**CRPD/C/18/D/30/2015**

**Boris Makarov v Lithuania**

**Communication No. 30/2015**

**Decision Date:** 5 October 2017

**Subject -** Denial of reasonable accommodations required for participating in legal proceedings regarding a traffic accident which lead to her disability

**Decision:** Violation of art. 12(3) and art. 13 (1)

**Facts -** The applicant's deceased wife Glafira Makarova, on behalf of whom the application was made, was the victim of a car accident caused by Mr. V.M. in 2005, where she suffered multiple bodily injuries, including a head injury. In 2006, a government medical commission established a medical disability ratio of 60 per cent for Ms. Makarova. As the consequences of the head injury had aggravated, in 2007 she was diagnosed with a disability ratio of 80 per cent. Ms. Makarova's health condition had deteriorated until her death in 2011.

The applicant claims that due to Ms. Makarova’s health condition, she was unable to come to the police station in person. In 2006 she wrote two letters where she requested to be informed of the criminal investigation initiated against V.M. The requests were ignored by the authorities and the prosecutor failed to inform the applicant’s wife of the indictment of V.M. on 2 May 2006 and consequently, she was deprived of her right to challenge the indictment.

Because of her worsening condition, Ms. Makarova could not take part in the hearings of the court. By a letter the Judge was informed that it would be impossible for the applicant’s wife to be present at the proceedings and requested that legal assistance is provided. The Judge had refused that request. According to the applicant, all the evidence of his wife's disability was disregarded and the physical harm she suffered because of the accident was described as 'light' in order to diminish the fault of the accused. The applicant had challenged the impartiality of the judge and the prosecutor, but without any success.

On 22 May 2008 the Judge decided the case, where a fine was imposed on V.M. and it was concluded "that the disability of Ms. Makarova was not related to the incident."Ms. Makarova was not informed of the judgment. The applicant had found about the judgment in November 2008. However, by that time, the judgment of the district court could no longer be challenged by an appeal. Still, the applicant had applied both to the Regional Court and the Supreme Court of Lithuania, but to no avail. For these reasons, the applicant applied to the Committee on behalf of his deceased wife, claiming the violations by Lithuania of articles 12 (equal recognition before the law), 13 (access to justice) and 22 (respect for privacy) of the Convention on the Rights of Persons with Disabilities.

**Committee's Considerations:**

The Committee considered that the applicant had not sufficiently substantiated his allegations under article 22 (respect for privacy) and therefore decided that, this part of the communication was inadmissible. Consequently the Committee considered the merits of the communication as regards to the applicant's claims under articles 12 (3) ("States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.") and 13 (1) ("States Parties shall 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, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.") of the Convention.

The Committee noted that "Ms. Makarova was the direct victim of the car accident at issue in the court hearings." It is undisputed that she "could not participate in the court hearings because of her disability and that she was not represented, despite her request for legal representation." (Even though she was assigned a lawyer, the lawyer failed to show up for court hearings). If she could participate in the proceedings either directly of though legal representation, she could have challenged the findings of expert examination reports regarding her health, posed questions to witnesses and testified to provide a first-hand account of the accident.

The Committee submits that States parties have a certain margin of appreciation to determine the procedural arrangements to enable persons with disabilities to exercise their legal capacity. However, in any case measures adopted should guarantee that the relevant rights of the person concerned are respected. As the direct victim of the accident, she had the right to participate in the proceedings. And she made it clear that she wanted to participate in the proceedings. However, the State party had not provided her any accommodation to enable her to do so. Consequently, she did not enjoy her right to access to justice, guaranteed under art. 13(1) of the Convention on the Rights of Persons with Disabilities. Accordingly, Both art. 12 (3) and art. 13(1) were violated.

The Committee recommended that the applicant is provided with an effective remedy and that the State party should take measures in order to prevent similar violations in the future.