United Nations CRPD/C/29/D/52/2018*

Convention on the Rights of Persons with Disabilities

Distr.: General
26 September 2023
English
Original: French

Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 52/2018**, ***

Communication submitted by:	Gaetan Sabadie (represented by counsel, Frédéric Fabre)
Alleged victim:	The author
State party:	France
Date of communication:	12 January 2018 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 18 April 2018 (not issued in document form)
Date of adoption of Views:	25 August 2023
Subject matter:	Lack of procedural accommodation for filing of an appeal on points of law
Procedural issue:	Admissibility – exhaustion of domestic remedies
Substantive issues:	Access to the courts; discrimination on the grounds of disability
Article of the Convention:	13
Article of the Optional Protocol:	2 (d)

1. The author of the communication is Gaetan Sabadie, a national of France, born on 11 July 1948. He claims to be a victim of a violation by the State party of his rights under article 13 of the Convention. The Optional Protocol entered into force for the State party on 20 March 2010. The author is represented by counsel.

* Reissued for technical reasons on 4 April 2025.

** Adopted by the Committee at its twenty-ninth session (14 August–8 September 2023).

*** The following members of the Committee participated in the examination 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, Rosemary Kayess, Alfred Kouadio Kouassi, Abdelmajid Makni, Sir Robert Martin, Markus Schefer and Saowalak Thongkuay.

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

Facts as submitted by the author

2.1 On 28 March 1977, the author, a farmer, signed a rural lease to run the Saint-Génies estate in the commune of Carcassonne. On 7 September 1993 and 16 November 1993, the Carcassonne *tribunal de grande instance* (court of major jurisdiction) ordered receivership and liquidation proceedings respectively against the author. On 13 December 2000 and 28 February 2002, the court rejected his requests to close the liquidation proceedings, stating that the closure of the proceedings would require the prior sale of the jointly owned family property. On 14 January 2003, the court terminated the author's rural lease, resulting in an eviction order. Given his bankruptcy status, the author was unable to defend himself, having lost his civil rights to the administrator appointed by the court.[1] On 11 March 2008, the court ordered the sale of the jointly owned family estate of the author's mother by public auction. On 13 October 2009, the Montpellier court of appeal upheld the decision of the Carcassonne court. The author did not appeal against this decision, considering that such an appeal had no chance of success. In a ruling dated 24 November 2015, the Carcassonne court declared the bankruptcy proceedings closed due to insufficient assets.

2.2 The author alleges that this lengthy liquidation procedure has affected his health to the point of making him disabled. The author has a medical certificate that demonstrates, in his words, "the link between anguish and the feeling of inferiority and humiliation derived from the impossibility of acting owing to the loss of his property rights and, consequently, of real 'civil death'".[2] On 13 May 2004, the Technical Commission for Vocational Guidance and Rehabilitation declared the author to be 80 per cent "disabled" and issued him with a disability card for persons less able to stand, followed by another one stating that he was in need of support, valid from 2010 to 2020. His health has deteriorated. According to a medical certificate dated 8 January 2014, the author was no longer able to express himself or walk following a series of strokes.

2.3 On 28 March 2013, the author filed a complaint with the Carcassonne Public Prosecutor and sued for damages to establish the liquidator's liability for fraudulent abuse of the ignorance or weakness of a vulnerable person. According to the author, the liquidator had abused her position to receive personal benefits from the liquidation and had caused his disability. On 21 August 2013, the Public Prosecutor dismissed the complaint on the grounds that the offence had not been sufficiently defined.

2.4 On 12 July 2013, the author asked the senior investigating judge to appoint an investigating judge. The author claims to have been badly received at the hearing, as the investigating judge refused to order an expert opinion on the grounds that his state of health was obvious. On 21 November 2014, the Carcassonne court issued an end of judicial inquiry notice. The author then submitted a request for further proceedings to the investigating judge, including for a new hearing with the liquidator. On 6 January 2015, the Carcassonne court declared the request inadmissible on the grounds that it did not relate to specific proceedings and did not include a statement of reasons. On 27 January 2015, the investigation division of the Montpellier court of appeal rejected the author's appeal, ruling that a new hearing was not necessary. On 26 February 2015, the Public Prosecutor at the Carcassonne court issued a final application for the dismissal of proceedings, considering that the essential elements of the alleged offences were lacking. On 22 January 2016, the Montpellier court of appeal ordered the discharge of proceedings concerning the author's complaint, a decision confirmed by the investigation division of the Montpellier court of appeal on 26 May 2016.

2.5 On 26 July 2016, the author went to Montpellier to sign his appeal on points of law with the registrar of the investigation division of the Montpellier court of appeal. The author argues that his disability and the scorching heat made the 151 km journey hard on him. He claims that the offices of the Montpellier court of appeal are not designed to accommodate

[1] The author refers to the former article L622-0 of the Commercial Code.

[2] The author refers to a medical certificate dated 13 December 2002, which states that he "has never had any other neurological problems …. A state of chronic stress linked to his environment over several years is likely to have been an aggravating and contributory cause of these strokes."

persons with disabilities, so that he could not go upstairs to the registrar responsible for receiving his appeal on points of law. The registrar was therefore called to the reception desk. She registered his appeal and had him sign his notice of appeal. She also received his statement of claim and stamped it as received but failed to have it signed. On 21 November 2016, the reporting judge proposed the issuance of a notice not to accept the appeal, applying article 567-1-1 of the Code of Criminal Procedure, for failure to sign the statement of claim. On 14 December 2016, in his comments in response to the notice, the author referred to the negligence of the registrar, who he said should have considered his disability and checked that he had signed the statement. On 29 March 2017, the advocate general, referring to article 584 of the Code of Criminal Procedure, issued a notice of non-acceptance of the appeal for a lack of signature on the statement. On the same day, the Court of Cassation declared the author's appeal on points of law inadmissible, considering that there were no grounds for accepting the appeal, referring to the opinion of the advocate general.

2.6 On 2 February 2015, the author submitted an application to the European Court of Human Rights, complaining mainly about the length of the liquidation proceedings. On 23 May 2017, the Court declared the application inadmissible on the grounds that he had failed to exhaust domestic remedies. On 20 October 2017, the author brought proceedings against the State party before the Paris *tribunal de grande instance* on the basis of article L141-1 of the Judicial Code, seeking compensation for damages suffered as a result of the excessive length of the judicial liquidation proceedings.

Complaint

3.1 The author argues that article 13 of the Convention has been violated on the grounds of a failure to investigate, which he describes as a denial of justice. In his complaint and civil claim for damages on 28 March 2013, the author criticized the liquidator for proposing to the courts to "wait until the death of his mother" so that she could sell the entire estate, when she or a family member could have bought back her share under article 815 of the Civil Code in order to complete the liquidation as quickly as possible. The author also criticized the liquidator for failing to claim compensation for the termination of the farm lease and the infringement of rights to the manure and stockpiled manure, despite the transfer of his property rights to her. On 14 January 2003, the Carcassonne *tribunal de grande instance* consequently ordered the termination of the rural lease without compensation. This termination favoured the 8 per cent fixed royalties which, according to the author, the liquidator hoped to collect.

3.2 In the author's view, the investigating judge's decision to refuse to order an expert opinion to establish the causal link between the liquidation proceedings and his disability was erroneous. According to the author, the investigating judge refused to carry out a proper inquiry. The author submits that the investigation division of the Montpellier court of appeal did not carry out an effective, concrete and efficient investigation, as the court "laughed at the author" when he requested additional investigative measures. In addition, the author argues that the court sought to protect the liquidator and failed to mention the absence of a claim for compensation. According to the author, the absence of an effective, concrete and efficient investigation resulted in a denial of justice, in violation of article 13 of the Convention.

3.3 The author submits that the lack of appropriate accommodation for persons with disabilities on the premises of the Montpellier court of appeal undermined his right to effective access to justice. According to the author, the lack of such accommodation forced the registrar to have the legal documents completed in a corridor and prevented her from fulfilling her obligation to check the documents. The author argues that the registrar failed to check whether he had signed his statement of claim.

3.4 The author alleges that he was unable to have access to the Court of Cassation on the same basis as any other claimant because of his disability. He maintains that, by declaring his appeal inadmissible, the Court has made him accept the registrar's negligence. He considers that the Court should have protected him, since his disability called for special attention to redress the balance with persons without disabilities. The author refers to the jurisprudence of the European Court of Human Rights, which states that the registrar's

negligence entails the responsibility of the courts[3] and which recognizes an obligation to verify documents filed with the registry.[4] According to the author, he could therefore legitimately hope that the Court of Cassation would accept his statement of claim even though he had not signed it.

State party's observations on admissibility

4.1 In its observations of 25 June 2018, the State party challenges the admissibility of the communication on the grounds that the author has not exhausted domestic remedies, contrary to the requirement under article 2 (d) of the Optional Protocol. Firstly, the State party considers that the author should have brought the action provided for in article L141-1 of the Code of Judicial Organization, under which "the State is required to remedy any damage caused by the improper functioning of the public administration of justice. Unless otherwise specified, such liability is incurred only in the event of gross negligence or a miscarriage of justice." The State party cites examples of cases where the domestic courts have recognized the existence of gross negligence. These examples demonstrate the "very common" practice of this procedure, which frequently results in convictions of the State party, in line with the "very broad acceptance" of the facts giving rise to responsibility. The State party notes that the European Court of Human Rights has recognized that the remedy arising from the action provided for in article L141-1 of the Judicial Code "has acquired a degree of legal certainty so that it may and must be used for the purposes of article 35 (1) of the Convention [for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)]."[5] The Court also noted that the domestic courts have given an increasingly broad interpretation of the concept of "gross negligence".[6] The State party notes that the European Court of Human Rights declared the author's application inadmissible on the grounds that he had failed to exhaust domestic remedies (see para. 2.6 above). Moreover, the author's appeal on points of law was intended to obtain another decision on whether to prosecute the liquidator (criminal component) and not to allow the domestic courts to consider the merits of the complaints raised by the author before the Committee (State party responsibility component). Moreover, the fact that the author brought this action in 2017 on account of the length of the liquidation proceedings demonstrates his knowledge of the effectiveness of this remedy.

4.2 Secondly, the State party considers that the claim of a violation of article 13 of the Convention was not raised before the domestic courts, since the author did not bring an action for damages against the State party owing to the failure to investigate his complaint properly and the error that led to the dismissal of his appeal on points of law. According to the State party, the author did not invoke the substance of the rights protected by article 13 of the Convention before the domestic courts.

Author's comments on the State party's observations

5.1 In his comments of 26 October 2018, the author states that the European Court of Human Rights held in its decision of 23 May 2017 that, following a judgment of the Court of Cassation of 16 December 2014 which, according to the author, created the principle of compensation, article L141-1 of the Judicial Code constitutes an effective remedy and has done so since January 2015, with reference to the Court's decision in *Poulain v. France* of 21 March 2017.[7] However, according to the author, the time limit between a reversal of case

[3] European Court of Human Rights, *Samoilă v. Romania*, application No. 19994/04, judgment, 16 July 2015; and *Gankin and Others v. Russia*, application No. 2430/06, judgment, 31 May 2016.

[4] European Court of Human Rights, *Walchli v. France*, application No. 35787/03, judgment, 26 July 2007.

[5] European Court of Human Rights, *Benmouna and Others v. France*, application No. 51097/13, decision, 15 September 2015, para. 52.

[6] Ibid., para. 49.

[7] Application No. 16470/15.

law and knowledge of the appeal is six months,[8] which the Court failed to observe given the time that had elapsed between its decisions in *Poulain v. France* and in the author's case.

5.2 The author notes that, in his response to the opinion of the reporting judge and the advocate general before the Court of Cassation, he said that the fact of setting the negligence of the registry of the Montpellier court of appeal against him constituted a violation of the State party's international obligations, including article 6 (1) of the European Convention on Human Rights. He also referred to his disability in his response.[9] In addition, in his statement of claim, he set out his complaints concerning the lack of investigation by the investigating judge and the causal link between the length of the liquidation proceedings and his disability. The author claims that he thus raised the substance of article 13 of the Convention.

5.3 The author disputes the State party's observation that he should have availed himself of the procedure provided for in article L141-1 of the Judicial Code. The author cites the jurisprudence of the Human Rights Committee, namely that any further appeal would be futile since the highest courts have made a final decision on the merits of a legal issue.[10] He notes that, in its decision of 29 March 2017, the Court of Cassation acknowledged that it had read his submissions, in which he had invoked article 13 in substance and, explicitly, articles 15 and 16 of the Convention. The author asserts that he should be able to seek a criminal remedy to claim compensation against the person who caused his disability. He therefore resorted to the necessary remedy. Furthermore, according to the author, it is unthinkable that a court of first instance would review the faults of the Court of Cassation, and the State party has not provided any examples of such cases. The author notes that, in a judgment of 12 June 2017, the Paris *tribunal de grande instance* ruled that it could not assess the merits of court decisions.[11] Moreover, according to domestic case law, resort to the remedy provided for in article L141-1 of the Judicial Code requires that all other remedies have been exhausted.[12]

5.4 According to the author, the judgments cited by the State party show that the procedure set out in article L141-1 of the Judicial Code can only be used to remedy the following three complaints: unreasonable delay in proceedings, police misconduct and death in custody. The author submits that the European Court of Human Rights has recognized the effectiveness of the procedure provided for in article L141-1 of the Judicial Code only to remedy an unreasonable delay and death in custody, but not for failure to investigate.[13] The author notes that, in *Benmouna and Others v. France*, the Court ruled that the rejection by the Court of Cassation of the applicants' arguments based on article 2 of the European Convention on Human Rights concerning the inadequacy of the investigations undertaken meant that they had exhausted domestic remedies.[14] He argues that the Court consequently considers that article L141-1 of the Judicial Code does not constitute an effective remedy for complaints concerning the inadequacy of investigations.

5.5 Furthermore, the author is waiting for redress for acts that have been going on for over 20 years. Initiating further proceedings would result in further delays. The author argues that the State party is wrong to refer to his initiation of proceedings under article L141-1 of the Judicial Code, since those proceedings did not relate to the same subject matter as the present communication.

[8] European Court of Human Rights, *Mifsud v. France*, application No. 57220/00, decision, 11 September 2002; and *Valada Matos Das Neves v. Portugal*, application No. 73798/13, judgment, 29 October 2015, para. 106.

[9] The author notes that he contested the requirement for him to travel from Carcassonne to the Montpellier court of appeal, even though he was 80 per cent disabled and the criminal proceedings had shown that his condition was serious.

[10] *Jong-nam Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), para. 6.3;

[11] Paris *tribunal de grande instance*, *S.A.R.L. MEM v. Agent judiciaire de l'État*, No. RG: 15/03249, judgment, 12 June 2017.

[12] Court of Cassation, First Civil Division, appeal No. 14-50074, judgment, 24 February 2016.

[13] European Court of Human Rights, *Benmouna and Others v. France*; and *Sabadie v. France*, application No. 7115/15, decision, 23 May 2017.

[14] European Court of Human Rights, *Benmouna and Others v. France*, para. 54.

State party's observations on the merits

6.1 In its observations of 19 October 2018, the State party points out that the author provides no evidence to link his complaint concerning the domestic procedures to his disability. The State party considers that the investigating judge and the investigation division carefully investigated his complaint and that he was not treated any differently because of his disability. Firstly, none of the hearings of the author, his wife or the liquidator, nor the liquidation and succession proceedings, established the alleged offences. Similarly, in its final application, the prosecution concluded that there had been no misappropriation of funds by an administrator and stated that the length of the proceedings was due solely to disagreement between the joint owners. In addition, the courts found that the weakness alleged by the author had not been established: his disability had only existed from 2001, whereas the procedure had begun in 1993, and it had in no way prevented him from acting to defend his interests given that he had filed numerous appeals. No advantage for the liquidator had been established in relation to any weakness, nor had any pressure on the author to carry out an injurious act been demonstrated. The investigating judge therefore dismissed the case in a reasoned decision, upheld on 26 May 2016 by the investigation division of the Montpellier court of appeal.

6.2 Secondly, the State party emphasizes that the investigating judge twice refused the author's requests for investigative measures to be taken, solely because they had not been submitted in the form required by article 81 of the Code of Criminal Procedure, the provisions of which were drawn to the attention of the author and his lawyer on several occasions during the proceedings.

6.3 Thirdly, the author did not avail himself of the opportunity provided for in article 175 of the Code of Criminal Procedure to submit written observations to the investigating judge within three months of the final application of the prosecution.

6.4 Fourthly, the State party considers that the communication does not substantiate in any way how the conduct of the judicial investigation demonstrates differential treatment on the grounds of the author's disability, or a failure by the courts to take his disability into account. Both the investigating judge and the investigation division referred to the author's state of health. The judge therefore granted the author's request that his wife be heard given his difficulty in expressing himself. The State party reaffirms that the author's numerous efforts to take legal action attest to his ability to protect his interests. The State party states that it follows from the foregoing that the conduct of the judicial investigation did not result in a violation of the author's rights under article 13 of the Convention.

6.5 The State party disputes the assertion that the failure of the registrar of the Montpellier court of appeal to check the author's signature on his statement of claim led to the non-acceptance of his appeal on points of law by the Court of Cassation or to a violation of article 13 of the Convention. According to the State party, the registrar acted in compliance with the rules of procedure. It follows from articles 576 and 584 of the Code of Criminal Procedure that the role of the registry is only to issue a receipt for the record of the filing of a statement of claim in the registry and not to check that the applicant has signed the statement. As the Court of Cassation is the sole judge of the admissibility of an appeal, it is up to the applicant to ensure that his or her appeal is admissible. In the present case, the registrar of the Montpellier court of appeal issued the record of registration of the statement to the author, in accordance with her obligations, and was therefore not at fault in failing to check the author's signature. The Court of Cassation declared the appeal inadmissible in accordance with its case law in this respect.

6.6 The State party points out that the Montpellier court of appeal did in fact provide accommodation adapted to the author's disability. The registrar went to the ground floor to obtain the necessary information from the author, went back upstairs to edit the necessary documents and finally came back down to have them signed by the author and issue him with the record of the filing of the statement in the registry. Consequently, the author's disability was taken into account to enable him to lodge his appeal. This disability, which was purely physical, was not such as to prevent him from knowing the conditions for admissibility of an appeal, especially as he was assisted by a lawyer. The State party concludes that the decision not to accept the author's appeal does not reveal any violation of article 13 of the Convention.

Author's comments on the State party's observations

7.1 In his comments of 23 January 2019, the author reaffirms that his disability was caused by the "connivance" of the liquidator and the bankruptcy judge at the Carcassonne *tribunal de grande instance*. He refers to the bankruptcy judge's letter of 13 December 2000, in which he informs the author that the only solution provided for is the sale of the jointly owned family property, which the author disputes. The author claims to have suffered a psychological shock on reading this letter. This psychological pressure, which lasted for many years, disabled him.[15]

7.2 The author reaffirms that the investigating judge at the Carcassonne *tribunal de grande instance* received him "very badly" and declared that, in view of his condition, there was no need for an expert opinion on his state of health.[16] However, the investigating judge and the investigation division of the Montpellier court of appeal took advantage of the author's disability to put up "a real barrier" to the investigation of his complaint against the liquidator. It was because of the investigating judge's conduct that the author's lawyer did not file his submissions under article 175 of the Code of Criminal Procedure. The dismissal order was therefore foreseeable. On appeal, the investigation division preferred to deflect attention from the investigation's shortcomings rather than uphold the author's rights, contrary to the provisions of article 13 of the Convention.

7.3 According to the author, it was up to the investigating judge to determine whether the classification of the facts of his complaint as a criminal offence could have been different from the one that he himself had made.[17] The investigating judge failed to do this, with the result that the author did not have access to a court, contrary to the provisions of article 13 of the Convention. Furthermore, having lost his rights to administer his property, he was unable to initiate other proceedings. The author argues that it is obvious that the liquidator had not pressured him to commit an injurious act since she held his rights.

7.4 The author states that he was not represented by a lawyer before the Court of Cassation. He argues that registrars are officers of the court who must check the formal validity of the documents they receive and have them corrected on the spot (see para. 3.4 above). The author reaffirms that the registrar who receives the documents must receive them in an office in order to work in peace, but that this was not the case in this instance.

7.5 The author notes that, in a judgment of 29 October 2018 on his civil claim, brought under article L141-1 of the Judicial Code, for compensation for an unreasonable amount of time for the liquidation, the Paris *tribunal de grande instance* ordered the State to pay him €15,000 in damages in respect of the non-material damage he suffered due to the denial of justice. The Paris *tribunal de grande instance* found that a denial of justice had been caused by the choices made by the bankruptcy judge of the Carcassonne *tribunal de grande instance*, which had slowed down the liquidation proceedings until the death of the author's mother and had thus resulted in a loss of opportunity to complete the proceedings more quickly. The author describes the State's appeal against the judgment as "obscene". According to the author, the judgment confirms that the estate should never have been sold if domestic law had been applied.

7.6 The author argues that, in view of the State party's appeal against the judgment of 29 October 2018 of the Paris *tribunal de grande instance*, the delay in these proceedings is unreasonable and constitutes a violation of his rights under article 13 of the Convention. The author notes that he has not yet been paid, despite the order making the judgment immediately enforceable. Thus, the author remains a victim of the unreasonable delay in the liquidation process. He maintains that these proceedings are not fast enough and are therefore ineffective

[15] The author refers to the contents of several medical certificates.

[16] The author notes that, in his affidavit, his counsel noted that he "was not received with the respect due to him. Real contempt was shown for him. His state of health and his weakness were visible and palpable, but this did not prevent the judge from displaying a rather disconcerting contempt for him."

[17] European Court of Human Rights, *Baka v. Greece*, application No. 24891/10, judgment of 18 February 2016, para. 29, and *B.V. v. Belgium*, application No. 61030/08, judgment of 2 May 2017, para. 57. See also Court of Cassation, Criminal Division, appeal No. 1281676, judgment of 19 March 2013.

given: his age of 71 and his severe disability; his claim for compensation for liquidation proceedings that lasted 22 years; the illegal collusion between the bankruptcy judge of the Carcassonne *tribunal de grande instance* and the liquidator to sell the estate, when the sale of her jointly-owned share would have enabled the liquidation to be completed quickly; and the compensation procedure, which has been pending for 18 months as a result of the State party's appeal.[18] For the same reason, the decision of the European Court of Human Rights (see para. 2.7 above) does not constitute an obstacle to the admissibility of this claim.

7.7 The author argues that the 22-year duration of the liquidation procedure shows that it is unreasonable. According to the author, the European Court of Human Rights has found that the overall length of proceedings alone is sufficient to determine a breach of the reasonable time requirement.[19] He maintains that, in this case, the delay was caused by the judicial authorities. The liquidator and the Carcassonne *tribunal de grande instance* decided to wait for his mother's death. After her death, they chose, in an abuse of authority, to take over the entire estate. The author could do nothing in this respect, as he had lost his right to manage his personal property. Consequently, it was imperative for him to obtain an end to the proceedings in order to save the family estate for his children. However, the case was not complex, and the proceedings would have lasted only two years if the liquidator and the bankruptcy judge had not sought to sell the estate.

State party's additional observations

8.1 In its comments of 5 April 2019, the State party observes that the documents in the file show that the author was already aware, on the basis of letters prior to the bankruptcy judge's letter of 13 December 2000, of the appointment of an expert to evaluate the assets dependent on his father's estate. Furthermore, the file does not demonstrate a link between the procedure and the author's state of health. On the one hand, it is clear from the author's letter to the Carcassonne *tribunal de grande instance* of 11 December 2000 that his state of health and stress were long-standing and linked to his decision to change careers and become a farmer, then to his indebtedness and a family dispute. On the other hand, the author has not demonstrated that his disability is the result of the liquidation proceedings and is in any way attributable to the State party. The medical certificate of 13 December 2002 to which he refers indicates that stress due to his "environment", without any further details, may have been an aggravating factor, but not a trigger. The State party reaffirms that the criminal courts took his disability into account when assessing his vulnerability in relation to the offences he reported. The courts did not accept the claim of such vulnerability, as they considered that this physical disability had no impact on the author's intellectual capacities, including his ability to defend his interests against the administrator. The "contempt" that the author attributes to the judge was in no way substantiated.

8.2 The State party disputes the author's allegation that the investigating judge failed to ascertain whether the facts could have been classified as something other than what the author had claimed (see para. 7.3 above). In accordance with article 80 of the Code of Criminal Procedure, the investigating judge could only investigate within the limits of the facts referred to him. Despite an in-depth study of the case file, the judge was unable to find any evidence to support the author's complaint. The State party points out that the author is merely multiplying the proceedings in order to obtain recognition of the rights he considers to have been infringed, both by the liquidation proceedings and by the proceedings for the division of the estate. The author asked the investigating judge to hold the liquidator civilly liable even though he had an action before the civil courts, which he never pursued. The State party notes that the author's placement under liquidation deprived him of the right to dispose of his assets, but that he retained full enjoyment of all his other rights. The author exercised his right to contest the liquidator's decisions throughout the proceedings.

8.3 As to the inadmissibility of the appeal on points of law, the State party notes that it is clear from the Code of Criminal Procedure that, when the author filed his appeal with the

[18] European Court of Human Rights, *Veriter v. France*, application No. 31508/07, judgment of 14 October 2010, paras. 57–60.

[19] European Court of Human Rights, *Basa v. Turkey* applications No. 18740/05 and No. 19507/05, judgment of 15 January 2019, paras. 112–4.

registry of the Montpellier court of appeal, he was under no obligation to file the statement of claim at the same time. Once the appeal had been lodged, the appellant had one month in which to submit the brief, either to the registry of the court that had handed down the decision within 10 days of the appeal being lodged or, once this period had expired, directly to the registry of the Court of Cassation. The author therefore had the option of being assisted by a lawyer before the Court of Cassation, to whose registry he could send his statement directly. As registrars are officers of the court, it was not the responsibility of the registrar of the court of appeal to inform the author that his appeal would be inadmissible in the absence of a signature. She therefore acted in strict compliance with the rules of procedure and did not commit any fault.

8.4 The State party considers that, contrary to the provisions of article 2 (d) of the Optional Protocol, the author has not exhausted domestic remedies in relation to his argument concerning the length of the proceedings provided for in article L141-1 of the Judicial Code. The State party considers that the author's assertion of the ineffectiveness of the proceedings brought on the basis of article L141-1 of the Judicial Code is inaccurate. On the one hand, the effectiveness of this procedure has been recognized by the European Court of Human Rights (see para. 5.1 above) and demonstrated by domestic decisions; of the nine decisions issued in 2018 relating to malfunctioning of the justice system as regards civil procedure, five found against the State. On the other hand, the proceedings pending before the domestic courts and the judgment handed down against the State by the Paris *tribunal de grande instance* on 29 October 2018 offer, in the State party's view, every guarantee of effectiveness within the meaning of article 13 of the Convention. In addition, a period of 12 months elapsed between the initiation of the action for damages before the court on 23 October 2017 and the judgment, during which the pretrial judge set a timetable for the proceedings, each stage of which allowed for the exchange of five sets of submissions between the parties. In the State party's view, such a time frame cannot be considered unreasonable. The author cannot argue that the appeal is ineffective when the court has upheld his claims. In addition, an appeal by the State does not deprive the proceedings of their effectiveness and does not prevent the immediate enforcement of the judgment.

Author's comments on the State party's additional observations

9.1 In his comments of 13 June 2019, the author maintains that article L641-7 of the Commercial Code implies that the judicial authorities must supervise the liquidator appointed by the court.[20] He argues that a liquidator must be personally liable under article 1240 of the Civil Code. However, according to the author, the judicial authorities do not hold the liquidators responsible.

9.2 According to the author, under articles 585 and 585-1 of the Code of Criminal Procedure, only claimants who have been convicted of a criminal offence may choose to file a statement of claim on points of law with the registrar of the Court of Cassation. The author could therefore only file his statement within 10 days of his appeal on points of law with the registrar of the court of appeal.

9.3 According to the author, the State party brought its appeal of 14 December 2018 against the judgment of the Paris *tribunal de grande instance* of 29 October 2018 after the period of one month from 29 October 2018, when notice of the judgment was given. The author served the judgment without being able to deliver an order to pay because of the "silence" of the judicial officer of the State party. He maintains that he only received the sum ordered by the court as a result of the pressure brought to bear by the present communication. According to the author, the State party did not bring proceedings against the French State, which is elusive.

9.4 The author notes that, in his letter of 11 December 2000 to the bankruptcy judge of the Carcassonne *tribunal de grande instance*, he stated that "my family and I can no longer put up with this harassment, which is very damaging to both our physical and mental health". The author maintains that these facts are the consequence of the liquidation proceedings. He

[20] See Court of Cassation, Mixed Division, judgment of 4 November 2002 (appeal No. 00-13.610); and Court of Cassation, Civil Division, judgment of 30 January 2013 (appeal No. 11-26.056).

argues that his stroke on 24 August 2001, which thus occurred eight months after the 13 December 2000 letter from the Carcassonne *tribunal de grande instance*, demonstrates "the link by way of timing" between the liquidation proceedings and his disability. The author wanted to have this link demonstrated in court, but the investigating judge "did not want to investigate the complaint seriously". The author states that he had chosen to bring criminal proceedings in view of the misuse of procedure to misappropriate funds. In addition, the civil proceedings cannot succeed because the liquidator has not violated any court decision owing to the "complicity" of the local judiciary. According to the author, the absence of any indication in the minutes that he had been "very badly" received by the investigating judge is explained by the fact that they were dictated by the investigating judge. The author disputes that a debtor has an inherent power to sue a liquidator for damages.

9.5 The author disputes the assertion that he has not exhausted domestic remedies concerning the length of the procedure provided for in article L141-1 of the Judicial Code. He maintains that the appeal proceedings have no timetable because they are not considered urgent, even though their purpose is to remedy the unreasonable 22-year delay in the liquidation. The proceedings therefore exceed reasonable time limits within the meaning of article 2 (d) of the Optional Protocol. According to the author, the European Court of Human Rights has recognized that a compensation procedure to remedy an unreasonable delay must be swift.[21] According to the author, the Paris *tribunal de grande instance* only introduced the timetable at his insistence (see para. 8.4 above).

B. Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claims 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.

10.2 The Committee notes the State party's argument that the communication is inadmissible on the grounds that the author has not exhausted domestic remedies within the meaning of article 2 (d) of the Optional Protocol, having neither pursued the action available under article L141-1 of the Judicial Code, nor invoked the substance of the rights protected by article 13 of the Convention before the domestic courts. The Committee recalls that only remedies that have a reasonable prospect of success for the purposes of article 2 (d) of the Optional Protocol should be exhausted.[22] The Committee notes that article L141-1 of the Judicial Code provides that the State is only liable for gross negligence or a denial of justice. The Committee notes that, while the State party maintains that the domestic courts have broadened the scope of the notion of "gross negligence", it nevertheless asserts that the registrar of the Montpellier court of appeal did not commit any fault, having acted in compliance with articles 576 and 584 of the Code of Criminal Procedure. Similarly, the Committee takes note of the State party's observations that the judicial authorities have refused the author's requests for investigative measures to be taken under domestic law. The Committee also notes that the European Court of Human Rights declared the author's application inadmissible on the basis of its case law to the effect that the procedure under article L141-1 of the Judicial Code is effective for challenging the duration of a liquidation, which is not the subject of the present communication. In the light of the above, the Committee considers that it cannot conclude that the use of the procedure under article L141-1 of the Code would constitute an effective remedy in this case. The Committee therefore considers that the failure to use this procedure does not prevent it from examining the communication under article 2 (d) of the Optional Protocol.

[21] European Court of Human Rights, *Veriter v. France*, paras. 57–60; and *Palmero v. France*, application No. 77362/11, judgment, 30 October 2014, para. 21.

[22] *Beasley v. Australia* (CRPD/C/15/D/11/2013), para. 7.4; *Lockrey v. Australia* (CRPD/C/15/D/13/2013), para. 7.4; *Noble v. Australia* (CRPD/C/16/D/7/2012), para. 7.7; *Bacher v. Austria* (CRPD/C/19/D/26/2014), para. 8.8; *V.F.C. v. Spain* (CRPD/C/21/D/34/2015), para. 7.3; *T.M. v. Greece* (CRPD/C/21/D/42/2017), para. 6.4; *Doolan v. Australia* (CRPD/C/22/D/18/2013), para. 7.5; and *Henley v. Australia* (CRPD/C/27/D/56/2018), para. 9.4.

10.3 The Committee notes that the author disputes the State party's observation that he did not invoke the substance of article 13 of the Convention before the domestic courts. The Committee notes that, in his comments of 14 December 2016 in response to the notice of the reporting judge of non-acceptance of the appeal on points of law, the author referred to his disability to criticize the decision to bring him before the Montpellier court of appeal, said that the offices of the court of appeal were not suitable for persons with disabilities and invoked article 6 (1) of the European Convention on Human Rights. The Committee therefore considers that the author has raised his complaint of a violation of article 13 of the Convention in substance before the national authorities. Therefore, the Committee is not precluded by article 2 (d) of the Optional Protocol from considering the present communication.

10.4 The Committee must then determine whether the allegations that it has received have been sufficiently substantiated for the purposes of admissibility. The Committee notes the author's complaints regarding the behaviour of the liquidator, the alleged causal relationship between his disability and the liquidation proceedings and the refusal of the judicial authorities to conduct an investigation in this regard. The Committee also notes that the investigating judge refused the author's requests for investigative measures to be taken on the grounds that they had not been submitted in the form required by domestic law, the provisions of which the author and his lawyer had been reminded of on several occasions. The Committee further notes that the national judicial authorities have found no evidence of the existence of an offence as claimed by the author, despite numerous hearings. The Committee notes that the author has not established that the investigation division of the Montpellier court of appeal treated him in a manner contrary to article 13 of the Convention. The Committee considers that the aforementioned allegations essentially relate to the assessment of facts and evidence by the domestic courts. The Committee recalls that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice.[23] The Committee considers that the information in the file does not allow it to conclude that the work of the court-appointed liquidator or the refusal of the judicial authorities to carry out an investigation were flawed in this way. Accordingly, the Committee declares this part of the communication inadmissible under article 2 (e) of the Optional Protocol.

10.5 The Committee notes that the author complains about the length of the procedure under article L141-1 of the Judicial Code in view of the State party's appeal against the judgment of the Paris *tribunal de grande instance* of 29 October 2018. The Committee also notes that a year elapsed between the time that the action for damages was brought before the *tribunal* and its judgment, in connection with a timetable for several rounds of exchanges between the parties. The Committee considers that this period of time is not unreasonable, noting moreover that the compensation was paid to the author by way of immediate enforcement of the judgment. The Committee considers that there is nothing in the case file to suggest that the State party's appeal would render the length of the proceedings unreasonable. Accordingly, the Committee considers that the author has not sufficiently substantiated this claim and declares it inadmissible under article 2 (e) of the Optional Protocol.

10.6 The Committee then notes the author's argument that there has been a violation of article 13 of the Convention on the grounds of the alleged failure of the registrar of the Montpellier court of appeal to check whether he had signed his statement of claim, and the decision of the Court of Cassation to declare his application inadmissible despite the particular attention required by his disability. The Committee considers that this part of the communication has been sufficiently substantiated for the purposes of admissibility. The Committee therefore considers that this part of the communication is admissible and proceeds to consider it on the merits.

[23] *L.M.L. v. United Kingdom* (CRPD/C/17/D/27/2015), para. 6.3; *F.O.F. v. Brazil* (CRPD/C/23/D/40/2017), para. 8.7; and *M.Y. v. Sweden* (CRPD/C/24/D/49/2018), para. 6.6.

Consideration of the merits

11.1 The Committee has considered the present 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.

11.2 The Committee notes the author's argument that the registrar of the Montpellier court of appeal failed to check whether he had signed his statement of claim and that, given his disability, the Court of Cassation should not have declared his appeal inadmissible on the grounds that he had not signed the statement of claim, in violation of article 13 of the Convention. The Committee notes that, under article 584 of the Code of Criminal Procedure, the appellant must sign his statement of claim and file it with the registry of the court that handed down the decision under appeal. The Committee also notes the State party's observation that it follows from articles 576 and 584 of the Code of Criminal Procedure that the role of the registry is only to issue a receipt for the record of the filing of a statement of claim in the registry, and not to check that the applicant has signed the statement. The Committee further notes that, in the *Walchli v. France* judgment, the European Court of Human Rights held that, when applying procedural rules, the courts must avoid both excessive formalism that would infringe the fairness of the proceedings and excessive flexibility that would result in the elimination of procedural requirements laid down by law.[24] The Court also noted that, although the registry of the investigation division of the Riom court of appeal had "properly received the application submitted by the applicant's counsel, it could reasonably be expected to provide the lawyer with the form of the statement in question to be completed or, at the very least, to remind him, where appropriate, of the necessary formalities to be completed, it being emphasized that the registrar before the courts of the judicial system is an officer of the court who is the guarantor of the proceedings and participant in the proper administration of justice".[25] The Committee notes that the role of the registrar as an officer of the court also stems from other Court case law.[26]

11.3 In the present case, the Committee notes that, on 26 July 2016, the author appeared before the Montpellier court of appeal to file his appeal on points of law. The Committee also notes that, because of his disability, the author was unable to reach the registrar, who was therefore called to the reception desk. The Committee further notes that the registrar had the author sign his notice of appeal, but that she did not do so with regard to his statement of claim, even though she received it and stamped it as received. On 29 March 2017, the absence of a signature on the statement of claim led the Court of Cassation to declare the author's appeal on points of law inadmissible. The Committee considers that, given the registrar's role as an officer of the court, it would have been reasonable to expect her to remind the author of the formalities to be completed, as she had done for his notice of appeal. Given the author's disability and the registrar's knowledge of it, the Committee considers that this would have constituted a procedural accommodation to ensure the author's effective access to justice on an equal basis with others. The Committee considers that the absence of this procedural accommodation resulted in a violation of the author's rights under article 13 (1) of the Convention.

C. Conclusions and recommendations

12. The Committee on the Rights of Persons with Disabilities, 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. The Committee therefore makes the following recommendations to the State party:

(a) With regard to the author, the State party is under an obligation to provide him with an effective remedy, including reimbursement of all legal costs incurred by him, together with compensation;

[24] *Walchli v. France*, para. 29.

[25] Ibid., para. 35.

[26] European Court of Human Rights, *Shuli v. Greece*, application No. 71891/10, judgment, 13 July 2017, para. 32.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future, in particular measures to ensure procedural accommodations for persons with disabilities in judicial proceedings.

(c) 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.