

Nyusti & Takacs v. Hungary (Communication No. 1/2010, CRPD/C/9/D/1/2010)

31.05.2013

Summary

In April 2013, the Committee on the Rights of Persons with Disabilities was asked to consider whether Hungary's failure to ensure that persons with disabilities could access banking services offered by a private financial institution violated its obligations under the Convention on the Rights of Persons with Disabilities.

The communication was submitted by two Hungarian nationals under the Optional Protocol to the Convention.

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Background

The authors of the communication, Szilvia Nyusti and Peter Takacs, have severe visual impairments. They separately entered into contracts for private account services with a local financial institution, the OTP Bank Zrt. credit institution (the OTP). Under these contracts, the authors paid the same fees as any other OTP client. However, the authors were unable to access the banking services provided by OTP's automatic teller machines (ATMs) on their own because none of those ATMs had braille font keyboards or voice assistance features.

In April 2005, the authors lodged a complaint with the OTP asking it to change its ATMs in the proximity of their homes to ensure that they could access them without assistance. The OTP rejected that complaint. In October 2005, the authors filed a civil complaint with the Metropolitan Court alleging, among other things, that the OTP was obliged under domestic equal treatment legislation to ensure that its entire network of ATMs was retrofitted so that persons with visual and other types of disabilities could access them. The case proceeded from the Metropolitan Court to the Court of Appeal and, ultimately, the Hungarian Supreme Court.

In February 2009, the Supreme Court rejected the authors' complaint. Although the Court acknowledged that ATMs designed for sighted persons placed visually impaired persons in a disadvantageous position, the Court held that the authors' had entered into contractual relationships with the OTP with full knowledge of the relevant terms, including that they would only be able to make limited use of the ATMs as a result of their respective disabilities. According to the Supreme Court, the authors had agreed to their disadvantaged position by signing those agreements.

On 11 March 2010, having exhausted all domestic remedies, the authors filed this communication with the Committee under the Optional Protocol to the Convention alleging that the Hungarian Courts' decisions engaged its international responsibility under the Convention.

The Committee's decision

The Committee dealt only briefly with the issue of admissibility, which was not challenged by Hungary. The Committee simply noted that the Optional Protocol had entered into force for Hungary on 3 May 2008 and this was before the Hungarian Supreme Court rejected the authors' case. It further noted that the factual basis for the alleged violation of the Convention (i.e., the authors' inability to access banking card services provided by

the OTP's ATMs) persisted after the Optional Protocol had entered into force. Accordingly, the authors' primary complaint was admissible.

On the merits, the Committee considered that the issue raised by the authors' complaint was whether Hungary had taken appropriate measures to ensure that visually impaired persons could access the OTP's entire network of ATMs.

The Committee noted that under art. 4(1)(e) of the Convention, States Parties had undertaken "to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise". And, under art. 9 of the Convention, States Parties are required to take appropriate measures to ensure persons with disabilities have access to information, communications and other services provided to the public by eliminating obstacles and barriers to accessibility. This includes the specific obligation under art. 9(2)(b) to ensure private entities offering information or services to the public take into account all aspects of accessibility for persons with a disability.

The Committee noted that Hungary had acknowledged that the accessibility of ATMs and other banking services to persons with visual and other types of disability, was a "real problem". Hungary had also recognised the need to establish regulatory tools to incentivise financial institutions to make financial services accessible to persons with disabilities. In this case, the financial institution that was the subject of the authors' complaint - the OTP - had recently undertaken in correspondence with state authorities to retrofit its network of ATMs so that they would be accessible to persons with disabilities within four years.

However, as the Committee observed, none of these measures ensured the authors or persons in a similar position access to banking card services at the OTP's ATMs and this breached Hungary's obligation under art. 9(2)(b) of the Convention. On that basis, the Committee recommended that Hungary:

- (a) remedy this lack of accessibility;
- (b) provide adequate compensation to the authors for the legal costs they had incurred in the domestic court proceedings and in submitting the communication;
- (c) establish minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of disability by creating a legislative framework with "concrete, enforceable and time-bound benchmarks" to monitor and assess the progress toward making banking services fully accessible to persons with disabilities;
- (d) provide regular training to judges and other public officials on the scope of the Convention and its Optional Protocol to ensure that future complaints are adjudicated in a disability-sensitive manner; and
- (e) ensure that legislation and its domestic application is consistent with Hungary's obligation under the Convention to ensure that legislation does not impair or nullify the recognition, enjoyment or exercise of any right for persons with disabilities on an equal basis with others.

Hungary must now submit its written response within six months of the Committee's decision, including any information on the action taken in light of the Committee's recommendations.

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