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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Norway**

### **Comments by the State\***


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## **Follow-up information from the meetings October 3rd and 4th between the Ministry of Labour and Social Affairs and Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar**

**Dear Ms. Devandas-Aguilar,**

1. First of all, we would like to express our gratitude for giving us the opportunity to meet with you and to discuss how the Norwegian Ministry of Labour and Social Affairs works with policies pertaining to persons with disabilities in general, and in particular how the National Insurance Scheme secures the rights of persons with disabilities to social protection as well as technical aids. We appreciate the opportunity to expand on the information given during the meeting. Additionally, we were asked some questions during the meeting that we at the time were not able to provide full information on. This letter seeks to provide you with some general information as well as the answers to those questions.

### **Norway has a comprehensive welfare system based on the needs of the individual**

2. Before going into any specific policies, we would like to express that Norway has a comprehensive welfare system which safeguards residents' universal rights to income security, healthcare, and further. As a general rule, all persons who are residents in Norway are insured under the National Insurance Scheme. Persons with disabilities have equal access to the social protection system as other members of society. In addition to the universal programmes, there exist specific rights pertaining to persons with disabilities, such as the disability benefit, basic benefits, attendance benefits and benefits for improving ability to work and function in everyday life (technical aids). Additionally, there exist daily cash benefits for parents in the workforce to compensate for loss of income due to caring for a child with an illness and/or disability (attendance allowance and training allowance).

3. The social protection system in Norway is based on the needs of the individual. The National Insurance Scheme is not tailored to a specific type of disability or illness. A disability in itself does not necessarily warrant the right to a benefit, but rather the right to a benefit depends on whether the disability causes a person to be unable to support themselves through work or causes certain extra expenses, or whether they have other special needs. However, certain benefits require a medical certificate and/or documentation. The kind of documentation needed depends on the eligibility criteria for the specific benefit. The medical information provided is a key documentation source in for example a claim for the disability benefit. Depending on the individual case, documentation by a medical specialist may be required.

### **Administration of benefits and services through NAV**

4. Benefits are provided through the Norwegian Labour and Welfare Administration (NAV), which employs around 19 000 people. Of these, around 14 000 are employed by the central government (the Norwegian Labour and Welfare Service) and around 5 000 are employed by the local authorities. The administration procedures are regulated in the NAV Act (the Labour and Welfare Administration Act), and the purpose of the law is to facilitate efficient labour and welfare management. Article 14 a in this act states that any person contacting the NAV office, who wants or needs assistance to be able to work, is entitled to having their assistance needs assessed. Persons who have been identified as requiring assistance are entitled to participate in the preparation of an activity plan for how to keep or start working. Article 15 states that any person contacting the NAV office is entitled to information about the services and benefits of the Labour and welfare administration. Furthermore, the NAV office should assess the user's overall needs as early as possible. Anyone in need of prolonged and coordinated services has the right to an individual plan. The NAV office should collaborate with other service providers on the plan to contribute to comprehensive services for the person concerned. These articles are not specific to persons with disabilities, but rather, are aimed at any person in contact with the NAV office.

### **Location and accessibility of the NAV office**

5. NAV offices are designed to meet National obligations regarding general accommodation, securing accessibility to all persons, including persons with disabilities. There are NAV offices in all municipalities in Norway. To ensure all persons accessibility to the NAV office, it is always located so it is easily accessible with public transport, often in the city or town centre. User participation is central when deciding on location and adapting the office to ensure accessibility to all persons. Despite this, some NAV offices are expected to not be in compliance with obligations regarding general accommodation due to long term housing contracts with buildings unfit to serve as a NAV office. The Ministry does not currently have any statistics of how many offices this would be the case for.

### **Accessibility of NAV's online presence**

6. The Labour and Welfare Service's web address nav.no is designed in compliance with National regulations on universal design of information and communications technology. This ensures accessibility and a user-friendly design for persons with disabilities. People with various types of disabilities are included in the development of nav.no. This way, the online communication meets the needs and expectations of persons with disabilities. Additionally, persons may contact the Labour and Welfare Service (NAV) over the phone or by online chat service.

## **Benefits and services for persons with disabilities**

### **The disability benefit (uføretrygd)**

7. The disability benefit is a benefit which compensates for loss of earning capacity due to illness, disability or injury. Specific criteria for receiving the disability benefit can be found in the brochure "The Norwegian Social Insurance Scheme".

#### *Size of the benefit*

8. The disability benefit is calculated on the basis of the average pensionable income of the best three of the previous five years before the onset of the disability. Income exceeding 6 B.a.<sup>1</sup> (NOK 599 148) is not taken into account. The disability benefit rate per year is 66 percent of the calculation basis.

9. For persons with low or no previous income there is a minimum benefit. The yearly minimum benefit is 2.28 B.a. (NOK 227 767) for persons living with a spouse/cohabitant, but is 2.33 B.a (NOK 232 669) if the person subsequent to 31 December 2014 received a recalculated disability pension. For others, the yearly minimum is 2.48 B.a. (NOK 247 648). Persons either born disabled or who have become disabled before age 26, are entitled to a higher minimum benefit to account for the fact that they will not have been able to earn an income through work. This minimum benefit is 2.66 B.a. (NOK 265 622) for persons living with a spouse/cohabitant, and 2.91 B.a. (NOK 290 587) for others. In case of partial disability, the benefit is reduced proportionally.

10. A supplement of up to 40 percent of the B.a. is on certain conditions granted for each supported child under the age of 18. The total amount of disability benefit and children supplement may not exceed 95 percent of the income prior to the disability. The supplements are income-tested.

11. Receiving the disability benefit does not exclude one from being eligible for the basic benefit or the attendance benefit.

#### *Amount of persons receiving the disability benefit*

12. As of June 2019, 346 800 persons receive the disability benefit, approximately 10.2 percent of the population between 18 and 67 years old. 83.3 percent of these receive the full

<sup>1</sup> Per May 1st 2019, the Basic amount is NOK 99 858 (€ 9 965).

disability benefit, while 16.7 percent receive a partial benefit. Approximately 18 percent of persons with the disability benefit are registered as employed.

#### **Basic benefit (grunnstønad)**

13. The basic benefit covers necessary additional expenses incurred due to permanent injuries, illness, disabilities or congenital malformations. A basic benefit is granted if the disability (illness, injury or defect) involves extra expenses at least equal to, or above, the lowest basic benefit rate (NOK 8 232 per annum). The basic benefit is paid at 6 different rates. Which rate a person qualifies for is determined by their total additional expenses.

14. The basic benefit covers, among other things; transport, guide dogs, additional food expenses due to special dietary restrictions, and additional wear and tear of clothing as a result of having to wash them more often or additional wear and tear as a result of use.

As of January 1 2019, the rates for the basic benefit are the following:

<b>Rate</b>	<b>Per annum</b>	<b>Per month</b>	<b>Number of persons receiving this rate<sup>2</sup></b>
1	NOK 8 232	NOK 686	44 872
2	NOK 12 564	NOK 1 047	8 154
3	NOK 16 464	NOK 1 372	17 446
4	NOK 24 252	NOK 2 021	42 863
5	NOK 32 868	NOK 2 739	2 362
6	NOK 41 052	NOK 3 421	1 113

#### *Amount of persons receiving the basic benefit*

15. By the end of December 2018, 116 810 persons received the basic benefit. 38 percent (44 872 persons) received rate 1 and 37 percent (42 863 persons) received rate 4. Over the years, there has been a large increase in the amount of persons who receive the basic benefit for additional food expenses due to special dietary restrictions, in particular for the diagnosis celiac disease.

#### **Attendance benefit (hjelpstønad)**

16. A person needing long-term private care and supervision due to illness, injury or congenital disability may receive an attendance benefit. In order to qualify for the attendance benefit, a person must have a special need for care and supervision due to their medical condition, i.e. they may need help taking care of personal needs healthy people are able to handle on their own. This also includes stimulation, training and physical activity. The attendance benefit does not cover practical assistance, such as cooking, cleaning or shopping. The care or supervision must be provided by private individuals, such as a spouse, children, parents, foster parents, other relatives, neighbours etc.

17. The care and/or supervision expenses must, at minimum, exceed rate 1, which is intended to cover 2-2.5 hours of private assistance per week. Rate 1 is the standard rate for the attendance benefit, while rates 2-4 are intended to cover the care and/or supervision expenses

<sup>2</sup> As of December 2018.

for children under 18 years whose needs exceed that which is covered by the standard rate. The rate received depends on the

*As of January 1 2019, the rates for the attendance benefit are the following:*

<b>Rate</b>	<b>Per annum</b>	<b>Per month</b>	<b>Number of persons receiving this rate<sup>3</sup></b>
1	NOK 14 748	NOK 1 229	37 218
2	NOK 29 496	NOK 2 458	16 647
3	NOK 58 992	NOK 4 916	5 213
4	NOK 88 488	NOK 7 374	1 459

*Amount of persons receiving the attendance benefit*

18. By the end of December 2018, 60 537 persons received the attendance benefit. 62 percent (37 218 persons) received rate 1 and 28 percent (16 647 persons) received rate 2.

#### **Benefits for improving ability to work and function in everyday life (assistive devices<sup>4</sup>)**

19. Based on individual rights, the provision of benefits for improving the ability to work and function in everyday life (assistive devices) is covered by the Act on Social Security in Norway. The benefits are provided to people whose functional capacity is permanently impaired due to illness or injury. The benefits may be given as a loan of, or grant or monetary loan for, the purchase of technical aids/assistive devices, hearing aids, delineator for tailor, seeing-eye dogs, reading and secretarial aid for blind and visually impaired persons, interpreters for hearing impaired persons, interpreters and escorting assistance for deaf-blind persons, motor vehicles or other means of transport, orthopaedic aids, prostheses, wigs, and more. The assistive devices must be both necessary and appropriate with regard to improving the user's ability to perform activities and to participate in daily life. The benefit's aim is to provide the most appropriate, as well as most cost-effective device, free of charge for the beneficiary. User participation the service delivery process is crucial.

20. The municipalities are responsible for social and rehabilitation services, including the provision of assistive devices. Trained personnel from the municipalities (typically occupational therapists or physiotherapists) are responsible for identifying and assessing the user's need, recommending and providing assistive devices, as well as following up the user's situation in daily life.

21. Each county in Norway has an Assistive Technology Centre, which is part of the state-run Norwegian Labour and Welfare Service, and have trained personnel like occupational therapists, physiotherapists, technicians/engineers, speech therapists etc. The Assistive Technology Centre is responsible for processing applications, giving guidance to the municipalities and other stakeholders, and delivering assistive devices. The municipalities must ask for help from the assistive technology centre if the local network does not have the sufficient expertise. The goal is to ensure that users are given the same help and are met by professionals with the same expertise regardless of where they live. The assistive technology centres organise annual training courses for the employees of the municipalities and other stakeholders.

<sup>3</sup> As of December 2018.

<sup>4</sup> Assistive device denote to any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities.

22. In 2018, the number of assisted users was 146 542 persons, while the number of users who had one or several assistive devices was 435 000.

**Attendance allowance (pleiepenging)**

23. An insured occupationally active person who cares for a child under the age of 18 who, due to illness or injury, needs constant supervision and care, is entitled to daily cash benefits (attendance allowance) from day one. If necessary, up to two caregivers may receive the allowance at the same time. No upper age limit applies in the case of children with mental disabilities who need constant supervision and suffers from a serious or potentially fatal disease or injury.

24. The allowance is calculated according to the same rules as sickness benefits from the National Insurance Scheme and is given at 100 percent of the basis for calculation up to 6 B.a. (NOK 599 148). The allowance may be graded down to 20 percent when the child is supervised by others in an established supervision or relief arrangement (kindergarten, school etc.). An insured occupationally active person taking care of close relatives or friends at home during the terminal phase is entitled to daily cash benefits (attendance allowance) from the National Insurance Scheme for a period of up to 60 days for each patient.

25. In 2018, 11 015 persons received the attendance allowance to care for a sick child, with an average benefit of 34 135 kroner.

**Training allowance (opplæringspenging)**

26. An insured occupationally active parent is entitled to cash benefits (training allowance) while attending approved training courses in order to improve his/her ability to take care of a child who is disabled or sick over a long period. There is no age limit on this allowance. Training allowance is calculated according to the same rules as sickness benefits from the National Insurance Scheme, and is given at 100 per cent of the calculation basis up to 6 B.a. (NOK 599 148). Self-employed persons and freelancers are entitled to attendance allowance and training allowance from the National Insurance Scheme to the same extent as employed persons.

27. In 2018, 4 046 persons received the training allowance, with an average benefit of 13 997 kroner.

**Report of the UN Special Rapporteur on the rights of persons with disabilities (Advance Unedited Version)  
- comments from Norwegian authorities**

28. We have received for comments the report of the UN Special Rapporteur on the rights of persons with disabilities after the visit to Norway in October. Enclosed follows some proposals for change in the report. Enclosed follows also some follow up information after the meetings in October from the Ministry of Labour and Social Affairs on benefits and services for persons with disabilities administered by the Norwegian Labour and Welfare Administration.

29. Under follows comments we have received from the Ministry of Labour and Social Affairs, comments and suggested corrections from the Ministry of Justice and Public Security and a comment from the Ministry of Culture.

## Comments from the Norwegian Ministry of Labour and Social Affairs:

### Comment to paragraph 34:

30. The rapporteur is concerned that the provision of sign language interpretation, relay services and captioning by NAV remains very limited, including when needed to access basic services.

31. Approximately 90% of the all requests for these services are provided by NAV. When receiving a request for an interpreter, NAV considers the assignment according to the following priority:

1. acute danger to life and health
2. important events in life
3. work and education
4. daily activities

32. From 1 March 2018 until 28 February 2019, NAV received 104 714 requests, which amounted to 445 773 hours of sign language interpretation, relay services and captioning. NAV failed to provide an interpreter for 9% of the assignments during this period.

### Comment to paragraph 50:

33. Comment to: "the National Inclusion initiative lacks concrete measures, does not address discrimination and is mainly based on the goodwill of employers."

34. The National Inclusion Initiative contains a number of measures linked to the three focus areas.

#### *The initiative will contribute to:*

- Lowering the step into the labour market and make it easier for employers to employ people from the target groups. The threshold into the labour market should be lowered for the target group through formal agreements with enterprises and through measures such as wage subsidies, mentor scheme and functional assistance in working life.
- Further develop and strengthen the services for unemployed people with mental problems and/or drug-related problems to increase their possibilities to take part in working life while in medical treatment. For persons with mental problems, medical treatment and labour market services will be combined through the method called Individual Placement and Support.
- Strengthen the opportunities for adapted education and training to make more people qualify for work for job seekers who have not completed secondary education we have improved the opportunities to complete training that result in formally approved competencies.

35. Anti-discrimination rules in Norway are quite stringent. Still, people with disabilities may experience discrimination in the labour market. The overall picture from research shows that employers have positive attitudes towards people with disabilities as a labour resource. Still, many do not actually employ people with disabilities when they have the chance, but may prefer candidates who do not have a disability.

36. To improve the situation, we work on the employers attitudes by shedding light on the resources that people with disabilities possess. It is also important that the employers are familiar with the services and measures available from the employment office, in order to help facilitate the workplace.

**Comment to paragraph 54:**

37. It is written that the disability benefit "can be adjusted monthly depending on how much a person can work at a given time. For instance, if a person works at 60 per cent in a given month, she will receive benefits to cover the remaining 40 per cent. The following month the percentages could be adjusted if the person would work more or less time".

38. This is not quite how the system works, but the general idea is similar. The disability benefit is adjusted based on additional income earned rather than the amount/hours worked in a given month. When the disability benefit is awarded, a limit for additional income is determined. This limit equals the beneficiary's expected income after disability (if less than full disability), plus 0.4 B.a.<sup>5</sup> If the person has a pensionable income above this limit, the benefit will be reduced proportionally. However, the degree of disability is not reassessed. This provides flexibility for the beneficiary because it allows them to adjust how much they work according to their own capabilities.

**Comment to paragraph 55:**

39. Regarding the percentage of persons for whom the national insurance scheme is the main source of income, it appears that the most recent numbers for this (from 2017) is 29 per cent for persons with disabilities and 8 per cent for the population as a whole. The numbers stated in the draft report, 33 and 9 per cent, are numbers from 2015.

[https://www.bufdir.no/Statistikk\\_og\\_analyse/Nedsatt\\_funksjonsevne/Okonomi/Inntekt\\_og\\_ytelser/](https://www.bufdir.no/Statistikk_og_analyse/Nedsatt_funksjonsevne/Okonomi/Inntekt_og_ytelser/)

**Comments from the Norwegian Ministry of Justice and Public Security:**

40. Concerning part K, "Denial of legal capacity", the Government of Norway would like to suggest corrections on the following points:

**On the following sentences of paragraph 73:**

41. "There is also an increasing reliance on professional guardians, many of whom are lawyers, who handle a high number of cases each. For example, in the County of Oslo and Akershus, 300 professional guardians represent approximately 13,000 persons, out of a total of 20,000 persons under guardianship."

42. The reliance on professional guardians is not increasing, but stable. The use of lawyers as guardians has been reduced over the last years. The Ministry of Justice is currently working on new regulations that will limit the use of lawyers even further.

43. The number of 20,000 persons under guardianship referred to by the Special Rapporteur, contains guardianships for adults and minors, temporary assignments and some other assignments. The total number of adults with guardianships in the County of Oslo and Viken is approximately 13,000. There are 214 guardians in the County with more than four assignments as guardians for adults. They represent 5,542 persons, which entails an average of 26 persons per guardian.

44. In paragraph 74, the correct name of the ministry is "the Ministry of Justice and Public Security".

**On the last sentence of paragraph 74:**

45. "While in 2019 the Government sent letters to all 17,000 persons and to their guardians to inquire about the voluntariness of the mandate, only 400 replies were received, of which 72 per cent stated they no longer wanted a guardian."

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<sup>5</sup> Many benefits from the National Insurance Scheme are determined in relation to a basic amount (B.a.). This amount is annually adjusted by the King with effect from 1 May, in accordance with the increase in wages. In 2018, the average B.a. was NOK 95 800 and the B.a. per 1 January 2019 is NOK 96 883.



46. The letters encouraged to answer the authorities only if the guardianship was considered unwanted. Out of the 17,000 people that were contacted (the persons and their guardians were contacted separately), approximately 400 reported back that they did not want the guardianship. In more than 100 out of the cases where the person opposed the guardianship, the protest has later been retracted. Approximately 200 guardianships have been revoked.

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47. Further to these corrections, we have some comments, which we leave for the Special Rapporteur to consider, on points where the draft report could in our view benefit from some clarifications:

*«In paragraph 17, second sentence, instead of stating that the Convention “does not enjoy the supra legal status of other international human rights treaties”, the following description would be more precise and could be considered:*

48. “Unlike international human rights treaties which are incorporated into domestic law through the Human Rights Act, such as for instance the Convention on the Rights of the Child, the provisions of the Convention will not take precedence in case of conflict with other legislative provisions.”

**On the following sentence of paragraph 72:**

49. “While, as a general rule, this regime is voluntary, formal consent is not required if the person is deemed “unable to consent”, which contradicts its voluntariness.”

50. To secure voluntariness when the person is unable to consent, the County Governor still, and as far as possible, is obliged to secure that the guardianship is voluntary.

51. Since February 2018, both interpretation statements from the Ministry of Justice and guidelines to the County Governors, explicitly underline that even if a person is seen as unable to consent, neither can a guardian be appointed if there is reason to believe that this is contrary to the will of the person, nor may the guardian act contrary to the will or preferences of the person.

52. A range of other measures have also been implemented to secure voluntariness, which means that the lack of requirement of a formal consent does not contradict the regime’s voluntariness. Securing voluntariness is among the key aims of the system.

53. This comment is also of relevance to the first sentence of paragraph 74.

**On the first sentence of paragraph 73:**

54. “Although the 2013 reform aimed to address the paradigm shift of the Convention, in practice the Guardianship Act focuses on representation rather than on supported-decision making, and allows for limitations in the exercise of legal capacity.”

55. The role of the guardian is to assist the person in performing his legal capacity, primarily through supported decision-making, but, if the person wants it, also by being a legal representative.

**On the following sentence of paragraph 73:**

56. “In many cases, County Governors appoint guardians without interviewing the persons concerned.”

57. A conversation with the person before appointing a guardian can only be omitted when this is considered impossible or aimless. Conversations are documented, and since 2018 the application demands to specify the reason why a conversation is omitted. By the end of 2018 conversations were carried through in 47 % of the cases. The conversation is voluntary, thus, the person him/herself is entitled to refuse the conversation with the County Governor.

**Comments from the Norwegian Ministry of Culture:**

**Comment concerning paragraphs 34 and 85:**

58. Norway has currently no general Language Act. Nevertheless, some languages are official through custom, other laws, international obligations, etc. (Norwegian Sign Language, for example, is an official language due to the Education Act.) The Ministry of Culture is now (autumn 2019) preparing a proposal for a general language act to the Storting (parliament). In this proposal the status of the languages for which Norway is responsible will be established. One of the objectives is to formally recognize Norwegian Sign Language as an official language.

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