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| **Fileno.**  2017 - 5395  **Docno.**  516555  **Date**  2017-11-15 |

**Response from the Government of Denmark with regards to Draft General Comment on Article 5 of the Convention – Equality and non-discrimination**

Denmark presents its compliments to the Committee on the Rights of Persons with Disabilities and thanks the Committee for the opportunity to comment on the Draft General Comment on Article 5 of the Convention.

Denmark welcomes the Committee’s comprehensive and inclusive work on the elaboration of Article 5 of the Convention on the Rights of Persons with Disabilities. While not of a binding nature, a General Comment on Article 5 may assist the States parties in the interpretation of the substantive content of the obligations under this key provision. However, there are certain aspects of the current draft which it is imperative that the Committee considers further before it attempts to issue a definitive General Comment on Article 5.

Above all, Denmark finds that the general comment should take into account that some individuals are unconscious, living in a persistent vegetative state, have very advanced dementia, or have the most profound intellectual disabilities, and who will not be in a position to understand that a decision is to be made, and the nature or consequences of that decision or of any expressed will or preference.

If substitute care and treatment decisions are not made for these individuals, they will risk being exploited, neglected, or even left to die. To assume that no one would ever require someone else to make a decision on their behalf would against this background not only be flagrantly wrong but ultimately irresponsible.

Thus, Denmark would like to point out that the need for and the permission of substitute decisions has been explicitly recognized in previous human rights instruments in this area (Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, UN, 1991; Declaration on the Rights of Mentally Retarded Persons, UN, 1971). These instruments accepted that – under prescribed conditions and with appropriate safeguards – regimes that allow for substitute decision-making can be indispensable if people with disabilities, whose decision-making skills may be compromised, are to lead lives in which they can both exercise and have protected their human rights. Denmark sees no need for a different understanding of Article 5 of the Convention on the Rights of Persons with Disabilities.

In light of the abovementioned considerations, Denmark would like to suggest with regards to paragraph 56 (b) that ”where appropriate” is inserted, so that the sentence reads as follows: ”b. Where appropriate, reform those with models of supported decision making.

Furthermore, the Committee should bear in mind – e.g. in regards to paragraphs 16, 32 and 74 of the draft general comment – that the Human Rights Committee has made it perfectly clear that Article 26 of the Covenant – which like Article 5 of the Convention on the Rights of Persons with Disabilities contains the principle of equality before the law – does not entail that every differentiation of treatment is prohibited. Hence, the Human Rights Committee has consistently established that differentiation of treatment does not constitute discrimination, if the criteria for the differentiation are reasonable and objective and if the aim is to achieve a purpose, which is legitimate under the Covenant. Denmark sees no reason why Article 5 of the Convention on the Rights of Persons with Disabilities should be interpreted differently in this respect.

In regards to paragraph 74 (a) and (b), Denmark notes that some persons with disabilities are too mentally or physically ill to vote or participate in the electoral process, e.g. because they are unconscious, living in a persistent vegetative state, have very advanced dementia, or have the most profound intellectual disabilities. In light of this and in order for Denmark to comply with its constitutional obligations, Denmark suggests the following amendments to paragraph 74:

* Paragraph 74, third line, should entail the additional words; “aim to”, so that the sentence reads as follows: “At a minimum, State parties should aim to”.
* The word “all” in paragraph 74 (a), should be deleted, so that the sentence reads: “a. Reform laws that exclude persons with disabilities from voting […]”.
* The words “whole” and “all” in paragraph 74 (b), should be deleted, so that the sentence reads as follows: “b. Ensure that the electoral process is accessible to persons with disabilities.”

*Example of best practices*

Denmark has a regular national siren warning system which can be used by the police in event of a major accident or disaster. In addition to the sirens, an emergency message will be broadcasted by national television stations to spread the information as fast as possible.

To ensure that persons with hearing disabilities have the same access to national warning signals, it is also possible to subscribe to text message warnings as well as tele-text on television. To inform about local emergencies regarding i.e. weather or major traffic accidents, The Danish Emergency Management Agency (DEMA) has also developed an app (“Mobile Alert”) for smart phones that can send messages in the event of accidents or pre-emergency alerts. For instance, this makes it possible to choose which kind of information you are interested in receiving and if you want the app to use the GPS signal on your phone.

*Final remarks*

With these remarks in mind, Denmark strongly urges the committee to reconsider its draft and take into account the issues raised.