

Legal analysis regarding the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure

The Government has decided to commission a legal analysis to highlight the advantages and disadvantages should Norway decide to ratify the Optional Protocol to the UN Convention on the Rights of the Child (subsequently 'the Protocol') on a communications procedure.

The Ministry of Justice and Public Security, the Ministry of Children, Equality and Social Inclusion, and the Ministry of Foreign Affairs have drawn up the following mandate for the analysis:

Mandate

Background:

The UN Convention on the Rights of the Child was adopted in 1989 and entered into force in 1990. Norway ratified the Convention in 1991. In 2003, the Convention on the Rights of the Child, together with the Convention's first two protocols,¹ was incorporated into the Norwegian Human Rights Act of 21 May 1999 (No. 30), with precedence over other Norwegian legislation, according to the Human Rights Act section 2.

The monitoring of the States Parties' compliance of their obligations under the Convention is mainly ensured through the Committee on the Rights of the Child's examination of the States Parties' periodical reports, as set out in article 44 of the Convention on the Rights of the Child. An Optional Protocol on a communications procedure was adopted by consensus at the 66th session of the UN General Assembly, on 19 December 2011, and this Protocol opened for signature on 28 February 2012. Norway has not signed the Protocol.

The legal analysis is to:

1. Highlight the advantages and disadvantages of a potential Norwegian ratification of the Protocol, including an analysis of the long-term legal, administrative and financial consequences, without providing a specific recommendation.
2. Outline the content of the Protocol and its structure from the point of view of legal technique, including the margin of appreciation embedded in the Convention's substantive provisions, and evaluate the ways in which ratification would affect the scope of action available to the Norwegian authorities on different levels.
3. Provide an account of the appeals authority, the UN Committee on the Rights of the Child, with an emphasis on its composition, proceedings and its formal as well as actual competence.
4. Consider which rights laid down in the Convention might generate the most complaints, as well as what implications an international review of these issues, in relation to potential individual complaints against

¹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, of 25 May 2000, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, of 25 May 2000.

Norway, could have on a national level. The topics to be examined should include matters relating to health, social security and benefits, education and immigration.

5. Provide an account of selected States' evaluation of the Protocol, as well as questions pertaining to their ratification.
6. Highlight possible legislative amendments that would be necessary if Norway ratifies the Protocol, including whether children's right to an independent complaints mechanism would have to be safeguarded in the Norwegian legal system in other ways than it is today.
7. Highlight Norwegian stakeholders' assessments of the advantages and disadvantages of a potential ratification, including Norwegian civil society organisations and the Ombudsman for Children in Norway.

Other preconditions

An inter-ministerial reference group will be established for the analysis, consisting of representatives from the Ministry of Justice and Public Security, the Ministry of Children, Equality and Social Inclusion, and the Ministry of Foreign Affairs. This group will assist in obtaining the views of Norwegian civil society actors as well as facilitating the gathering of other relevant information, on the request of the legal expert conducting the analysis. The group itself will not be involved in carrying out the analysis.

Time frame

The legal analysis is to be submitted by 31 May 2013, in the form of a report to the Ministry of Foreign Affairs.