

Comments from the Norwegian Government to the report by the Commissioner for Human Rights of the Council of Europe following his visit to Norway from 19 to 23 January 2015

The Norwegian Government would like to thank the Commissioner for Human Rights of the Council of Europe for the many interesting discussions during the course of his visit and for a constructive report. The report addresses important and challenging questions, and we would like to underline the importance that is attached to these issues in the Government's work as well. The Government will give careful consideration to the Commissioner's report, and welcomes this opportunity to submit certain comments.

1. Human rights of people with disabilities

Guardianship legislation, legal capacity and supported decision-making

The question of legal capacity for persons with impaired decision-making skills is important and difficult and calls for a balanced and subtle approach. The Norwegian Government underlines the importance it attaches to the Convention on the Rights of Persons with Disabilities (CRPD) and confirms its commitment to fully comply with Norway's treaty obligations. The Government does however respectfully disagree with the Commissioner on certain points concerning the interpretation of the CRPD and the implementation of the convention in Norway. In the opinion of the Government, the interpretative declarations made by Norway upon ratification of the CRPD are fully in line with the wording of Articles 12, 14 and 25. Reference is made to the comments submitted by Norway to the draft General Comment of the Committee on the Rights of Persons with Disabilities on Article 12 of the Convention.¹

With respect to the Norwegian Guardianship Act, we refer to our letter to the Commissioner 4 March 2015 regarding selected topics on guardianships in Norway. In addition, the report gives rise to a further elaboration on certain points.

A principle of using the "least restrictive means" forms a basis for the Guardianship Act, and should serve as a starting point when assessing whether a person should be appointed a guardian, whether the guardianship should include economic and/or personal matters, and whether the guardianship should be supplemented with restrictions in the legal capacity to act. The importance of each person's integrity, will and preferences is emphasized on a general basis in the preparatory documents to the Guardianship Act. This affects the interpretation of the Act and how the various support mechanisms provided for under the Act should be used in practice. The implementation of these aspects in practice is nonetheless a continuing process, and the Government will continue to focus on information and training of guardians and the County Governors on the new law and the principles mentioned above.

As reflected by the statistics included by the Commissioner in the report, a guardianship entails in the great majority of cases only voluntary and supportive functions. The person's legal capacity to act is not restricted, and the guardianship requires consent. Contrary to what is stated in paragraph 15 of the report, section 33 of the Guardianship Act should not be interpreted as enabling a guardian to

¹ See <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>

“decide against the will of persons who have not even been deprived of their legal capacity if they are deemed not to understand the issues at hand”. The provision should in the Government’s view be interpreted in accordance with the main principles forming the basis for the act, emphasizing the importance of the individual’s integrity, preferences and will. However, when the person is not capable of understanding what the disposition involves, the guardian is, according to section 33, not any longer obliged to ask the person for an express consent, but will have to seek the person’s will and preferences on a more abstract level taking into account what the person used to wish, what the person seems happy with now, etc.

It should be emphasized that partial limitations to a person’s legal capacity to act can only be imposed when strictly necessary, and only to the extent necessary to safeguard the interests of the person concerned. The guardian shall still give weight to the person’s opinion when making decisions.

While agreeing that it would be contrary to the CRPD to restrict a person’s legal capacity to act solely on the basis of a diagnosis or disability, this should not be read as signifying that the existence of a diagnosis or disability may not be one of several criteria. Under the Guardianship Act, a diagnosis or a disability is a requirement in order to qualify for a guardianship. This is however never in itself sufficient to obtain the right to the appointment of a guardian. The main criteria will always be a person’s need for assistance which cannot be helped out with other supportive means.

We also add that a guardianship involving restrictions of a person’s legal capacity to act, in some cases are preferred by the person concerned. Case law in Norway indicates that some of the approximately 250 guardianships involving restrictions of the person’s legal capacity to act, are based on a voluntary request from the person in question and framed in accordance with his or her preferences. The Government does not yet have statistics on how many of the guardianship decisions this applies to, but intends to pursue this aspect.

As further described in our letter 4 March 2015, the Guardianship Act governs three different support mechanisms of which a modernized form of guardianship is one. It should however be noted that while the CRPD applies for a wide range of persons and situations, the Guardianship Act will only apply for a quite narrow group of persons who have a distinct need of support. For persons who are not comprised by the scope of the Guardianship Act, other alternatives for support and assistance may be available under other laws and regulations. The limited time available for providing comments to the report has however not allowed for a further description of such alternatives.

The Government shares the Commissioner’s view that finding suitable guardians and ensuring sufficient contact between the guardian and the person in question is important. This is reflected in the guardianship legislation, and the Central Guardianship Authority is supervising this field on a daily basis. In relation to professional guardians representing more than one person, the number of persons that the guardian should be allowed to represent should, in the Government’s view, be individually assessed on the basis of the relevant persons’ specific needs of assistance. This can vary to a great extent, and will depend on aspects such as the person’s functional level and the guardian’s mandate.

Use of coercion in the care of persons with psycho-social and intellectual disabilities

The Ministry of Health and Care Services acknowledges the challenges and complex questions attached to the use of coercion in the mental health services. While the numbers of patients and admissions under coercive mental health care might seem high, we are unfortunately unable to suggest what could be a justifiable amount of coercion, that is, how great the potential for reduction is. This is partly due to the lack of reliable and valid data on all forms of coercion in mental health care, which in itself is a key target for measures in the on-going national strategy for increased voluntariness. Nonetheless we agree with the Commissioner that there is a potential to reduce and safeguard the use of coercion in mental health care.

According to the National Patient Register 139 000 adults received treatment from the specialist mental health services in 2014. This is a rise of 3.7% from 2013 and counts for an increase of more than 10 000 patients from 2011. In comparison 5 400 persons was admitted to compulsory mental health care in 2012 and 2013, although the numbers must be considered with caution. The general trend indicates that while the amount of coercion has been stable or possibly slightly reduced for the last years, the total number of voluntarily treated persons has grown steadily year by year.

Further steps in this area will be considered on the basis of the coming assessment of the national strategy carried out by the Directorate of Health, on request from the Ministry.

With respect to the legislation on mental health care in light of the obligations under CRPD, reference is made to the interpretative declarations given to art. 12, 14 og 25 in the convention.

As regards the use of coercion in municipal nursing homes, the Minister of Health and Care Services has held meetings with the Directorate of Health and the Norwegian Board of Health Supervision in order to be assured that this issue is given priority in future work. Before the summer of 2015, there will also be held a meeting with the patient and user organizations. The use of coercion is the main challenge for the nursing homes' expertise and management skills. The ongoing Care Plan (HelseOmsorg21) contains several measures to strengthen both the competence and the quality in care. In addition, the Government will consider to include the conditions in the nursing homes as a theme in Norway's future periodic reports to international human rights bodies.

2. Human Rights situation of Romani people/Taters (Norwegian Travellers), Roma and Roma immigrants

The situation of the Norwegian Roma minority

As described in the Commissioner's report, a report was published in February 2015 on the treatment of the Roma minority, in particular during the Second World War. On 8 April 2015, the Prime Minister of Norway officially apologized, on behalf of the Government, the racist policy of exclusion against the Norwegian Roma minority prior, during and after the Second World War. The Government plans to grant a collective compensation for the injustices experienced by the group. The size, form and other details of this compensation will be decided in close cooperation with the Roma community.

Roma children placed in alternative care by the Child Welfare Services

The report addresses Roma children placed in alternative care by the Child Welfare Services. According to the report it is estimated that "over 60 Roma children are in foster care currently and that a further 60 children may be vulnerable to such interventions in the future" (paragrahp 52). The report is not clear as to whether these children are of non-immigrant Roma families or Roma immigrant families. The Ministry of Children, Equality and Social Inclusion has no access to statistics as to children's ethnic origin and is therefore not in a position to comment upon the numbers in the report. However, we would like to give the following general remarks:

The Norwegian Child Welfare Act applies to all children in Norway, regardless of their residential status, background, or citizenship. The basic principle of the Act is that the best interests of the child shall be a primary consideration. The underlying assumption of the Child Welfare Act is that children should grow up with their parents. Our legislation places great importance on family ties and continuity in the child's upbringing, but also on a child's right to care and protection from all forms of physical or mental violence, injury, abuse or neglect.

The Child Welfare Service primarily offers voluntary assistive measures so that children can live with their families. Entering 2013 a total of 53 198 children received measures from the child welfare service in Norway. 83% of these cases were voluntarily assistive measures to children and families in the home. Only 17% of the cases involved placement outside the home, usually in a foster home.

Children who cannot live with their parents are placed in alternative care. The majority lives in foster homes, but some children's needs are best met within an institution. The best interest of the child is the paramount consideration in the choice of foster home and/or institution. The Child Welfare Service will choose a foster home/institution based on the child's personality and/or individual needs. The service will always try to ensure continuity in the child's upbringing and the child's religious, cultural and linguistic background. The child has a right to be heard in the choice of foster home, and the child's opinion shall be given weight in accordance with the child's age and maturity. The parents also have a right to be heard and shall be given the chance to influence the choice of placement.

Due to increasing globalization and migration, more children and families with foreign citizenship are in contact with the child welfare service. Many children have parents from different countries and family ties in more than one country. It is necessary to implement international agreements that allow the exchange of information about the child and emphasise cooperation with the competent authorities of the child's country of origin. These principles are enshrined in the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Norway is in the process of ratifying the Hague Convention of 19 October 1996 on parental responsibility and protection of children.

The situation of Roma immigrants: responses to begging and homelessness

The report mentions that suggestions to criminalize begging and “sleeping rough” are due to “an increase of these social phenomena”. We see a need to give a more detailed background for the relevant suggestions for changes in the legislation.

As mentioned in the meeting with the Commissioner, there was an increase in the number of foreign citizens begging in public places from 2007 onwards, many of whom were from Romania.

In the same period, we had an increase in criminal activities in public places, especially pick-pocketing and various forms of petty theft. Several such crimes were committed by Romanian citizens. We do not categorize people after any ethnic lines, so we do not have any opinion on how many crimes were committed by people belonging to the Roma population. However, police reports from Oslo indicated that there were connections between people and groups involved in begging and those involved in criminal activities.

The police and other authorities received a growing number of complaints from the public about groups of foreign citizens pitching camp and spending the night in parks and public places. Many complaints concerned litter and unsanitary conditions. Several complaints also concerned the high number of beggars, and the demanding way in which many beggars were conducting their business.

From this new situation arose a debate about possible ways to reduce disturbances in public places. Both the previous and the current government have as mentioned in the report responded to what has been perceived as serious challenges with suggestions for regulating or banning begging. The Commissioner mentions that Article 7 of the Police Act permits the police to intervene to stop disturbances of public order, but the starting point for authorities in Norway was the fact that this tool was not proving sufficient to curb the situation.

There have been other responses as well. One measure that was taken in Oslo was the creation of a special police group for investigating pick-pocketing in public places. The police in Oslo also carried out a number of other preventive measures, such as changing the rules for parking in certain areas, to avoid large groups of beggars congregating to spend the evenings and nights in their cars.

In paragraph 66, the Commissioner mentions the established grant scheme. Current rates show that 10 million NOK is equal to **1.186.000 €**.

Anti-gypsyism

As mentioned to the Commissioner in the meeting with the Ministry of Justice and Public Security, the challenges that came from an increase in begging and crime in public places was accompanied by a public debate that also included hateful expressions.

However, from a peak in 2012/2013, there has since been a notable easing of tensions which can be seen in the manner the public and politicians now voice their opinions about beggars. This coincides with a shift in the more low-key way that many beggars now conduct their business.

3. Human rights protection system

Reform of the National Institution for Human Rights

The new Act on the National Institution for Human Rights was adopted by the Parliament 28 April 2015. The Parliament introduced a few changes to the the working group's draft as presented in the Commissioner's report. The most significant amendment is the introduction in the leadership of the institution of a board in addition to the director. According to section 5 of the Act the board shall consist of five members elected by the Parliament for a four year term renewable once. Sections 6 states that the board shall have a general responsibility for the instiution's activities, economy and management, whereas the daily management of the institution and the activities is led by the director according to section 7. In the Act as adopted by the parliament it is also the board which elects the members of the Advisory Commission, whereas the director is appointed by the Parliament. The Act will enter into force 1 July 2015.