

# The Equality and Anti-Discrimination Ombud's input to the CRPD Committee's tenth pre-session

The Equality and Anti-Discrimination Ombud's remit includes monitoring that Norwegian law and administrative practice are in accordance with e.g. the United Nations Convention on the Rights of Persons with Disabilities, see the Equality and Anti-Discrimination Ombud Act Section 5.<sup>1</sup>

In its supplementary report from 2015 to the United Nations Committee on the Rights of Persons with Disabilities, the Ombud described the situation in, and made recommendations for, eight areas of society. In this document, the Ombud will describe the most relevant changes that have taken place in these areas since 2015. The Ombud will also recommend questions that the Committee should ask the Norwegian authorities in its 'list of issues' and during the examination.

## Summary of main challenges

- 1) The Convention has not been incorporated, the Optional Protocol has not been ratified, and the interpretative declarations have been upheld.
- 2) Disabled people are not sufficiently involved in the forums where the premises for legislation and policy are set.
- 3) There is reason to believe that the authorities and service providers have little awareness and knowledge of the Convention.
- 4) Knowledge and documentation of discrimination are inadequate, including of its causes and extent and effective countermeasures.
- 5) Disproportionate and harmful coercion is still used in relation to people with intellectual impairments and mental patients.
- 6) The current guardianship system does not provide the supported decision-making that the Convention requires.
- 7) The authorities do not do enough to prevent, protect against and prosecute violence against and abuse of disabled people.
- 8) The authorities do not do enough to prevent, protect against and prosecute harassment and hate crime against disabled people.
- 9) The authorities' measures to increase labour market participation and inclusion have not been sufficiently successful.

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<sup>1</sup> The Ombud's remit also includes providing guidance on anti-discrimination legislation and working to promote genuine equality and prevent discrimination, cf. the Equality and Anti-Discrimination Ombud Act Sections 1 and 5. As of 1 January 2018, the Ombud no longer considers complaints concerning discrimination. Such cases are now dealt with by the Anti-Discrimination Tribunal.

- 10) There is still a long way to go until society can be said to be universally designed. There are still children who cannot attend their local school because it is physically inaccessible to them.
- 11) There is still a long way to go before disabled people have equal access to information, goods and services.

## The conditions for the CRPD in Norway

The Ombud's supplementary report pp. 12–16

Since 2015, the Norwegian authorities have taken several steps to facilitate a human rights-based approach to disability. For example, committees and expert groups have been appointed to examine and assess the rights of people with intellectual impairments,<sup>2</sup> the regulations relating to coercion in the health and care sector,<sup>3</sup> and how to ensure inclusive education.<sup>4</sup> How these issues relate to Norway's human rights obligations, including the CRPD, has had a central place in the work of several of these committees. Some amendments have also been made to legislation in the areas of coercion and anti-discrimination, and a strategy has been adopted to combat hate speech that also covers disability.

However, Norway still lacks a comprehensive policy to dismantle barriers created by society, combat prejudice and discrimination, and involve disabled people in policy-making. The report from the expert committee charged with looking into the rights of people with intellectual impairments (NOU 2016: 17) concluded that Norwegian legislation and practices deviate from the requirements of the Convention in several areas of society. The committee made a number of recommendations. The authorities have followed up the committee's report by initiating work on a strategy plan for equality for disabled people, and it was decided in June 2018 that a new white paper will be issued on the rights of people with intellectual impairments. Other than this, the report has not resulted in much concrete action.

The Ombud would like to emphasise our concern that disabled people are not sufficiently involved in the forums where the premises for legislation and policy are set. Since our 2015 report, several committees have been appointed and work on reports has been initiated without involving disabled people. For example, no disabled persons were included in the expert group for children and adolescents with special needs, which was charged with submitting a report on special needs education. Nor were any disabled persons included in the expert group appointed to analyse developments in employment in Norway. A new forum for cooperation at the central level has yet to be established.

The Ombud is also concerned about the lack of knowledge and awareness of the Convention and that the Convention is not used as the instrument it is intended to be. Norway has upheld its interpretative declarations, and despite the fact that it was particularly relevant to incorporate the Convention in connection with the amendments of the anti-discrimination legislation in 2017, the authorities did not propose incorporation. This weakens the Convention's position as a legal instrument. It is also reasonable to assume that

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<sup>2</sup> Official Norwegian Report NOU 2016: 17 På lik linje

<sup>3</sup> The legislative committee's report will be published in 2019.

<sup>4</sup> <http://nettsteder.regjeringen.no/inkludering-barn-unge/files/2018/04/INKLUDERENDE-FELLESSKAP-FOR-BARN-OG-UNGE-til-publisering-04.04.18.pdf>

incorporation of the Convention could have raised awareness of the human rights of disabled persons. A new study of the municipalities' and county governors' work to implement the Convention shows that municipalities still do not know much about it.<sup>5</sup>

Norway has not ratified the Optional Protocol on the individual right to lodge complaints. Among the grounds given by the authorities are the composition of the Committee and that its work and interpretation methods are not regarded as suited to ensuring a satisfactory consideration of individual complaints. It is also argued by the authorities that, in some areas, the Committee applies a broad interpretation of the Convention that is not in agreement with how Norway and other state parties interpret it.<sup>6</sup>

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

1. What will be the main content of the strategy plan for equality for disabled people, and how will the plan help to safeguard their human rights?
2. How will the authorities ensure that disabled people participate and are involved in decision-making processes and forums where the premises for legislation and policy are set, both in general and in matters that concern disabled people in particular?
3. What strategies and measures have been implemented or are planned to combat prejudice and discrimination of disabled people?
4. What measures have the Norwegian authorities implemented to incorporate training in awareness of the CRPD and human rights in schools, the public administration, research environments, and in educational programmes for teachers, healthcare professionals, media, the police and the judiciary?
5. Why has the CRPD still not been incorporated into Norwegian law? How do the authorities believe that this affects the Convention's position in Norwegian law? In how many cases have the courts applied the Convention? What importance have the courts attached to the Convention and the Committee's statements?
6. Why have the authorities not ratified the Optional Protocol?

## Information and documentation

Article 31 – the Ombud's report pp. 17–19

The authorities still lack statistics and other documentation of the prevalence and causes of discrimination of disabled people. The authorities also lack knowledge about what constitutes effective anti-discrimination measures. This lack of knowledge makes it difficult to assess the Norwegian State's implementation of the Convention.

The Ombud would like to reiterate the need to map the nature and extent of discrimination against disabled people in working life. The Ombud also sees a need for knowledge about barriers to equality in education, in housing policy and in the transport sector, hate crime, domestic violence and about the possibilities for living independent lives.

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<sup>5</sup> <http://senterforlikestilling.org/wp-content/uploads/2018/05/Arbeidsnotat-CRPD-150218.pdf>

<sup>6</sup> Report No 39 to the Storting (2015–2016) p. 62 ff.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) How do the authorities ensure that they have the knowledge, including statistics, necessary to develop targeted and effective measures to promote equality and combat discrimination?
- 2) How do the authorities ensure research and documentation of discriminatory barriers and how they can be removed in order to fulfil the human rights of disabled people?

## Right to liberty, personal security and equal access to health care for people with psychosocial impairments

Articles 14, 15 and 25 – the Ombud’s report pp. 21–27

Norway's interpretative declarations to Articles 14 and 25 of the CRPD are upheld. A Supreme Court judgment from 2016 confirms the Ombud's concerns that the interpretative declarations mean that, in reality, people with psychosocial impairment are prevented from effectively using the rights in the CRPD to challenge the use of coercion in mental health care.<sup>7</sup>

In 2017, the Storting adopted an additional condition concerning lack of capacity to consent in order to apply and implement compulsory mental health care.<sup>8</sup> Coercion can now only be used for *treatment purposes* if ‘the patient, on account of a physical or mental disorder, senile dementia or mental retardation, is clearly incapable of understanding what the consent entails’.<sup>9</sup> At the same time, stricter requirements were adopted for giving grounds for decisions to treat patients without their consent.<sup>10</sup>

The Ombud regards the additional condition as a step in the right direction as regards increasing self-determination and improving the due process protection of people with psychosocial impairments. The number of committals to mental health care facilities has decreased since this provision came into force.<sup>11</sup> At the same time, the Ombud believes that there may be a risk that, in practice, people who were held to meet the criterion ‘serious mental disorder’ will also be the ones who are deemed to lack capacity to consent. Investigations carried out by the Parliamentary Ombudsman’s National Preventive Mechanism have found that, in many decisions, the references to the requirement concerning lack of capacity to consent were brief and standardised. In several cases, the grounds given

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<sup>7</sup> HR-2016-1286-A. The judgment states that there is ‘no basis for concluding that the Convention prohibits the committal and involuntary treatment of mentally ill persons on a general basis, provided that this complies with the criteria that follow from the Mental Health Care Act.’ The judgment makes reference to the interpretative declaration to Article 14 and page 16 of Proposition No 106 to the Storting (2011–2012), where it is stated that it was not deemed necessary in connection with the ratification to amend the Norwegian Mental Health Care Act’s provisions on coercion.

<sup>8</sup> The Mental Health Care Act Sections 3-2, 3-3 and 4-4

<sup>9</sup> Patient and Users Rights Act Section 4-3. Circular IS-1/2017 elaborates on how the requirement concerning lack of capacity to consent is to be understood <https://helsedirektoratet.no/retningslinjer/psykisk-helsevernloven-og-psykisk-helsevernloven-med-kommentarer/seksjon?Tittel=kapittel-3-etablering-og-11227#%C2%A7-3-3.-vilk%C3%A5r-for-vedtak-om-tvungent-psykisk-helsevern>

<sup>10</sup> The Mental Health Care Act Section 4-4a

<sup>11</sup> <https://helsenorge.no/Kvalitetsindikatorer/psykisk-helse-for-voksne/tvangsinnleggelse-i-psykisk-helsevern-for-voksne>, <https://www.vg.no/nyheter/innenriks/i/kaG9e9/faerre-tvangsinnleggelse-etter-ny-lov>

for a patient's lack of capacity to consent were lack of 'insight into his/her illness', without any description being provided of the underlying assessment or circumstances.<sup>12</sup>

The Ombud is also concerned about whether persons who can no longer be treated against their will pursuant to Section 4-4 will in practice be ensured adequate voluntary health care. The authorities have issued instructions to all regional health authorities requiring them to establish medication-free treatment options.<sup>13</sup> Such services have now been established in all the health regions,<sup>14</sup> but, in the Ombud's opinion, it is still unclear what these services will comprise and who will be able to use them. The consequences of the new provisions regarding capacity to consent and how they are practised should therefore be evaluated. In particular, the authorities should examine what voluntary treatment services have been made available and who has access to them.

The Ombud is also concerned about how the right to self-determination is fulfilled for people who are deemed to lack capacity to consent and can thus still be subjected to involuntary treatment pursuant to Section 3-3. Moreover, the Ombud is concerned about how the condition set out in Section 4-4, that there must be a 'great likelihood' that the treatment will have a positive effect, is practised. Investigations carried out by the Parliamentary Ombudsman's National Preventive Mechanism have shown that the assessments in many decisions seemed brief and standardised. The decisions often lacked adequate descriptions of the actual circumstances and assessments of whether the other conditions were met.

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The Parliamentary Ombudsman's National Preventive Mechanism has also made findings that show that patients are at high risk of inhuman or degrading treatment in connection with ECT being administered without consent. The Parliamentary Ombudsman has concluded that, as this practice has developed, it can be seen as a circumvention of the legislator's intention to prohibit ECT without the consent of the patient.<sup>16</sup> The authorities still do not have reliable figures for the use of ECT without consent. The health authorities' mapping showed that 30% of the institutions asked had administered ECT on grounds of necessity.<sup>17</sup>

The Ombud would also like to draw the Committee's attention to the widespread use of isolation of inmates with mental disorders in Norwegian prisons.<sup>18</sup> The UN Committee against Torture (CAT) has expressed concern about 'the severe insufficiency of mental health care services and of the capacities of inpatient psychiatric wards to accommodate prisoners

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<sup>12</sup> See, e.g., <https://www.sivilombudsmannen.no/wp-content/uploads/2018/05/Reinsvoll-psykiatriske-sykehus-2018.pdf>

<sup>13</sup> <https://www.regjeringen.no/no/dokumenter/medikamentfrie-tilbud-i-psykisk-helsevern---oppfolging-av-oppdrag-2015/id2464239/>

<sup>14</sup> <http://www.erfaringskompetanse.no/ressurs/medisinfrie-behandlingstilbud-oversikt-medisinfrie-behandlingstilbud-helseforetakene-pr-01-04-17/>

<sup>15</sup> See, e.g., <https://www.sivilombudsmannen.no/wp-content/uploads/2018/05/Reinsvoll-psykiatriske-sykehus-2018.pdf>

<sup>16</sup> [https://www.sivilombudsmannen.no/wp-content/uploads/2017/04/FOREBENH\\_%C3%85RSMELDING\\_2017\\_WEB.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2017/04/FOREBENH_%C3%85RSMELDING_2017_WEB.pdf)

<sup>17</sup> <https://helsedirektoratet.no/Lists/Publikasjoner/Attachments/1382/ECT.pdf>, page 26

<sup>18</sup> Innsatt og utsatt – rapport om soningsforholdene til utsatte grupper i fengsel. The Equality and Anti-Discrimination Ombudsman, 2017

with serious mental illnesses, which often result in their placement in isolation, including security cells, which leads to a further deterioration of their health'.<sup>19</sup>

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) How do the authorities ensure that people with psychosocial impairments' right to self-determination in health care is fulfilled in law and in practice?
  - a) How do the authorities ensure that health services are provided on the basis of free and informed consent and taking into consideration the patient's wishes and preferences, regardless of diagnosis and capacity to consent? How will persons currently subject to forced medication (Section 4-4) be guaranteed a satisfactory treatment option that does not entail such coercion?
  - b) How will the authorities ensure that patients do not risk being treated with ECT in violation of their human rights?
  - c) What documentation exists of the extent of ECT and pharmacological treatment without the patient's consent?
  - d) How do the authorities ensure that people who exercise authority and control under the Mental Health Care Act's provisions regarding coercion are educated about self-determination?
- 2) What steps will the authorities take to ensure that prison inmates with serious mental illnesses are not isolated?
- 3) What steps will the authorities take to ensure that people with serious mental illnesses receive adequate and satisfactory health care in prison?

## Freedom from coercion for persons with intellectual impairments

Articles 14, 15, 17 and 25 – the Ombud's report pp. 28–32

The law still permits the use of coercion against people with intellectual impairments to prevent serious harm, including satisfying fundamental needs, see the Health and Care Services Act Chapter 9.

The number of administrative decisions to use coercion against people with intellectual impairments has continued to increase. The Norwegian Board of Health Supervision is concerned about this development. It believes that these figures reflect an actual increase in the number of persons subjected to coercion pursuant to Chapter 9. The reason for the increase remains to be determined. The number of dispensations from the educational requirement for health personnel who implement decisions to use coercion remains high. In 2017, dispensations from the educational requirement were granted in connection with 1093 of 1503 coercion decisions made pursuant to the Health and Care Services Act.<sup>20</sup>

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<sup>19</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fNOR%2fCO%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fNOR%2fCO%2f8&Lang=en)

<sup>20</sup> The Norwegian Board of Health Supervision's annual report for 2017, p. 55.  
<https://www.helsetilsynet.no/globalassets/upload/Publikasjoner/aarsrapporter/aarsrapport2017.pdf/>

In its report on the rights of people with intellectual impairments, the committee concluded that the law does not adequately respect and guarantee the right to freedom and self-determination of people with intellectual impairments. The committee was of the opinion that the right to use coercion against people with intellectual impairments under the health and care services legislation is in violation of the CRPD Articles 12, 14 and 25.<sup>21</sup> The above-mentioned committee will also review the rules regulating the use of coercion against people with intellectual impairments under the Health and Care Services Act.

In connection with a PhD thesis on the CRPD and self-determination, a study was carried out of the use of coercion pursuant to the Health and Care Services Act Chapter 9. A review of 121 administrative decisions and interviews with case officers confirmed the Ombud's concern that the protection of intellectually impaired people's right to self-determination is weak.<sup>22</sup>

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) How will the authorities ensure that, in connection with services, people with psychosocial impairments' right to self-determination in services is fulfilled in law and in practice?
  - a. How do the authorities ensure adapted information and involvement when administrative decisions are made?
  - b. How do the authorities ensure that people who exercise authority and control under the provisions of the Mental Health Care Act Chapter 9 have received sufficient training in self-determination?
  - c. How do the authorities ensure that the people who implement administrative decisions to use coercion meet the statutory educational requirement?
  - d. How do the authorities ensure effective arrangements for control and review of administrative decisions to use coercion?

## Right to exercise legal capacity: Guardianship

Article 12 – the Ombud's report pp. 31–36

Norway's interpretative declaration to the CRPD Article 12 is upheld. The interpretative declaration has a bearing on how much weight the courts attach to the Convention and the Committee's statements. In a ruling from 2016, the Supreme Court of Norway found that the CRPD Article 12 does not rule out the possibility of fully depriving a person of his/her legal capacity with regard to financial affairs.<sup>23</sup> The Supreme Court did not go into detail about what weight should be given to the Convention and the CRPD Committee's statements regarding Article 12, because Norway's interpretative declaration means that 'Article 12 must, in my opinion, mean that the Convention should be given limited importance when determining the scope of the Norwegian Guardianship Act Section 22 second paragraph in light of international law'.

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<sup>21</sup> Official Norwegian Report NOU 2016: 17 På lik linje

<sup>22</sup> Skarstad, Kjersti *Ensuring Human Rights for Persons with Intellectual Disabilities? Self-determination Policies and the Use of Force in the Case of Norway*. *International Journal of Human Rights*, 2018.

<sup>23</sup> HR-2016-2591-A



Two recent investigations into how the Guardianship Act is practised uncovered several of the same shortcomings as the Ombud pointed out in its report to the CRPD Committee in 2015.<sup>24</sup> The 2018 report from the Office of the Auditor General of Norway uncovered the following, among other things:

- In two-thirds of cases, the descriptions of the guardianship role were general, and most of the mandates were similarly worded. The failure to adapt guardianship mandates to the individual in question gives guardians wide-ranging powers and weakens the due process protection of those under guardianship.<sup>25</sup>
- In more than half the cases, it was not documented whether the county governor's office had interviewed the person placed under guardianship before making the decision. It was not always clear whether the person placed under guardianship had understood what guardianship entails.<sup>26</sup>
- The county governors do not have an overview of the training of guardians and do not have a uniform system for supervising them. No instructions have been prepared for the county governors' supervision.
- No guidelines have been prepared for individual adaptation and capacity to consent.

The Storting has decided that the Norwegian Civil Affairs Authority will follow up the recommendations of the Office of the Auditor General. In brief, the recommendations are to ensure training and supervision, and to introduce guidelines.

The above-mentioned PhD thesis studied 167 guardianship decisions concerning people with intellectual impairments made by one county governor's office. It could only be documented in 13 per cent of cases that the county governor's staff had talked to the person placed under guardianship. None of the guardians' mandates specified the needs of the person placed under guardianship. Instead, the mandates were broad and general, and in 92 per cent of the cases, the mandate covered both financial and personal affairs.<sup>27</sup> Nearly all of the cases in the sample concerned voluntary guardianship (Guardianship Act Section 20), but the person in need of a guardian was deemed to lack capacity to consent in half of these cases. According to the study, no further assessment of the capacity to consent was carried out in relation to the scope and content of the guardianship or when choosing a guardian.<sup>28</sup> The decision regarding capacity to consent in one area was used as the basis for decisions in other areas as well, which resulted in a general deprivation of the right to self-determination.<sup>29</sup> The assessment of capacity to consent was based on non-standardised capacity assessments based on medical certificates, they varied greatly in length, and in some cases, the conclusions seemed arbitrary.<sup>30</sup>

The Guardianship Act has been unclear as regards self-determination for people *who lack capacity to consent*. It has been unclear whether the Act permits ordinary (voluntary)

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<sup>24</sup> The Office of the Auditor General's investigation into how the guardianship reform has been implemented. Document 3:6 (2017–2018) and Skarstad 2018.

<sup>25</sup> The Office of the Auditor General's report p. 79

<sup>26</sup> The Office of the Auditor General's report p. 9

<sup>27</sup> Skarstad page 16

<sup>28</sup> Assessments of capacity to consent are carried out by the county governor, mainly based on a medical certificate.

<sup>29</sup> Skarstad, page 16

<sup>30</sup> Skarstad, K. *Vergemålsordning på kollisjonskurs med menneskerettighetene*, Juristkontakt 3/2018



guardianship to be established pursuant to Section 20 in cases where a person who is deemed to lack capacity to consent objects to being placed under guardianship, or whether the guardianship must in such case be established by court pursuant to the Guardianship Act Section 22. The Ministry of Justice's Legislation Department has now issued an interpretative statement on this matter, which is relevant when interpreting this provision.<sup>31</sup> Based on i.a. Article 12 No 4, the Legislation Department states, that, if a person objects to being placed under guardianship, ordinary guardianship cannot be established, regardless of whether or not the person is deemed to lack capacity to consent. If a person is to be placed under guardianship against his or her will, this must be done by depriving them of their legal capacity in accordance with Section 22 (involuntary guardianship). However, the Legislation Department states that it is not always necessary to carry out a broad assessment of a person's wishes to determine whether the person accepts or objects to being placed under guardianship. Unless there are particular indications to the contrary, the Legislation Department finds it highly probable that that the assistance and support system that an ordinary guardianship entails will not be against the wishes of the person whom one is considering placing under guardianship.<sup>32</sup>

The interpretative statement contains certain clarifications that we hope may lead to the self-determination of persons without capacity to consent being better safeguarded. However, The Ombud is of the opinion that the Act must be amended. Until a legislative amendment has been adopted, the authorities should closely monitor whether the statement by the Legislation Department results in the Act being interpreted more in accordance with the CRPD, so that wishes and preferences are respected in practice. There may also be reason to monitor whether this interpretation of the legislation results in an increase in the number of people deprived of their legal capacity to act pursuant to the Guardianship Act Section 22.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

1. How do the authorities ensure that the right to supported decision-making and self-determination is fulfilled in law and in practice?
  - a) Why is the interpretative declaration to Article 12 upheld?
  - b) How will the authorities reform the guardianship system to ensure that the law is in line with the CRPD and suited to ensuring self-determination in practice?
  - c) What measures will be implemented to ensure supported decision-making tailored to the needs of the individual, and that supported decision-making is based on self-determination and real wishes and preferences, also for people who are deemed to lack capacity to consent?
  - d) How do the authorities ensure that assessments of individuals' capacity to consent is not arbitrary and that their right to self-determination is respected?
  - e) How do the authorities ensure that guardians receive training in how to safeguard the right to self-determination?

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<sup>31</sup> <https://www.regjeringen.no/no/dokumenter/-20-og-33---vergemalsloven--20-og-33---samtykkekompetanse/id2594556/>

<sup>32</sup> According to the Legislation Department, Section 33 of the Guardianship Act concerning the guardian's right to carry out transactions on behalf of the person placed under guardianship shall be interpreted correspondingly. This means that the guardian cannot carry out transactions that go against the wishes and preferences of the individual. As the Ombud understands the matter, such transactions would require the individual to be deprived of his/her legal capacity to act by the courts pursuant to the Guardianship Act Section 22.

- f) How do the authorities ensure frequent supervision of guardians and the guardianship authorities?
- g) To what extent have the authorities considered whether the current special provisions in, for example, the Sterilization Act and the Abortion Act are in compliance with Article 12? To what extent is the self-determination of persons who lack capacity to consent ensured in decisions relating to, for example, abortion and sterilisation? The Committee should request the Norwegian authorities to obtain information about the number of cases and documentation of how such cases are dealt with in practice.

## Freedom from violence and abuse

Article 16 – the Ombud’s report pp. 37–40

As referred to in our report from 2015, there are shortcomings in the services provided for disabled adults who are victims of violence and abuse. The Ombud has long been concerned about whether the investigation of cases of abuse and violence against persons with intellectual impairments is satisfactory, and is also concerned that the criminal justice system does not have sufficient expertise in this field.<sup>33</sup> Official Norwegian Report NOU 2016:17 found that the police and the courts lack sufficient expertise in examining and dealing with people with intellectual impairments in the criminal justice process. According to the committee, this weakens the due process protection of people with intellectual impairments throughout the legal system.<sup>34</sup> In its concluding observations to Norway in 2017, the Committee on the Elimination of Discrimination against Women (CEDAW) recommended that the authorities ‘*evaluate the issue of investigations and prosecutions of cases involving sexual violence against women with cognitive and psychosocial disabilities*’.

A 2017 survey of municipal notification systems for uncovering violence and abuse showed that only a third of the municipalities included had notification and reporting systems in place specifically aimed at vulnerable adults. Only one in four municipalities had action plans against domestic violence specifically aimed at vulnerable adults.<sup>35</sup> The Ombud is therefore pleased to note that the authorities have now developed a new model, called TryggEst, for the protection of persons who are less able to protect themselves. So far, however, the model is a pilot project with twelve municipalities/city districts participating. In the Ombud's view, there is still a risk that many municipalities are failing to ensure that systematic efforts are being made to combat violence and abuse. In the Ombud's opinion, as long as it is not seen as compulsory to have guidelines in place for preventing and dealing with violence and abuse, there is a risk that such guidelines will not be prepared and implemented.<sup>36</sup> The Ombud is also concerned that students and employees, for example in the health and care services etc., are still not receiving sufficient and systematic training in the topic of violence and abuse.

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<sup>33</sup> The Ombud has received two complaint cases (14/297 and 11/83) and several guidance cases concerning this issue. In June 2018, the Ombud sent another enquiry to a police district after two cases involving abuse of two persons with intellectual impairments were dropped.

<sup>34</sup> NOU 2016:17 På lik linje p. 177

<sup>35</sup> Vislie C., and Gundersen T., *Vern av risikoutsatte voksne Kommunens varslingsystemer for avdekking av vold og overgrep*.

<sup>36</sup> Pursuant to a new provision in the Health and Care Services Act Section 3-3a, the municipalities shall take steps to enable the health and care services to prevent, uncover and avert violence and sexual abuse. In the Ombud's view, this does not entail a concrete duty to have guidelines or other concrete measures in place.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

1. What measures have been implemented to strengthen the due process protection of and services provided for disabled victims of violence and abuse?
  - a. What measures are being implemented to spread information about the support system so that it reaches particularly vulnerable persons?
  - b. How do the authorities currently ensure that all municipalities have the resources and tools necessary to prevent and uncover violence and abuse, that guidelines prepared by the authorities are used in practice and that the municipalities have good procedures in place for offering help?
  - c. How do the authorities ensure that the municipalities provide systematic training to everyone who works in services for particularly vulnerable persons, for example people with intellectual or psychosocial impairments?
  - d. How do the authorities ensure that crisis shelters are accessible to everybody, regardless of impairments?

## Freedom from bullying, harassment and hate crime

Article 16 – the Ombud’s supplementary report pp. 40–44

A research report from 2016 on hate speech targeting disabled people shows that a third of the respondents reported having experienced hate speech.<sup>37</sup> Few cases of hate crime against disabled people are reported to the police. In 2017, only 18 offences were registered as hate crime targeting disabled people in Norway as a whole.<sup>38</sup> The Ombud is concerned that many cases could go unrecorded.

The Ombud is also concerned that cases that could have been coded as hate crime are investigated as criminal offences against a defenceless person. The Ombud believes that it is necessary to raise awareness of hate crime against disabled people and to strengthen people's understanding of what forms such crime can take. The Ombud considers it particularly important to better equip the police and prosecuting authorities to identify and prosecute this type of crime. The Ombud also believes that further research on hate crime targeting this group is necessary.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) How will Norwegian authorities ensure that hate crime targeting disabled people is identified and uncovered?
- 2) How will the Norwegian authorities increase this group’s trust so that more cases are reported?

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<sup>37</sup> Olsen, T. et al. *Hatytringer. Resultater fra en studie av funksjonshemmedes erfaringer*. Nordland Research Institute, 2016 <http://nordlandsforskning.no/getfile.php/1315203-1491293801/Opplevelser%20i%20nord/NF%206-2016%20opplag%202.pdf>

<sup>38</sup> <https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/anmeldelser-hatkriminalitet/anmeldelser-med-hatmotiv-2017.pdf>, page 10

## Right to work and employment

Article 27 – the Ombud’s report pp. 45–51

The Ombud has considered several cases that show that disabled people are discriminated against in working life. As referred to in our 2015 report, higher education is very important to disabled people in relation to labour force participation.<sup>39</sup> It therefore gives cause for concern that a new report from the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) on discriminatory barriers in education shows that disabled students encounter various barriers in higher education.<sup>40</sup>

The authorities have not implemented sufficiently effective measures to combat stereotypes in the labour market or to dismantle barriers to labour force participation. The new Equality and Anti-Discrimination Act continues and elaborates on employers' activity and reporting obligation. However, it gives cause for concern that these obligations are still not widely known among employers, and the authorities have not done enough to make them known. The new Act does not require universal physical and IT design in existing workplaces.

The Government’s inclusion campaign started in 2018. The goal is that five per cent of new state employees shall be people with impairments or ‘gaps in their CV’. The Ombud takes a positive view of the government cooperating with employers to increase labour market participation. Nevertheless, the authorities do not do enough to ensure that employers fulfil their obligation to make active, targeted and systematic efforts to promote equal opportunities and combat discrimination in working life.

The Norwegian Labour and Welfare Administration (NAV) administers a comprehensive range of policy instruments aimed at including disabled people in the labour market. The Ombud has the impression that the cooperation between NAV and individual employers does not function well enough, and that the measures taken are therefore not proving sufficiently successful. A 2018 report from the Office of the Auditor General of Norway on the use of NAV labour market schemes confirms that there are weaknesses in NAV's follow-up of participants in such schemes.<sup>41</sup>

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) What measures have been implemented or are planned to combat stereotypes and prejudice toward disabled people in the labour market?
- 2) How are the authorities ensuring that employers fulfil their obligation to make active, targeted and systematic efforts to promote equality in practice? How do the authorities ensure that employers are sufficiently aware of their activity obligations under the Equality and Anti-Discrimination Act?

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<sup>39</sup> [https://www.bufdir.no/Statistikk\\_og\\_analyse/Nedsatt\\_funksjonsevne/Arbeid/](https://www.bufdir.no/Statistikk_og_analyse/Nedsatt_funksjonsevne/Arbeid/)

<sup>40</sup> [https://www.bufdir.no/Global/Barrierer\\_i\\_hoyere\\_utdanning\\_for\\_personer\\_med\\_nedsatt\\_funksjonsevne.pdf](https://www.bufdir.no/Global/Barrierer_i_hoyere_utdanning_for_personer_med_nedsatt_funksjonsevne.pdf)

<sup>41</sup> The Office of the Auditor General’s investigation into the management and use of the NAV labour market schemes, Document 3:5 (2017-2018)  
<https://www.riksrevisjonen.no/rappporter/Sider/Arbeidsmarkedstiltak.aspx>

- 3) How do the authorities use their role as employer in a way that ensures that their own goals and guidelines for quality are implemented in practice in recruitment and in other personnel policy areas?
- 4) Will the authorities investigate how universal design of the physical environment and universal IT design in working life can be implemented and draw up a strategy for doing so?
- 5) What measures have been implemented or are planned to promote research on and documentation of the nature and extent of discrimination of disabled people in working life?

## Right to accessibility: Universal design of existing buildings, with school buildings as an example

Article 9 – the Ombud’s report pp. 52–55

Many disabled pupils are still being denied the possibility of attending their local school because it is not physically accessible to them. Bufdir has proposed a roadmap to universal design of primary and lower secondary schools. The goal of upgrading existing buildings and outdoor areas to universal design standard, with school buildings being prioritised, must be followed up with a binding and realistic plan.

Previous action plans for universal design of society in general have aimed to achieve ‘a universally designed Norway by 2025’.<sup>42</sup> This objective is not continued in the Government’s new Action Plan for Universal Design 2015–2019.<sup>43</sup> In the Ombud’s opinion, the new plan is not binding and lacks concrete measures with earmarked funding.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) Will the authorities introduce regulations containing deadlines for the universal design of existing buildings and prioritise primary and secondary schools in that connection?
- 2) Will the authorities ensure that an escalation plan is adopted for universal design, with school buildings as the top priority, and ensure sufficient and regular annual appropriations to ensure that the plans are implemented within the deadlines?
- 3) Will the authorities raise the threshold for what is considered an undue burden under the Equality and Anti-Discrimination Act Section 17 third paragraph?

## Right of access to information, goods and services

Article 9 – the Ombud’s report pp. 56–58

Many disabled people do not have access to information, goods and services because they do not receive the assistance they need, or because the provision of such information, goods and

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<sup>42</sup> <https://www.regjeringen.no/globalassets/upload/bld/planer/2009/norge-universelt-utformet-2025-web-endig.pdf>

<sup>43</sup> <https://www.regjeringen.no/contentassets/b335313065f440f6bd7cc203a8e0ce2d/regjeringens-handlingsplan-for-universell-utforming-2015-2019-1.pdf>

services is not adequately adapted. The Equality and Anti-Discrimination Act does not contain any explicit provisions on access to goods and services.

A proactive accommodation duty can to a certain extent be inferred from the ban on indirect discrimination, although it will depend on the circumstances. The Ombud suggests making it a duty for all enterprises that serve the general public to provide personal service to disabled people when this is necessary.

The Ombud recommends that the Committee ask the Norwegian authorities the following questions:

- 1) Why are there no provisions in the anti-discrimination legislation that guarantee the accessibility of goods, services and information?
- 2) Will the authorities appoint a legislative committee with a mandate to assess legislative amendments to ensure fulfilment of the right to information, goods and services for disabled persons? Will the authorities follow up the legislative work with training and guidance material? Will the authorities ensure that all enterprises are required to provide internal training and to ensure that guidelines concerning access to information, goods and services are made known?