



Convention on the Rights of Persons with Disabilities

Distr.: General
22 May 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 eleventh session (31 March–11 April 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 and rule 75, paragraph 7, of the rules of procedures of the Committee on the Rights of Persons with Disabilities. Article 5 of the Optional Protocol reads as follows: “The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.” Rule 75, paragraph 7, reads as follows: “The Special Rapporteur or working group shall regularly report to the Committee on follow-up activities.”

2. The present report sets out the information received by the Special Rapporteur for follow-up to Views of the Committee between the tenth and eleventh sessions pursuant to the Committee’s rules of procedure, and the analyses and decisions adopted by the Committee during its eleventh 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 measures and related information are required

B2 Initial action taken, but additional measures and related information are required

Action not satisfactory

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

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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*

H.M. v. Sweden No. 3/2011

Views 19 April 2012

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

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

Actions taken

13 September 2013: Letter of the Special Rapporteur on follow-up to Views to the Permanent Mission of Sweden reflecting the analysis of the Committee:

(a) As regards the measures related to the implementation of paragraph 9.1 of the Committee's Views: the Committee considered that the situation of the author remains unchanged and that its recommendations have not been implemented. The Special Rapporteur recalled that the Committee's decision was adopted with the view to enable the author to live in her own home, through the adoption of all the necessary and appropriate modifications and adjustments, not imposing a disproportionate or undue burden upon the State party to ensure the author's enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with others. The Committee considered that the review of the author's application for a building permit for a hydrotherapy pool is one of such measures.

(b) As regards the measures related to the implementation of paragraph 9.2 of the Committee's Views: the Committee recalls that the obligations of the Convention are binding on every State party as a whole. The executive branch, which generally represents the State party internationally, including before the Committee, may not argue that an action incompatible with the provisions of the Convention was carried out by another branch of the Government as a means of relieving the State party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties. As to the State party's assessment of the compliance of the Planning and Building Act with the Convention, the Committee reminds the State party that all legislation has to be implemented in a way so as to be compatible with international human rights standards.

In light of the above, the Committee concluded that the follow-up dialogue is ongoing, and requested the State party to provide additional information on the following issues:

(a) Measures taken to ensure the implementation of its recommendations in the case

H.M. v. Sweden.

(b) Possibility, within the national and local planning legislation, of providing a person with an exceptional building permit in compliance with the principle of reasonable accommodation.

Deadline for State party's second follow-up reply: **13 December 2013.**

The Special Rapporteur also invited the State party for a meeting on the occasion of the examination of the State party's report during the eleventh session of the Committee.

Second reply from the State party 13 December 2013

Summary of State party's second reply

The State party welcomes the initiative to organize a meeting to discuss the matters raised in the letter.

As to the measures taken to implement the Committee's Views:

(a) Since the follow-up reply of 26 October 2013, a summary of the Views has been published on the Government's human rights website.

(b) The Swedish Agency for Disability Policy Coordination (Handisam) has established a disability council involving disability organizations to foster dialogue on Handisam's disability policy tasks.

(c) As stated in previous submissions, a decision has been taken on the building permit application in question and this decision cannot be re-examined by the competent authorities and courts. The way for the author to obtain a new examination is to submit a new 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). If the author lodges a new application, she can refer to any new circumstances and to the Committee's Views.

(d) Under the new Planning and Building Act, the author can also request a planning statement from the municipality to establish whether the municipality is prepared to change the applicable detailed development plan. This enables individuals to obtain rapid and clear decisions on the municipality's view of whether the request will be used in municipal planning.

(e) According to the information received from the City Planning Office in Örebro, the author has not submitted a new application for a building permit and she has not requested a planning statement. She has therefore not utilized the opportunity available to her to obtain a re-examination of her case or to establish the municipality's view of amending the detailed development plan.

(f) As to the possibilities of submitting a new application for a building permit and to request a planning statement, the Government is prevented under the Constitution of Sweden from influencing decision-making in individual matters. The Government will therefore not interfere in any proceedings at the local or national level concerning the author's past or future application for a building permit or requests for a planning statement.

(g) As regards the possibility of granting an "exceptional building permit", the State party notes that for a building permit to be granted within an area covered by a detailed development plan, the planned measures must not contravene the plan. A building permit may be granted for a measure that involves a "minor derivation" that is compatible with the purpose of the plan. The detailed development plan is the result of a democratically based process that aims to enable property owners and others to foresee what requirements apply for building in the area. There is extensive jurisprudence from the Swedish courts on the

notion of “minor deviation”.

(h) The State party reiterates that a starting point in the examination of complaints under the Optional Protocol must be that the burden of proof of an alleged violation, at least initially, must rest with the author. In the present case, the author has failed to substantiate certain alleged circumstances on which she bases her claims. Despite this, the Committee has based its assessment on the author’s assertions.

(i) The State party considers that it has taken reasonable steps to comply with the Committee’s Views and the Swedish legislation is compatible with the articles invoked by the author. The State party maintains that it is not the main object of the plan and building legislation to guarantee the author’s right to health, rehabilitation and habilitation. Her rights in this regard are primarily secured under the Health and Medical Services Act, which regulates the obligation incumbent on county councils to offer good health and medical services to those residing within the county council area. The author’s rights under article 19 to live independently and to be included in the community can be fulfilled through the assistance she may obtain upon request to the relevant authorities in the municipality where she lives. Thus, the Committee’s Views do not give occasion to change the Swedish legislation. Further, the acts applied in the present case are not discriminatory and the decisions delivered by the various instances do not violate her rights under the Convention.

Authors’ comments

17 February 2014

Summary of authors’ comments

The authors reiterate that the medical treatment needed by H.M. is not provided by the Swedish medical system, which is why she applied for a building permit. They indicate that H.M. is not ready to reinitiate a building permit process as long as the State party does not provide any kind of guarantee that she will get the requested permit. The authors invite the Committee to request the State party to compensate H.M. for the costs she incurred throughout the building permit process (approximately 35,000 Swedish kronor).¹

Committee’s evaluation

[B2]: Initial action taken, but additional measures and related information are required.

On 1 April 2014, the Committee had a meeting with the Permanent Mission of the State party to address the difficulties faced in the context of the implementation of the Views and recommendations and to analyse possible ways of action to promote their implementation.

As to the building permit, the State party reiterated that it is now for H.M. to reinitiate the proceedings if she wants the issue to be reviewed by local authorities. The need to organize trainings on and sensitize local authorities to the Convention on the Rights of Persons with Disabilities was highlighted and the delegation of the State party indicated that the suggestion would be taken into account.

The Committee reminded the State party that it should compensate the author for the costs incurred in filing her communication (see paragraph 9.1 of the Committee’s Views).

Follow-up recommendation

The follow-up procedure is ongoing. A letter will be sent to the State party:

¹ Approximately 3,957 euros.

(a) Requesting information as to the implementation of the trainings on the Convention on the Rights of Persons with Disabilities or State party authorities at the local and national level, including with regard to the implementation of building and planning codes in compliance with the Convention;

(b) Reminding the State party that it should compensate the author for the costs incurred in filing her communication.

A letter will be sent to H.M. to inform her of the invitation by the State party to reinstate the process to apply for an amended building permit, making reference to the Views of the Committee.

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

*Nyusti and Takács v.
Hungary*

No. 1/2010

Views 16 April 2013

Comments of the authors' counsel 1 September 2013: as far as they know, no steps were taken so far to remedy the authors and to improve the accessibility of financial services.

First reply from the State party Due 24 October 2013; received 8 January 2014 (after one reminder). Transmitted to the author on 13 January 2014.

Recommendations of the Committee

Views, paragraph 10

Concerning the authors: the State party is under an obligation to remedy the lack of accessibility for the authors to the banking card services provided by the automatic teller machines (ATMs) operated by the OTP Bank Nyrt (OTP). The State party should also provide adequate compensation to the authors for the legal costs incurred during domestic proceedings and the costs incurred in filing this communication.

General: the State party is under an obligation to take measures to prevent similar violations in the future, including by:

(a) Establishing minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments. The Committee recommends that the State party create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private financial institutions of previously inaccessible banking services provided by them into accessible ones. The State party should also ensure that all newly procured ATMs and other banking services are fully accessible for persons with disabilities;

(b) Providing for appropriate and regular training on the scope of the Convention and its Optional Protocol to judges and other judicial officials in order for them to adjudicate cases in a disability-sensitive manner;

(c) Ensuring that its legislation and the manner in which it is applied by domestic courts is consistent with the State party's obligations to ensure that legislation does not have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of any right for persons with disabilities on an equal basis with others.

Summary of State party's reply

The accessibility of banking services is to be developed for persons with all types of

disabilities and should be extended to all Hungarian financial institutions. This can only be achieved gradually. The State party has been in contact with the Chief Executive Officer of OTP and reports on the measures adopted or announced by the credit institution:

(a) The Chief Executive Officer has committed to retrofit each ATM in the local branches of OTP (approximately 400 ATMs nationwide) so that they can be used by persons with visual impairments independently;

(b) An internal regulation for bank employees is prepared to improve communication with clients with disabilities and the services that they are being provided;

(c) Special attention is given to clients with disability when concluding a contract;

(d) Around 90 per cent of the local branches are barrier-free and all new local branches are built in a way to ensure the accessibility of customers with disability. Information accessibility is supported by specialized staff and the system is being expanded progressively over the network;

(e) The keyboards of ATMs are marked with Braille fonts. Number 5 is marked on the PIN (personal identification number) pads utilized by OTP to assist blind and visually impaired costumers in entering their PIN;

(f) Special products, services and procedures are set up for costumers with disabilities, including an accessibility support organized with the National Federation of Disabled Persons' Associations;

(g) OTP places great emphasis on corporate social responsibility in matters concerning persons with disabilities. Financial volunteer days are organized under the name "Without barriers", and disabled persons' organizations are invited to appear at the events organized by OTP.

With regard to the compensation to the authors for the legal costs incurred during domestic proceedings and the costs incurred in filing the communication, the State party advises that a consultation is ongoing with the representatives of the authors as to the compensation that should be provided.

The State party further informs the Committee that a consultation was initiated in October 2013 with the president of the Hungarian National Federation of the Blind and Visually Impaired to identify obstacles that persons with visual impairments might experience upon the use of banking services, especially with cash withdrawals. It was agreed that the obstacles identified should be addressed by the State party as a priority.

Three thematic working groups were established by the Ministry of Human Resources to prepare the amendment of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities. The regulation of accessibility was revised in autumn 2012. Among the 35 members of the working groups, 26 were non-governmental experts representing 12 civil and professional disability organizations. The amendments of the Disability Act adopted by Parliament in May 2013 introduce statutory obligations on accessibility that are immediately applicable for all concerned institutions, including financial ones.

The new National Disability Programme, as the main strategic document of disability policy for the period 2014–2020, is being finalized, and follows a human rights-based approach. The government action plan must now be established and implemented.

As regards education programmes:

(a) Adult training and higher education: more than 70 accessibility training materials have been prepared, and training courses and modules are integrated into higher education,

adult education and vocational training programmes.

(b) Training of judges and other actors in the public sector: in 2012, the annual training plan in family law included information about persons with disabilities; the public service training system includes information with regard to persons with disabilities; the module on public administrative procedure includes general information about persons with disabilities; the training of administrators working at the “one-stop shops” (integrated customer services) specifically includes information on access to public services.

(c) Training for public service officials: from 2014, a programme on persons with disabilities and their life situations will be available amongst the advanced professional development courses and modules.

As to the application of the relevant legislation by domestic courts, the State party seeks to disseminate the Convention as widely as possible, including through its inclusion in training materials for officials of the judiciary. Further cooperation is planned with the National Judicial Office and the National University of Public Service to enhance the knowledge and experience of judges, and to raise awareness towards persons with disability.

The Views of the Committee and its Hungarian translation will be published on the Government’s home page.

Comments of authors’ Due: 10 March 2014. Received 13 March 2014.

counsel

Summary of authors’ comments

The authors highlight that the reply of the State party mainly describes the policy of OTP on persons with disabilities. They confirm that the State party initiated a consultation with the Hungarian National Federation of the Blind and Visually Impaired on 21 October 2013. In this consultation, they identified the obstacles a person with visual impairment might experience to use banking services, especially for cash withdrawals. The State party and the Federation agreed that the emphasis should be put on the needs expressed by persons with visual impairments.

The reply of the State party also notes that the Ministry of Human Resources contacted the National Judicial Office and the rector of the National University of Public Service and with the representative of the authors. The consultation on the reasonable and fair compensation is in progress.

The authors consider that the commitment of the State party to promote the full inclusion and participation of persons with disabilities is positive, but that no precise answer is provided as to when and how the ATMs and financial services will be barrier free. The State party echoes the arguments of the court that the safety risk in case of cash withdrawals by people living with visual impairment would increase because of the reconstruction. The authors consider that it is for each person to decide whether to take such risk. They are not aware that the Committee’s decision has been published or translated.

The authors approached the Ministry of Human Resources reiterating the recommendations made by the Committee and requesting their implementation. They also offered their expertise to ensure that the legislative environment is in compliance with the Convention. The State party replied that further deliberation to that regard would be necessary within the Government. The State party also requested the authors to provide invoices for the payment of a remedy by the Ministry.

Conclusion of the authors: the Committee should pursue the follow-up procedure on this

case.

Committee's evaluation

[B2]: Initial action taken, but additional measures and information are required.

The timeline of the measures announced by the State party to implement the Views and recommendations of the Committee are not clear and the Views and their translation must be made public by State authorities.

Follow-up recommendation

The follow-up procedure is ongoing. A letter will be sent to the State party:

(a) Acknowledging the measures taken to implement the Committee's Views and recommendations, and requesting the State party to provide further information as to the actual payment of the compensation to the authors within six months, and as to the reform of the ATMs at national level within one year;

(b) Recalling that the Views and its translations must be made public by State authorities.
