



S.C. v. Brazil

Communication No. 10/2013; U.N. Doc. CRPD/C/12/D/10/2013

Country: Brazil

Region: Americas

Year: 2014

Court: Committee on the Rights of Persons with Disabilities Committee on the Rights of Persons with Disabilities

Health Topics: Chronic and noncommunicable diseases, Disabilities

Human Rights: Freedom from discrimination, Right to work

Facts

A Brazilian national, S.C., worked as a teller at a state-run bank. S.C. was involved in three motorcycle accidents, in 2006, 2007, and 2009. She underwent surgery in 2008 after the second accident. She took medical leave in 2009. Under the bank's internal policy, she was required to return from medical leave within three months to retain her position as teller; she returned after approximately six months and was demoted. In 2010 she was diagnosed with a chronic illness.

S.C. filed a complaint against the bank, alleging that the bank's internal policy was unconstitutional. The complaint was denied and S.C. appealed; the appeal was rejected because she was not represented by an attorney. S.C. filed a request for legal aid, which was denied. S.C. then brought a complaint before the Committee on the Rights of Persons with Disabilities, alleging that the bank's policy had a disproportionately adverse impact on her, in violation of Articles 3, 4, 5 and 27 of the Convention on the Rights of Persons with Disabilities (â€œConventionâ€•).

Decision and Reasoning

The Committee stated that S.C.'s â€œphysical impairment, in interaction with barriers, did in fact hinder her full and effective participation in society on an equal basis with othersâ€•. However, the Committee noted that S.C. had not exhausted domestic remedies, as she had not substantiated that there were no other options for legal representation, other than her request for legal aid, which was denied. Because S.C. had not exhausted domestic remedies, the Committee was precluded from considering the complaint.

Decision Excerpts

â€œA health impairment which initially is conceived of as illness can develop into an impairment in the context of disability as a consequence of its duration or its chronicity. A human rights-based model of disability requires the diversity of persons with disabilities to be taken into account â€! together with the interaction between individuals with impairments and attitudinal and environmental barriersâ€•. Para. 6.3

â€œ[D]iscrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilityâ€•. Para. 6.4

â€œThe Committee notes the State party's argument that the author has not exhausted domestic remedies since she has not brought a claim that her demotion was linked to a disability before domestic courts.â€• Para. 6.5

â€œ[T]he author has not substantiated that there were no other options for legal representation open to her. In the circumstances, the Committee finds that it is precluded from considering the communication under article 2, paragraph (d), of the Optional Protocol.â€• Para. 6.5