



Introduction to the UN Convention on the Rights of Persons with Disabilities and its added value

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ERA February 2014



Outline- combined presentation

- Introduction
- Position of Convention in Int HR Law
- General principles

Part 1:

- Structure and contents of the Convention
- Normative framework
- Concept of disability
- Monitoring system
- Concluding remarks and questions.

Part 2

- Nature and contents of H.R. obligations
- Relevant Disability rights document and cases
- Comparison EU/ UNCRPD
- Concluding remarks and questions



EU law

- Lisbon treaty
- Directive 2000-78-EC



EUCoJ case law

- C13/05: Chacon Navas: concept
- C303/06: Coleman: association
- C/335/11 and C-337/11 Ring: shift to social model (see also Lisa Waddington, HK Danmark (Ring and Skouboe Werge): interpreting EU Equality Law in the Light of the Convention on the Rights of People with Disabilities, European Anti-Discrimination Law review, November 2013, Issue 17, p.11-21)



Relevance of CRPD:

- **Cases C335-11 and C/337-11 (see above): Ring**
 - **Case C-363/12, Reference for a preliminary ruling from The Equality Tribunal (Ireland) made on 30 July 2012:**
 -**5. Is the United Nations Convention on the Rights of Persons with Disabilities capable of being relied on for the purposes of interpreting, and/or of challenging the validity, of Directive 2000/78/EC?.....**
 - 6. If the answer to the fifth question is in the affirmative, is Directive 2000/78/EC, and in particular Articles 3 and 5 thereof, compatible with Articles 5, 6, 27(1)(b) and 28(2)(b) of the United Nations Convention on the Rights of Persons with Disabilities?**
- **Opinion of AG 29 September 2013**



Disability Convention as Turning Point in attitude and approach

Disability caused by two elements:

- a. Impairment of person**
- b. Environmental barriers**

See:

Preamble of Convention sub (e) and art 2

- Development from 'hand in cap' to rights based
- Medical model → human rights



CPRD as part of UN system

- 1948: Charter
 - 1966 ICCPR
 - 1966 ICESCR
 - 1965 CERD
 - 1979 CEDAW
 - 1989 CRC
 - 2006 CRPD
- **Part of larger body**
- **No new rights created but elaborated obligations**



CRPD as part of International anti-discrimination law: some important instruments

- CRPD art 1 EQUAL ENJOYMENT OF ALL Human rights
- Equality framework to be incorporated, e.g.
 - article 26 ICCPR
 - Art 2 CESCRC: GC No 20 → see next slides
 - ECHR art 14 (accessory nature)
 - 12th Protocol ECHR
 - EU Charter art 21 (non discrimination) and 26 (integration of persons with disabilities)
 - EU Framework Directive 2000/78/EC



GC CESCR (2009) no 20

* Disability

- 28. In its general comment No. 5, the Committee defined discrimination against persons with disabilities^[1] as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.^[1] The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.^[2] States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,^[3] as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.



GC CESCR no 20 (Ctd)

- [\[1\]](#) For a definition, see CRPD, art. 1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”
- The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability. [\[1\]](#) States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace, [\[2\]](#) as well as in private places, e.g. as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.
- [\[1\]](#) See CRPD, art. 2: “‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”
- [\[2\]](#) See CESCR general comment No. 5, para. 22.



Concept of 'disability' itself

- Article 1 CRPD Purpose
 - Includes long-term physical , mental, intellectual and sensory impairments *which in interaction with barriers*
- art 2 CRPD:
 - Discrimination : distinction, exclusion, restriction
 - Including: 'assumed' disabilities
 - Including association: Case C-303/06 EUCoJ: Coleman



General Principles

- Article 3
 - Human dignity
 - Autonomy
 - Non-discrimination
 - Participation
 - Inclusion



Scope of obligations CRPD

- Article 4

Par 1: broad scope, includes training, research, third party effect (e)

Par 2: Soc Ec rights: progressive implementation

Par 3: involvement of target groups

- Article 8: awareness raising
- Art 31 Data Collection



Overarching obligations

- Non-discrimination → art 5 and 12 (incl: legal capacity, ownership)
- Accessibility → art 9



Intersectionality

- Art 5 (2) : on *all grounds*
- Art 6: women
- Art 7: children



Substantive rights protected

- Art 10 Right to life
- Art 13 Access to Justice
- Art 14 Liberty and security
- Art 15 Freedom from torture and IT
- Art 16 Freedom from abuse
- Art 17 Integrity
- Art 18 movement and nationality
- Art 19 Living independently
- Art 20 Mobility
- Art 21 Expression
- Art 22/23 Privacy and family life
- Art 24 Education
- Art 25 Health
- Art 26 (Re)Habilitation
- **Art 27 Work and employment**
- **Art 28 Social Protection**
- Art 29/30. Participation



Monitoring and implementation

- Art 33: National implementation
 - Focal point
 - Independent framework
- Art 34 Int'l Com on RPD
 - State reports Art 35/36
 - Optional Protocol : Individual complaints



Concluding remarks on CRPD

- Innovative
- Progressive
- Concrete



Added value

- No new rights so added value lies in concretization of obligations
 - New explicit obligations:
 - Accessibility
 - Participation
 - Autonomy



Human Rights Obligations

→ Different forms of positive obligations defined by international and national human rights courts and commissions



General Human Rights obligations as interpretative framework

Duty to

- Respect
- fulfill and
- protect



Equality and Difference

CRPD Fits into non-discrimination framework: obligation to *take difference into account*.

- Duty to investigate
- Duty to *collect data*
- Challenge neutrality
- Burden of proof
- Sanctions



Progressive implementation

- Autism France v. France, ECSR 4-11-2003, Complaint No. 13/2002. → see also AEH v. France, Complaint 81/2012



Reasonable accommodation- general aspects

- not only relevant in cases of disability
- e.g. obligation to have women's facilities in the workplace
- but: absolute necessity in disability cases
→ effective and concrete, see ECHR Z.H. v. Hungary, 8 November 2012, case 19535/08.
- barriers are caused by the environment
- Refusal is sui generis form of discrimination, but no exception to equality.



Reasonable Accommodation

- Ring case: reduction of working hours



Reasonable accommodation-specific aspects

- no absolute duty
- but: proportionality test
- depends on concrete circumstances.



Reasonable accomodation \neq preferential treatment

- Not temporary
- Aim is to guarantee equality, not to repair inequalities or to accelerate equality.



Concluding remarks

Added Value:

- Treaty Conform interpretation
- Due Diligence
- Impact assessment
- Additional burden of proof
- Progressive approach strengthened



Relevant websites

- SIM data base
: <http://sim.law.uu.nl/SIM/Dochome.nsf?Open>
- Equal Treatment Commission of the Netherlands:
www.cgb.nl
- EU and disability:
http://ec.europa.eu/employment_social/disability/index_en.html
- UN and disability:
<http://www.un.org/esa/socdev/enable/>
- UNHCR and disability:
<http://www.ohchr.org/english/issues/disability/index.htm>
- Case law:
 - <http://cmiskp.echr.coe.int/>
 - <http://curia.europa.eu/>