

VIKE The Center for Human Rights for Persons with Disabilities (Finland)

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An NGO Contribution to the Universal Periodic Review Mechanism

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In the context of Universal Periodic Review Mechanism and the case of Finland we wish to pinpoint a few crucial aspects in the realisation of human rights of persons with disabilities in Finland.

VIKE The Center for Human Rights for Persons with Disabilities:

The Finnish Association of People with Mobility Disabilities (FDM) and the Threshold Association have founded a Center for Human Rights of Persons with Disabilities (VIKE) in cooperation with the Institute for Human Rights at Åbo Akademi University. The project is financed by the Finland's Slot Machine Association (RAY).

A consultative committee operates as a discussion forum in VIKE. The committee consists of representatives of Disabled Peoples' Organisations (DPOs) and Human Rights Organisations. In addition, the Institute for Human Rights at Åbo Akademi University runs a scientific advisory board which has the objectives of facilitating research on disability and human rights and promoting international cooperation.

The main aim of the project is to improve Human Rights of Persons with Disabilities. We also seek to establish a working human rights network which has the aim to serve everybody that is interested in the subject.

The other specific aims of the project, amongst other things, are to: 1) Promote the realisation of the UN Convention on the Rights of Persons with Disabilities and to protect and promote the rights of persons with disabilities, 2) Assemble information concerning the human rights of persons with disabilities, 3) Cooperate with authorities, researchers and international groups and to make public statements on matters concerning the human rights of persons with disabilities, 4) Arrange education concerning the human rights of persons with disabilities and to publish material on the subject.

1. Ratification of the CRPD

VIKE urges the government of Finland to ratify CRPD (Convention on the Rights of Persons with Disabilities, (A/RES/61/106) quickly. However, VIKE wants to pinpoint that some crucial changes to the domestic legislation concerning persons with disabilities have to be accomplished prior to the ratification. VIKE considers it important that CRPD will be ratified before the end of the ongoing governmental period. VIKE has submitted a paper to the Ministry for Foreign Affairs of Finland (dated 25 September 2007) describing shortcomings of the domestic legislation of Finland in relation to CRPD.

In addition to the comments concerning individual articles, the paper includes more general emphasis on the general articles of CRPD. These include for example notions of general obligations and equality. VIKE wants to point out that also these general obligations have to be taken seriously. While ratifying CRPD a decision have to be made on how strongly these general obligations will be taken into account. This decision has a huge impact on the actual scope of the changes that need to be considered before ratifying CRPD. Especially the choice on the scope of equality and non-discrimination has far reaching effects on the future of the legislation and the situation of persons with disabilities.

2. Grievances in the Non-Discrimination Legislation

The domestic legislation concerning equality is sporadic, incoherent and very difficult to perceive. The implementation of two EU –directives as the background for the equality act led to a situation in which the scope of application and legal remedies are much more comprehensive in case of discrimination based on ethnic discrimination than that of other grounds. This state of affairs can not be considered as being in harmony with the principle of equality and the norms regulating it. The equality act is discriminating itself because it deals differently with different grounds of discrimination – without acceptable reasons.

While the equality act acknowledges the denial of reasonable accommodation as a form of discrimination, it remains extremely unclear what is the actual relevance of this because of the shortcomings in the monitoring of the law. Monitoring mechanisms are very weak and they don't have relevant expertise in disability issues. In the cases of discrimination concerning, inter alia, providing services and health care, disability cases fall outside the scope of application. In addition, the article on compensation (art. 9) is written in such a manner that it has raised confusing interpretations even among legal scholars.

When persons with disabilities face discrimination, they don't have access to effective legal safeguards. The possibility of taking a case to court as a civil lawsuit remains illusory because of the risk of costs and the imbalance of the parties. In other words, it seems that even if we have legislation on non-discrimination, it is not enough to protect persons with disabilities from discrimination even in clear cases.

This is why we need an independent body which mandate would also include the intervening to cases of discrimination of persons with disabilities in all different spheres of life. The body's mandate should also include counseling, supporting persons in legal proceedings, awareness-raising, research, implementation of non-discrimination legislation and also mandate to mediate.

3. Lack of Inspection in Institutional Settings and Use of Coercive Measures

During the autumn 2007 there has evolved an extensive discussion on the circumstances on the institutional setting in which persons with disabilities reside. A couple of deaths in institutions

accelerated the discussion and the shortcomings of the legislation on particular inspection systems and the practises relating to the enforcement of such legislation.

The problem is that the general bodies that execute judicial monitoring of institutions do not have resources or the expertise to monitor institutions in which persons with disabilities reside. In Finland we don't have a special body to monitor these institutions. Especially the situation of persons with intellectual disabilities is highly fragile because of the magnitude of institutional living settings in Finland.

Also the legal monitoring of the use of coercive measures is very powerless. The culture of using coercive measures is very concealing and because of this there is no widespread confidence on the legitimacy of the use of coercive measures. Many disability organisations receive constantly information on cases in which there arises misuse of coercive measures. The legislation on the use of coercive measures is very old especially in the case of persons with intellectual disabilities (1977) and instead of restricting the use of coercive measures it, in contrary, mandates to use them. The legislation also varies – there are different pieces of legislation concerning different types of disability groups.

4. Right to Choose Place of Residence

The Municipality of Residence Act (201/1994) does not give persons with disabilities the right to change their place of residence. The act has to be changed in order the equal rights of persons with disabilities in this regard.

The right to choose the place of residence also includes the right to choose freely the place of residence inside municipality. In reality, persons with disabilities are obliged to live in places, in which the local government is willing to provide the necessary services. For example, a person with a disability may be pressured to live in an institution even though she would have a possibility to live in a place she wants to with appropriate supply of personal assistance.

5. Assistance of the Persons with Most Severe Disabilities

Personal assistant is extremely often the only way through which persons with most severe disabilities can live independent life. Personal assistant –system is the only way to realise independent living and prevent segregation in the society.

Services and Assistance for the Disabled Act (380/1987) regulates the personal assistant –system so that its applying is highly sensitive to the discretion of the local municipality in terms of conditions on which this support can be admitted and on the allocation of money. A person with a severe disability can not make decision over her life in a case that personal assistance is not admitted. Because of the high level of discretion persons are in an unequal position - the assistance they get depends on their place of residence.

6. Inaccessible Apartments

The legislation concerning renovation of old buildings to be accessible is rather good in Finland but the practice fails in enhancing the legislation in an effective way. The reality shows that people can not live in a normal living environment because the supply of accessible apartments is very limited. The latest example of this phenomenon was when the City Council of Helsinki accepted a city planning scheme (“Scheme of Pitäjänmäki”). One of the peculiarities of the scheme was that it strictly prohibited the installment of elevators to some old buildings from 1960’s. The indicated ratio for this was the preservation of the original architecture of the buildings.

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