

Nyusti & Takacs v Hungary

The Committee on the
Rights of Persons with Disabilities
(Communication no. 1/2010)

 **Disability Rights
Resource Network**

<http://disabilityrights.law.hku.hk>



Quick Facts

Applicants (authors): Szilvia Nyusti and Peter Takacs

Member State: Hungary

Court: Committee on the Rights of Persons with Disabilities

Date Decided: 16 April 2013

Issue: Whether the failure by Hungarian authorities to ensure accessibility for persons with visual impairment to OPT's entire network of ATMs was a violation of Article 9 of the Convention on the Rights of Persons with Disabilities.

Case Synopsis: Both authors of this case were visually impaired and had separately concluded contracts for private account services with OTP Bank ("OTP"). Despite having to pay

the same annual fees for the banking services and transactions as other OTP clients did, they were denied access on an equal basis with others to the use of OTP's ATMs which lacked Braille fonts, audible instructions and voice assistance. The CRPD Committee ("Committee") found that Hungary failed to ensure accessible banking services, including those provided by OTP and other private financial institutions, for persons with visual impairments, in violation of Article 9(2)(b) (*accessibility*). It upheld the obligation on Hungary to ensure that private entities which offer facilities and services to the public take into account all aspects of accessibility for persons with disabilities, by creating a legislative framework to monitor their modifications for achieving full accessibility.

Procedural Background

Domestic Remedies

In May 2007, the authors succeeded in a case against OTP before the Metropolitan Court in Budapest, which allowed their argument that there was direct discrimination and a violation of the authors' right to equal treatment and human dignity. Although the authors demanded for the retrofitting for all of OTP ATMs, OTP was only ordered to ensure that there would be a portion of accessible ATMs all over Hungary and particularly four in districts where the authors lived.

In July 2007, the authors appealed to stop discrimination fully and demanded access to all of OTP ATMs, but the Court of Appeal, despite holding that there was indirect discrimination, rejected the appeal considering the inapplicability of domestic legislations and the financial burden caused to OTP to retrofit the ATMs. The protection of rights of persons with disabilities was held conditional on "the strength of the national economy". The authors further appealed to the Supreme Court in April 2008, but Supreme Court concurred with the Court of Appeal that OTP was exempted from providing for equal treatment and its obligations owed to the authors were only governed by the contracts between them.

Admissibility

After the rejection of their appeal by the Supreme Court, the authors submitted that they had exhausted all effective domestic remedies and sent an individual communication to the Committee under the Optional Protocol to the CRPD. Hungary ratified both the CRPD and its Optional Protocol in July 2007 and both instruments came into force in May 2008. The Committee affirmed that the authors' case was admissible, noting that the Optional Protocol had entered into force for Hungary before the Supreme Court rejected the authors' case, and that the factual basis for the alleged violation of the CRPD persisted after the Optional Protocol became in force.

Case Summary

The Committee recalled that under Article 9, 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 article 9(2)(b) to ensure private entities offering information or services to the public take into account all aspects of accessibility for persons with disabilities.

The Committee noted that Hungary had acknowledged the “real problem” with the accessibility of ATMs and other banking services to persons with visual and other types of impairments, as well as the need to establish regulatory tools to incentivise financial institutions to make financial services accessible to persons with disabilities. Although Hungary had made some general proposals to improve accessibility of banking services and communicated with OTP and within state authorities to achieve this objective, it was still held in breach of article 9(2)(b) as none of its initiatives actually ensured accessibility for the authors or similar persons. The Committee thus recommended that Hungary:

1. Remedy this lack of accessibility and provide adequate compensation for the authors;
2. Establish minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments by creating a legislative framework with “concrete, enforceable and time-bound benchmarks” to monitor and assess the improvement progress;
3. Provide regular training to judges and other judicial officials on the scope of the CRPD and its Optional Protocol in adjudicating future complaints in a disability-sensitive manner; and
4. Ensure that its legislation and its domestic application are consistent with Hungary’s obligation under the CRPD to ensure no impairment or nullification of any right for persons with disabilities on an equal basis with others.

Significance

The decision has raised several issues for the legal community and the CRPD state parties to observe. Firstly, it has affirmed that states must take concrete actions to prevent non-state actors from discriminating people with disabilities. Compliance with the CRPD means more effective steps than mere communications between state authorities and the private sector, and procuring promises from the latter to improve the situation.

Also, while the authors brought their case under both CRPD Articles 5 (*reasonable accommodation*) and 9 (*accessibility*), the Committee only considered that the totality of their claims under Article 9. This article expressly sets the obligations of state parties to provide an accessible environment but does not explicitly provide for a substantive right for persons with disabilities. In this decision, it would seem that the Committee was inferring a right from Article 9 and effectively making accessibility justiciable. This will surely influence how prospective applicants establish their cases before the Committee.

Furthermore, this decision would have significant impacts on how the domestic courts apply international human rights law as per the Committee's recommendation. More importantly, it compels states to ensure that not only the legislations themselves but also their interpretation and application by judges must not result in discrimination. This is contrary to the Hungarian courts' insistence on maintaining the separation of powers and judicial independence, and is a direct reminder of a state's utmost priority to protect human rights.

Context

Hungary was the second country in the world to ratify the CRPD (20 July 2007) and the first to ratify the Optional Protocol to the CRPD. As the CRPD entered into international force on 3 May 2008, it became binding on Hungary which has to prepare state reports representing the implementation of its convention obligations.

Currently, Hungary homes a population of around 9.9 million. Recent figures showed that almost 20% of the population were people with disabilities, a proportion below the EU average. According to the last processed census in 2001, 14% of the population with disabilities were blind or visually impaired. The generally low education level of this population and their majority's settlement in villages and small towns were detrimental to their employment prospects. Hungarian disability and human rights community has expressed concerns for *"the government's blatant disregard for its obligation under [the CRPD] to actively involve the organizations of persons with disabilities in the implementation work"*. They have claimed that *"(t)he gravity of the situation is manifested by the non-transparent and malfunctioning procedures, short consultation deadlines and cuts to organisations' project funding."*

Cases and Resources

- ***Nyusti & Takacs v Hungary*** (Communication no. 1/2010)