justice system to determine whether accommodations and support are necessary. Accommodations should include modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language. In addition, States should ensure that police officers, prosecutors and others involved in arrests and investigations of criminal offences are knowledgeable about the rights of persons with disabilities, are alert to the possibility that a person may have a disability and adjust their responses accordingly. They should also ensure that independent third persons, such as attorneys, are available to accompany persons with disabilities to the police station to assist them in the investigative process and that intermediaries or facilitators are available to facilitate communication between persons with disabilities and law enforcement and court personnel. Furthermore, they should adopt legislation and policies that enable persons with disabilities to request procedural accommodations.

7.10 The Committee notes the author's argument, not contested by the State party, that the State party has not complied with its obligation to adopt legislation and policy to ensure the effective participation in judicial proceedings of persons with intellectual disabilities, in particular when they are investigated or charged, by providing procedural accommodations and support. The Committee points out that principle 4 of the International Principles and Guidelines on Access to Justice for Persons with Disabilities establishes guidelines for the accessibility of information. It proposes, for example, using plain language, Easy Read and facilitated communication. The Committee notes that there can be no effective access to justice if the buildings in which law enforcement agencies and the judiciary are located are not physically accessible, or if the services, information and communication they provide are not accessible to persons with disabilities.¹² Communication barriers may hinder access to information, understanding of legal processes or dialogue with judges, lawyers and other interlocutors.¹³

7.11 In the present case, the Committee is of the view that the State party's authorities should have acted *ex officio* and with due diligence as soon as they became aware of the author's disability and, by engaging in an effective and multidisciplinary dialogue with him, should have determined what procedural accommodations and support were needed and monitored his needs during the proceedings.¹⁴ The Committee is likewise of the view that the State party should have taken into account the author's intellectual disability and ensured that communications, including all the information he was given, were accessible to him.¹⁵ In addition, the Committee finds that the State party has not demonstrated that those working in the field of administration of justice were trained in intellectual disability issues, given that those who dealt with the author were unable to recognize the situation he was in and take appropriate measures to ensure that he had effective access to justice. Lastly, the State party has not demonstrated that it has legislation and policies to ensure that procedural accommodations and support are provided in situations such as the one in which the author found himself. The Committee therefore concludes that the failure to ensure that information and communications were accessible and the failure to provide the necessary procedural accommodations and support put the author in a situation in which he could not defend himself, in violation of his rights under article 13 of the Convention, read alone and in conjunction with article 9.

¹² General comment No. 2 (2014), para. 37.

¹³ [A/HRC/37/25](#), para. 20.

¹⁴ See, *mutatis mutandis*, *García Vara v. Mexico* (CRPD/C/28/D/70/2019), para. 10.11. See also [A/HRC/37/25](#), para. 17.

¹⁵ *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015), para. 10.5.

7.12 The Committee also notes the author's claims that the failure to provide procedural accommodations and support to enable him to exercise his legal capacity in the criminal proceedings to which he was a party violated his rights to freedom from discrimination, to equality before the law and to information provided in an accessible format. Having found a violation of article 13, however, the Committee does not consider it necessary to decide whether the same facts constitute a violation of articles 5, 12 and 21.

7.13 The Committee is therefore of the opinion that the lack of accessibility and the failure to provide the author with procedural accommodations and support during the criminal proceedings to which he was a party were a violation of his rights under article 13 of the Convention, read alone and in conjunction with article 9.

C. Conclusions and recommendations

8. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 13 of the Convention, read alone and in conjunction with article 9. The Committee therefore makes the following recommendations to the State party:

(a) The State party is under an obligation to provide the author with adequate compensation, including for any legal costs he may have incurred in submitting the communication. The State party is also under an obligation to ensure that the author is given a fair trial with all safeguards, while providing him with the necessary procedural accommodations and support in accordance with the present Views and the Convention;

(b) In general, the State party is under an obligation to prevent similar violations in the future, including by:

(i) Enacting legislation to remove barriers for persons with disabilities in their access to justice, guaranteeing the provision of procedural gender- and age-appropriate accommodation and establishing relevant safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others, through facilitating the use of the communication method of their choice in judicial interactions, including sign language, Braille, Easy Read, captioning, augmentative and alternative communication devices, and all other accessible means, modes and formats of communication;¹⁶

(ii) Ensuring regular training programmes and awareness-raising campaigns for lawyers, court staff, judges, prosecutors and law enforcement officers, including police and prison officers, on the need to provide access to justice for persons with disabilities.¹⁷

9. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee. The State party is also requested to publish the Committee's Views, have them translated into the official language of the State party and to circulate them widely, in accessible formats, in order to reach all sectors of the population.

¹⁶ CRPD/C/ESP/CO/2-3, para. 25 (a).

¹⁷ Ibid., para. 25 (c).