



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

Communication No. 21/2014

**Views adopted by the Committee at its fourteenth session (17 August– 4
September 2015)**

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| <i>Submitted by:</i> | Mr. “F” (represented by Volker Frey) |
| <i>Alleged victim:</i> | The author |
| <i>State Party:</i> | Austria |
| <i>Date of communication:</i> | 24 March 2014 (initial submission) |
| <i>Document references:</i> | Special Rapporteur’s rule 70 decision, transmitted to the State party on 7 June 2013 (not issued in document form) |
| <i>Date of adoption of the decision:</i> | 21 August 2015 |
| <i>Procedural issues:</i> | Admissibility of claims |
| <i>Subject matter:</i> | Accessibility to live information in public transport on an equal basis with others |
| <i>Substantive issues:</i> | Access to information and communication technologies; facilities and services open to the public on an equal basis with others; right to personal mobility and to live independently |
| <i>Articles of the Convention:</i> | 2; 5; 9; 19 and 20. |
| <i>Articles of the Optional Protocol:</i> | 2 (b) and (c) |



Annex

Views of the Committee on the Rights of Persons with Disabilities (fourteenth session)*

concerning

Communication No. 21/2014

Submitted by: Mr. "F" (represented by Volker Frey)
Alleged victim: The author
State Party: Austria
Date of communication: 24 March 2014 (initial submission)

The Committee on the Rights of Persons with Disabilities, established under article 34 of the Convention on the Rights of Persons with Disabilities,

Meeting on 21 August 2015,

Having concluded its consideration of communication No. 21/2014, submitted to the Committee on the Rights of Persons with Disabilities on behalf of Mr. "F" under the Optional Protocol to the Convention on the Rights of Persons with Disabilities,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 2 of the Optional Protocol

1. The author of the communication is Mr. "F", an Austrian citizen born on 13 August 1955. He claims to be a victim of a violation by Austria, of articles 2, 5 (2), 9, 19 and 20 of the Convention. He is represented by Mr. Volker Frey.¹ The Convention and the Optional Protocol entered into force for the State party on 25 October 2008.

Facts as presented by the author

2.1 Mr. "F" lives in Linz, the capital of Upper Austria, one of the nine federal provinces of Austria. The author is blind and depends on public transportation for his daily activities, for private and business purposes. He particularly uses tram Line 3 of the city of Linz, which is managed by Linz Linien GmbH, a company owned by the city that runs the entire public transport of the area.

2.2 In March 2004, Linz Linien GmbH started to equip the tram stops of the city with digital audio systems, which reproduces the written text of the digital information displays

* The following members of the Committee participated in the examination of the present communication: Mohammed Al-Tarawneh, Danlami Umaru Basharu, Munthian Buntan, María Soledad Cisternas Reyes, Theresia Degener, Hyung Shik Kim, Stig Langvad, Laszlo Gabor Lovaszy, Diane Kingston, Martin Babu Mwesigwa, Carlos Alberto Parra Dussan, Safak Pavey, Coomaravel Pyaneandee, Silvia Judith Quan-Chang, Jonas Ruskus, Damjan Tatić and Liang You

¹ The author attached a power of attorney.

by pressing a button of a hand held transmitter. The digital audio information therefore provides real time information on the direction of the trams, their arrival and departure time, and disruptions of services. More than 40 digital audio systems were installed before June 2009 to enable persons with visual impairments to use the trams independently and on an equal basis with others. The author explains that the audio system enables him and other persons with visual impairment to know if they are already in the tram station or where the stop is if they are still outside, and to receive all the information that is also available visually (delays, interruption of services, and waiting time for the next tram).

2.3 In August 2011, Linz Linien GmbH extended the railway network of tram Line 3. However, none of the stops along the extended railway network of Line 3 has been equipped with the digital audio system. The information for passengers is only available visually. The author therefore has to ask passers-by to get access to the information, which makes it difficult to find his way to the new stops and prevents him from using them on an equal basis with others.

2.4 The author further submits that to adequately equip the seven stops along tram Line 3, fourteen audio systems would have been necessary. The estimated overall budget for establishing the new part of the railway network of Line 3 was 150 million euros. The actual costs only amounted to 140 million euros. 80 per cent of the costs were covered by the State of Upper Austria, and 20 per cent by the Community of Leonding, a city near Linz. According to Linz Linien GmbH, one audio unit costs 1962 euro. Fourteen units would therefore have cost 24468 euros. The author argues that this money would have been available within the estimated budget, without causing any additional costs for Linz Linien GmbH, and that the equipment of the referred stops with an audio system would therefore also have been reasonable in economic terms.

2.5 Under the Federal Act on Equality for Persons with Disability, any judicial action must be preceded by an attempt to settle the case.² On 4 June 2012, the author initiated conciliation proceedings against the Linz Linien GmbH submitting that he would be discriminated against on the basis of his disability because, as a blind customer, he could not obtain the necessary information at the stops of tram Line 3. However, no agreement was found and the conciliation proceedings ended on 18 July 2012 with a confirmation by the conciliation board that no agreement could be reached.

2.6 The author submitted a complaint to the District Court of Linz (Bezirksgericht Linz) arguing that he was suffering indirect discrimination, in violation of articles 4(1), 5(2), and 9(1) of the Federal Disability Equality Act.³ Under the Act, discrimination “occur[s] where an apparent neutral provision, criterion or practice as well as characteristics of configured areas of life put persons having a particular disability at a particular disadvantage compared with other persons, [...] unless it is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.⁴

2.7 On 2 May 2013, the District Court held that the absence of digital audio system did not constitute a barrier for the use of the transportation service by visually impaired persons. The Court noted that the only information visually available to passengers on the new stops of tram Line 3 is the remaining time until the arrival of the next tram and, exceptionally, temporary or total service breakdown. It considered that this information is also available on the internet and is accessible for persons with visual disability equipped

² Procedure of conciliation initiated under paragraph 14 of the Federal Act on Equality for People with Disabilities (Bunder-Behindertengleichstellungsgesetz)

³ Bundes-Behindertengleichstellungsgesetz.

⁴ Summary and English translation of the judgement of the District Court of Linz dated of 02 May 2013 as provided by the author.

with speech recognition software device, and that the author can use the tram without the information that is provided to passengers without visual impairment. The District Court concluded that the lack of digital audio system does not constitute a barrier of communication that would amount to a breach of the prohibition to discriminate. Accordingly, the author's case was dismissed and he was requested to pay 674.35 euros of legal costs.

2.8 The author appealed the decision of the District Court before the Regional Court of Linz (Landesgericht Linz). On 15 July 2013, the Regional Court confirmed the District Court's decision considering that the visually available information on the stops of tram Line 3 is of "minor importance", and that the author would rarely depend on them.

2.9 The author argues that, although the information concerning the tram schedule is available via internet, he does not have immediate access to the real time information he needs while traveling. The author further claims that the information visually available to passengers on the new stops of tram Line 3 is of paramount importance for him because he has no alternative route to perform his daily activities.

2.10 According to article 502 (2) of the Civil procedure Code,⁵ the Supreme Court is not competent to review cases with a value of litigation under 5000 euros. The Regional Court is therefore the highest instance of appeal, and no other domestic remedies are available in the author's case.

2.11 The author also contends that the Federal Disability Equality Act does not provide adequate remedies in so far as it only provides compensation in case of indirect discrimination, but not in cases of the non-enforcement of an obligation to remove a barrier to access services that are available to persons without disabilities.

The Complaint

3.1 The author considers that the failure by the State party to install the audio system on tram Line 3 violates the two-senses-principle of accessibility, according to which all information, including guidance aids, must be perceivable by a minimum of two senses out of three (hearing, sight and touch) to enable visually impaired and hearing-impaired people to access all important information without outside assistance. He further argues that the lack of audio system prevents him, as a person with visual impairment, to access the information that is only visually available. He considers that this barrier of communication amounts to a discrimination, as it deprives him of the use of transportation services on an equal basis with others, in breach of articles 5 and 9 of the Convention.

3.2 The author also considers that the refusal by the State party to remove those barriers constitutes a breach of articles 19 and 20 of the Convention, as the lack of audio system on Line 3 prevents him from living an independent life and violates his right to personal mobility.

3.3 The author contends that the Act does not provide adequate protection from discrimination because it does not introduce any obligation to remove barriers. He considers that the interpretation of the provisions of the Federal Disability Act by national courts has been too restrictive, because it does not consider that such barriers are a source of discrimination for persons with disability. He further considers that such interpretation does not take into account the Convention of the Rights of Persons with Disability and violates his right to equal and effective remedy under article 5, paragraph 2, of the Convention.

⁵ Zivilprozessordnung.

3.4 The author also argues that under the Federal Disability Equality Act, a barrier will only be considered unlawful if it results of a mistake or is intentional, therefore excluding from its scope of application “[the] distinction, exclusion or restriction on the basis of disability which has [...] the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[...]”, in violation of article 2 of the Convention.

State party’s observations on the admissibility and merits

4.1 On 30 December 2014, the State party submitted its observations on the admissibility and merits of the communication.

4.2 It indicates that the Linz tramway is operated by the Linz Linien GmbH, which operates approximately 720 stops in Linz. Of these 720 stops, 374 are equipped with display panels with dynamic passenger information. This means that the signs display the actual times of arrival and departure of the trams, and not merely the time schedule. They also show in how many minutes the next tram will arrive at the stop. Of these 374 stops, 44 are equipped with an acoustic transformation (by pressing a button) of the information visible on the display panel “for passengers able to read it”. These are stops of major traffic junctions. The voice output of the information, or so called DISA system, is technically possible only for stops equipped with a dynamic passenger information system.

4.3 The State party describes the judicial proceedings carried out by the author and states that on 31 July 2013, the Linz Regional Court dismissed the author’s appeal against the judgement of the Linz District Court of 2 May 2013 considering that there was no indirect discrimination based on technical communication barriers since the dynamic passenger information was of no specific relevance at the stops used by the author: these stops are exclusively frequented by tram Line 3, which normally arrives at seven to eight minutes intervals. Longer delays could be excluded and complete cancellations were extremely rare. The regional Court added that the general operating periods and foreseeable or planned cancellations were also available to blind passengers on the Internet with a voice recognition system. The Court therefore considered that the author would have to rely on external assistance only in exceptional circumstances, and that trams of Line 3 are accessible and can be used by the author “in the usual manner, without extraordinary obstacles or barriers, and in general without external assistance”.

4.4 The State party recalls that article 5 of the Convention prohibits any discrimination on the basis of disability. It also recalls that article 9, paragraph 1, requires States parties to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, in particular to transportation and communications, and to other facilities and services open or provided to the public; and that article 9, paragraph 2, requires States parties to take appropriate measures to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities. Article 19 guarantees all persons with disabilities the right to live in the community, with choices equal to others, and article 20 requires States parties to take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities.

4.5 The State party further refers to the Committee’s interpretation of article 9 of the Convention in General Comment No. 2,⁶ and concludes that “the right of access

⁶ General Comment 2, “Article 9 – Accessibility”, CRPD/G/GC/2, May 2014, para. 13: “[...] As long

emanates from the general discrimination prohibition enshrined in article 5 of the Convention and is a prerequisite for the exercise of the right to live independently and to be included in the community as required by article 19 of the Convention, and for the right to personal mobility as enshrined in article 20". The State party also recalls that the Convention does not comprise an absolute prohibition of difference in treatment; that "the obligation to implement accessibility is unconditional [...]. [while] the duty of reasonable accommodation [...] exists only if implementation constitutes no undue burden on the entity";⁷ and that "when assessing the reasonableness and proportionality of accommodation measures, States enjoy a certain margin of appreciation".⁸

4.6 The State party considers that through the Federal Disability Equality Act (the Act), it has taken legal measures to comply with its conventional obligations: the Act prohibits direct and indirect discrimination and its underlying principle is the comprehensive "freedom of barriers". Under article 6, paragraph 5 of the Act, buildings and other facilities, means of transport, technical equipment, information processing systems and other created aspects of life are considered barrier-free only if they are accessible and can be used by persons with disabilities without special difficulty and without the need for help from others. The State party considers that in the case at issue, after a thorough and objective assessment of the relevant facts, the Linz District Court and the Linz Regional Court concluded that pursuant to the Federal Disability Equality Act, the absence of an audio system at the stops used by the author does not lead to an indirect discrimination of the author. The courts based their conclusions on the fact that these stops are frequented exclusively by trams of line 3 at regular intervals of between seven and eight minutes. Since the general time schedule and foreseeable and planned operating interruptions and complications would also be available on the Internet to blind passengers, using a voice recognition system, the audio system would thus be useful only in cases of unforeseeable provisional or complete cancellation, which is extremely unlikely and very rare. Against this background, national courts concluded that tram line was not⁹ accessible "only with particular difficulty and generally with external assistance" within the meaning of article 6, paragraph 5, of the Federal Disability Equality Act, and that there has thus been no indirect discrimination against the author.

4.7 The State party also considers that, contrary to the author's view, the absence of an audio system does not mean that the author generally cannot use tram Line 3 in the same manner as persons without disabilities. The accessibility and use of trams as means of transport is not restricted as such. The "everyday aim" of using a public means of transport, can certainly be achieved by the author also without the audio system. The existence of an audio system merely has an effect on the way of using the tram. The information provided visually and through the audio system is available to blind and visually impaired persons at any time on the Internet via an adequate voice recognition

as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. This approach stems from the prohibition against discrimination; denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity."

⁷ General Comment 2, *Ibid.*, para. 25

⁸ The State party refers to Communication 5/2011, *Jüngelin v. Sweden*, Views adopted on 14 November 2014, para. 10.5; Communication 3/2011, *H.M. v. Sweden*, Views adopted on 12 May 2012, para. 8.5 and 8.8; Communication 8/2012, *X v. Argentina*, Views adopted on 18 June 2014, para. 8.5.

⁹ Underlined by the State party.

system. The Linz Linien GmbH has made available all time schedules within the framework of the Open Data Initiative of the City of Linz under the licence “CC-by”. A number of apps are thus available to passengers, some of them free of charge. These apps partly provide real-time departure schedules thus giving very close information about delays or failures.¹⁰ In addition, the Linz Linien GmbH operates mobile electronic information with real-time prognosis data and tracking functionality. The State party considers that these offers are adequate alternatives to the dynamic passenger information, and that persons without an Internet access can at any time call the customer service of the Linz Linien GmbH and they will obtain rapid and detailed information on time schedules. The State party notes that the author does not specify why the several sources of information provided by the Linz Linien GmbH would not be a “reasonable accommodation”, and considers that blind and visually impaired persons are by no means put at a disadvantage vis-à-vis others through the absence of an audio system.

4.8 The State further argues that in the case at issue, the stops used by the author are exclusively frequented by tram Line 3. The dynamic passenger information therefore provides only the information in how many minutes the next tram will arrive. In view of the short intervals between trams, that information normally does not constitute an added value to passengers since the schedule is published on the Internet. In this connection, the State party notes that the author does not specify why the several sources of information provided by the Linz Linien GmbH would not be a “reasonable accommodation”.

4.9 The State party considers that the audio system is “by no means a prerequisite for using a public means of transport” as it does not provide information that is absolutely necessary for passengers. It further considers that there is no obligation under the Convention to equip public means of transport with every means conceivable to facilitate the use of public transport; and that it is for the supplier to make the choice between equal alternatives. To this regard, the State party informs that the Linz Linien GmbH decided, in cooperation with the Upper Austrian Association for Blind and Visually Impaired Persons, to establish audio systems primarily at stops situated at major traffic junctions with several tram lines. All other stops have been equipped with a line message system in the meantime. This is an outdoor acoustic vehicle announcement, which permits passengers waiting at the stop to activate a hand transmitter for blind persons to be informed about the line number and final destination of the arriving or waiting public means of transport. Taking into account the comprehensible reasons for establishing an audio system only at major traffic junctions but not at stops frequented only by one tram line, the State party considers that the author has not been indirectly discriminated as the absence of an audio system does not affect his right to live independently and to be included in society.

4.10 As to the author’s submission that victims of discrimination are not entitled to remove an obstacle and barrier but can only obtain financial compensation, the State party considers that a legal remedy enabling the victim of discrimination to claim damages complies with the requirements of article 5, paragraph 2 of the Convention to guarantee effective legal protection. It considers that such a remedy provides better legal protection than the mere right to an omission or taking of action, in so far as a public or private body convicted to pay damages for discriminating measures or omissions will for obvious reasons also endeavour to remove as soon as possible the discrimination that prompted compensation for damages. The Federal Disability Equality Act also provides for an easily accessible, plaintiff-friendly and highly effective conciliation procedure. If a

¹⁰ A list and description of apps is annexed to State party’s observations.

settlement can be reached, which is possible in more than half of the conciliation proceedings, the allegedly discriminating situations are removed. The State party conciliation proceedings are free of charge, lasting 106 days on average.

4.11 The State party also informs that in 2009, the Federal Ministry of Transport, Innovation and Technology has published a guide on the access of persons with disabilities to means of public transport entitled “Barrier-free public passenger transport”¹¹. One chapter of this guide is dedicated to the requirements for Barrier-free bus and tram stops” and “Passenger information and signage/guiding systems at bus and tram stops”. It includes among others the recommendation that regard should always be had to the two-sense principle, noting that regular information may be offered by acoustic means on demand only.

The author’s comments on the State party’s observations

5.1 On 13 January 2015, the author submitted to the Committee his comments on State party’s observations. He considers that the “comprehensive non-discrimination rule” referred to by the State party is not effective.

5.2 As regards the conciliation proceedings enshrined in article 14 of the Federal Disability Equality Act, the author argues that the defendant was not willing to find an agreement. He further argues that the proceeding is not effective because (a) the Act does not provide a concept of discrimination in line with the definition of article 2 of the Convention in so far as the Act requires purpose of the discriminator to constitute discrimination; (b) the Act only provides monetary compensation and no right to remove barriers; (c) the compensation provided in case of discrimination is minimum; (d) and it does not provides a compulsory awareness training for judges, which might have resulted in an adequate understanding of discrimination. The author considers that very few persons who feel discriminated against undertake actions under the Act because they do not have the impression that such an action would provide them with the result they would hope to get.

5.3 The author further considers that the Guide entitled “Barrier-free public passenger transport” referred to by the State party is not compulsory and was neglected in his case. He considers that the two-senses-principle was not respected, that the acoustic means are not even available on demand, and that the Linz Linien neglected these guidelines.

5.4 The author further submits that the State party’s observations do not provide sufficient elements to conclude that the lack of acoustic does not constitute a discrimination against him. In this connection, he wonders why the information that he requests through acoustic means should be provided visually while the State party considers that its content is not necessary. To the contrary, he argues that the audio information system does not just inform about delays and interruptions, but they help blind passengers to find the stop. According to the information provided on the Internet,¹² “tram Line 3 runs at least every thirty minutes, eight times per hour from 6 am to 8pm from Monday to Friday, and less frequently at other times”.¹³ The author argues that this information is not sufficient and that he can only use the new stops with particular difficulty, and generally with external assistance to locate the stop and to have access to the information only available visually on the screens. He therefore considers that the violation of the two-senses-principle constitutes discrimination.

¹¹ Barrierefreier Öffentlicher Personenverkehr.

¹² See www.linzwiki.at/wiki/Stra%C3%9Fenbahnlinie_3/

¹³ Unofficial translation.

5.5 The author considers that the State party's observations generally demonstrate that a very narrow understanding of "accessibility". He argues that a tram is not necessarily accessible when a person is physically capable of using it, but that accessibility also requires the information necessary to be able to use the tram on an equal basis with others. The author considers that this information is not available in practice. In this connection, he comments that the mobile apps mentioned by the State party are not official apps provided by Linz Linien, but privately operated apps. Contrary to State party's affirmation, the author considers that he cannot use the tram Line 3 independently. He argues that the audio system would be necessary to help him to locate the stop; that the information via Mobile EFA or mobile phone does not serve this purpose; that real time information is provided to use means of transport spontaneously, while the collection of information via telephone can take a lot of time and is therefore not reliable and useful when a person needs to take the tram; and that the voice over-apps provided by Linz Linien cannot be used by the author and does not actually provide all the necessary information.

5.6 Regarding the State party's assertion that the LiSA line message system was established in cooperation with the Upper Austrian association for blind and visually impaired persons, the author argues that the referred association does not represent all visually impaired persons in Austria. He further argues that the LiSA line message system is connected to the tram and that it therefore cannot help blind persons like the author to find the stop independently. For this purpose, the stop would have to be equipped with an audio system.

5.7 As to the State party's argument that the monetary compensation is a more effective legal remedy "than the mere right to an omission or taking of action" in case of barriers and other discrimination, the author considers that the compensation provided in such cases is traditionally very low and therefore does not motivate providers of public transport, shops or public entities to remove barriers. He argues that the right to have barriers removed would be the only effective sanction ensuring an accessible environment. Moreover, according to article 501, paragraph 1 of the Civil procedure Act, when the value of a claim is not higher than 2700 euros, remedies are only possible for legal reasons but not concerning the consideration of evidence.¹⁴ The author finally argues that barriers affect many people. Therefore, a right to have barriers removed would be more effective than compensation because one lawsuit could improve the situation of all persons concerned. When compensation is the only remedy, all persons affected have to sue, and the barrier remains.

Additional submission from the State party

6.1 On 8 May 2015, the State party sent additional observations following the author's comments. It considers that the author's contention that the general prohibition of discrimination laid down in the Austrian Federal Constitution is irrelevant in a civil procedure cannot be verified: the only decisive criterion in question is whether the provision in question is prejudicial in the case at issue, or whether the provision is directly applicable to the applicant. It is therefore irrelevant to determine whether the case was of an administrative or civil nature. In the case brought before the civil courts under §9 of the Austrian Federal Act on Equality for People with Disabilities, the author of the Communication could have provided detailed arguments as to which provisions of the Act he considered discriminatory, and he could have proposed that the civil courts submit an appropriate petition for legal review to the Constitutional Court.

¹⁴ No further information is provided on this issue.

6.2 As regards the author's arguments about the overall legal protection system of the Federal Disability Equality Act, the State party considers that it is not incompatible with the Convention in so far as the Convention does not stipulate strict liability (regardless of the negligence or fault); it does not specify a minimum amount of damages to be awarded in connection with accessibility. The State party further notes that the Committee's General Comment No. 2 on article 9 does not provide concrete indications on this issue. In line with the general principles governing torts in Austria, damage claims under the Federal Disability Equality Act require negligent conduct in violation of the law. In the case of direct discrimination, it can generally be assumed that the act was voluntary. The State party further considers that to assess whether the accessibility requirement has been fulfilled in a specific case requires a high level of expertise and technical knowledge. Accessibility standards change continually, meaning that business and service providers cannot guarantee that their products and services are offered in an accessible manner according to the state of the arts at all times. It is therefore possible that they might create barriers for people with disabilities without committing a personally attributable culpable act. Not least for this reason, the Federal Disability Equality Act provides for a conciliation procedure as a means to resolve disputes and to find practical solutions to eliminate barriers.

6.3 In cases of indirect discrimination due to barriers, the State party considers that strict liability would bring unreasonable results and would not be conducive to the objective of the Federal Disability Equality Act.

6.4 The State party considers that the author disregards the different options that it presents in its observations as to the ways to use Line 3 of the Linz tramway without discriminatory barriers. In this context, the Austrian National Action Plan on Disability 2012-2020 is relevant because one of its objectives is to improve accessibility and to enable persons with disability to participate equally in community life. This plan is supported by a group which includes representatives of civil society organisations, in particular organisations of persons with disabilities. In line with the CRPD and the National Action Plan, a large number of projects related to accessibility in transport are funded and an education program for university students is being developed to promote skills related to accessible mobility in Austria. There is also an annual research forum entitled "Mobility for all", which is attended by experts from Austrian research institutions in the field of mobility, transport, and development, and by representatives of organisations or persons with disabilities, NGOs, and providers of mobility services and technologies.

6.5 The State party further informs that the visual information system has been expanded, including to ensure that persons with hearing impairment can use the tramway in Linz without barriers to access. According to a survey conducted by Statistics Austria, approximately 2.5% of the Austrian population had a permanent hearing impairment in 2008.¹⁵ According to information provided by the Austrian Association of Sign Language Interpreters, there are 450,000 persons with hearing impairments in Austria, out of which some 8,000 to 10,000 are completely deaf, and another 10,000 to 15,000 have such severe hearing impairments that communication based on hearing alone (even with hearing aids) is hardly possible. The State party considers that persons with visual impairments generally complete a mobility training course in order to orientate themselves and to avoid potential sources of danger whenever possible.¹⁶ The costs of such training are largely covered by the provincial government, the Austrian Federal Social Welfare Office or the Austrian Pension

¹⁵ Austria Federal Government Report on the situation of persons with disabilities in Austria 2008. A similar survey is scheduled for 2015.

¹⁶ This course is offered for example by the Vocational Education and Rehabilitation Centre (Berufliches Bildungs und Rehabilitationszentrum).

Agency, and participants only have to pay a small part. Persons with visual impairments learn to use guidance systems and paths which they use repeatedly. These are the primary methods of locating tram stops. They also receive information on specific trams arriving at tram stops via the LISA line message system. For the first time the author has argued that the LISA line message system (namely acoustic information regarding the arrival and waiting time) cannot be used to locate tram stops. The author did not exhaust available domestic remedies on this issue and this point should therefore be considered inadmissible.

6.6 The State party also argues that the Convention does not stipulate who is to provide accessibility aides for the use of public facilities and services. It therefore considers that the author's argument is of no avail.

6.7 The State party additionally considers that the mere fact that not all individual requests can be fulfilled does not amount to discrimination. Moreover, the author does not explain why the solution developed in collaboration with the Upper Austrian Association for Blind and Visually Impaired Persons is not adapted to his needs.

6.8 The State party therefore considers that there has been no violation of the author's rights under the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee on the Rights of Persons with Disabilities must, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Convention.

7.2 The Committee has ascertained, as required under article 2, paragraph (c), of the Optional Protocol that the same matter has not already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the argument of the State party that the author only raised before the Committee that the LiSA line message system is not adapted to his needs, but that he had not done so before domestic courts. The Committee notes that no reference is made to this issue in the author's complaints to national jurisdictions. This allegation is therefore inadmissible under article 2, paragraph (d) of the Optional Protocol.

7.4 The Committee also notes the argument of the State party as to the author's contention that the general prohibition of discrimination laid down in the Austrian Federal Constitution is irrelevant in a civil procedure, and that in the case brought before the civil courts under §9 of the Austrian Federal Act on Equality for People with Disabilities, the author of the Communication could have provided detailed arguments as to which provisions of the Act he considered discriminatory. The State party further argues that the author could have proposed that the civil courts submit a petition for legal review to the Constitutional Court. In the view of the information submitted by both parties on the issue, the Committee considers that the author's complaint that the Federal Disability Equality Act does not provide adequate remedies in violation of articles 2 and 5, paragraph 2, of the Convention, is inadmissible for lack of exhaustion of domestic remedies.

7.5 As no other obstacles to the admissibility of the communication exist, the Committee considers that the remaining claims of the author are admissible and proceeds to their examination on the merits.

Consideration of the merits

8.1 The Committee has considered the case in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee takes note of the District Court decision of 2 May 2013, confirmed by the Regional Court on 15 July 2013, that the absence of digital audio system did not constitute a barrier for the use of the transportation service by visually impaired persons; that the information visually available is also available on the Internet and is accessible for persons with visual disability equipped with speech recognition software device; and that the author can use the tram without the information that is provided to passengers without visual impairment.

8.3 The Committee further notes State party's argument that the audio system is "by no means a prerequisite for using a public means of transport"; that the "everyday aim" of using a public means of transport can certainly be achieved by the author also without the audio system; that the existence of an audio system does not provide information that is absolutely necessary for passengers, but merely has an effect on the "way of using the tram"; that the visual information system has been expanded as part of the efforts to ensure that people with hearing impairments can use the tramway in Linz without barriers to access; that there is no obligation under the Convention to equip public means of transport with every means conceivable to facilitate the use of public transport; and that it is for the supplier to make the choice between equal alternatives. In this connection, the Committee acknowledges that audio systems have primarily been set up at stops situated at major traffic junctions with several tram lines and that, "in the meantime", all other stops have been equipped with a line message system which permits passengers waiting at the stop to activate a hand transmitter for blind persons to be informed about the line number and final destination of the arriving or waiting public means of transport. The Committee further acknowledges the information provided by the State party as to the possibility for all passengers of tram Line 3 to use the Internet with a voice recognition system to access the general operating periods and foreseeable or planned cancellations. Nonetheless, the Committee also notes the arguments of the author who considers that the non-availability of digital audio system on tram Line 3 prevents him from locating the stop, from accessing real time information that he needs when using the tram, and therefore from using Line 3 independently and on an equal basis with others.

8.4 The Committee recalls that "accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an *ex ante* duty, and that States parties have the duty to provide accessibility before receiving an individual request to enter or use a place or service". The Committee also recalls that "the obligation to implement accessibility is *unconditional*, namely that the entity obliged to provide accessibility may not excuse the omission to do so by referring to the burden of providing access for persons with disabilities".¹⁷

8.5 Persons with disabilities face technical and environmental barriers, such as a lack of information in accessible formats. In accordance with the article 9, paragraph 1, of the Convention, "States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, (...) to transportation, to information and communications, including information and communications technologies and systems". Under article 9, paragraph 2 (f), of the Convention, "States parties shall also take

¹⁷ See General Comment No. 2, Article 9: Accessibility, CRPD/C/GC/2, paragraph 25.

appropriate measures to ... Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information". The Committee further recalls that the importance of ICT lies in its ability to open up a wide range of services, transform existing services and create greater demand for access to information and knowledge, particularly in underserved and excluded populations, such as persons with disabilities.¹⁸ In this perspective, new technologies can be used to promote the full and equal participation of persons with disabilities in society, but only if they are designed and produced in a way that ensures their accessibility. New investments, research and production should contribute to eliminating inequality, not creating new barriers. Article 9, paragraph 2 (h), therefore calls on States parties to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.¹⁹ The Committee further recalls that under article 5, paragraph 2, of the Convention, "States parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds", and that denial of access to the physical environment, transportation, information and communication, or services open to the public should be clearly defined as a prohibited act of discrimination.²⁰

8.6 In the present case, the Committee notes that the information available visually at the stops of Line 3 is a complementary service aiming at facilitating the use of the tram line, and that, as such, this information is an integral part of the transportation service provided. The question before the Committee is therefore to assess whether the State party has taken sufficient measures to ensure that the information regarding the transportation services provided to persons without disabilities is also provided – on an equal basis – to persons with visual impairments.

8.7 In this connection, the Committee notes that the Linz Linien GmbH started to equip the tram stops of the city with digital audio systems in March 2004. In August 2011, Linz Linien GmbH extended the railway network of tram Line 3. However, none of the new stops has been equipped with the digital audio system, which was already known by the service providers, and could have been installed at a limited cost at the time of the construction of the new line. The Committee further notes the author's argument that the audio system would have provided him and other persons with visual impairment with immediate access to the real time information available visually on an equal basis with others, while the existing alternatives (different applications accessible through the Internet and by telephone, and the line message system) do not. The non-installation of the audio system by the State party when extending the tram network therefore resulted into a denial of the access to information and communication technologies, and facilities and services open to the public on an equal basis with others, and therefore amounts to a violation of articles 5, paragraph 2, and 9, paragraph 1 and paragraph 2 (f) and (h) of the Convention.

8.8 As regards the author's allegation under articles 19 and 20, the Committee notes that the author does not provide sufficient elements to enable it to assess to which extent the lack of audio system affects his right to personal mobility and to live independently. Consequently, the Committee is of the view that it cannot establish a violation of articles 19 and 20 of the Convention in this case.

¹⁸ General Comment No. 2, op.cit., paragraph 5.

¹⁹ General Comment No. 2, op.cit., paragraph 22.

²⁰ General Comment No. 2, op.cit., paragraph 29.

9. The Committee on the Rights of Persons with Disabilities, acting under article 5 of the Optional Protocol to the Convention, is of the view that the State party has failed to fulfil its obligations under article 5, paragraph 2, and article 9, paragraph 1 and paragraph 2, (f) and (h) of the Convention. The Committee therefore makes the following recommendations to the State party:

1. Concerning the author: the State party is under an obligation to remedy the lack of accessibility for the author to the information visually available in all lines of the tram network. The State party should also provide adequate compensation to the author for the legal costs incurred during domestic proceedings and the costs incurred in filing this communication;

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

(a) Ensuring that the existing minimum standards for the accessibility of public transport guarantee the access of all persons with visual and other types of impairments to the live information visually available to other users of the tram and of all other forms of public transport. In this context, 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 necessary to enable the access by persons with visual impairment to the information that is visually available. The State party should also ensure that all newly procured tram lines and other public transport networks are fully accessible for persons with disabilities;

(b) Ensuring that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on accessibility for persons with disabilities, is provided to all service providers involved in the design, construction and equipment of public transport networks, to guarantee that future networks are built and equipped in compliance with the principle of universal design;

(c) Ensuring that disability rights laws concerned with non-discriminatory access in areas such as transport and procurement include access to ICT and the many goods and services central to modern society that are offered through ICT. The Committee recommends that the review and adoption of these laws and regulations are carried out in close consultation with persons with disabilities and their representative organizations (article 4, paragraph 3), as well as all other relevant stakeholders, including members of the academic community and expert associations of architects, urban planners, engineers and designers. Legislation should incorporate and be based on the principle of universal design, and it should provide for the mandatory application of accessibility standards and for sanctions for those who fail to apply them.

10. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the present Views and recommendations of the Committee. The State party is also requested to publish the Committee's Views, to have them translated into the official language of the State party and widely disseminated, in accessible formats, in order to reach all sectors of the population.
