**CRPD/C/19/D/19/2014**

**Fiona Given v Australia**

**Communication No. 19/2014**

**Decision Date:** 29 March 2018

**Subject -** Failure to provide accessible voting platforms on an equal footing to all persons with disabilities

**Decision:** Violation of art. 29 of the CRPD alone and in conjunction with articles 5 and 9

**Facts -** The author has cerebral palsy and, as a result, she has limited muscle control and she uses an electric wheelchair for mobility. She would be voting in 2013 federal elections. The Electoral Commission conducted the 2013 federal election by means of postal voting, polling stations and electronically assisted voting for persons with visual impairments, in line with the Electoral Act.

The author Fiona Given is unable to mark a ballot paper and fold and deposit it in a ballot box without live assistance, due to her limited mobility. For this reason, unless she has access to an electronic voting system, she is unable to cast a secret ballot. On the day of the election, Fiona Given asked for the assistance of the polling booth's presiding officer to help her cast her vote, the presiding officer refused to help, claiming that she was "too busy" and told Ms. Given to get assistance from her attendant. Even though Fiona Given did not prefer the help of her attendant "as the attendant is a person with whom the author is obliged to have a close, continuing relationship", she had no other choice. For these reasons, she applied to the Committee on the Rights of Persons with Disabilities claiming the violations of articles 29 (a) (i) (ii) and (iii), 4 (1) (a), (b), (d), (e) and (g), 5 (2) and (3) and 9 of the Convention.

The author claimed that no domestic remedies were available. Consequently, she had not exhausted any, before bringing her claims to the Committee. The State Party did not claim the existence of domestic remedies with regard to art. 29 (a) (i) and (ii) of the Convention; however regarding art. 29 (a) (iii) the State Party established that effective domestic remedies were available. Consequently, the Committee declared the communication admissible as far as it concerns claims under art. 29 (a) (i) and (ii) of the Convention read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and (3) and 9. Article 29 (a) (i) and (ii) read as follows:

*"States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:*

*(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*

*(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*

*(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;"*

**Committee's Considerations:**

After noting that the State Party had made available alternative voting methods, the Committee considered that none of those methods enabled the author to vote - on an equal basis with others- without having to reveal her political choice to the person accompanying her. The Committee rejected the claim that provision of accessibility "can constitute a disproportionate burden, taking into account limited resources" by underscoring that "the obligation to implement accessibility is unconditional."

The Committee recalled that "the electronic voting option has been widely used for persons with visual impairments" and that "the State party has not provided any information that could justify the claim that the use of such an electronic voting option would have constituted a disproportionate burden." With reference to art. 5 of the Convention, the Committee reminded that States Parties are obliged to refrain from discrimination based on the type of impairment.

Thus, the Committee concluded that "the failure to provide the author with access to an electronic voting platform already available in the State party" constituted "a denial of her rights under article 29 (a) (i) and (ii), read alone and in conjunction with articles 5 (2), 4 (1) (a), (b), (d), (e) and (g) and 9 (1) and (2) (g) of the Convention."