



30.6.2017

OHCHR
CRPD committee
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Re: Draft General Comment No. 5 (June 2017)

Submission to the CRPD Committee

The Finnish National Human Rights Institution (NHRI) is comprised of the Human Rights Centre, the Human Rights Delegation and the Office of the Parliamentary Ombudsman. The institution operates in compliance with the Paris Principles and the International Coordinating Committee of National Human Rights Institutions accredited it with A-status in 2014. The role of the National CRPD Monitoring Mechanism (Article 33 (2) of the CRPD) was assigned to the Finnish National Human Rights Institution in 2016.

The Finnish Human Rights Centre thanks the Committee on the Rights of Persons with Disabilities (the Committee) for the opportunity to respond to the Draft General Comment No. 5 (Draft GC) on Article 19 of the CRPD. The Finnish Human Rights Centre focuses on three issues, namely on i) concerns arising from paragraph 47; ii) on procurement of services related to Article 19 of the CRPD; and iii) independent monitoring.

Paragraph 47 of the Draft GC

It is the view of the Finnish Human Rights Centre that paragraph 47 of the Draft GC is ambiguous and thereby open to misinterpretations. The ambiguity concerns what the right to make one's own choices entails in terms of state parties' obligations.

One core element of article 19, as the Committee highlights in paragraph 40, is to have legal capacity to decide where and with whom and how to live (i.e. individual autonomy). The premise of individual autonomy, however, does not impose a duty or obligation for the state parties' to "maintain" or to "ensure availability" of institutional care settings. To the contrary, the normative framework of the CRPD imposes an obligation to the state parties to adopt a strategy for de-institutionalisation.

Accordingly, the availability of the option to choose to live in institutional care settings is only temporary. It can be available only until the structural changes have been fully implemented and the strategy for de-institutionalisation has been completed. In the normative framework of the CRPD, this cannot be perceived as limiting the right to make one's own life choices, since the CRPD provides a



conception of a good life towards which the state parties are obligated to aspire.

It is the opinion of the Human Rights Centre that the temporary nature of the option should be more clearly emphasised in paragraph 47. Accordingly, as an example, the first sentence of paragraph 47 could read as follows:

“The right to decide where, how and with whom to reside also embraces the decision to live in institutional care settings during the time when the process of de-institutionalisation is carried out.”

In addition, as an example, the last sentence of paragraph 47 could read as follows:

“However, as article 19 of the Convention is about being included in the community, the right to choose a residential, institutional setting does not entail that state parties’ have a duty to maintain institutions or to ensure the availability of residential support services.”

Procurement of services related to Article 19 of the CRPD

Finnish Human Rights Centre notes that the Draft GC does not contain any reference to tendering processes.

Finnish Human Rights Centre foresees that many state parties will put the provision of services related to Article 19 of the CRPD out to public tender. Accordingly, it would be important to make explicit reference to state parties’ obligation to ensure that tendering process regarding services take into account the normative content of Article 19.

Independent monitoring mechanism and the role of NHRIs

Finnish Human Rights Centre would like to see a clarification from the Committee about the role independent monitoring mechanisms and National Human Rights Institutions should play in the implementation of Article 19 on the national level. Accordingly, paragraph 94 (k) could be more detailed in this regard.

On behalf of the Finnish NHRI/Human Rights Centre,


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