**CRPD/C/15/D11/2013**

**Gemma Beasley v Australia**

**Communication No. 11/2013**

**Decision date:** 25 May 2016

**Subject -** Denial of indirect participation in legal proceedings by refusing the provision of sign-language translation to a juror

**Facts -** The applicant is deaf and requires sign language interpretation of communications to communicate with others. In October 2012 she was summoned to serve as a juror. She contacted the Sheriff's office explaining that she was deaf and required a sign language interpreter to participate in the jury selection process and jury duty. When the Sheriff's officer told her that such support cannot be provided, the applicant challenged that on the basis of a claim of discrimination and was told to speak to a jury manager to discuss the issue. The jury manager told her that “under current legislation, [the Sheriff is] unable to assist with Auslan service relating to the empanelling procedure of the jury panel” and that real-time steno-captioning was not available either. When the applicant asked what other communication options could be made available to enable her participation in the jury selection process, the jury manager replied that she was unfamiliar with real-time captioning and added that “… under current legislation there are a couple of points to consider … the first one would be the breach of [confidentiality of jury deliberation] and also the fact that a verdict can only be delivered with 12 people in the [jury] room … so there is no capacity under current legislation to have an Auslan interpreter or real-time captioner”.

Under the current law, certain categories of persons are excluded from jury service, while others can be exempted from serving as a juror, if they claim such an exemption. However, the law neither excludes deaf persons from jury duty nor allows an exemption for them. Consequently, they are liable to serve as jurors when summoned. The Sheriff has the authority to exempt a person from jury service if he considers that there is a good cause to do so, including where “some disability associated with that person would render him or her, without reasonable accommodation, unsuitable for or incapable of effectively serving as a juror”. The applicant notes that the Sheriff has precluded her from serving as a juror under that provision. She wanted to make a personal request to he judge, however when she went to the court she was told in writing that no support would be provided to facilitate her communication with the judge.

The applicant claims that the Sheriff does not consider deaf persons as suitable or capable of serving as jurors and that the provision of a sign language interpretation does not constitute reasonable accommodation because: "(a) a deaf person using Auslan is unable to sufficiently comprehend courtroom communication and jury deliberations and consequently the rights of an accused to a fair trial are liable to be compromised; (b) an Auslan interpreter in attendance during jury deliberations would constitute a “thirteenth person” in the jury room and would consequently violate a (purported) common law rule that requires jury deliberations to be confidential to empanelled jurors; and (c) the provision of Auslan interpreters to jurors who are deaf and the conduct of Courtroom proceedings and jury deliberations with the assistance of an Auslan interpreter would unreasonably impede the effective and efficient administration of justice."

The applicant Gemma Beasley claimed that her rights under articles 5, 12, 13, 21 and 29 of the UN Convention on the Rights of Persons with Disabilities are violated.

**Committee's Considerations:**

The Committee begins its consideration of merits by underscoring that the prohibition of discrimination includes all forms of discrimination, including denial of reasonable accommodation. The applicant was told by the Sheriff's office that accommodations requested would be incompatible with the confidentiality of jury deliberations. The Committee "recalls that discrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilities." The Committee reminds that art. 5 of the Convention requires States parties to take all appropriate steps to ensure reasonable accommodation, so that persons with disabilities can enjoy equality before and under the law. "The Committee considers that when assessing the reasonableness and proportionality of accommodation measures, States parties enjoy a certain margin of appreciation. However, States parties must ensure that such an assessment is made in a thorough and objective manner, covering all the pertinent elements, before reaching a conclusion that the respective support and adaptation measures would constitute a disproportionate or undue burden for a State party." According to the Committee, while the confidentiality principle of jury deliberations must be observed, the State party had failed to consider reasonable accommodations, such as an oath to be taken by the sign language interpreter, which would guarantee both confidentiality and the equal treatment of the applicant. Thus, the Committee concluded that "the refusal to provide Auslan interpretation or steno-captioning, without thoroughly assessing whether that would constitute a disproportionate or undue burden, amounts to disability-based discrimination, in violation of the author’s rights under article 5 (1) and (3) of the Convention."

The Committee than went on to consider the issue under art.9, and refers to its General Comment No. 2, which reads that "the obligation to implement accessibility is unconditional" and "that it is important to address accessibility in all its complexity, including communication." Thus, according to the Committee "the State party did not take the appropriate measures to enable the author to perform jury duty, thereby preventing her participation in a clear “aspect of life”, in violation of her rights under article 9 (1)."

Regarding the applicant's claims under art. 21 of the Convention on the Rights of Persons with Disabilities, the Committee refused the State Party's claim that "obligations under article 21 are to be achieved progressively" and decided that the refusal to provide the author with the format of communication she needs to enable her to perform jury duty and therefore to express herself in official interaction, amounted to a violation of freedom of expression and opinion.

In its considerations under art. 13 (access to justice), the Committee underscores that States are under an obligation to facilitate the effective role of persons with disabilities as “direct and indirect participants in all phases of legal proceedings.” Therefore the refusal to provide sign-language translation amounted to a violation of article 13.