



Convention on the Rights of Persons with Disabilities

Distr.: General
29 October 2014

Original: English

Committee on the Rights of Persons with Disabilities

Interim follow-up report under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted by the Committee on the Rights of Persons with Disabilities at its twelfth session (15 September–3 October 2014)

A. Introduction

1. The present report is submitted in compliance with article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which states that the Committee shall hold closed meetings when examining communications under the Protocol, and that, after examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner. The report is also prepared in line with rule 75, paragraph 7, of the rules of procedures of the Committee, which stipulates that the Special Rapporteur or working group shall regularly report to the Committee on follow-up activities. The Committee has considered and adopted the report.

2. The present report sets out the information received by the Special Rapporteur for follow-up to Views of the Committee between the eleventh and twelfth sessions pursuant to the Committee's rules of procedure, and the analyses and decisions adopted by the Committee during its twelfth session. The assessment criteria were as follows:

Assessment criteria

Action satisfactory

A Measures taken largely satisfactory

Action partially satisfactory

B1 Substantive action taken, but additional information required

B2 Initial action taken, but additional action and information required

Action not satisfactory

C1 Reply received but actions taken do not implement the Views/recommendations



Assessment criteria

C2 Reply received but not relevant to the Views/recommendations

No cooperation with the Committee

D1 No reply to one or more of the recommendations or part of a recommendation

D2 No reply received after reminder(s)

The measures taken are contrary to the recommendations of the Committee

E The reply indicates that the measures taken go against the Views/recommendations of the Committee

B. Communications

3. Communication No. 3/2011, *H.M. v. Sweden*

<i>H.M. v. Sweden</i>	No. 3/2011
-----------------------	-------------------

Views: 19 April 2012

First reply from the State party: Due 19 April 2013; received 26 October 2012.
Analysed at the tenth session [see CRPD/C/10/3]

Authors' comments: 1 February 2013 [see CRPD/C/10/3]

Second reply from the State party: 13 December 2013. Analysed at the eleventh session [see CRPD/C/11/R.3]

Authors' comments: 12 February 2014. Analysed at the eleventh session [see CRPD/C/11/R.3]

Meeting with the State party: 1 April 2014

Decision of the Committee (adopted at the eleventh session) and action taken:

Follow-up letter sent to the State party on 8 May 2014:

In the view of the information provided in the follow-up report and during the meeting of 1 April 2014, the Committee considered that the follow-up dialogue should be ongoing and requested the State party to provide additional information on the following issues:

(a) The State party indicated that the way for the author to obtain a new examination is to submit another application for a building permit, which would be examined in accordance with the new Planning and Building Act (entered into force on 2 May 2011). The Committee therefore requests the State party to provide updated information on any steps taken by the competent authorities to inform the author about this option.

(b) The State party indicated that, to date, the author has not been compensated for the costs incurred in filing her communication. The Committee reiterates its recommendation to provide adequate compensation to the author for the referred costs.

(c) The State party expressed its interest to envisage the possibility of organizing training, at the local and national level, on the Convention on the Rights of Persons with Disabilities, including with regard to the implementation of building and planning codes in compliance with the Convention. The Committee requests the State party to provide information as to the measures taken to organize such training and reiterates its readiness to support such activities.

Third reply from the State party: 19 June 2014

Summary of the State party's third reply:

(a) As to the steps taken to inform the complainant about the possibility of submitting a new application for a building permit: it must be assumed that the State party's follow-up submissions have been forwarded to the complainant by the Committee. She must therefore be aware that she has the possibility to submit a new application for the building permit. The Government does not consider it necessary to provide the complainant with any further information in that regard. The State party's submission also included information on the possibility to apply for a planning notification in order to try to change the detailed development plan.

(b) As to the reimbursement of the costs incurred for filing the communication: in September 2012, H.M. applied to the Government for compensation. In a Cabinet meeting on 19 June 2014, the Government rejected H.M.'s request for compensation, and it was considered that there are no sufficient reasons to award compensation ex gratia.

(c) Steps taken to organize training on Convention issues: in its concluding observations adopted on 11 April 2014, the Committee recommended that the State party launch periodical, regular and continuous national campaigns and other training courses targeted at public officials and private actors to enable them be acquainted with the general and specific contents of the Convention that are of recent adoption in human rights law. The Government will consider further steps to strengthen the implementation of human rights standards at the national and local level. According the Committee's recommendations, the Government will provide information on the implementation of this matter when it submits its combined second and third periodic reports, no later than 14 January 2019.

The State party therefore considers that it has taken reasonable steps to implement the Committee's recommendations. It invites the Committee to conclude that it will no longer consider the matter under the context of the follow-up to Views.

Transmittal of State party's submission: 20 June 2014. Deadline for comments:
4 August 2014

Decision of the plenary:

The measures adopted by the State party are not satisfactory. Follow-up procedure discontinued with a C1 assessment.

A letter will be sent to the State party and to the authors, informing them that the follow-up procedure is discontinued, with a C1 assessment that will be included in the Committee's biannual report.

4. Communication No. 1/2010, *Nyusti and Takács v. Hungary*

<i>Nyusti and Takács v. Hungary</i>	No. 1/2010
Views:	16 April 2013
First reply from the State party:	Due 24 October 2013; received 13 December 2013: analysed at the eleventh session [see CRPD/C/11/R.3]
Authors' comments:	13 March 2014: analysed at the eleventh session [see CRPD/C/11/R.3]

Decision of the Committee (adopted at the eleventh session) and actions taken:

Follow-up letter sent to the State party on 8 May 2014:

While taking note of the collaboration of the State party, the Committee considered that the follow-up dialogue should be maintained to ensure that the initial measures taken to implement the Views actually result in their full implementation. The Committee noted that no deadline was specified as to the implementation of the referred actions. It therefore decided to request the State party to provide additional information on the following points:

(a) Within five months: information on the payment of the compensation to the authors, for the costs incurred in filing their communication, and on the measures taken to ensure that the views referred and their translations are made public by State authorities.

(b) Within one year: information on the implementation of the necessary modification and adjustment of the automatic teller machines (ATMs) at national level, to ensure that the previously inaccessible banking services become accessible, and that all newly procured ATMs and other banking services are fully accessible for persons with disabilities.

Deadline: **5 October 2014**

Decision of the plenary: Follow-up procedure ongoing.

5. Communication No. 4/2011, *Zsolt Bujdosó et al. v. Hungary*

Zsolt Bujdosó et al. v. Hungary

No. 4/2011

Views: 9 September 2013

First reply from the State party: Due 12 March 2014; received 26 March 2014 and transmitted to the author on 27 March 2014

Summary of State party's first reply:

Paragraph 70(5) of Act XX of 1949 on the Constitution of Hungary which was in force until 31 December 2011, generally and automatically excluded a well-defined group of citizens from the right to vote, on the basis of the mere fact of guardianship. This regulation, which was applicable to the facts considered by the Committee, was not consistent with the principle of non-discrimination. The new Hungarian Fundamental Law, which entered into force on 1 January 2012, states the general prohibition of discrimination, specifically prohibiting discrimination based on disability.

Further amendments have been adopted:

(a) Under the new Civil Code (Act V of 2013) and article XXIII, paragraphs 1 and 2, of the new Fundamental Law, disfranchisement can only be decided through a legally binding decision of a judge, which is based on the examination and individual consideration of all the circumstances of the person concerned. The automaticity of disfranchisement in cases of guardianship has therefore been abolished, and a particular attention is put on the need to protect and promote the exercise of the right to vote.

(b) A new legal guarantee has been incorporated: the judicial procedure must now be carried out taking the requirements of necessity and proportionality into account, and the judicial decision can be challenged through a constitutional complaint.

(c) A re-examination of the disfranchisement of persons placed under guardianship under the previous system is in progress. Since the entry into force of the Fundamental Law, 1700 previously disenfranchised persons will certainly be able to participate in parliamentary, municipal and European Parliament Elections of 2014 as a result of the re-

examination of their right to vote. Nonetheless, there is still a relatively high number of people disfranchised due to the transitional provisions of the Fundamental Law (statistics are provided): pursuant to paragraph 24(2) of the “Closing and Miscellaneous Provisions of the Fundamental Law, and paragraph 349 of the election procedure, a person who was under guardianship restricting or excluding his or her capacity to act adopted before the Fundamental Law entered into force shall have no right to vote until the guardianship is terminated or the court establishes the existence of his or her right to vote. The national legislation explicitly provides the opportunity to apply for an extraordinary judicial review of such judgement.

In order to monitor the emerging practice, the State party intends to set up long-term interministerial and professional cooperation in the context of the new National Disability Programme for 2014–2020. The State party also defines as a priority:

(a) To strengthen the training programmes of judges and experts of the relevant authorities (programme to be defined in the view of the results of a nationwide data collection inquiry on the practice of national courts concerning the capacity to act and the right to vote).

(b) To put emphasis on the barrier-free exercise of the right to vote, as illustrated during the preparation of the 2014 elections.

(c) To prioritize the promotion of exercising the suffrage of voters living with disabilities, as one of the main principles of the Act XXXVI 2013 on the electoral procedures (Electoral Procedures Act).

(d) To facilitate the exercise of their right to vote by persons with disabilities through concrete measures such as the possibility to ask for a mobile ballot box, or for the use of a notification and voting templates in Braille, or for information materials in easy language format. The Electoral Procedures Act also introduces the obligation for each constituency to establish at least one barrier-free polling station. If a constituent who has requested to vote in a barrier-free polling station is geographically linked to a polling station that is not accessible, the local election office shall transfer him to another voting register within the same constituency, with a barrier-free polling station. These measures are described in the information letters sent to all constituents in January 2014 and in the Guidelines issued by the National Election Office.

As regards the compensation for the moral damage and the reimbursement of the legal costs incurred by the authors for filing the communication: the State party identified the budgetary resources that will be used and is in the process of clarifying the technical details of the reimbursement, “taking into account that the grievance object of the complaint occurred under the previous legislation”. Interministerial consultations are in progress to prepare for the negotiations with the representative of the authors and for the future disbursement.

The Views and its Hungarian translation will be published on the Government’s website.

Authors’ comments:

Due 27 May 2014; received 5 May 2014

Summary of authors’ comments:

As to the general measures referred in the reply:

(a) The grievance and Views did not relate only to the old Constitution: the Committee found that the provisions of the new Fundamental Law violate article 29 of the Convention (see paragraph 9.4 of the Views). The adoption of the new Fundamental Law is therefore not an “action taken in the light of the Views and Recommendations of the Committee”.

(b) The new Fundamental Law allows for disenfranchisement on the basis of an individual assessment of the capacity to vote of the person concerned. Nonetheless,

according to the statistics provided by the State party, the 1,692 persons who have reacquired their right to vote only represent 2.7 per cent of the 61,734 persons disenfranchised under the “old” system. Additionally, 10,834 persons have been disenfranchised under the new system. The authors therefore consider that the new system is based on a formalistic consideration of the voting abilities of persons with disabilities, and that the State party has taken no step to enact a law that recognizes, without any capacity assessment, “the right to vote for all persons with disabilities” in compliance with paragraph 10.2 (a) of the Committee’s Views.

(c) The procedure to access easy-to-read information about the 2014 parliamentary elections was particularly complicated and burdensome, making it impossible for a person in need of easy-to-read information to have access to any.

As to the specific recommendations concerning the authors:

(a) On 4 October 2013, the authors sent a letter to the Ministry of Human Resources submitting their request for compensation. In this letter, they suggest the payment of 3,000 euros per person for moral damages, and 5,000 euros for legal costs.

(b) The authors are still disenfranchised and could not participate in the parliamentary elections of 2014. They request the State party to ensure that their names are included in the electoral register and that they can participate in future elections.

The authors finally welcome the State party’s commitment to translate and publish the Committee’s Views but regret that this has not yet been done.

Second reply from the State party: Due 7 July 2014; received 8 July 2014

Summary of State party’s second reply:

The State party reiterates that the legal framework applicable at the time of the facts submitted to the Committee has been significantly amended. As to the access to assistance, the State party specifies that it can be requested in different ways, including in person, by mail, via client gateway or via the official election website. At the parliamentary elections of 2014, the election offices recorded 1,578 voters’ request for easy language information material.

The cases in which the exercise of suffrage may be restricted are clearly defined by section 13/A of the Electoral Procedure Act and the regulations in force explicitly provide the opportunity to request priority proceeding for judicial review of disfranchisement.

As to the compensation of the authors, the Ministry of Human Resources has contacted them in order to discuss the rate and means of equitable compensation and the negotiations should be concluded shortly.

The Ministry of Human Resources has published the Views of the Committee in English and in Hungarian on the official website of the Government. An easy-to-read summary of the Views is being prepared.

Actions taken:

Transmittal of State party’s submission for comments. Deadline: 10 September 2014.

24 September 2014: reminder sent to authors. Deadline: 25 November 2014.

Decision of the plenary:

[B2]: Initial action taken, but additional action remains necessary, especially for the review of the 1992 Law, and for the implementation of the specific recommendations of the Committee with regard to the authors. Follow-up procedure ongoing.
