

**The Survey on the Ratification Processes
of the Convention on the Rights of Persons with Disabilities
in Seven States**

VIKE

The Center for Human Rights of Persons with Disabilities

Publication number 2, 2008

Publisher: The Center for Human Rights of Persons with Disabilities
Layout: Niina Kilpelä

ISBN 978-952-67068-0-1 (nid.)
ISBN 978-952-67068-1-8 (PDF)

Oy Arkmedia Ab, Vaasa 2008

**The Survey on the Ratification Processes
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Riku Virtanen

Dear reader,

The report in front of you is a historic document for us. It is not a mere survey but also a result of a totally new kind of cooperation initiative, VIKE, i.e. the Finnish Center for Human Rights of People with Disabilities. VIKE brings several actors together. Its cornerstones are the organizations of persons with disabilities - the Finnish Association of People with Mobility Disabilities and the Threshold Association - but its work is also based on academic knowledge, as the Institute for Human Rights at Åbo Akademi University is part of VIKE. This cooperation has accomplished representations of a new kind of social entrepreneurship. In the future, VIKE plans to include the business world into its functions and, through this, reach out for even better realization of human rights for persons with disabilities, which is the ultimate goal of VIKE.

The entry into force of the United Nations Convention on the Rights of Persons with Disabilities has led us into a new era. Even if there are other core human rights conventions that have also played a role in the context of persons with disabilities, it is clear that the new Convention brings new impetus to the work done in this field. While celebrating the entry into force of the new Convention, it is, however, important to bear in mind that these other conventions still have huge potential in the context of persons with disabilities. This survey concentrates on the ratification process of the new Convention and forms thus a part of the visibility project of the human rights of persons with disabilities, which is needed to gain maximal influence for the new Convention.

The survey was carried out through a four-month project called the “CRPD Survey”, which was financed by the Ministry for Foreign Affairs of Finland, to which VIKE remains thankful for their cooperation. The information was collected and the survey written by researcher Riku Virtanen. The project manager of VIKE Juha-Pekka Konttinen together with researcher Jukka Kumpuvuori from the Institute for Human Rights at Åbo Akademi University mentored the writing process. The views in the survey are expressed by VIKE, not by the Ministry.

The survey is published in English in the context of the CRPD – Added Value? -seminar in Helsinki on 20-21 May 2008. A Finnish version will be made available during the summer 2008. All documents will be published in the VIKE website at www.vike.fi.

We sincerely thank all the people who played a role in making this survey possible, especially those who gave their precious time to answer the questionnaire and to correspond with the researcher.

Helsinki 1st May 2008

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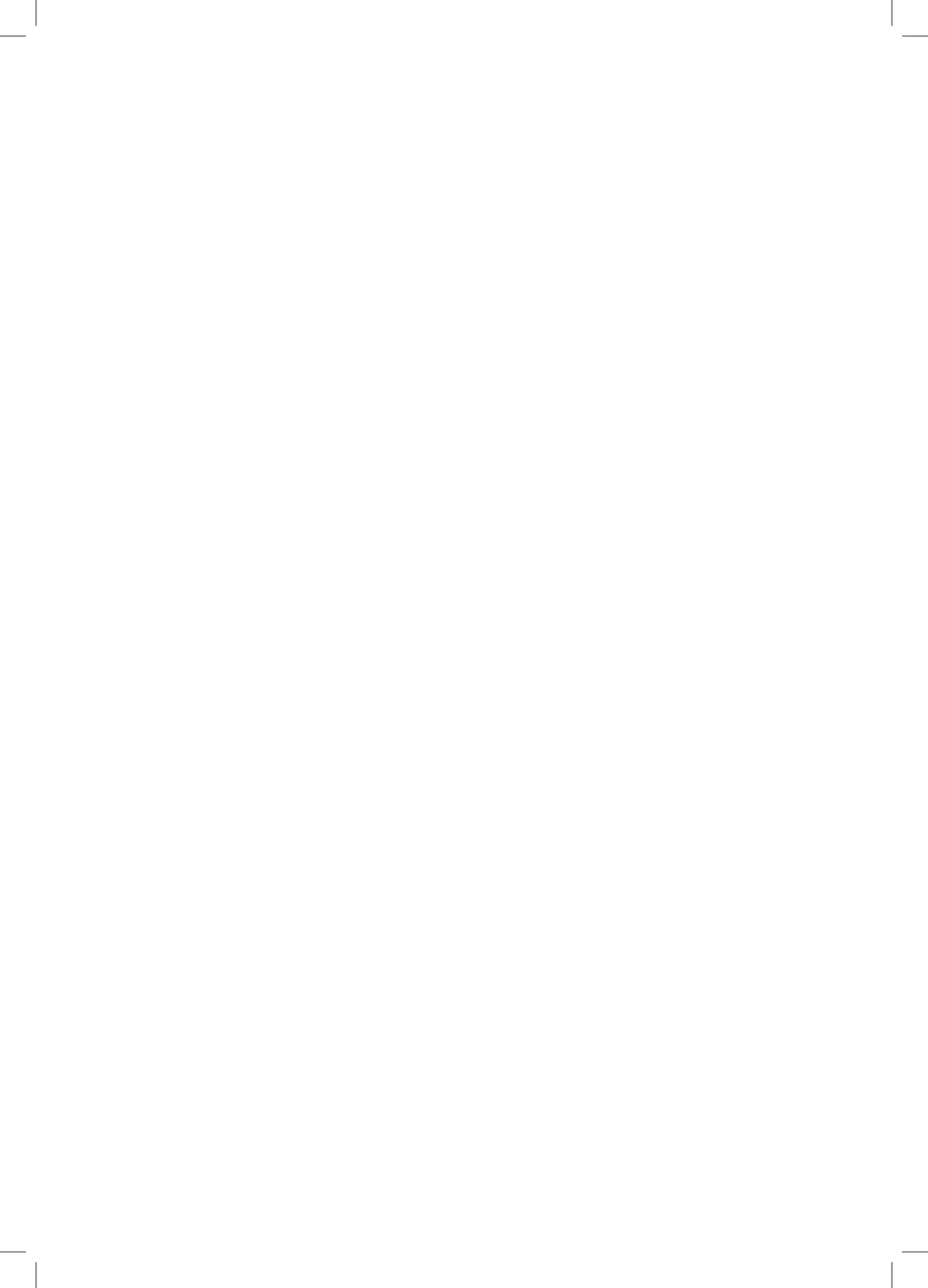
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Summary

This paper analyzes the ratification processes of the Convention on the Rights of Persons with Disabilities in seven states. The opinions expressed in this paper have been collected from the departments concerned in the ratification process, from different non-governmental actors as well as from earlier studies and literature. The survey was carried out through a questionnaire which was sent to these previously mentioned actors in the seven states.

The first part of the paper offers background information about the Convention and the ratification processes of international treaties. It also explains the contents of the five requirements, which the survey consists of. The second part describes the situation in the seven states. These descriptions consist of the five requirements that acted as a checklist for the respondents. These requirements include broad issues, which include the general situation of ratification, the description of the national anti-discrimination legislation and its challenges, the national monitoring system in the context of the Convention, the measures of raising awareness and the possibilities of persons with disabilities to take part in decision-making processes. The final part of the paper consists of conclusions and recommendations.

The stage of ratification varies from state to state. Most of the states aim to ratify the Convention in the near future. Inclusive education, accessibility and reasonable accommodation are mentioned in many answers. Moreover, the cooperation between public authorities and the NGOs of persons with disabilities is a cross-cutting issue in this survey. The involvement of those representing persons with disabilities in the ratification processes acts as an indicator, as the involvement varies from formal to practical participation in decision making.



Tiivistelmä

Selvityksessä analysoidaan YK:n vammaisia henkilöitä koskevan ihmisoikeussopimuksen ratifiointiprosessia seitsemässä valtiossa. Selvityksessä esitetyt mielipiteet on kerätty yleissopimuksen ratifiointiprosessiin osallistuvilta valtion yksiköiltä sekä kansalaisjärjestöiltä. Selvitys toteutettiin kyselyllä, joka lähetettiin näille mainituille asianosaisille.

Selvityksen ensimmäinen osa sisältää taustatietoa sopimuksesta ja kansainvälisten sopimusten ratifiointiprosesseista. Siinä myös selostetaan, mitä kyselyn pohjan muodostaneet viisi vaatimusta käsittävät. Toinen osa on tilannekatsaus seitsemästä valtiosta. Tilannekatsaukset koostuvat viidestä väitteestä, jotka toimivat eräänlaisena tarkastuslistana vastaajille. Mainitut väittämät sisältävät laajoja aiheita, jotka ovat ratifioinnin yleistilanne, kuvaus kansallisesta syrjinnänvastaisesta lainsäädännöstä ja sen haasteista, kansallinen valvontajärjestelmä yleissopimuksen turvaamien oikeuksien kontekstissa, tietoisuuden lisäämiseksi tehtävät toimenpiteet sekä vammaisten henkilöiden osallistumismahdollisuudet. Viimeisessä osassa kerrotaan johtopäätökset ja suositukset.

Ratifiointivaihe vaihtelee maittain. Useimmat valtiot ratifioinevat sopimuksen lähitulevaisuudessa. Inklusiivinen koulutus, esteettömyys sekä kohtuulliset mukauttamistoimenpiteet mainitaan monissa vastauksissa. Lisäksi selvityksen läpileikkaavana teemana on julkisviranomaisten ja vammaisten henkilöiden kansalaisjärjestöjen yhteistyö. Vammaisten henkilöiden edustajien mukanaolo ratifiointiprosessissa toimii eräänlaisena indikaattorina, sillä mainittu yhteistyö vaihtelee muodollisesta osallistumisesta käytännön osallistumiseen päätöksenteossa.



Sammandrag

I utredningen analyseras ratificeringsprocesserna i sju stater visavi FN-konventionen om rättigheter för personer med funktionsnedsättning. Åsikterna som framförs i utredningen har samlats in från de statliga enheter och medborgarorganisationer som medverkar i ratificeringsprocesserna. Utredningen har förverkligats genom en förfrågan, som sänts till de vederbörande.

Utredningens första del innehåller bakgrundsinformation om konventionen och internationella konventioners ratificeringsprocesser. Där beskrivs även vad som avses med de fem krav som utgör basen för utredningen. Andra delen innehåller en lägesrapport över de sju valda staterna. Lägesrapporten består av fem påståenden, som fungerar som en kontrollista för de svarande. Påståendena inbegriper stora ämnesområden, såsom ratificeringens allmänna läge, beskrivning av den nationella anti-diskrimineringslagstiftningen och dess utmaningar, nationella bevakningssystem i förhållande till rättigheter i den allmänna överenskommenheten, åtgärder för att öka medvetandet samt funktionshindrades deltagande i beslutsfattandet. I den sista delen redogörs för utredningens slutsatser och rekommendationer.

Ratificeringsläget varierar från stat till stat. De flesta staterna i utredningen kommer att ratificera konventionen inom en snar framtid. I samband med många stater omnämns inkluderande utbildning, tillgänglighet och rimliga åtgärder. Dessutom ingår i utredningen som ett genomgående tema samarbetet mellan allmänna myndigheter och handikappsorganisationer. Närvaron av representanter för personer med funktionsnedsättning tjänar som en indikator, eftersom samarbetet varierar från formellt till praktiskt deltagande i beslutsfattandet.



Introduction

The UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the UN General Assembly on 13 December 2006 and it was opened for signatures and ratifications on 30 March 2007. The adoption of the CRPD was a result of comprehensive negotiations, which took place within the UN from 2001 onwards. The Convention elaborates in considerable detail the human rights of persons with disabilities (PWDs) under international human rights law and establishes a code of implementation for governments. The significance of the Convention is reflected in the transformation from considering PWDs as needy recipients of charity towards considering them as holders of rights.

By 5 May 2008, 25 states had ratified the Convention and 15 states had ratified the Optional Protocol. This survey explores which measures the seven selected states have undertaken and what the implications of the CRPD are in the legal sphere of the states. Originally, the selected states were Finland, Germany, Hungary, Serbia, Sweden, Ukraine and the United Kingdom. After consideration, the Government of the United Kingdom decided not to answer the questionnaire at this stage¹. While the survey is based on answers from both the governments and the civil societies, VIKE decided to leave the United Kingdom outside the survey. However, VIKE would like to thank those organisations² and individuals from the United Kingdom that shared their views with VIKE. As Norway expressed a strong commitment to share information, it was included in the survey. At the beginning of 2008, out of the seven states in question, Hungary was the only one to have ratified the CRPD.

The aim was to come up with a diverse combination of countries and thus reach a general understanding on the ratification process in Europe. All the seven states are Member States of the Council of Europe.

The method of this survey is to analyze both the official information received from the governments and the feedback information from the NGOs. The views of the civil society are an important source of information on the development and the weaknesses of the ratification processes in the seven states.

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- 1 Email received from Sarah Dunn, Office for Disability Issues, Department for Work and Pensions on 18 March 2008. Email correspondence on file with VIKE.
 - 2 Rachel Hurst, UK Disabled People's Council; Dan Pescod, European and International Campaigns Manager at Royal National Institute of Blind People (RNIB); Richard Rieser, Director of Disability Equality in Education (DEE).

Objectives of the Survey

- To promote research in the area of human rights and disability
- To facilitate the ratification process in Finland and other states

The survey consists of five requirements, which relate to the implementation of the CRPD. These requirements can be considered as a checklist for the different actors, particularly for the states involved. Through elaborating these requirements, it is possible to examine the key questions relating to the ratification process in a particular state. The core elements of these requirements are described below.

The governments and the organisations of PWDs were requested to give opinions about the situation in their respective states in the context of these requirements. The opinions given on the ratification process formed the basis for the analysis, the aim of which was to illustrate the processes in the selected states.

Further information about the Convention

Why is a disability-specific convention needed? The new Convention is needed to clearly reaffirm that the rights of persons with disabilities are human rights. Furthermore, it is needed to strengthen respect for these rights. Even if the existing human rights conventions offer considerable potential to promoting and protecting the rights of persons with disabilities, it became clear that this potential was not being tapped. Indeed, persons with disabilities were continuously denied their human rights and kept on the margins of society in all parts of the world. This continuous discrimination against persons with disabilities highlighted the need to adopt a legally binding instrument which would establish legal obligations for states to promote and protect the rights of persons with disabilities.³

3 Enable Newsletter: Special Edition. Issue No. 3, March 2008.
<http://www.un.org/disabilities/default.asp?id=456>. 31.3.2008.

In addition to these problems, the human rights instruments prior to the Convention do address disability issues⁴ but are not legally binding. This means that governments are not legally required to follow the recommendations of these documents. The UN Committee on Economic, Social and Cultural Rights released a General Comment No. 5⁵ to advise States Parties on how to ensure that persons with disabilities enjoy the rights in the International Covenant on Economic, Social and Cultural Rights.

The drafters of the CRPD shared a common understanding that disability should be seen as a result of interaction between a person and his/her environment; that disability is not something that resides in an individual as the result of an impairment. The CRPD recognizes that disability is an evolving concept and that legislation can be adapted to reflect positive changes within society.⁶

4 Like the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

5 <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>.

6 From Exclusion to Equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. Handbook for Parliamentarians No 14 – 2007. Office of the High Commissioner for Human Rights: 2007, p. 4.

Requirements

1. Ratifying the Convention and the Optional Protocol of the CRPD

The ratification of the CRPD is a key towards a more equal society. The Optional Protocol makes it possible to monitor the implementation of the Convention. Without monitoring, the power of the Convention will most likely stay relatively weak.

The rules of ratification vary from state to state⁷. Some states will ratify the CRPD and harmonize their legislation after the ratification. Some states explore possible conflicts between national legislation and the CRPD before ratification. The ideal situation is that a state ratifies both the CRPD and the Optional Protocol without reservation. However, some states make reservations or ratify the Convention but not the Protocol. For example, India ratified the CRPD in October 2007. However, India has not ratified the Optional Protocol and has no monitoring system in the specific context of the CRPD⁸.

Signing the Convention indicates the intention of a state to proceed to express its consent to be bound by the CRPD and/or the Optional Protocol at a later date. In the period between signing and consent, signing also creates an obligation to refrain from acts that would oppose the objectives and purpose of the treaty. However, it is only through ratification that a state becomes legally bound to implement the CRPD and/or Optional Protocol, subject to valid reservations, understandings and declarations.⁹

In general, if a state is satisfied with most of the provisions of a treaty but dissatisfied with some particular provisions, it may, in certain circumstances, wish to refuse to accept or be bound by such provisions, while consenting to the rest of the treaty¹⁰. A reservation is a statement that purports to exclude or modify the legal effect of a treaty provision with regard to the state or with regard to a regional integration organization concerned. The statement may be entitled “reservation”, “declaration” or “understanding”, but whatever the phrase or name, any statement that excludes or modifies the legal effect of a treaty provision is, in fact, a reservation. A reservation

7 Shaw Malcolm N. *International Law*. 2003. 5 edition. Cambridge University Press. p. 819.

8 Information received via email from Javed Abidi, Head of The National Centre for Promotion of Employment for Disabled People (NCPEDP) on 26 March 2008. Email correspondence on file with VIKE.

9 From Exclusion to Equality, p. 42.

10 Shaw Malcolm N. *International Law*. 2003. 5 edition. Cambridge University Press. p. 821.

may enable a state or a regional integration organization that would otherwise be unwilling or unable to participate in the CRPD or the Optional Protocol to participate. When the reservation is made simultaneously with signing, the reservation is merely declaratory and must be formally confirmed in written form when the state later expresses its consent to be bound by the treaty. The CRPD and the Optional Protocol both permit reservations. However, reservations that are incompatible with the objectives and purpose of the CRPD or the Optional Protocol are not permitted.¹¹

The CRPD and the Optional Protocol both provide the states with the possibility to express their consent to be bound by signature, subject to ratification. Upon ratification at the international level, the state becomes legally bound by the treaty. At the national level, the state might have to ratify the treaty in accordance with its own constitutional or legal provisions before it expresses consent to be bound internationally.¹²

2. Strengthening anti-discriminatory legislation according to the CRPD

The CRPD defines the term *discrimination* on the basis of disability¹³. Even if the constitutions of some states include a demand for equality, their anti-discrimination legislation remains ineffective. It is essential that the above-mentioned definition of discrimination will be adopted at the national level and that the principle of equality will comply with the more subordinate level of legislation, as well.

In some states, the constitution forbids discrimination on the basis of disability. In addition, some states have disability-specific anti-discrimination legislation¹⁴. In the European Union, the Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC) is a legal basis, but some Member States of the European Union have not implemented the Directive at all or the implementation is inadequate¹⁵.

11 From Exclusion to Equality, p. 45.

12 From Exclusion to Equality, p. 41.

13 Article 2. "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or 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. It includes all forms of discrimination, including denial of reasonable accommodation.

14 For example, Americans with Disabilities Act of 1990 and Disability Discrimination Act of 1995 in United Kingdom.

15 European Commission; Employment, Social Affairs and Equal Opportunities: News.

However, the CRPD and the Directive set the objectives and purposes, and States Parties can consider the means to implement these purposes.

The obligation to prohibit all discrimination on the basis of disability and to guarantee equal and effective protection to persons with disabilities (Article 5 of the CRPD) requires both that the prohibition is included in the national legislation and, preferably, in the national constitution, as well. It also requires that detailed legislation provisions that cover discrimination in all fields of public and private life are adopted. The exact forms of these provisions depend on the existing laws and the particular legal system of the State Party in question. One option would be to enact a disability anti-discrimination law that prohibits discrimination on the ground of disability, in general, but that also provides detailed regulations on specific areas concerning public and private life. Another option would be to enact a disability-equality law, similar to the gender-equality laws adopted by some states. Laws of this kind do not limit themselves to prohibiting discrimination, but, instead, address a wide range of issues relating to persons with disabilities. Where legislation prohibiting other forms of discrimination already exists, it might be appropriate to amend the existing legislation to incorporate disability as a ground of discrimination. At a minimum, it is important to ensure that the CRPD's understanding of the concept *disability* and the definition of *discrimination on the basis of disability* are fully reflected in a general anti-discrimination law. Where the existing legislation only applies to some of the areas covered by the CRPD, new legislation will be required to ensure that protection against discrimination on the ground of disability applies to all areas.¹⁶

The CRPD stipulates that a failure to provide a person with reasonable accommodation amounts to discrimination on the basis of disability. Consequently, any legislative definition of discrimination should include the denial of reasonable accommodation as an act of discrimination. Reasonable accommodation is also known as a *duty to accommodate*; *reasonable adjustment/adaptation/measures*; or *effective/suitable modifications*. To provide a person with *reasonable accommodation* means, for example, adapting the working environment in order to remove the barriers that prevent a person with disability from participating in an activity or receiving services on an equal basis with others.¹⁷

http://ec.europa.eu/employment_social/emplweb/news/news_en.cfm?id=356.
On 8 April 2008.

16 From Exclusion to Equality, p. 56-57.

17 From Exclusion to Equality, p. 60.

3. Creating an effective system to monitor national implementation

In many states, disability-based discrimination is forbidden. However, only few states have a monitoring system that controls discrimination.

At the national level, States Parties must appoint one or more focal points within the government to handle matters concerned in implementation. States Parties must also consider establishing or designating a coordinating body within the government to facilitate the implementation. Similarly, States Parties must maintain, strengthen or establish an independent institution, such as a national human rights institution, to promote, protect and monitor the implementation of the CRPD.¹⁸ Various jurisdictions have introduced focal points and coordination mechanisms to act as intermediaries either between the government and national human rights organizations or, more commonly, between the government and individuals and their representative organizations.

The CRPD requires states to establish a framework, involving one or more independent mechanisms, to promote, protect and monitor the implementation of the CRPD. A national human rights institution is the most likely form for an independent framework in compliance with the national monitoring provisions under the CRPD.¹⁹

When designating or establishing a mechanism that meets the requirements of the CRPD, States Parties must take notice of the principles that relate to the status and functioning of those national institutions that protect and promote human rights. An international workshop of national human rights institutions, held in Paris in 1991, first drafted these Principles, which were then adopted by the United Nations General Assembly in 1993. Today, they are known as the *Paris Principles*.²⁰

According to the CRPD, the civil society, in particular persons with disabilities and their organizations shall be involved and fully participate in the monitoring process. This provision requires States Parties to promote the participation of persons with disabilities in the monitoring mechanism.

18 Article 33. National implementation and monitoring.

19 From Exclusion to Equality, p. 95.

20 From Exclusion to Equality, p. 97.

4. Coordinating awareness-raising activities

Comprehensive knowledge decreases prejudices and other harmful attitudes towards PWDs. The lack of knowledge is usually one of the most remarkable barriers to persons with disabilities.

Article 8 was included in the CRPD to address the underlying causes of discrimination on the basis of disability - namely the prevailing attitudes towards persons with disabilities in many societies. Even in countries with disability-related legislation, the efficacy of such legislation is often hindered by public assumptions and stereotypes of persons with disabilities. Due to the delegates' concerns about these problems, a version of the Article was included in the original draft prepared by the Working Group of the Ad Hoc Committee (AHC). In order to enhance the implementation of both domestic legislation as well as the CRPD, Article 8 sets forth the objectives for awareness-raising measures, as well as gives examples of such measures.²¹

For example, the translations of the CRPD are an important part of raising awareness. In India, according to NCPEDP, it is a challenge to translate the CRPD into a national language Hindi and into different regional languages.²²

21 Guernsey Katherine, Nicoli Marco and Ninio Alberto: Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank. SP Discussion Paper No. 0712. World Bank: June 2007.

22 Information received via email from Javed Abidi, Head of The National Centre for Promotion of Employment for Disabled People (NCPEDP) on 26 March 2008. Email correspondence on file with VIKE.

5. Promoting the participation of PWDs

It is essential that PWDs can participate in decision-making. This requires that public buildings, services and positions are accessible to all. The importance of the participation of PWDs should be both noted and ensured. They should be given full opportunity to offer feedback.

People with disabilities have too often been excluded from participating in the decision-making affecting their lives. Their absence from decision-making processes reinforces barriers to full participation in society. For PWDs, the possibility to enjoy the right to participate in decision-making, including participation in political and public life, is interrelated to the possibility to enjoy other human rights. For example, if a person with a disability is denied his/her right to education, the right to participate in political processes is also compromised because education provides the basis for active citizenship.²³

The CRPD elaborates on the right of PWDs to participate in their societies' political life and provides specific guidance to states on how to implement this right. In the context of the CRPD, participation extends beyond voting and encompasses the right of the PWDs to participate in decision-making processes, when their interests are affected, on an equal basis with others.

States Parties to the CRPD are required to ensure the right to participate in political processes, including voting, and, by means of positive state action, to provide the citizens with disabilities with an actual opportunity to exercise their political rights. The CRPD makes participation a fundamental principle in Article 3²⁴ and calls for *full and effective participation and inclusion in society*. Article 4 declares a general obligation for states to *closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations in the development and implementation of legislation and policies*. In the whole sphere of international human rights law, Article 29, Article 3 and Article 4²⁵ together give one of the clearest expressions for the right to participation in decision-making when one's interests are affected.²⁶

23 Human Rights. Yes! Action and Advocacy on the Rights of Persons with Disabilities. 2007. p. 50.
<http://www1.umn.edu/humanrts/edumat/hreduseries/TB6/index2.html>. 28.3.2008.

24 General Principles.

25 General Obligations.

26 Human Rights Yes! p. 52.

States

Finland

1. Ratifying the Convention and the Optional Protocol of the CRPD

Finland signed both the Convention and the Optional Protocol on 30 March 2007. According to the Ministry for Foreign Affairs of Finland, the preparation of the legislative amendments and the establishment of a national monitoring and coordination body will probably take several years, after which the Convention on the Rights of Persons with Disabilities can be ratified.²⁷

VIKE urges the government of Finland to ratify the CRPD quickly. However, VIKE wants to point out that some crucial amendments have to be made in the domestic legislation concerning persons with disabilities prior to the ratification. VIKE considers it is important that the CRPD will be ratified before the end of the ongoing governmental term²⁸. VIKE has submitted a paper to the Ministry for Foreign Affairs of Finland describing the shortcomings of the Finnish legislation in relation to the CRPD.²⁹

The Ministry of Social Affairs and Health is preparing the legislative amendments that the ratification of the Convention necessitates. The amendment required by Article 14 of the Convention (Liberty and security of person), concerning the use of coercion in special care for mentally disabled persons, will be replaced by new legislation on the grounds of restrictions of basic rights and liberties.³⁰

Moreover, Article 18 (Liberty of movement and nationality) and Article 19 (Living independently and being included in the community) require that (1) the restriction on choosing one's municipality of residence laid down in Section 3 of the Municipality of Residence Act should be eliminated by dividing the relevant costs between municipalities and that (2) Section 13 of the Social Welfare Act should be amended so that social services may be provided not only to the residents of a municipality but also to persons moving there.³¹

27 Information received from Krista Oinonen, Legal Officer, and Arto Kosonen, Director, Agent of the Government, at Unit for Human Rights Courts and Conventions, Ministry for Foreign Affairs on 16 April 2008. Email correspondence on file with VIKE.

28 2007 - 2011.

29 Information received via email from Juha-Pekka Konttinen, Project Manager at the Center for Human Rights of Persons with Disabilities (VIKE) on 16 April 2008. Email correspondence on file with VIKE.

30 Ministry for Foreign Affairs. <http://www.kynnys.fi/content/view/435/438/>

31 Ministry for Foreign Affairs.

The Government views that it is in the common interest of the Member States that the parties of international human rights treaties are prepared to make the necessary amendments in order to fulfil the objectives and purpose of such treaties. Therefore, the Government is in the process of amending the aforementioned domestic legislation in order to be able to ratify the Convention and its Optional Protocol without reservation.³²

2. Strengthening anti-discriminatory legislation according to the CRPD

Section 6 of the Constitution of Finland contains both a general equality provision and an extensive prohibition of discrimination covering all spheres of life. In addition, there are many non-discrimination provisions in the Non-Discrimination Act and special acts.³³

The Non-Discrimination Act (21/2004) came into force on 1 February 2004 implementing the two European Union Council Directives³⁴. The purpose of the Act is to foster and safeguard equality and enhance the protection provided by the law to those who have been subjected to discrimination in cases that fall under the scope of application of the Act.³⁵

According to Section 5 of the Act, to foster equality in the contexts referred to in Section 2, subsection 1, a person who commissions work or arranges training shall, where necessary, take reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in his/her career. Section 6 of the Non-Discrimination Act provides prohibited grounds of discrimination, of which disability is one. According to the law, discrimination is prohibited in matters related to the work, education and trade union activities.³⁶

32 Ministry for Foreign Affairs.

33 Ministry for Foreign Affairs.

34 2000/43/EC and 2000/78/EC.

35 Ministry for Foreign Affairs.

36 Ministry for Foreign Affairs.

The placement of a disabled person in a workplace or the retention of that job may require changes to work machines, tools or methods or the external working conditions at the workplace, or arrangements that are essential in order to compensate for or reduce the inconvenience caused by the disability or disease. The resulting costs can be reimbursed to the employer subject to an application for subsidy for arrangement of working conditions³⁷. At the moment, the maximum subsidy is EUR 2,500 for each person with disabilities³⁸.

In January 2007, the Ministry of Justice set up a committee to reform the non-discrimination legislation. The purpose is to strengthen the guarantees of non-discrimination by making the legislation more clearly cover all grounds of discrimination, apply more uniformly to all spheres of life and provide for the most uniform possible legal remedies and sanctions for different instances of discrimination.³⁹ The revision was not undertaken due to the ratification and implementation of the new Convention, but as it is timewise linked to this stage, it is possible to consider the Convention in this revision process, as well. The aim is to renew the anti-discriminatory legislation to better fulfil the constitutional requirements of a consistent and broad ban on discrimination.⁴⁰

According to VIKE, the domestic legislation on equality is sporadic, incoherent and very difficult to perceive. Currently, in the Non-Discrimination Act, the scope of application and legal remedies are much more comprehensive in ethnicity-based discrimination than that of other grounds. This state of affairs is not in harmony with the principle of equality and the norms regulating it. The Non-Discrimination Act is contradictory and inconsistent because it deals differently with different grounds of discrimination without acceptable reasons.⁴¹

37 Section 7 of the Act on Public Employment Service Benefits.

38 Ministry for Foreign Affairs.

39 Ministry for Foreign Affairs.

40 Information received via email from Kaisa Alanen, Director of Development Department at the Finnish Association of the Deaf (FAD) on 10 March 2008. Email correspondence on file with VIKE.

41 VIKE.

While the Non-Discrimination Act acknowledges the denial of reasonable accommodation as a form of discrimination, it remains extremely unclear what the actual relevance of this is due to the shortcomings in the monitoring of the Act. Monitoring mechanisms are weak and they do not 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 Section 9 on compensation is written in such a manner that its interpretations have caused confusion even among legal scholars.⁴²

According to VIKE, PWDs that have faced discrimination do not have access to effective legal safeguards. The possibility of filing a civil lawsuit remains illusory due to the financial risk and the imbalance of the parties. In other words, it seems that even if we have legislation on non-discrimination, it cannot protect persons with disabilities from discrimination even in the clearest cases.⁴³

According to VIKE, when the promotion of equality and the intervention of discrimination are involved, the equality plan, the national board on discrimination and the Ombudsman for Minorities do not support persons with disabilities. The Act must absolutely be made cover all grounds of discrimination equally. In addition, the provision in the Penal Code should be developed further and the concept of disability should be added to it.⁴⁴

The measures of labour administration, such as wage subsidies and adapting working conditions, have not sufficiently improved the employment of PWDs. In some cases, adaptation applications⁴⁵ have been rejected because the Non-Discrimination Act requires the employers to make reasonable accommodations. This kind of interpretation of the Non-Discrimination Act, which is directed against persons with disabilities, makes it even more difficult for them to find employment.⁴⁶

This is why we need an independent body whose mandate would also include intervening in cases of discrimination of persons with disabilities in all different spheres of life. The body's mandate should also include counselling, supporting persons in legal proceedings, raising awareness, research, implementation of non-discrimination legislation and mediating.⁴⁷

42 VIKE.

43 VIKE.

44 VIKE.

45 Above-mentioned Section 7 of the Act on Public Employment Service Benefits.

46 VIKE.

47 VIKE.

3. Creating an effective system to monitor national implementation

No decision has yet been reached on the form of the coordination mechanism. At the moment, there is no such government body in Finland that would have been, or could as such be, designated to attend to the tasks referred to in Article 33(2) of the Convention. Thus, the ratification of the Convention would necessitate either the establishment of a new human rights body in Finland or the transformation of an existing authority into such a body. In this context, particular attention should be paid to the independence of this body, necessitated by the Convention, as well as to the need to ensure that organisations representing persons with disabilities will be included in the monitoring work of the body.⁴⁸

In Finland, there are such officials as the Equality Ombudsman, the Minority Ombudsman, the Equality Board and the National Discrimination Tribunal of Finland. According to the Finnish Association of the Deaf, the current structure cannot sufficiently monitor the implementation of the CRPD, since the emphasis of the equality issues has so far been on gender equality and ethnic minority issues. This structure has no such organ that would be fully authorized to monitor the implementation of the CRPD from a linguistic minority's and a disability group's perspective.⁴⁹

According to VIKE, the development of a monitoring mechanism should be connected to the revision process of the Ministry of Justice. VIKE suggests that the Government should establish an office of Ombudsman for persons with disabilities. Furthermore, VIKE emphasizes the importance of raising awareness within the existing human rights monitoring bodies by increasing their resources.

4. Coordinating awareness-raising activities

The Convention and its Optional Protocol have been translated into Finnish, but the translation has not yet been published. An easy-to-read version has been issued to make the text more accessible. The Convention will be

48 Ministry for Foreign Affairs.

49 FAD.

utilised in preparing the national programme on disability.⁵⁰ The Finnish Association of People with Mobility Disabilities (FMD) 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.⁵¹

5. Promoting the participation of persons with disabilities

Representatives of disability organisations took part in the different phases of the Convention negotiation process. For example, the organisations were informed of the draft convention in several meetings. These organisations have also been notified in the various contexts of the legislative amendment processes necessitated by the ratification of the Convention. Both authorities and organisations have been consulted.⁵²

As the Government programme on disability policy is being prepared, information on the contents and on the implementation of the Convention will be disseminated to various stakeholders and disability organisations, which will, in turn, inform their members.⁵³

According to VIKE, there is a clear lack of resources in the official machinery that takes care of the ratification. Thus, many of the activities VIKE would like to see, i.e. awareness-raising campaigns and comprehensive analysis of the legislation, do not exist. VIKE would like to contribute to the process of ratification, but it also wants to remind the state of its duty to provide funding to facilitate the participation of PWD's and their organizations.⁵⁴

OBSERVATIONS

Finland aims to harmonize its legislation with the Convention before ratification. The current anti-discrimination legislation is incoherent because the Non-Discrimination Act deals differently with different grounds of discrimination. Even if there are some existing monitoring bodies, none of them complies with the requirements of Article 33(2).

50 Ministry for Foreign Affairs.

51 www.vike.fi

52 Ministry for Foreign Affairs.

53 Ministry for Foreign Affairs.

54 VIKE.

Germany

1. Ratifying the Convention and the Optional Protocol of the CRPD

The Convention and the Optional Protocol will be ratified by the legal approval of the German national parliament (Bundestag). With regard to this procedure, it is necessary to draft a law. The law consists two parts. The first part contains the English, French and German versions of the Convention and its Optional Protocol. The second part comments on the requirements of the Convention and explains whether and how Germany already fulfils or intends to fulfil them.⁵⁵ In other words, the second part presents the current legal situation in Germany. If it turns out in the ratification process that the national legislation must be amended or new national laws must be drafted, it will be realized in another separate national legislative procedure after the ratification procedure.⁵⁶ All 16 federal states have to approve of the law before the German Bundestag can adopt it. The Federal Ministry of Labour and Social Affairs is drafting the law. According to the Government, Germany aims to ratify the Convention without reservation.⁵⁷

55 Information received via email from Stefanie Pagel and Mona Sinno, Administrative Officers at Federal Ministry of Labour and Social Affairs on 13 March 2008. Email correspondence on file with VIKE.

56 Information received via email from Stefanie Pagel and Mona Sinno, Administrative Officers at Federal Ministry of Labour and Social Affairs on 9 April 2008. Email correspondence on file with VIKE.

57 Federal Ministry of Labour and Social Affairs.

2. Strengthening anti-discriminatory legislation according to the CRPD

The German Constitution prohibits discrimination on the ground of disability. Furthermore, discrimination on the ground of disability is forbidden by the Social Code Book I and IX as well as by the Act on Equalisation. These laws are relevant for the public sector. The General Act on Equal Treatment, enforced on 18 August 2006, prohibits discrimination based on race or ethnic origin, gender, religion, disability, age or sexual identity.

The legislation is based on the following EU anti-discrimination directives: Field of application on the principle of equal treatment; Equal treatment in the workplace; Equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; and Equal treatment as regards access to and supply of goods and services⁵⁸

Especially in the field of education there are great gaps between the German reality and the provisions of the CRPD. In Germany, education is regulated by the 16 federal states. According to the German Disability Council there is no state where children with disabilities or their parents could choose between a special school and a regular school.⁵⁹ Only 13 percent of the German children with disabilities are educated together with children without disabilities.⁶⁰ However, some federal states disagree with the CRPD requirements relating to education. Therefore, German education standards do not comply with the requirements of inclusive education⁶¹.

According to the German Disability Council, the rules related to accessibility have to be strengthened. At the moment, they only apply to the governments and public authorities. The legislation has to be amended so that all public buildings, offices and services have to fulfil accessibility standards. In order to protect the dignity of persons with disabilities and in order to protect them against violence, it is essential that persons that need assistance may, at least, choose whether they are assisted by a man or a woman.⁶²

58 Federal Ministry of Labour and Social Affairs.

59 Information received via email from Sigrid Arnade, the German Disability Council on 18 March 2008. Email correspondence on file with VIKE.

60 Sekretariat der Ständigen Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland (Hg.): Sonderpädagogische Förderung in Schulen 1994 bis 2003. Statistische Veröffentlichungen, Dokumentation Nr. 177. Kultusministerkonferenz, Bonn, 2005.

61 Information received via email from Michael Spörke, Referent der Geschäftsführung at Interessenvertretung Selbstbestimmt Leben in Deutschland (ISL) on 19 March 2008. Email correspondence on file with VIKE.

62 German Disability Council.

Germany's differentiated benefit system aims at adaptations for persons with disabilities in certain areas of life.⁶³ One example of such legal provisions is the right to claim accommodation for severely disabled people expressed in the social law⁶⁴. The right to reasonable accommodation as a subjective right of an employee with severe disability was already included in the Severely Disabled Act of 1974 but this Act did not contain an anti-discrimination provision⁶⁵. The denial of this kind of reasonable accommodation is not assessed as discrimination in this law.⁶⁶

3. Creating an effective system to monitor national implementation

At the moment, there is no monitoring system in Germany in the specific context of the CRPD. Plans have been made to appoint an independent body to control and monitor the implementation of the Convention. One opportunity, which has been under discussion, would be the German Institute for Human Rights in Berlin. It is a national human rights institution, which complies with the Paris Principles of the United Nations.⁶⁷

4. Coordinating awareness-raising activities

Under the German EU-presidency, an international conference was organized in June 2007. It helped to raise awareness among German and European stakeholders. The Government provides information on the CRPD and the translation of the CRPD on its official website.⁶⁸

63 Federal Ministry of Labour and Social Affairs.

64 German § 81 (4) SGB IX.

65 Cases, Materials and Text on National, Supranational and International Non-discrimination Law. 2007. Editors Schiek D., Waddington L. and Bell M. Hart: Oxford; Portland, Or. p. 750.

66 German Disability Council.

67 Federal Ministry of Labour and Social Affairs.

68 www.bmas.de; Federal Ministry of Labour and Social Affairs.

5. Promoting the participation of PWDs

For the German Government, it is very important to work closely with the NGOs of PWDs, who are experts in their own matters. In particular, the involvement of the civil society, especially the NGOs of PWDs, is guaranteed because the domestic rules concerning the legislative process require it.⁶⁹ On the other hand, PWDs are not yet involved in either the translation process of the Convention or the ratification process.⁷⁰ The German Disability Council is trying to lobby changes in the translation because there are mistakes in the German translation. For example, the word *inclusion* in the context of education has been translated as *Integration* instead of *Inklusion*.⁷¹

The German disability policy does deal with the question of participation of PWDs in society and work.⁷² According to the German Disability Council, the motto “Nothing about us without us” was well-realised during the negotiation process in New York and it has to be realised again in Germany. People with disabilities and their organisations have to be involved in all questions and actions relating to the Convention.⁷³

OBSERVATIONS

Due to the federal system, the ratification process will require the consent of the federal states in Germany. The federal Government aims to ratify the Convention without reservation. Even if the Government emphasizes close cooperation with the NGOs of persons with disabilities, the organisations are practically not involved in the ratification process.

69 Federal Ministry of Labour and Social Affairs.

70 Information received via email from Ottmar Miles-Paul, the German Council of Centers for Self-Determined Living on 15 April 2008; German Disability Council; Interessenvertretung Selbstbestimmt Leben in Deutschland.

71 German Disability Council.

72 Federal Ministry of Labour and Social Affairs.

73 German Disability Council.

Hungary

1. Ratifying the Convention and the Optional Protocol of the CRPD

The Hungarian Parliament ratified the Convention and the Optional Protocol in its session on 25 June 2007⁷⁴. The ratification document was deposited with the UN Secretary General on 20 July 2007.

An expert group was established to examine the present national legislation. Even if the working group has not yet published a final outcome, it has been assessed that the notion of legal capacity in the Code of Civil law has to be revised.⁷⁵

According to the MDAC⁷⁶, the Civil Code does not recognize supported decision-making as a legitimate form of exercising legal capacity. The Labour Code⁷⁷ does not include a rights-based approach to inclusion. Moreover, the Social Care Act and the Health Care Act include collisions with Article 14 of the CRPD because there is a legal basis for deprivation of liberty based on mental health/psychosocial disability and lack of support in community.⁷⁸

74 Information received via email from Hanna Páva Head of Department of Disability and Rehabilitation Issues, Ministry of Social and Labour Issues on 11 March 2008. Email correspondence on file with VIKE.

75 Ministry of Social and Labour Issues.

76 The Mental Disability Advocacy Center (MDAC) is an international non-governmental organisation based in Budapest that promotes and protects the human rights of people with mental health problems and intellectual disabilities across Central and Eastern Europe and Central Asia.

77 Act on Public Education.

78 Information received via email from Gábor Gombos, Senior Advocacy Officer at Mental Disability Advocacy Center (MDAC) on 10 March 2008. Email correspondence on file with VIKE.

2. Strengthening anti-discriminatory legislation according to the CRPD

According to the Hungarian Constitution, the Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation or birth or on any other grounds whatsoever.⁷⁹ On the other hand, according to Article 70(2), PWDs under guardianship are automatically deprived of their right to vote.⁸⁰

The Act No. 125 of 2003⁸¹ entered into force on 27 January 2004. The Act declares that pursuant to the principle of equal treatment, all private individuals abiding in the territory of the Republic of Hungary and any groups thereof, as well as legal entities and organisations without legal entity, shall be treated with the same respect and deliberation and their special considerations shall be equally respected. It also regulates that all dispositions as a result of which a person or a group is treated or would be treated less favourably than another person or group in a comparable situation because of e.g. his/her sex, racial origin, nationality, origin of national or ethnic minority, disability, state of health, religious or ideological conviction, political or other opinion, etc. are considered direct discrimination.⁸² However, the Act obligates the public sector but not the private entities⁸³.

Act 26 of 1998⁸⁴ states the following: “The state as well as different organisations and members of society must carry out their activities so as not to cause impairments that might lead to the development of disability, and they must create conditions amongst which people with disabilities are able to lead more fulfilling lives and that allow for the mitigation of their burdens due to their disabilities. In making decisions having an impact on persons with disabilities, it shall be taken into account that persons with disabilities are equal mem-

79 Ministry of Social and Labour Issues.

80 MDAC.

81 Equal Treatment and Promotion of Equal Opportunities.

82 Ministry of Social and Labour Issues.

83 MDAC.

84 On the Rights and Equal Opportunities of Persons with Disabilities.

bers of society and their local community, therefore arrangements shall have to be provided to enable their participation in society. As persons with disabilities, due to their condition, are restricted in the exercise of their rights to which they are entitled equally to anyone else, it is appropriate that they be given preferences by all possible means.”⁸⁵ According to MDAC, in the Act 26, the definition of disability is not similar to the one in the CRPD, because it includes the medical model of disability rather than the social one. Moreover, all types of disabilities, f.ex. people with mental health impairments, are not covered by the definition. In addition, there is no definition of reasonable accommodation. Furthermore, the fact that the denial of reasonable accommodation is explicitly identified as a form of discrimination is not included.⁸⁶ Moreover, Hungarian Sign Language is not recognized by the law⁸⁷.

In Hungary, there are some conflicts between national legislation and the CRPD. For instance, the right to choose place of domicile is not guaranteed on an equal basis with others. In addition, the legal capacity issue includes problems as the right to liberty can be deprived on the basis of a mental health/psychosocial disability and lack of support in the community.⁸⁸

The concept *reasonable accommodation* does not exist in the Hungarian legislation. However, the only existing legal requirement is that the employer may not dismiss a PWD that acquired his/her disability in the workplace or in relation to the work, but should find a proper adjustment for him/her. Even in the Hungarian translation of the CRPD, in Article 27 (1i), *reasonable accommodation* is mistakenly translated as *reasonable placement*.⁸⁹

85 Ministry of Social and Labour Issues.

86 MDAC.

87 SINOSZ.

88 MDAC.

89 MDAC.

3. Creating an effective system to monitor national implementation

The National Disability Council was entrusted by the Hungarian Government to monitor the implementation of the Convention in Hungary. In the Council, the NGOs of PWDs and expert organisations are working on one side, i.e. the civil side, and representatives competent in disability issues from ministries on the other side, i.e. the governmental side. Both sides cooperate with each other. In other words, people with disabilities take part in monitoring the implementation of the Convention.⁹⁰

The future proposal is that coordination should be mandated to the Council while monitoring should be the responsibility of either the Parliamentary Commissioner of Civil Rights or the Equal Treatment Authority.⁹¹

A public administration body oversees the compliance with the obligations of equal treatment. It shall, at request or ex officio, conduct investigations to see whether the obligations of equal treatment have been violated. Finally, it shall make decisions on the basis of the investigations.⁹² The Parliamentary Commissioner on Civil Rights has no right to sanction. The Equal Treatment Authority may sanction but only in areas expressly listed in relevant domestic law.⁹³

In case of human rights violations, the national NGOs of PWDs have the possibility to appeal to the Equal Treatment Office or to the court, if a number of people with disabilities have been violated. If an individual's rights have been violated on the ground of his/her disability, he/she may even file a lawsuit against the violator based on the Civil Code.⁹⁴

90 Information received via email from Csaba Chikán, Vice-Chairperson, (translated by Eva Caesar) at the National Federation of Disabled Persons' Associations (MEOSZ) on 14 March 2008. Email correspondence on file with VIKE.

91 MDAC.

92 Ministry of Social and Labour Issues.

93 MDAC.

94 MEOSZ.

4. Coordinating awareness-raising activities

There are some awareness-raising programs, most of which are DPO⁹⁵ initiatives without funding from government.⁹⁶ For instance, the Hungarian Association for Persons with Intellectual Disability organized a conference last year about the CRPD.⁹⁷ Moreover, a SINOSZ/EUD⁹⁸ Conference was organized, which offered explanations on the content of the new Convention for the Hungarian Parliament⁹⁹.

According to the new National Programme on the Disabled Persons, there are different programmes for raising awareness.¹⁰⁰ These documents contain detailed provisions on the measures and actions needed to promote the rights and participation of PWDs in society for the period of 2006-2013. These include, for example, promotion of independent living, design for all, universal design, equal access to public services, accessibility of built environment, development of employment facilities, etc.¹⁰¹

Disability NGOs make the Convention better-known to their communities or to wider public through awareness-raising programmes, and training courses are organized to discuss the content more deeply by the NGO activists. The next awareness-raising event will be the National Day of Equal Opportunities on 9-10 May 2008.¹⁰²

95 Disabled people's organisations.

96 MDAC.

97 Ministry of Social and Labour Issues.

98 The European Union of the Deaf.

99 SINOSZ.

100 Ministry of Social and Labour Issues.

101 MEOSZ.

102 MEOSZ.

5. Promoting the participation of PWDs

The representatives of PWDs were involved in the drafting procedure of the Act concerning the ratification of the CRPD. Persons with disabilities have been able to participate in decision-making. For instance, equal access to the facilities is declared by law, and the timetable for promoting access to public services as a part of the National Programme on Disabled Persons has been set up.¹⁰³ The enactment of the Act on the Rights and Equal Opportunities of People with Disabilities has been the most important step forward, but the implementation has been problematic: for example, the deadlines for making public services accessible have been postponed, as well as the deadlines for scaling down large institutions for people with intellectual disabilities, and no positive measures have been taken to make public positions accessible.¹⁰⁴ In general, DPOs have had no involvement¹⁰⁵ except for a formal decision made by the National Council on Disability Affairs¹⁰⁶.

Both for individual disability NGOs and for the National Disability Council, it is possible to express their opinion on the laws and regulations. In this way, with their proposals and motions, they can promote the requirements of the CRPD so that these will be met by relevant laws and governmental and ministerial decrees. Local governments draft decrees and regulations for their own territories. In many cases, the NGOs of PWDs take effort to participate in the decision-making of local governments, but there is no elaborated system for this kind of participation at the national level.¹⁰⁷

OBSERVATIONS

Hungary ratified the Convention and the Optional Protocol in 2007. As mentioned above, the Hungarian Constitution, some laws and practices collide with the CRPD. The Government is examining these conflicts. It is unclear when the Government will amend these conflicting laws. In addition, it is unclear what kind of national monitoring mechanism will be established.

103 Ministry of Social and Labour Issues.

104 MDAC.

105 MDAC.

106 Prior to the finalisation of the Hungarian version of the CRPD.

107 MEOSZ.

Norway

1. Ratifying the Convention and the Optional Protocol of the CRPD

In Norway, the Government is in the process of exploring how the national legislation/practice may have to be changed before the ratification of the Convention.¹⁰⁸ Also, there is an ongoing process to propose a motion for an anti-discrimination act for people with disabilities¹⁰⁹ before the Parliament. According to the FFO¹¹⁰, the Government has stated that the Convention will not be ratified before the anti-discrimination act has passed in the Parliament. Thus, the authorities do not want to ratify the Convention before other legislation has been amended.¹¹¹

It is too early to present a timetable for ratification.¹¹² Furthermore, Norway has not signed the Optional Protocol.

According to the FFO, there are several laws for people under guardianship. It is mentioned that these laws have to be amended; otherwise they will establish too strong restraints on individuals' lives and conflict with the Convention¹¹³.

108 Information received via email from Christian B. Kielland, Adviser at Ministry of Children and Equality on 27 March 2008. Email correspondence on file with VIKE.

109 Law on Accessibility and Equity.

110 Information received via email from Hanne E. Wits, Adviser at Norwegian Federation of Organisations of Disabled People (FFO) on 25 March 2008. Email correspondence on file with VIKE.

111 FFO.

112 Ministry of Children and Equality.

113 FFO.

2. Strengthening anti-discriminatory legislation according to the CRPD

There is no general anti-discrimination legislation in Norway. A committee appointed by the Norwegian Government is working on proposals for such legislation.¹¹⁴ As mentioned above, new disability-specific national anti-discrimination legislation¹¹⁵ should enter into force from 2009¹¹⁶.

However, there are provisions in the Norwegian legislation on discrimination on the basis of disability in the field of employment¹¹⁷. In addition, the Labour Environment Act¹¹⁸ forbids both direct and indirect, discrimination in employment processes on the ground of disability.

The Government's proposal for a new act relating to prohibition on the basis of disability¹¹⁹ will be published in the beginning of April. This act will not fulfil all the requirements of the CRPD, so further legislation will have to be prepared.¹²⁰

At present, the term *reasonable accommodation* is included in several laws. The new Act on Accessibility and Equity will also make claims about reasonable accommodation. There are quite a few examples of reasonable accommodation in Norwegian legislation. According to the FFO, the problem is that violations are not followed by sanctions and that too many dispensations are allowed.¹²¹

At the end of the year 2007, the Norwegian Government finally acknowledged that, in order to fulfil the requirements of the CRPD, the anti-discrimination legislation must include a duty to provide reasonable accommodation. But, after having admitted this, the Government made it clear that such provisions will not be included in the draft law on Accessibility and Equity due to the tight schedule¹²².

114 Ministry of Children and Equality.

115 Law on Accessibility and Equity.

116 Information received via email from Berit Vegheim, Director at Stopp Diskrimineringen on 25 March 2008. Email correspondence on file with VIKE.

117 Working Environment Act, Chapter 13. This chapter is based on EU Directive 2000/78/EC. See <http://www.arbeidstilsynet.no/binfil/download.php?tid=42156>.

118 13-1 §.

119 Discrimination and Accessibility Act.

120 Ministry of Children and Equality.

121 FFO.

122 Stopp Diskrimineringen.

3. Creating an effective system to monitor national implementation

The existing anti-discrimination legislation is monitored by the Equality and Anti-discrimination Ombud.¹²³ It is reasonable to assume that the Ombud will play a role in monitoring the CRPD¹²⁴. In addition, according to a Norwegian civil rights foundation called Stopp Diskrimineringen there are no indications that PWDs would be able to participate in the monitoring¹²⁵.

Furthermore, the Norwegian Equality Tribunal enforces the various Norwegian equality and anti-discrimination acts. There is a representative from the State Council on Disability in the Equality Tribunal.¹²⁶

It is only the Equality and Anti-discrimination Ombud that has the competence to investigate the alleged non-compliances with the law. The Ombud can make recommendations that can be appealed before the Tribunal¹²⁷. A case can only be heard by the Tribunal after the Ombud has made a recommendation.¹²⁸ The Board may impose fines to those who do not abide by the decision of the Board.¹²⁹

The rulings of the Tribunal are administratively binding. Such rulings, however, may be overruled by a court of law. The Tribunal may order day-fines until compliance with such rulings is achieved. When it comes to the administrative decisions made by municipal and state institutions, the power of the tribunal is more limited. In such cases, the Tribunal can only give recommendations.¹³⁰

4. Coordinating awareness-raising activities

Awareness-raising procedures are being conducted in Norway on the discriminatory effects of the lack of accessibility. Raising awareness belongs to the responsibilities of the Equality and Anti-discrimination Ombud. Norway has taken part in the awareness-raising activities of the EU Anti-discrimination programme and will continue to do so in future.¹³¹ In addition, the FFO¹³² publishes news about the Convention on its website.¹³³

123 For further information on the Ombud see: <http://www.ido.no/en-gb/>.

124 FFO.

125 Stopp Diskrimineringen.

126 FFO.

127 Equality and Anti-discrimination Board of Appeals.

128 FFO.

129 Stopp Diskrimineringen.

130 FFO.

131 Ministry of Children and Equality.

132 The Norwegian Federation of Organisations of Disabled People.

133 FFO.

5. Promoting the participation of PWDs

The disability organisations have been invited to contribute to the ratification process, and the Norwegian Government hopes that they feel that they are being listened to. Consultations between representatives of the national disability organisations and government representatives take place regularly. The leaders of the national umbrella organisations take part in the State Council on Disability. The purpose is to ensure the participation of PWDs in disability-related issues.¹³⁴

Stopp Diskrimineringen has found it very hard to obtain information both about the process and about the Government viewpoints. The Norwegian NGOs play a very distant role in the ratification process. NGO representatives have not been invited to give speeches at the very few conferences that have been held about the CRPD and about the anti-discrimination act.¹³⁵ Also, the Convention is being translated into Norwegian, and the NGOs are now preparing their suggestions¹³⁶.

OBSERVATIONS

In Norway, the Government is exploring what kind of changes will be needed before the ratification of the CRPD. The national anti-discrimination legislation will most likely be adopted by the Parliament during the year 2008. The Ombud may monitor the implementation of the CRPD in the future. However, because Norway has not signed the Optional Protocol, it is difficult to evaluate whether Norway will aim to fulfil the obligations of Article 33(2) concerning monitoring. The opinions expressed about the involvement of the disability NGOs in the ratification process reflect the tension between full participation of PWDs and the choices made by public authorities.

134 Ministry of Children and Equality.

135 Stopp Diskrimineringen.

136 FFO.

Serbia

1. Ratifying the Convention and the Optional Protocol of the CRPD

According to the draft plan by the Ministry for Labour and Social Affairs and the Ministry of Foreign Affairs of Serbia, the Serbian Parliament should ratify the Convention and Optional Protocol in 2008. However, as Serbia has an extraordinary Parliamentary election in May 2008, the ratification process will have to wait until a new Government is formed and until the ministries initiate the procedure for ratification as described above. The Department for Persons with Disabilities of Ministry of Labour and Social Affairs intends to prepare a draft law on the ratification of the Convention in cooperation with the Ministry of Foreign Affairs in due time¹³⁷.

The Government of Serbia intends to give an interpretative statement that the provisions of Article 12 do not constitute a basis for prohibition of appointment of legal representatives and guardians to persons with disabilities in due process of law and in accordance with the provisions of the Family Code. Serbia bases this interpretation on the deliberations of the Chairperson of the Ad Hoc Committee during the 7th and 8th session of the AHC in 2006, when he stated that article 12 does not, in fact, constitute a ban on legal guardianship.¹³⁸

According to CIL Serbia, the Parliament should, in parallel to the process of ratification, adopt new legislation, including the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the Law on Serbian Sign Language and the Law on Use of Guide Dogs. The Parliament should also amend the Law on Public Procurement in order to ensure the mainstreaming of disability issues and the application of accessibility standards to all new objects, infrastructure, programs, systems and services funded from public funds.¹³⁹

137 Information received via email from Jelena Kotevic, Head of the Group for Normative Activities of Department for Persons with Disabilities on 31 March 2008. Email correspondence on file with VIKE.

138 Information received via email from Damjan Tatic, UNDP consultant at Center for Independent Living Serbia (CIL) on 4 March 2008. Email correspondence on file with VIKE.

139 CIL Serbia.

In Serbia, there is also a need to progressively amend laws on primary and secondary education in order to promote inclusive education; laws on public transport to ensure accessible transport; laws on scientific research to promote universal design; and laws on social protection to provide support services in local community.¹⁴⁰

2. Strengthening anti-discriminatory legislation according to the CRPD

The Constitution of Serbia explicitly prohibits discrimination on the basis of disability¹⁴¹. In April 2006, Serbia adopted a comprehensive Law on Prevention of Discrimination against Persons with Disabilities. This law prohibits both direct and indirect discrimination, victimisation, instigating the discrimination, violation of principle of equality in areas of public proceedings, civil participation, access to public buildings, premises and services opened to public, health care, education, employment and labour relations, public transport, family and marital relationships. The law provides mechanisms of judicial protection and measures for equalization of opportunities as well as orders fines for perpetrators of some discrimination acts. The law was praised at the High Level conference of the Council of Europe in St Petersburg in the autumn 2006. The European Disability Forum also gave highly positive reviews for this anti-discrimination law.¹⁴²

Disability-based discrimination is furthermore prohibited in the general labour, education and health care legislation. Serbia has not yet adopted a general law on the prevention of discrimination.¹⁴³ Recently, experts from the Ministry of Labour and Social Affairs, with the support of the UNDP country office, prepared a draft that received positive comments from the Venetian Commission. Another draft law had been submitted to the Parliament by an opposition party but, due to the extraordinary Parliamentary elections in May, it has not been discussed in the Parliament yet.¹⁴⁴

140 CIL Serbia.

141 Clause 3, article 21.

142 Department for Persons with Disabilities.

143 CIL Serbia.

144 Department for Persons with Disabilities.

There are plans to amend legislation in order to enable DPOs to launch lawsuits on behalf of its members and to enable shifting the burden of proof to the defendant in civil lawsuits for discrimination (as prescribed by Directive 2000/78/ EC). These amendments are underway, as well as the election of the Deputy Ombudsperson, who will deal with disability-based complaints, inter alia.¹⁴⁵

There are some needs for amendments in the Serbian legislation. The Law on Health Care needs to be amended in order to provide firm legal safeguards against medical experimentation without the patient's informed consent. The Family Code provides a possibility to limit a person's legal capacity by appointing a legal representative or a guardian. As stated before, the Chairperson of the Ad Hoc Committee and a number of delegations interpreted the text of article 12 in a manner that it does not constitute a basis for eliminating legal representation and guardianship, and Serbia endorses such interpretations.¹⁴⁶

The laws on primary and secondary education do not explicitly provide inclusive education and need to be progressively and accordingly amended. Legislation promoting community-based rehabilitation support services and universal design remains to be developed.¹⁴⁷

The Serbian legislation includes an accommodation provision. The National Employment Service provides incentives of up to 1,100 Euros to employers hiring persons with disabilities for reasonable accommodations at workplace. Reasonable accommodation will be further elaborated in a new Law on Professional Rehabilitation and Employment of Persons with Disabilities that has been submitted to the Parliament.¹⁴⁸

145 CIL Serbia.

146 CIL Serbia.

147 CIL Serbia.

148 Department for Persons with Disabilities.

3. Creating an effective system to monitor national implementation

Serbia is currently setting up a body for monitoring the National Strategy for Persons with Disabilities. Until this body is formed, its duties are carried out by the National Council for Disability Affairs¹⁴⁹. Such a body could monitor the implementation of the CRPD.¹⁵⁰

According to CIL Serbia, the recently appointed Ombudsman is also in charge of monitoring any violations of human rights by public entities, so its office could take some of the monitoring tasks, especially, since one of the Deputy Ombudsmen should protect the rights of women, children and persons with disabilities. Any person that maintains his/her rights under ratified international treaties may initiate a proceeding in the Serbian court if these rights have been violated. Nevertheless, such cases have been extremely rare in the judiciary practice of Serbia so far.¹⁵¹

The National Organization of Persons with Disabilities prepared a National Disability Report. This report may serve as a future monitoring tool and it provides guidelines for harmonizing the legislation with the provisions of the Convention. The Department for Persons with Disabilities supported the promotion of the National Disability Report and included many of its recommendations in the draft for harmonizing Serbia's legislation with the Convention.¹⁵²

In the current judiciary system of Serbia, magistrates and courts are the only ones to sanction violations of human rights, adjudicating on fines, compensation of damages and, rarely, prison sentences in cases where the violation constitutes a criminal offence.¹⁵³

149 More than half of members of National Council for Disability Affairs are persons with disabilities, either DPO representatives, or representatives of some ministries (Justice, Education), or MPs.

150 CIL Serbia.

151 CIL Serbia.

152 Department for Persons with Disabilities.

153 CIL Serbia.

4. Coordinating awareness-raising activities

One of Serbia's organizations of persons with disabilities, the Centre for Independent Living of Serbia, conducted a campaign for promoting the Convention in dozen major cities of Serbia, presenting the Convention to MPs, members of National Council for Disability Affairs and local authorities in all major cities of Serbia and to persons with disabilities and law students in Belgrade, Novi Sad and Nis universities. The media coverage of the campaign was extensive, and the Department for Protection of Persons with Disabilities supported the campaign financially.¹⁵⁴

The Parliamentary Committee for Labour, Social Affairs and Veterans expressed their interest in organizing a public hearing on the ratification of the Convention, and there are plans to present the Convention to all parliamentary groups in the Parliament of Serbia. The UNDP office in Serbia intends to include the promotion of the Convention in its 18-month campaign for equality of persons with disabilities in Serbia 2008/9.¹⁵⁵

5. Promoting the participation of PWDs

Serbian authorities developed a close partnership with the disability movement in the drafting process of the Convention. In 2003, the Ministry of Foreign Affairs and Ministry of Labour and Social Affairs invited a disability expert¹⁵⁶, who is an activist in the disability movement and a person with disability himself, to become a member of the state delegation to the Ad Hoc Committee.¹⁵⁷

The Ministry of Labour and Social Affairs supported the promotion of the National Disability Report prepared by the National Organization of Persons with Disabilities of Serbia and invited organizations and other DPO representatives to deliberate at a round-table discussion on the measures needed for harmonizing Serbia's legislation prior to the ratification of the Convention.¹⁵⁸

154 CIL Serbia.

155 CIL Serbia.

156 Mr. Damjan Tatic.

157 Department for Persons with Disabilities.

158 Department for Persons with Disabilities.

The Government of Serbia adopted a comprehensive National Strategy for Persons with Disabilities 2007-2015 in December 2006 and drafted action plans for its implementation in 2008/9. After the new Government is formed after May 2008 Parliamentary elections, it should adopt the above-mentioned action plans. DPO representatives participated in the adoption process of the Strategy that had been supported by the UNDP office in Serbia.¹⁵⁹

Measures for promoting participation of persons with disabilities were included in the Poverty Reduction Strategy and the National Employment Strategy. The DPO representatives took part in the working groups drafting key laws related to persons with disabilities, especially the anti-discrimination law.¹⁶⁰

Nevertheless, according to CIL Serbia, there is a distinct gap between the adopted norms and their implementation in practice, especially at the local level, and the disability movement in Serbia should use the partnership it has already built with the government to push for a consistent implementation of the existing legislation and policies.¹⁶¹

OBSERVATIONS

Serbia aims to ratify the Convention by the end of 2008. In general, there are many sectors in the disability-specific legislation that are being developed or have recently entered into force. In Serbia, the cooperation between the disability movement and the Department for Protection of Persons with Disabilities is close.

159 Department for Persons with Disabilities.

160 CIL Serbia.

161 CIL Serbia.

Sweden

1. Ratifying the Convention and the Optional Protocol of the CRPD

In Sweden, international treaties have to be specifically adopted into domestic legislation before they become binding within the state¹⁶². The Ministry of Social Affairs of Sweden has appointed an expert¹⁶³ that has now gone through the Swedish legislation with a supporting advisory group. This investigation has resulted in a report where the expert's views and recommendations are clearly expressed. However, there is also a separate report with recommendations made by the advisory group.¹⁶⁴

Generally, the expert's finding is that Swedish legislation does not discriminate persons with disabilities with regard to any fundamental rights. However, the expert warns that there might be structural problems in society that might threaten the opportunity to in practice exercise the rights listed in the Convention. According to the expert, the most obvious structural obstacle would be the lack of accessibility.¹⁶⁵

This investigation will be published in a report, which will be referred to stakeholders for consideration¹⁶⁶. After that, the report will form the basis of the Parliamentary bill during the autumn 2008. The Government aims to reach a decision about the ratification of the CRPD in December 2008.¹⁶⁷ However, there is disagreement within the disability movement whether to support the early ratification this year or not, because the necessary legislation should be drafted first.¹⁶⁸

162 Dualistic system.

163 Lars Grönwall.

164 Information received via email from Malin Ekman Aldén, Secretary General at Swedish Organisations' of Persons with Disabilities International Aid Association (SHIA) on 25 March 2008. Email correspondence on file with VIKE.

165 SHIA.

166 March - June 2008.

167 Information received via email from Eva Lisskar-Dahlgren, Kansliråd/Deputy Director at Ministry of Health and Social Affairs on 13 March 2008. Email correspondence on file with VIKE.

168 Information received via email from Kicki Nordström, The Swedish Association of the Visually Impaired (SRF) and World Blind Union (WBU) on 7 February 2008. Email correspondence on file with VIKE.

2. Strengthening anti-discriminatory legislation according to the CRPD

There are four acts prohibiting discrimination on the ground of disability: Prohibition of Discrimination in Working Life, Equal Treatment of Students at Universities Act, Prohibition of Discrimination Act and Prohibition of Discrimination in School.

These laws together with three others anti-discriminatory laws will be put together to form a new Prohibition and other Measures against Discrimination Act¹⁶⁹. The purpose of the Act will be combating discrimination and in other ways promoting equal rights and opportunities regardless of sex, sexual identity, ethnic background, religion or other religious belief, disability, sexual orientation or age.¹⁷⁰ However, according to Kicki Nordström, the Act lacks both the issue of accessibility needed for PWDs and the sanctions if access is not provided for PWDs to goods, services and buildings.¹⁷¹ One very serious example is that the new anti-discriminatory Act does not cover the disfavouring of people with disabilities due to inadequate accessibility.¹⁷² Until now, the Government has chosen to leave out the accessibility issue from the discrimination Act, arguing that it needs more investigation.¹⁷³ The current legislation¹⁷⁴ expressly recognises an obligation to provide reasonable accommodation to meet the needs of individuals with disabilities.

There are some conflicts between the Swedish legislation and the CRPD. For example, the Schools Act makes it possible for a free school to deny a pupil's entry if the pupil needs substantial extra resources. Moreover, the number of independent compulsory schools has doubled in ten years. According to the Swedish Disability Federation (HSO), the Schools Act has to be amended to make it impossible for free schools to refuse students with disabilities.¹⁷⁵

169 The law will come into force the 1st of January 2009.

170 Information received via email from Maryanne Rönnersten, Adviser at the Swedish Disability Federation (HSO) on 17 March 2008. Email correspondence on file with VIKE.

171 Information received via email from Kicki Nordström, The Swedish Association of the Visually Impaired (SRF) and World Blind Union (WBU) on 7 February 2008. Email correspondence on file with VIKE.

172 HSO.

173 SHIA.

174 Waddington Lisa: Implementing and Interpreting the Reasonable Accommodation Provision of the Framework Employment Directive: Learning from Experience and Achieving Best Practice. 2004. p. 76.

175 HSO.

3. Creating an effective system to monitor national implementation

The Swedish Disability Ombudsman¹⁷⁶ works on issues relating to human rights of PWDs. The Ombudsman does not control violations or discriminatory practices in relation to all the rights in the Convention. The main task of the Ombudsman is to see that the anti-discriminatory legislation complies with the Convention and to bring court actions that he/she considers important in terms of case-law or otherwise¹⁷⁷. The court will have the possibility to claim sanctions or fees of the discriminatory part.¹⁷⁸

From 1 January 2009, the current four ombudsmen against discrimination will be amalgamated into one authority, the Office of the Ombudsman against Discrimination. The new Ombudsman will give supervision relating to discrimination based on sex, sexual identity, ethnic background, religion or other religious belief, disability, sexual orientation and age.¹⁷⁹ To some extent, the new Ombudsman will also monitor all ratified treaties, but the CRPD will be monitored by a special state authority dealing with accessibility and information duties.¹⁸⁰

Sweden may have problems in fulfilling Article 33, because it recommends establishing a human rights institution in each country, and Sweden does not have such an institution. The new Ombudsman cannot propose new legislation, monitor conventions in the way that is meant by the Paris Principles nor propose new legislation to be made if international laws do not correspond to national laws¹⁸¹.

Another interesting authority in Sweden is Handisam¹⁸². As a part of Swedish disability policy, Handisam has two main responsibilities: coordinating and raising awareness, i.e. supporting the authorities tasked with implementing the national plan for disability policy¹⁸³. However, Handisam does not have any legal monitoring rights and there is no institution for proposing amendments in legislation or promoting implementation.¹⁸⁴

176 Handikappombudsmannen, HO.

177 HSO.

178 Information received via email from Kicki Nordström, The Swedish Association of the Visually Impaired (SRF) and World Blind Union (WBU) on 7 February 2008. Email correspondence on file with VIKE.

179 HSO.

180 Information received in an interview with Kicki Nordström in Helsinki, Finland on 11 March 2008.

181 Information received in an interview with Kicki Nordström in Helsinki, Finland on 11 March 2008.

182 Swedish Agency for Disability Policy Coordination.

183 HSO.

184 Information received via email from Kicki Nordström, The Swedish Association of

4. Coordinating awareness-raising activities

Handisam will have a role to play in the future awareness-raising projects.¹⁸⁵ The Swedish Inheritance foundation, which works within the framework of the Ministry of Health and Social Affairs, gives funds to a new project on human rights and the new Convention. The project has just started and will last for three years. The main objectives of the project are to follow the ratification process of the new Convention, to develop a monitoring system for implementing the convention - mainly by clarifying the role of the Swedish DPOs in the future monitoring system - and to disseminate information and knowledge of the importance and usefulness of the new Convention¹⁸⁶

5. Promoting the participation of PWDs

The NGOs of PWDs have been able to give their opinion through the reference group of the investigator.¹⁸⁷ In addition, the NGOs have once been invited to a three-hour consultation session on the translation process of the CRPD.¹⁸⁸

The government work is guided by a national action plan named "From patient to citizen" (2000-2010).

OBSERVATIONS

In Sweden, the Government aims to ratify the Convention and Optional Protocol without reservation before the end of the year 2008. As mentioned above, the current anti-discrimination legislation does not comply with all obligations of the CRPD. Despite the fact that there is an Ombudsman for persons with disabilities, the Swedish monitoring mechanisms should be developed further in order to fulfil the requirements of Article 33.

the Visually Impaired (SRF) and World Blind Union (WBU) on 7 February 2008. Email correspondence on file with VIKE.

185 Ministry of Health and Social Affairs.

186 HSO.

187 Ministry of Health and Social Affairs.

188 Information received via email from Kicki Nordström, The Swedish Association of the Visually Impaired (SRF) and World Blind Union (WBU) on 7 February 2008. Email correspondence on file with VIKE.

Ukraine

1. Ratifying the Convention and the Optional Protocol of the CRPD

The Ministry of Labour and Social Policy of Ukraine gives special priority to signing and ratifying the CRPD. Under the Presidential decree from 17 March 2008, the Minister of Labour and Social Policy of Ukraine¹⁸⁹ is authorized to sign the CRPD and the Optional Protocol on behalf of Ukraine.¹⁹⁰

After the signing of the Convention, the Ministry of Labour and Social Policy will present the Draft Law *On ratification of the Convention on the Rights of Persons with Disabilities* to the Cabinet of Ministers of Ukraine for approval. After the ratification of the Convention, the Ministry will prepare and present an action plan on implementation of the Convention to the Cabinet of Ministers for approval.¹⁹¹

2. Strengthening anti-discriminatory legislation according to the CRPD

In 2007, the NADU¹⁹², supported by the International Renaissance Foundation, started monitoring *The implementation of human rights of the disabled in Ukraine*. According to the preliminary results of this monitoring, one can say that the Ukrainian legislation does not fully meet the requirements of the CRPD. That is why it is necessary to introduce some amendments into the current Ukrainian legislation so that it could meet the requirements of the CRPD.¹⁹³

189 L. Denisova.

190 Information received via email from Igor Kozlov, Principal Specialist at Department of European Integration and International Co-operation, Ministry of Labour and Social Policy of Ukraine on 9 April 2008. Email correspondence on file with VIKE.

191 Ministry of Labour and Social Policy of Ukraine.

192 The NADU includes 64 national and regional NGOs for the disabled which unit disabled with different disabilities.

193 Information received via email from Nataliia Skrypka, Executive Director of the National Assembly for the Disabled of Ukraine (NADU) on 31 March 2008. Email correspondence on file with VIKE.

There is no appropriate definition of *discrimination* determined by the CRPD in the Ukrainian legislation, where the term *discrimination* is not used, although according to the Article 1 of the Law on Social Security of the Disabled¹⁹⁴ *discrimination of the disabled is prohibited and sanctioned*. However, the term *discrimination* is not defined in the legislation. Only social guarantees are mentioned in the legislation. The legislation in Ukraine on social security as well as on the implementation of the human rights of the disabled is not systematized.¹⁹⁵

According to the NADU, some amendments are needed in the Constitution and other legislation. For example, there are no special mechanisms and responsibility sanction procedures in the Ukrainian legislation that would apply to any cases of not providing accessibility for the disabled. In most cases, such legal terms as “is ensured”, “is implemented” and “is provided” are used in the Ukrainian legislation. The definition of the *state obligations* does not apply to the disabled.¹⁹⁶

Furthermore, the Constitution of Ukraine does not guarantee the prevention of limiting individual rights on the basis of disability, and the term “other criteria” is used. In addition, in the Ukrainian society, there are no statutory norms on the educational work and raising awareness relating to disability that would have to be conducted by state authorities.¹⁹⁷

The Ukrainian legislation defines the legal grounds for providing social accommodation for socially unsecured sections of the population, including people with disability, but this program is not fully realized due to financial reasons. Also, state building regulations¹⁹⁸ have been adopted, and the regulations came into force in 2007. However, these regulations are only used for the construction of new buildings. The reconstruction of existing buildings with the aim of making them more accessible is not regulated.¹⁹⁹

194 On the Fundamentals of Social Security of the Disabled in Ukraine.

195 NADU.

196 NADU.

197 NADU.

198 The accessibility of buildings and structures for the low mobile groups of the population.

199 NADU.

3. Creating an effective system to monitor national implementation

Formally, there is an Ombudsman in Ukraine but the office has never taken the responsibility of monitoring the rights of persons with disabilities. For the past three years, the Ombudsman has not delivered Public Human Rights Reports to the Parliament - a procedure regulated by law. According to the Presidential Decree, the Government has to deliver an annual document on the rights of people with disability. It is probable that the Ministry of Social Policy and Labour will soon take this responsibility.²⁰⁰ In addition, within the NADU, the monitoring was initiated in 2007, and persons with disabilities participated directly in the monitoring carried out by the NADU.²⁰¹

4. Coordinating awareness-raising activities

In 2007, the National Assembly for the Disabled of Ukraine (NADU) initiated a campaign for the signing and ratification of the CRPD. Public hearings, roundtable discussions and press conferences were held in the 27 regions of Ukraine to inform the general public about the CRPD and its role. Due to the support of the UN mission in Ukraine, the CRPD has been translated into Ukrainian and widely disseminated during the events carried out by the NADU. A special edition of the CRPD adapted for children has been prepared and disseminated by the NADU. During the campaign conducted by the NADU, signatures were collected from the NGOs of PWDs, from the PWDs themselves and from the human rights organisations to support the signing and ratification of the CRPD in Ukraine.²⁰²

200 Information received via email from Roman Romanov, Program manager at Rule of Law on 20 March 2008. Email correspondence on file with VIKE.

201 NADU.

202 NADU.

5. Promoting the participation of PWDs

The Ukrainian legislation defines the interaction mechanisms between the state authorities and the NGOs of PWDs in the sphere of social security of the disabled. It includes involving the NGOs of PWDs in the process of developing a law on the social security of PWDs, research, monitoring, establishing public councils and work groups within central and local state authorities and organizing public events.²⁰³ In addition, the Head of the Parliamentary Committee is the President of NADU²⁰⁴. In other words, there is close coordination between the different organizations.²⁰⁵

OBSERVATIONS

Ukraine will most likely sign the Convention in the near future. It is too early to say when Ukraine will ratify the CRPD. Even if there are some provisions relating to persons with disabilities in the Ukrainian legislation, many rights guaranteed in the Convention are not included or defined in the national legislation. Inadequate implementation of the existing national provisions and the lack of effective monitoring mechanisms are probably the most remarkable problems in Ukraine.

203 NADU.

204 Mr. Valeriy Suchkevich.

205 Information received via email from Roman Romanov, Program manager at Rule of Law on 20 March 2008. Email correspondence on file with VIKE.

Conclusions

The timetable and the ways of ratification vary from state to state. The timetable of the ratification process and the level of harmonizing the legislation prior to the ratification are questions of paramount importance. Once this human rights convention has entered into force in a particular state, it becomes legally binding. At this point, the national legislation should comply with the Convention and it becomes subject to the scrutiny carried out by the monitoring body of the Convention. During the ratification process, states may amend their legislation to comply with the Convention. However, it has to be noted that the states may not prolong the ratification process in order to protect the human rights of persons with disabilities. In other words, the ratification process is a good tool for amending legislation, but it is not acceptable to make these amendment procedures an excuse for postponing the actual ratification.

In national legislation, it is important to define discrimination on the basis of disability. In particular, the denial of reasonable accommodation as a part of discrimination should be incorporated in the anti-discrimination laws. In this respect, there is still lack of knowledge of the different forms of discrimination that take place in the context of persons with disabilities. While the Convention clearly promotes the comprehensive concept of non-discrimination, lots of work remains to be done in the field of disability policy and legal research.

The cooperation between public authorities and the organisations of PWDs has to fulfil the obligations of the Convention. It is not enough that the cooperation is merely formal. Article 33(3) and Article 4(3) should be seriously discussed when public authorities deal with issues relating to persons with disabilities.

It is necessary to develop an effective monitoring system to monitor the implementation of the Convention. Such a system could be a national human rights institution referred to by the Paris Principles. The main task of such a body could be preventive coordination. Furthermore, when human rights violations occur, there should be a possibility to claim sanctions.

As a part of raising awareness, it is essential to provide a translation of the Convention. These translations should be prepared in cooperation with the organisations of persons with disabilities.

The issue of special measures relating to education vary from state to state. There has to be a right to inclusive education for children with disabilities. In general, if a special school is the only option, it can be seen as segregation.

To conclude, VIKE would like to address a few aspects of the future research needs that arise from this survey and also from the more general context of human rights and persons with disabilities.

1) Already prior to the new Convention, there have been legally binding human rights conventions in the context of persons with disabilities. However, these conventions have remained regrettably unused. There has been an understanding that persons with disabilities are not included in the sphere of legal human rights. This has not been true before, and it is even less true now, when the new Convention has entered into force. However, we need efforts to make disability a human rights issue. This requires exploring the new Convention and its links to local settings. Human rights are realized in local settings, and they need to be made visible there, otherwise they will just remain empty words.

2) Understanding the denial of reasonable accommodation as discrimination that is forbidden by the Convention is the key to a more equal society. The gap between the normative level that now addresses this question, namely, the Convention, and the grass-root level remains wide. There is a great demand for new research in this area. VIKE will, of course, concentrate on this area itself, but VIKE also wants to encourage all other actors in the field to do so.

3) Raising awareness is extremely important for the realization of human rights, for persons with disabilities and for the new Convention. States will have to reserve money for campaigns that will make the new Convention visible and more familiar to everybody. Organizations of persons with disabilities should play a central role in these processes with the aim of including persons with disabilities in everything that concerns them.

