**CRPD/C/19/D/26/2014**

**Simon Bacher v Austria**

**Communication No. 26/2014**

**Decision Date:** 6 April 2018

**Subject -** Lack of consideration by public authorities (including courts) of the disability of a person in the application of laws and regulations - violation of article 9 (accessibility)

**Facts -** Simon Bacher was born in 1990 with Down’s syndrome. He is on the autism spectrum and occasionally needs a wheelchair, as he suffers from some health problems.

Bacher family house and the two neighboring houses are only accessible by a footpath. The Bacher family had constructed wooden steps filled with gravel along the footpath. However, when it rains or snows the path becomes dangerous for Simon Bacher and the persons who help him. For that reason, they decided to build a roof over to path to protect it from bad weather. The law requires the consent of the neighbors living within 15 meters of the place of construction and the permission of the local authority. When the permission was granted, the family had built the roof in 2001. One of the neighbors whose consent was not required by law, sued the family claiming that the roof reduced the width of the path from 1.5 to 1.25 meters and thus violated his right of way. The local court decided in his favor and ordered the roof to be demolished. All appeals were rejected, without any reference to the consequences of the destruction of the roof for Simon Bacher and in 2004 the roof was demolished.

After the demolition, rain and hailstorms caused damage to the path, making it dangerous. As a result, Simon Bacher's mother fell and broke her arm while helping him cross the path.

During that period, in 2003 Simon Bacher began treatment for cystic fibrosis, which increased his need to use the path. While the Bacher family tried every possible way to resolve the problem, - including petitions to the Ministry of Justice, negotiations with the neighbor, suggestions of alternative solutions to the local government- the issue remained unresolved. In the process, the family had spent 30.000 Euros and they do not have the financial resources to repair the damaged path.

Furthermore, the Mayor had suggested that Simon Bacher should be placed in an institution or that the whole family should move away. The family does not want to institutionalize their son, and as regards the suggestion that they should move, autism requires Simon Bacher to live in a familiar environment. In addition, the family home is close to the day center that Simon Bacher attends, and the University Clinic where he receives his weekly treatments.

As legal and other efforts to make the path to Simon Bacher's house safe, -which continued well until mid-2014- did not resolve the problem, Simon Bacher applied to the Committee on the Rights of Persons with Disabilities claiming the violations of articles 3 (general principles), 9 (accessibility), 14 (liberty and security of the person), 19 (living independently and being included in the community), 25 (health), 26 (habilitation and rehabilitation) and 28 8Adequate standard of living and social protection) of the Convention.

**Committee's Considerations:**

In its considerations regarding the admissibility of the communication, the Committee decided that, as article 3 of the Convention is of a general character, it does not give rise to a free-standing claim, and "can only be invoked in conjunction with other rights guaranteed under the Convention." Regarding the claims under articles 14. 19, 25 and 26, the Committee underscored that "in order to bring a claim before the Committee, an author must have raised them in substance at the domestic level" and concluded that this was not done by the author of this application. Consequently, the Committee decided that the application was admissible only with regard to art. 9 of the Convention on accessibility obligations.

The Committee decided that, even though the legal dispute in question is one between neighbors, the State party "bears the ultimate responsibility to ensure that the rights under the Convention are respected." (with regard to this communication: to have access to his or her home, but also to have access to community life and to public services, such as education and health); and for this reason "although disputes resulting from the construction of a roof on a path are between two individuals, the State party has an obligation, inter alia, to guarantee that the decisions adopted by its authorities do not infringe upon the rights of the Convention." In sum, the obligations of the States parties are not limited "to refraining from infringing upon them, but also to protect those rights by adopting measures to prevent the direct or indirect interference of individuals in the enjoyment of those rights." Consequently, "when the courts of the State party intervened to resolve the conflict between the parties, they were bound by the Convention."

After reiterating that “accessibility is a precondition for persons with disabilities to live independently and participate fully and equally in society” the Committee underscored that the responsibility of the States parties cover taking appropriate measures both in urban and in rural areas and includes measures for the identification and elimination of obstacles and barriers to accessibility. The Committee continued its considerations by indicating the role of reasonable accommodation in the enjoyment of rights, including accessibility. The Committee recalls that, under the Convention, reasonable accommodations not imposing a disproportionate or undue burden may have to be adopted. The Committee submits that "when assessing the reasonableness and proportionality of accommodation measures, States parties enjoy a certain margin of appreciation." However, it rests on the Committee to assess whether decisions rejecting accommodation requests were taken arbitrarily or not.

The Committee noted that the demolition of the roof over the path leading to the Bacher family house did not only limit Simon Bacher's access to his home, but also limited" his access to social activities and to the public services that he needs for his daily life, such as education, health institutions and public services at large." In the cases before them, the local courts did not consider Simon Bacher's situation. On the contrary, authorities explicitly said that the matter was about property rights and "had nothing to do with the rights of persons with disabilities."

After these considerations, the Committee had decided that Simon Bacher's right to accessibility enshrined in art. 9 of the United Nations Convention on the Rights of Persons with Disabilities was violated, read alone and in conjunction with art. 3 of the Convention.

Finally, the Committee recommended the State Party "to facilitate a solution to the conflict related to the use of the path" and "to award Mr. Bacher financial compensation for the violations suffered." The Committee also asked the State Party to take measures to prevent similar violations in the future.