



**To the United Nations Committee on the Rights of Persons with Disabilities.
Office of the High Commissioner for Human Rights**

PALAIS DES NATIONS, 1211 GENEVA 10, Switzerland, ohchr-petitions@un.org

Referred documents:

Decision adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 46/2018*, CRPD/C/26/D/46/2018, 7 April 2022. Hereby referred to as “the Decision”.

Governments Response to the Decision of the Committee, VN/14031/2022, VN/14031/2022-UM-4, 7 October 2022. Hereby referred to as “the Response”.

Request for comments on the State Party report, United Nations Office of the High Commissioner for Human Rights, G/SO 213/48 FIN (1) FU, 4 April 2023.

With reference to the request, of 4 April 2023 by the United Nations Office of the High Commissioner for Rights, the Author S.K. provides following comments.

The conclusions and recommendations of the Committee, the Government’s Response and the Author’s views:

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Recommendation of the Committee:

“C. Conclusion and recommendations

10. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 19 and article 5 (1) and (2), read alone and in conjunction with article 19 of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation to:

- (i) Provide him with an effective remedy, including by reconsidering his application for personal assistance to ensure that he can exercise his right to live independently, in light of the Committee’s Views; “

Government’s Response:

“15. The Government notes that the Ministry of Social Affairs and Health instructed the municipality concerned by email, on 8 June 2022, regarding the obligation to provide S.K. with an effective remedy, including by reconsidering his application for personal assistance, to ensure that he can exercise his right to live independently in line with the Committee’s Decision.

16. In the email, the Ministry of Social Affairs and Health noted that by law a person is entitled to reapply for disability services by submitting a new application, which in the opinion of the Ministry of Social Affairs and Health would ensure that S.K. is provided with an adequate legal remedy for having his case reconsidered.”

The Author:

The decision of the CRPD Committee on the Author’s case was handed down on 7 April 2022. On the basis of e-mail correspondence from the municipality of Kirkkonummi, it is undisputed that the decision has reach the municipality on 22 April 2022 the latest.

In the e-mail of 22 April from the municipality of Kirkkonummi (social worker) to the Author was asked to submit a new application concerning the service, in order to have the matter dealt again. It was also noted that an evaluation of the need for services would be done, when the application was submitted to the municipality.

The Author’s legal guardian answered the municipality in the e-mail of 27 May 2022 about the conclusion of the CRPD Committee, including the one that the State should provide the Author with an effective remedy, including by reconsidering his application for personal assistance to ensure that he can exercise his right to live independently, in light of the Committee’s Views. The legal guardian submitted her understanding that a new application was not needed, but the municipality should proceed with previous applications etc.

In the e-mail of 8 June 2022 the municipality of Kirkkonummi answered that they have been in contact with the Ministry of Social Affairs and Health and that they have received advice from there that the Author can apply again. The municipality answered in detail, that they can not “lift up” the previous application.

In the e-mail of 13 June 2022 the legal guardian of the Author submitted that the municipality of Kirkkonummi should re-evaluate the matter, on the basis of the previous application.

Thus, the municipality of Kirkkonummi, based also on the advice of the Ministry of Social Affairs and Health, demanded for a new application and while the Author did not submit a new application, the municipality remained totally passive, with reference to both exploring the current service needs of the Author and to making new decisions.

The Author is of the opinion that a new application is not needed. First, the conclusions of the CRPD Committee are clear on that the State need to actively provide the Author legal safeguards as to alleviate the ongoing discrimination. The only way to do this is to come up with a new decision that would provide the Author with personal assistance. Second, the Finnish legislation is clear on that the municipality should also be aware of the service needs of a person with a severe disability. The service plan needs to be up to date constantly. Last service plan version of the Author is from around 2014. The Finnish legislation is also very clear on that new application is not needed in a situation like this. According to 34 § of the Social Care Act a matter of social care is registered when an employee of the municipality's social care becomes aware of a person in need of social services. It is clear that according to this, and noting that the municipality received the decision of the CRPD Committee, it would have needed to take prompt action to explore the current situation and service need of the Author, and to come up with a new decision, without an application from the Author.

Thus, the matter of personal assistant has come up on 22 April 2022 the latest, when the municipality of Kirkkonummi received the decision of the CRPD Committee.

The matter should be dealt with without undue delay, and within 3 months the latest, according to the Disability Services Act.

As the State and the municipality of Kirkkonummi remained totally passive, on 11 December 2022 the Author, with the help of legal counsel turned to seek help from the Non-Discrimination Ombudsman which the government office supervising the Non-Discrimination Act. The complaint was titled "The still ongoing discrimination of the Author within the municipality of Kirkkonummi", and thus the complaint was focused on non-discrimination. The Author asked the Non-Discrimination Ombudsman to evaluate if the actions of the municipality of Kirkkonummi were discriminatory and thus in violation of the Non-Discrimination Act. In addition, the Author asked the Non-Discrimination Ombudsman to give advice to the municipality of Kirkkonummi and to promote common understanding between the municipality and the Author. All this, with the aim to finally stop the ongoing discrimination of the Author on the basis of his disability. Furthermore, the Author noted as his purpose that the municipality of Kirkkonummi would compensate the ongoing human rights violation, and asked the Non-Discrimination ombudsman to facilitate even this aspect.

Note: A reform of the state organization in Finland took place on 1 January 2023 after that the municipalities do not have mandate to handle social services. From 1 January the social services of the people residing in the municipality of Kirkkonummi, are handled by the Western Uusimaa Wellbeing County.

The complaint to the Non-Discrimination Ombudsman was timely followed (after the County had received an inquiry for a statement by the Ombudsman) by a proposal from the County to have a meeting on the Author's situation and to update the service plan. Finally on 20 March 2023 there was a meeting at Kirkkonummi. The Author with the help of his legal guardian and legal counsel, submitted that he wants the same services that he has earlier applied, and that he still has the apartment in which he can not live because of the ongoing discrimination, thus the lack of the personal assistance service. It was also clear to all that no new application was submitted by the Author, nor was it asked by the social workers. The Author is now waiting for an updated service plan, and also for a decision that would, if positive, end the long ongoing discrimination of the Author on the basis of his disability.

As of the date of this submission, the Author has heard nothing from the County. The Non-Discrimination Ombudsman had asked for a statement from the County and the process is pending at the Ombudsman. But still, the Author is still a victim of an ongoing discrimination and unable to live independently.

The State has not provided the Author with an effective remedy. On the opposite, the State has been extremely passive, or, maybe more actively hesitant, to take any actions to update the service situation of the Author. It has come up with shoddy (and wrong) administrative law interpretations and thus neglected the matter totally. The State has not ensured that the Author can exercise his right to live independently, in light of the Committee's Views.

Recommendation of the Committee:

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- (ii) Provide adequate compensation to the author for the costs incurred in filing this communication;”

Government’s Response:

“19. The Government notes that neither the Convention nor the Optional Protocol to it include any articles on an obligation to provide monetary compensation payable to any author”.

The Author:

The State has not provide adequate compensation to the Author for the costs incurred in filing the communication to the CRPD Committee. The State has not even asked the Author on such costs. The Author submits that the State is obligated, already based on a general principle of international law, the deal with its human rights obligations honestly and fairly and to refrain from taking unfair advantage, which it is doing by totally denying to cover the human rights litigation costs.

Recommendation of the Committee:

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- (iii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population. “

“(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future, including by ensuring that its legislation on personal assistance and the manner in which it is applied by administrative institutions and domestic courts is consistent with the State party’s obligations to ensure that legislation does not have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of any right for persons with intellectual disabilities on an equal basis with persons with other types of disabilities when seeking to access personal assistance; “

Government’s Response:

“Publication and dissemination of the Decision 5. The Government received the Committee's Decision on 7 April 2022. 6. The Ministry for Foreign Affairs issued a press release concerning the Decision on 8 April 2022. The Decision of the Committee (in English) was annexed to the press release. The press release is available at the Ministry’s website. 7. Furthermore, by a letter dated 13 May 2022 (in Finnish) and 19 May 2022 (in Swedish), the Ministry for Foreign Affairs disseminated the Decision of the Committee to the following: the Prime Minister’s Office, the Ministry of Social Affairs and Health, the Constitutional Law Committee of Parliament, the Office of the Parliamentary Ombudsman, the Human Rights Centre, the Office of the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, Helsinki Administrative Court, the Non-Discrimination Ombudsman, the Ombudsman for Older People, the Advisory Board for the Rights of Persons with Disabilities VANE, the municipality of Kirkkonummi, the Government of Åland and, among others, civil society organisations. 8. The Ministry for Foreign Affairs has also provided translations of the Decision into Finnish and Swedish. 9. The ministries ensure that the agencies and other authorities subordinate to them are informed about the Decision. 10. The aforementioned concerning the publication and dissemination is a standard procedure in Finland.”

The Author:

The Author has no reason to not believe that the decision has been disseminated but it looks obvious that such dissemination has not been effective as such situations, including Author’s, still take place. There are no reports available on how the decision of the CRPD Committee has been adopted by authorities including the courts. As to the experience of the Author’s legal counsel, the effect has been minimal. For example, more extensive training to authorities and courts would have been needed to ensure maximum adoption of recommendations.

Recommendation of the Committee:

“(c) In particular, the Committee recommends the State party to amend the Disability Services Act to ensure that the resource-criteria requirement based on the beneficiary’s “ability” to determine the content and modalities of the required assistance is not an obstacle to the independent living of persons who require support in decision-making.”

Government’s Response:

“21. The Government notes that it has submitted, on 22 September 2022, a legislative proposal to Parliament on a new Act on Disability Services and Assistance (hallituksen esitys eduskunnalle vammaispalvelulaiksi ja siihen liittyviksi laeiksi, regerings proposition till riksdagen med förslag till lag om funktionshinderservice och till vissa lagar som har samband med den; HE 191/2022 vp.) which would implement the Committee's recommendation. In the drafting of the bill, due consideration was given to the obligations of the Convention and the Committee's General Comments. Following the communication of the Committee's Decision, special attention was paid in the drafting to grounds the Committee presented in its Decision. 22. The proposed new Act seeks to enable societal equality, inclusion and participation and to prevent or remove the obstacles to their realisation for persons with disabilities. 23. The proposed new Act also aims to support independent living and the realisation of self determination, and to ensure access to services that meet the individual needs of persons with disabilities, and are adequate and of good quality. 24. In the proposed new Act on Disability Services and Assistance, the provision of special services would be based on a need for assistance or support due to functional restrictions caused by long-lasting disability or illness. However, a person's diagnosis would not determine their access to services. Instead, the access to services for persons with disabilities would be provided in one common act regardless of the type of disability. 25. As a rule, service needs would be mapped together with the client and, where necessary, their family, taking into account the client’s individual needs and wishes. An individual client care plan would then be drawn up, providing the basis for granting the services meeting individual needs. 26. According to the government proposal on the Act on Disability Services and Assistance, personal assistance could be provided if the person with disability can independently or with support formulate and express his or her will concerning the content of the assistance using sign language or another method of communication suited to the person. Alternatives to personal assistance would include special support for participation for those persons with disabilities who need individual support from another person for participation. 4 (4) 27. Unlike personal assistance, the special support for participation would involve, where necessary, guidance provided by a healthcare or social welfare professional, a person with an applicable qualification or a person who otherwise has the appropriate competence to provide such guidance. These provisions seek to offer persons with disabilities a range of alternative services in order to ensure equality. 28. The proposal on the Act on Disability Services and Assistance includes provisions on supported decision-making to enable persons with disabilities to make decisions about their life.”

The Author:

A new Disability Services Act will enter into force on 1 October 2023. Thus, it would have been a great opportunity for the legislature to take the decision of the CRPD Committee seriously and to abolish such provision that prevent especially persons with intellectual disabilities from living independently with the help of personal assistance. However, this was not the case.

According to 9 § of the new Disability Services Act the prerequisite for being eligible for personal assistance is the person with a disability is able, independently or with support, to form and express her preferences of the content of the help. While the wording of the provision is a bit different, it can be read both in the text and the *travaux préparatoires* that the intention of the legislator was not to

widen the scope of disability services, including personal assistance in particular, to cater for independent living of persons with intellectual disabilities (in particular).

The State highlights in its Response parts of the new legislation that have already been there in place in the current legislation. For example, also earlier it has been the goal of the Disability Services Act to enable societal equality. Disability Services Act has also earlier been non-diagnosis based, this is not news, in particular when it comes to personal assistance. Personal assistance has not been diagnosis based before, according to law, but the resource-criteria, which is practically the same in the new law, has made the service of personal assistance discriminatory against persons with intellectual disabilities. Also earlier it was possible to meet the resource-criteria with the help of, for example, an interpreter. But still, the resource-criteria has had and has today, a very high threshold, in particular when it comes to receiving the service to support independent living and daily activities, not just leisure activities. Thus, in its Response, the State had not been able to explain who the recommendations of the CRPD Committee have been incorporated in the new Disability Services Act. This is obviously an impossible task, because the recommendations have not been taken into account.

Other, new, services in the new Disability Services Act (special support for participation, supported decision-making) do not provide redress for such needs of personal assistance to daily activities and independent living in one's own apartment, that the Author and many more persons with intellectual disabilities have. For example special support for participation is meant for leisure activities and can be granted as very minimum hours.

CONCLUSIONS

The enforcement by the State, or to be more precise, the non-enforcement of the decision by the CRPD Committee concerning the Author's human rights, is a good example of the most significant limitation of international human rights law, namely the lack of effective enforcement mechanism. The Author however extends his gratitude of having the possibility to express his views on the Government's Response and obviously welcomes every views and actions within the mandate of the receiver of this response to facilitate the better realization of his human rights.

Thus, after over a year from the groundbreaking decision from the CRPD Committee, the Author is in the same situation where he has been for almost 10 years. He has not been granted personal assistance to live independently in his own apartment. Thus, he is not able to live independently in his own apartment with the help of personal assistance. It remains unclear to the Author, what are the motives and incentives of the State to treat its own citizens like this, after full and bona fide ratification of the CRPD to its legal system (with pride).

The Republic of Finland, the municipality of Kirkkonummi, nor the Western Uusimaa Wellbeing County has not even apologized the Author for the serious human rights violation that has taken place and still is.

On behalf of the Author, Turku, Finland, 7 May 2023



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