



Obligations of the UN Convention on the Rights of Persons with Disabilities regarding its implementation and monitoring

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Bodies under Article 33 of the CRPD ¹

The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol entered into force at a national level on 10 June 2016. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The implementation of the Convention is monitored at the international level by the Committee on the Rights of Persons with Disabilities, to which the signatories report periodically. Monitoring is complemented by the Optional Protocol which grants individuals and groups the right to file complaints with the Committee on the Rights of Persons with Disabilities for alleged violations of the rights recognised under the convention. The optional protocol also establishes an investigation procedure for serious and systematic violations which can be carried out on the initiative of the Committee.

As a result of the entry into force of the Convention, the national field of actors related to the rights of persons with disabilities has been revised to correspond to the obligations related to the implementation and monitoring of the Convention. This thematic article discusses these mechanisms and their tasks. The objective is to provide a general overview of what the obligations related to the implementation and monitoring of the Convention mean in practice and who is responsible for meeting each obligation.

The obligations related to the implementation and monitoring of the Convention are set out in Article 33. The article contains three obligations for the signatories. According to Article 33(1), the States Parties shall designate one or more focal points within government for matters relating to the implementation of the Convention. In addition, the States Parties shall give due consideration to the establishment of a coordination mechanism to facilitate action related to the implementation in different sectors and at different levels. According to Article 33(2), States Parties shall designate or establish an independent mechanism to promote, protect and monitor the implementation of the Convention. According to Article 33(3) of the CRPD, States Parties shall fully involve persons with disabilities and their representative organisations in the monitoring process.

In Finland, the focal point consists of the Ministry of Social Affairs and Health, the Ministry for Foreign Affairs and a civic organisation representative appointed by the coordination mechanism. The coordination mechanism is the Advisory Board for the Rights of Persons with Disabilities. The tasks of the independent mechanism are ensured by the Parliamentary Ombudsman, the HRC and the Human Rights Delegation, which together form the Finnish national human rights institution. To facilitate the active involvement of people with disabilities, a permanent division, the Disability Rights Committee, has been established under the HRC.

¹ The article is also available in the theme section for the HRC report 2016.

Focal point and coordination mechanism

The responsibilities of the focal point under the Ministry of Social Affairs and Health include the implementation of the Convention, including preparatory work on legislation, commissioning various reports, provision of information relating to the Convention, data collection and application of statistics. In addition, the focal point serves as the coordinating body on CRPD matters between different bodies, including in the central government, and promotes the mainstreaming of the rights of persons with disabilities in society.

The implementation of the CRPD is monitored at the international level by the Committee on the Rights of Persons with Disabilities, to which the signatories report periodically. The role of the Ministry for Foreign Affairs as part of the national focal point is to coordinate periodic reporting under Article 35 of the CRPD. Finland must submit the first report on the actions related to the implementation of the obligations of the Convention and the development in these actions two years after the national entry into force of the Convention. After this, a report shall be submitted every four years.

The purpose of the coordination mechanism is to facilitate actions relating to implementation at various sectors and levels of central government and society. The Advisory Board for the Rights of Persons with Disabilities has been established for this purpose under the Ministry of Social Affairs and Health. The decree establishing the advisory board entered into force on 1 January 2017. As part of its special task, the advisory board promotes and coordinates the national implementation of the CRPD and consideration of persons with disabilities in all areas of government. The Advisory Board for the Rights of Persons with Disabilities draws up an action plan for each term, determining key national objectives in the promotion of CRPD implementation, and the associated measures and monitoring. In addition, the Advisory Board appoints among its members a representative of persons with disabilities for focal point activities.

Independent mechanism

The tasks of the independent mechanism have been assigned to the Parliamentary Ombudsman, the Human Rights Centre, and its Human Rights Delegation, which together form Finland's National Human Rights Institution. In this respect, the amendment to the Parliamentary Ombudsman Act came into force on 10 June 2016.

Article 33(2) of the Convention states that the mechanism should comply with the UN Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles). According to the Paris Principles, national human rights institutions should be established by the Government by law, be autonomous and independent, and have a pluralist composition. They must be vested with a broad mandate to protect and promote human rights at national level, and they should also have adequate resources and powers of investigation. In 2014, Finland's National Human Rights Institution was awarded the highest possible status, or A status, based on the assessment of the International Coordi-

nating Committee of National Human Rights Institutions. This means that Finland's National Human Rights Institution fully complies with the Paris Principles.

All parties of the human rights institution are needed in the promotion, protection and monitoring of the implementation of the CRPD. The various statutory tasks of each party complement each other in the implementation of the special task. Effective implementation of the rights of persons with disabilities, i.e. protection of their rights, requires the ability to investigate individual cases and carry out inspections, which are part of the responsibilities of the Parliamentary Ombudsman. Secondly, the special task requires human rights education, training, research and awareness raising, which are among the tasks of the Human Rights Centre. Thirdly, the special task requires cooperation between different fundamental and human rights actors and active involvement of persons with disabilities. The Human Rights Delegation provides an excellent forum for this purpose.

Promotion, protection and monitoring of the implementation of the CRPD in Finland

Role of national human rights institutions

The concept 'promote and protect' is an established way of conveying obligations and tasks related to human rights in UN documents. The State's obligations arising from human rights conventions can be defined as follows:

- the obligation to respect human rights requires that states refrain from human rights violations,
- the obligation to protect requires that states prevent third parties from violating human rights, and
- the obligation to implement the Convention requires that the states take measures to ensure that persons within its jurisdiction may enjoy the enforcement of their rights.

The basic task of national human rights institutions is to promote and protect human rights, which is why the special task included in the CRPD is particularly suitable for national human rights institutions.

The general guide of the UN Commissioner for Human Rights' office for national human rights institutions emphasises that the task of promotion is closely related to the task of protection. The objective of promotion is to cherish

the values and attitudes which safeguard human rights and to create a human rights culture. In terms of content, this means that the task of promotion consists of promoting internationally confirmed human rights standards and knowledge and understanding of their established interpretations. Means of promoting human rights include human rights education and training, a wider awareness raising of human rights, including the dissemination of information through the media, publications, the organisation of events, and various social initiatives and activities.

The purpose of the task of protection within human rights institutions is to identify and to examine human rights violations and to provide legal protection for the victims. The task of protection is not intended to replace the other existing national legal remedies but rather to complement them. Protection measures include, inter alia, independent investigation and inspection of suspected human rights violations, the processing of individual complaints and the provision of related recommendations.

Protection

In the promotion, the oversight and the monitoring of the implementation of the CRPD, the method of operation and division of labour of Finland's National Human Rights Institution consists of the statutory tasks and methods of operation of its various parts. This means that the same tasks are executed in different ways and from different complementary starting points.

The Parliamentary Ombudsman protects the implementation of the CRPD as part of its statutory oversight task. According to section 109 of the Constitution, the Parliamentary Ombudsman shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. Further, the section requires that, in the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights.

Oversight of legality by the Parliamentary Ombudsman with regard to public authorities is implemented primarily by processing complaints. According to section 10 of the Parliamentary Ombudsman Act, the Ombudsman may express to the subject his or her opinion concerning what constitutes proper observance of the law, or draw the attention of the subject to the requirements of good administration or to considerations of fundamental and human rights. The most severe measures, which can be taken to address detected issues, include prosecution against an official and a reprimand. Most typically, the Ombudsman shall affect the activities of the authorities through opinions,

which may be either reproachful or steering.

The Ombudsman also has the competence to investigate a specific matter unprompted, i.e. without a specific complaint. In addition, the Ombudsman carries out oversight by inspecting sites that are within the scope of its oversight of legality. From the point of view of the protection of the CRPD, key inspection sites include e.g. residential units for persons with disabilities and, in particular, units where restrictions can be imposed on e.g. persons' movement.

The HRC does not carry out supervision of legality or deal with individual cases. Instead, it complements the task of protection in the framework of its statutory role. Purely private parties are outside the mandate of the Ombudsman, which is why the protection, the promotion and the monitoring of the CRPD remains in the field of the HRC in this regard. The protection is indirect since the Centre does not deal with individual complaints. For this reason, the cooperation between the Non-discrimination Ombudsman supervising the prohibition of discrimination in private services and the Occupational Safety and Health Administration supervising the prohibition of discrimination in working life is particularly important. Among the statutory duties of the HRC, features such as drafting reports on the enforcement of fundamental rights and human rights and making initiatives and statements for promoting and implementing fundamental rights and human rights are suitable for protecting the enforcement of the rights of persons with disabilities. In addition, improving the awareness of persons with disabilities of the existing legal remedies is an important part of protecting their rights.

Promotion

When establishing the HRC, the starting point was to assign to the HRC the tasks of promoting fundamental rights and human rights which were not performed at the time to a sufficient degree or in a coordinated way. For this reason, more general statutory promotion tasks have been assigned to the HRC than to the Parliamentary Ombudsman. The HRC's statutory tasks in the area of promotion are:

- promoting information provision, training, education and research activities and cooperation related to fundamental and human rights,
- initiatives and statements to promote and implement fundamental and human rights,
- participation in European and international cooperation relating to the promotion and protection of fundamental and human rights and
- performing other comparable tasks associated with the promotion and implementation of fundamental and human rights.

The HRC's activities have had a strong focus on promoting fundamental and human rights education and producing relevant education materials. Promoting CRPD implementation also falls into place naturally within this operating model, while other established modes of operation are also used, including dissemination of information on electronic channels, events, reports, publications and studies as well as initiatives and statements.

The promotion task is reflected in the Ombudsman's activities, *inter alia*, so that in complaint cases, the Ombudsman assesses not only the legality of the authorities' actions but also whether the authorities could have better promoted the implementation of fundamental

and human rights by acting in some other way. This approach is a form of promotion, since it is intended not only to protect from violations of rights in individual cases but also more widely to educate and guide the authorities to act in a way which is respectful of fundamental and human rights.

The Ombudsman also makes proposals for developing legislation. They are typically related to the enforcement of fundamental rights and human rights. In addition, the Ombudsman's annual reports and other communications are ways in which the Ombudsman's views on the legality of the authorities' actions, the implementation of good governance and the enforcement of fundamental and human rights are expressed to the Parliament and to the wider public.

Monitoring

The purpose of monitoring the CRPD is to determine how well the rights of persons with disabilities are realised in principle and in practice. Monitoring means the gathering and further use of information related to the practical fulfilment of the CRPD obligations with a view to remedying any problems and defects found in this area. Monitoring measures include:

- the collection of data related to the implementation of CRPD obligations
- the collection of data related to individual violations of the CRPD
- reporting violations and efficiencies to the committee monitoring the CRPD
- monitoring the implementation of recommendations issued by the committee.

The independent position of the National Human Rights Institution plays an important role in the monitoring task. The deficiencies detected in the effective enforcement of the rights

of persons with disabilities may be in conflict with the State's own views. Where necessary, it must be possible to critically assess the measures taken by the State in connection with the obligations of the CRPD and the results of these measures.

As for the tasks related to the implementation of the CRPD, the division of labour between the Ombudsman and the HRC is most clearly limited in terms of monitoring. Unlike the HRC, the Ombudsman is not obliged to generally monitor human rights and fundamental rights. Monitoring includes features such as research on human rights and reporting on the national human rights and fundamental rights situation. However, it can be considered that the Ombudsman carries out monitoring duties by assessing the more extensive problems related to the implementation of the CRPD detected in connection with processing complaints and making inspections, and by expressing opinions on these problems.

The HRC carries out monitoring tasks for instance by collecting data and by making reports on the actual enforcement of the rights of persons with disabilities. In addition, the HRC involves actors in the disability field in monitoring activities as well as other activities, for instance through the Disability Rights Committee. An attempt is also made to develop monitoring activities over time. As for monitoring indicators, development work is carried out in conjunction with other authorities.

Involvement

Under Article 33(3) of the CRPD, persons with disabilities and their representative organisations shall be involved and participate fully in the monitoring process of CRPD implementation. For involvement purposes, a permanent division on the rights of persons with disabilities was set up under the Human Rights Delegation at the Human Rights Centre. The Disability Rights Committee held its inaugural session on 19 October 2016.

According to the rules of procedure for the Human Rights Delegation, the Disability Rights Committee may submit proposals and express its views to the Parliamentary Ombudsman and the Human Rights Centre on how they could develop the realisation of the rights of persons with disabilities and the performance of tasks related to CRPD implementation. The Disability Rights Committee can also bring up issues related to the rights of persons with disabilities for the Human Rights Delegation to address, and submit proposals to the Delegation for decision-making. Reciprocally the Parliamentary Ombudsman and the Human Rights Centre can request expert assistance from the Subcommittee when performing their tasks related to CRPD implementation.

The Disability Rights Committee is not the only way in which the HRC and the Parliamentary Ombudsman involve and participate persons with disabilities and organisations representing them. The HRC in particular engages in bilateral exchange of information and also cooperates with the other actors in the disability field. The involvement of persons with disabilities is also ensured by organising consultations.

Cooperation as a mode of operation

The objective of the HRC is to establish the centre's own promotion work and the monitoring of the enforcement of the rights of persons with disabilities in the disability field as an activity producing added value. Reinforcing the cooperation between the various actors in the disability field runs in parallel with this objective. The priorities of the activities are related to the general key principles of the CRPD: equality, social inclusion and the right of self-determination. In terms of these principles, the objectives of the HRC are as follows:

- increasing and improving the social inclusion of persons with disabilities (working life and accessibility, the built environment and digitalisation)
- improving the active awareness of persons with disabilities of their rights
- raising the awareness of the right of self-determination of persons with disabilities
- improving the awareness, the potential and the skills of actors in the disability field in order for them to contribute and participate in decision-making concerning them
- the production of high-quality data related to the actual realisation of the rights of persons with disabilities.

All statutory tasks of the HRC, such as training, communication, studies and reports as well as initiatives and statements are used in these aspirations. There is an attempt to avoid overlap with other actors, but cooperation is encouraged where possible in order to maximise the effectiveness and impact of the activities.

Meeting the objectives which the HRC has set for its activities requires cooperation and the involvement of the various actors in the disability field. To fully benefit from the expertise in the disability field, it is important to increase the involvement and participation of persons with disabilities, whose expertise is based on their experiences. The Disability Rights Committee is an important channel, but at the same time, the cooperation must be developed and coordinated with other organisations and authorities operating in the disability field.

Cooperation with the Parliamentary Ombudsman will be developed in a coordinated and systematic manner. For this purpose, a Disability Team was appointed at the Office of the Parliamentary Ombudsman on 9 December 2016. The team shall, inter alia, be in charge of mapping the content of the task related to the independent mechanism at the Ombudsman's Office and at the HRC, considering ways of cooperating and participating with the Disability Rights Committee, planning and preparing the implementation of the tasks under the Convention in different ways and mapping

the cooperation with different authorities and organisations.

Cooperation must also be at the heart of the activities in terms of the other actors determined in Article 33. Cooperation between the authorities and persons with disabilities is particularly important for their involvement, for instance, in drafting laws. As a result of the entry into force of the CRPD, the cooperation and the participation procedure should be developed in a more interactive direction.

The HRC's international and European cooperation particularly aims at more in-depth professional competence, the exchange of experiences and the identification of good practices. Since Finland ratified the CRPD relatively late, CRPD obligations have been implemented for a longer period of time in many other countries. For this reason, international cooperation is very beneficial for promoting and monitoring the implementation of the CRPD.

Key partners in international cooperation include the UN, the Council of Europe and the European Union Agency for Fundamental Rights, the Global Alliance for National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI). With regard to the latter network, its cooperation within the CRPD Working Group is particularly valuable. In addition, monitoring and utilising the work carried out by the Committee on the Rights of Persons with Disabilities is an integral part of international cooperation.

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