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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Follow-up progress report on individual communications, adopted by the Committee at its sixteenth session (15 August-2 September 2016)

A. Introduction

1. The present report was prepared pursuant to 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, after examining a communication, 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 procedure of the Committee, which stipulates that the Special Rapporteur or working group to ascertain the measures to be taken by States parties to give effect to the Committee's Views shall regularly report to the Committee on follow-up activities. The Committee considered and adopted the present report at its sixteenth session.

2. The present report sets out the information received by the Special Rapporteur for follow-up on Views between the fifteenth and sixteenth sessions pursuant to the Committee's rules of procedure, and the analyses and decisions adopted by the Committee during its sixteenth 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

C2 Reply received but not relevant to the Views/recommendations

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No cooperation with the Committee

D1 No reply to one or more recommendations or parts of recommendations

D2 No reply received following reminder(s)

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

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

Views adopted:	16 April 2013
First reply from the State party:	Due on 24 October 2013. Received on 13 December 2013. Analysed at the eleventh session (see CRPD/C/11/5).
Authors' comments (first set):	13 March 2014. Analysed at the eleventh session (see CRPD/C/11/5).
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3), with a deadline for comments of 7 November 2014.
Second reply from the State party:	Received on 29 June 2015 and 27 May 2016, indicating that: (a) The State party had paid compensation to the authors and reimbursed them for their legal expenses; (b) OTP Bank had undertaken to make all the automatic teller machines (ATMs) in its branches accessible for independent use by persons with visual impairments as a result of a four-year development programme; (c) On 21 October 2013, the Ministry responsible for social affairs had initiated consultations with the President of the Hungarian Federation of the Blind and Partially Sighted, and on 17 April 2015, it had initiated consultations with the Minister responsible for tax and financial affairs of the Ministry for National Economy on possible regulatory solutions to implement the Committee's Views; (d) The Minister responsible for social affairs and inclusion of the Ministry of Human Capacities had sent a letter to the Central Bank of Hungary requesting information on changes that had been implemented in recent years and on possible regulatory solutions in the area address in the Committee's Views; (e) Consultations to shape the legislative framework had been launched.
Decision adopted at the fifteenth session:	Follow-up ongoing. A letter would be sent to the State party.

Actions taken:	6 June 2016: Letter of the Special Rapporteur for follow-up on Views sent to the State party (a) welcoming the compensation paid to the author; and (b) requesting updated information on the implementation of Committee's Views, the implementation of the ATM four-year development programme and the outcome of the consultations initiated by the State party. Deadline for response: 2 August 2016.
Decision of the Committee:	Follow-up ongoing, except on the issue of the compensation paid to the authors ("A" assessment). State party's follow-up reply to be transmitted, upon receipt, to the authors for their comments.

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

Views adopted:	9 September 2013
First reply from the State party:	26 March 2014 (see CRPD/C/12/3)
Authors' comments (first and second sets):	5 May 2014 (see CRPD/C/12/3)
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3), with a deadline for comments of 7 November 2014.
Second reply from the State party:	8 July 2014 (see CRPD/C/12/3)
Authors' comments (third set):	25 August 2015
Third reply from the State party:	Received on 29 June 2015, indicating that: (a) The State party had awarded the authors compensation and reimbursed their legal costs on 17 June 2015; (b) Act V of 2013 on the Civil Code had entered into force on 15 March 2014, amending the system of placement under guardianship. In addition to the limitation of capacity, the Act introduced alternative legal instruments for adults whose decision-making was hampered. The Act referred to supported decision-making, without indicating the details of its application; (c) Act CLV of 2013 had been adopted in order to support the decision-making of persons whose capacity for judgment was allegedly limited, without introducing restrictions and considering the principles of necessity and proportionality. Regular consultations with the National Office for the Judiciary regarding the Act had shown that the number of non-disenfranchised persons had increased from 1,333 in 2013 to 3,044 in May 2015; (d) In October 2014, the National Office for the Judiciary had carried out a review of domestic judicial practices

	in decisions on the capacity of discretion related to the exercise of suffrage for persons placed under guardianship. The aims of the review included identifying the proportion of cases in which persons placed under guardianship had been excluded from suffrage; the practical aspects considered by judges in the procedure; and the relative strictness of the examination of capacity of discretion related to suffrage. Based on the review, the State party maintained that courts currently placed stronger emphasis on examination of the capacity of discretion relating to the exercise of suffrage; ordered the provision of extensive evidence; and undertook a more detailed examination of circumstances; (e) Several courts had held conferences involving the public prosecutor's office and guardianship authorities and experts, aimed at harmonizing domestic judicial practice and promoting expert examinations and opinions in decisions on guardianship and suffrage; (f) An action plan had been prepared that included a review of judicial and guardianship authority practice on supported decision-making, and implementation of training programmes, in accordance with the review, for judges, forensic medical experts, guardianship authorities, social work and health professionals and child protection guardians. A decision would be adopted in that regard in the near future.
Decision adopted at the twelfth session:	Follow-up ongoing. The Committee decided to send a follow-up letter to the State party.
Actions taken:	14 June 2016: Letter of the Special Rapporteur for follow-up on Views sent to the State party: (a) Welcoming the compensation paid to the author ("A" assessment); (b) Requesting updated information on the implementation of the Committee's Views and on the alternative legal instruments for adults whose decision-making is allegedly hampered; on the steps taken to implement the Act concerning provision of assistance in voting for all persons with disabilities; on the finding of the National Office for the Judiciary on an increase in the number of non-disenfranchised persons, specifying changes in the proportion of persons placed under guardianship who are disenfranchised following a capacity assessment; and on the proportion of cases concerning persons placed under guardianship that had resulted in exclusion from suffrage; (c) Urging it to ensure the compliance of the alternative legal instruments with paragraph 10 (b) (2) of the Committee's Views (recognition, without any "capacity assessment" of the right to vote for all persons with disabilities); and to consider repealing legislation that required courts to decide on the capacity of discretion related to the exercise of suffrage for persons placed under guardianship. Deadline for response: 9 August 2016.

Fourth reply from the State party:	Received on 12 August 2016, indicating that: (a) Supported decision-making had been possible since the adoption of Act V of 2013 on the Civil Code, which ensured the opportunity of supported decision-making and provided for individual help for each person without limiting their capacities. The supporter could help the person concerned with decision-making without limiting his or her capacity, and he or she could make legally valid statements on his or her own; (b) Concerning the right to vote, article XXXVI of the Constitution stipulated that the court had to decide whether to exclude from suffrage persons who had been placed under capacity-limiting or capacity-excluding guardianship. If the court did not exclude the adult from suffrage, he or she could vote and be voted for. The State party did not currently plan to modify or repeal those unambiguous constitutional provisions. However, the Joint Ministerial Disability Commission, which was in charge of coordinating the implementation of the National Disability Programme, had set up a working group to review the legal institutions of "supporter decision-making" and the suffrage of persons with disabilities. The working group was composed of experts from the Ministry of Justice, the Ministry of Human Capacities, the National Office for the Judiciary and the Commissioner for Fundamental Rights. Its main aim was to review the regulations and case law that applied to the limitation of suffrage. Its first discussion had taken place in August 2016; (c) Compensation for the authors was in progress.
Actions taken:	16 August 2016: The State party's follow-up reply was transmitted to the authors for their comments, with a deadline for response of 28 October 2016.
Authors' comments on State party's reply:	17 August 2016: The authors' comments on the State party's reply were received, indicating that: (a) Regarding supported decision-making, they welcomed the adoption of the 2013 Act. However, they considered that supported decision-making was more widely available under the Civil Code of 2009, which had never entered into force because the Government had repealed it in 2010; (b) As to the right to vote, they considered that the State party's statement that it would not modify or repeal the relevant constitutional provisions was a clear refusal to implement the Committee's Views. The authors agreed that the constitutional framework was unambiguous, but considered that it remained very ambiguous as to the reasons why a person's right to vote could be restricted. There was no psychiatric or other forensic protocol as to what should be examined by forensic experts when asked whether a person was able to vote;

	(c) The authors regretted that civil society representatives had not been invited to participate in the working group of the Joint Ministerial Disability Commission, which undermined the working group's legitimacy; (d) As to the payment of compensation, the legal costs awarded by the government decree in June 2015 had been paid in full; (e) As to the rest of the compensation, significant delays had occurred. The authors had still not received the amount fixed in the 2015 decree, which they considered to be a result of the fact that they were under guardianship. The Ministry of Human Capacities had decided that it would recognize their legal representative only for the procedure before the Committee. For the domestic implementation procedure, they had to be represented by their legal guardians, against whom part of the authors' complaint was directed. The authors argued that that had put them in a vulnerable position because their guardians could dispose of the authors' assets.
Decision of the Committee:	Follow-up ongoing. Rapporteur to send another follow-up letter to the State party welcoming the payment of the legal costs to the authors and highlighting the fact that the Committee regrets that the State party has clearly indicated that it does not plan to modify or repeal article XXXVI of the Constitution, as recommended in the Committee's Views (para. 10 (b) (i)). The State party will be requested to provide information on (a) the measures adopted to ensure the full compatibility of the legislation on supported decision-making and the right to vote with the Convention and the Committee's Views in *Budjoso et al. v. Hungary*; (b) the measures taken to ensure the participation of civil society organizations in the work of the working group of the Joint Ministerial Disability Commission; and (c) the progress made in the payment of the compensation determined in June 2015, and the measures taken to ensure that the compensation paid can be managed by the authors in compliance with their own will and decisions.

3. Communication No. 21/2014, *F. v. Austria*

Views adopted:	21 August 2015
Deadline for first reply from the State party:	9 March 2016
First reply from the State party:	Received on 24 February 2016, indicating that: (a) Linz Linien GmbH, which runs the public transport in Linz including tram line 3, would continue its efforts to improve access for persons with disabilities. Working in close cooperation with the Austrian Federation of the Blind

and Partially Sighted, it would develop electronic timetable information systems operated via smartphone with a digital voice output system, to provide customers individually with comprehensive real time information on the traffic situation;

(b) Linz Linien GmbH would undertake a detailed analysis of the current situation, together with the Austrian Federation of the Blind and Partially Sighted, in order to eliminate existing accessibility gaps for all passengers;

(c) Concerning the author's request for compensation for legal costs from several federal institutions, as a matter of principle, Austria did not provide compensation to applicants in treaty body procedures. The costs incurred by the author during domestic court proceedings had been the subject of a final decision of an independent court;

(d) Concerning the general recommendations: (i) the Government had adopted the National Action Plan on Disability 2012-2020, which was included in the Government's 2013-2018 work programme. In terms of the accessibility of public transport, the Committee's recommendations would be analysed by the group of governmental and civil society experts on inclusive mobility research, which met annually, in order to raise awareness on accessibility issues; (ii) concerning training, measure 92 of the National Action Plan on Disability provided for lectures on accessibility as part of courses at technical universities and other academic institutions for professions relating to public transport, particularly in the fields of architecture, civil engineering, engineering, electrical engineering and information technology. The Federal Ministry of Science, Research and Economy ensured that accessibility was part of various academic curricula. Linz Linien GmbH would continue to provide training courses on passengers with disabilities for tram and bus drivers. Four hundred and twenty drivers had been trained between September 2014 and April 2015 and the next course would be held once a sufficient number of drivers had been employed. There would be specific reference to the Committee's conclusions on that course; (iii) the State party welcomed the European accessibility act, proposed by the European Commission on 2 December 2015, which set common accessibility requirements for key products and services. The main aspect of the directive was accessibility of information and communications technology and of transport; (iv) in order to promote close consultation with persons with disabilities and their representative organizations, in a circular dated 18 September 2009, the Federal Chancellery had informed the relevant national institutions, including Parliament and all federal ministries and regional governments, about the obligations arising from article 4 (3) of the Convention to consult with organizations of persons with disabilities on matters concerning them during the legislative process; and (v) the Committee's Views had been translated into German and published on the websites of the Federal Chancellery and the Federal Ministry of Labour, Social Affairs

	and Consumer Protection. The Federal Ministry for Europe, Integration and Foreign Affairs and the Federal Chancellery had disseminated the Views to the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Federal Ministry for Transport, Innovation and Technology, the Federal Ministry of Justice, the city government of Linz and Linz Linien GmbH on 16 September and 14 December 2015.
Actions taken:	11 March 2016: The State party's follow-up reply was transmitted to the author for his comments, with a deadline for response of 10 June 2016. 13 June 2016: First reminder sent to the author, with a deadline for response of 15 August 2016.
Author's comments:	Received on 22 June 2016, indicating that: (a) The State party had published the Committee's Views in German, but not in accessible formats; (b) No compensation had been provided for the legal costs he had incurred during the domestic proceedings and for filing the communication; (c) No specific steps had been taken to ensure that disability rights included accessible information on transport or to guarantee that Austrian transport networks built in the future complied with the principle of universal design; (d) While the efforts announced by Linz Linien GmbH might result in improvements for that specific company, there were no general binding rules requiring public transport companies to provide passengers with accessible information; training provided for Linz Linien GmbH employees was useful, but would not solve the problem of the failure to provide accessible information.
Decision of the Committee:	Follow-up ongoing. A letter to be sent to the State party recalling the Committee's recommendation concerning compensation and requesting additional information on the measures taken to provide accessible information about public transport.