

LEGAL CAPACITY OF PERSONS WITH DISABILITIES IN THE LIGHT OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

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The word of *person* comes from the Latin "*personare*" and from the Greek "*prosopon*", meaning the mask that the actors put on to get in the scene.

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In relation to persons with disabilities is illustrative the Ganzenmüller and Escudero appointment in his work of *Disability and Law*

"Aristotle said that the best thing you could do with a person with disability was to leave them at the gates of the temples. In Sparta, a council of elders examined the health of newborns, and if the creatures were not normal, they abandon them to the beast or hurl them from Taygetus Mount. During Nazi Germany were burned in a brutal way. Were exploited and used during World War II when a shortage of workers and then abandoned to their luck again. Today, in psychiatric institutions of the so-called first world continue to be bound by a straitjacket since when they entered at four years old, probably because they had a behavior problem, and are now forty or fifty years old and are still tied".

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The difference between the *legal capacity* and the *capacity to act* will be one of the aspects that we will analyze in the discussion around to Article 12 of the Convention, particularly in the declarations and reservations made to it.

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The importance of this article, its central character, the heart of the Convention, took to intense and logical debates due to the wide scope of this international treaty.

European Disability Forum

"The appointment of a personal representative comes from the premise of the inability of persons with disabilities. This creates a hard impression of permanence and brings us back to the system of guardianship that we are trying to change with this Convention."

"It is precisely to break this paradigm of replacing what has made the International Caucus (supported by the EDF) suggested that this support is seen as a right that is not pejorative about the capacity of people with disabilities. The concept of support allows assistance to be adapted according to the needs of individuals with disabilities without replacing them. "

"At the same time, EDF recognizes that States are worried about potential abuse in the decision-making support and feel driven to prevent them. However, from our point of view, detailed procedures to prevent such abuses should not be included in the text of the Convention. It would be enough if the convention includes a mandate to the States to adopt legislative measures to prevent this abuse."

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In relation with the discussions about the concept of capacity, it is often highlighted the draft of the Eighth Session (in the August 2006), before the final report, the article 12 was accompanied by something at least unusual: a footnote page that said "*In Arabic, Chinese and Russian, the expression "legal capacity "refers to" legal capacity for rights" and not the "capacity to act."*"

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I have to note also the letters dated 5 December 2006 from the Permanent Representative of Iraq to the United Nations addressed to the Chairman:

I have the honour, as the Chair of the Arab Group for the month of December 2006, and on behalf of Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen, to inform you that the aforementioned States are joining the consensus on the Convention based on the understanding that legal capacity mentioned in paragraph 2 of Article 12 of the Convention entitled "Equal recognition before the law" means the capacity of rights and not the capacity to act, in accordance with the national laws and legislation of these States.

We kindly request that this letter be included in the report of the Ad Hoc Committee. We will be presenting it to the General Assembly when the text of the Convention is submitted prior to its adoption.

And the Corrigendum

First paragraph, line 9

After the capacity of rights and not the capacity to act insert for those who are unable to practice the capacity to act

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An the Letter dated 5 December 2006 from the Permanent Representative of Finland to the United Nations addressed to the Chairman

“According to paragraph 2 of Article 12 of the Convention 'States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life'. It is our understanding that the concept of 'legal capacity' has the same meaning in all language versions.

It is on the basis of this understanding that we are ready to join the consensus. We would also request to include this letter in the report of this meeting”.

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Article 12 - Final text

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Article 12 - Equal recognition before the law

1. *"States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*
2. *States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.*
3. *States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*
4. *States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.*
5. *Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property".*

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Reservations and declarations

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AUSTRALIA

Upon ratification Declaration

Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life.

Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others.

Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards;

Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others.

Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

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CANADA

Declaration and reservation:

"Canada recognizes that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives. Canada declares its understanding that Article 12 permits supported and substitute decision-making arrangements in appropriate circumstances and in accordance with the law.

To the extent Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards.

With respect to Article 12 (4), Canada reserves the right not to subject all such measures to regular review by an independent authority, where such measures are already subject to review or appeal".

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EGYPT

Interpretative declaration made upon signature:

The Arab Republic of Egypt declares that its interpretation of article 12 of the International Convention on the Protection and Promotion of the Rights of Persons with Disabilities, which deals with the recognition of persons with disabilities on an equal basis with others before the law, with regard to the concept of legal capacity dealt with in paragraph 2 of the said article, is that persons with disabilities enjoy the capacity to acquire rights and assume legal responsibility ('ahliyyat al-wujub) but not the capacity to perform ('ahliyyat al-'ada'), under Egyptian law.

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FRANCE

With regard to article 29 of the Convention, the exercise of the right to vote is a component of legal capacity that may not be restricted except in the conditions and in accordance with the modalities provided for in article 12 of the Convention.

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MEXICO

Interpretative declaration

The Mexican State reiterates its firm commitment to creating conditions that allow all individuals to develop in a holistic manner and to exercise their rights and freedoms fully and without discrimination.

Accordingly, affirming its absolute determination to protect the rights and dignity of persons with disabilities, the United Mexican States interprets paragraph 2 of article 12 of the Convention to mean that in the case of conflict between that paragraph and national legislation, the provision that confers the greatest legal protection while safeguarding the dignity and ensuring the physical, psychological and emotional integrity of persons and protecting the integrity of their property shall apply, in strict accordance with the principle "pro homine".

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SYRIAN ARAB REPUBLIC

Upon signature:

Understanding:

Our signature of this Convention does not in any way, imply recognition of Israel or entry into relations with Israel, in any shape or form, in connection with the Convention. We signed today on the basis of the understanding contained in the letter dated 5 December 2006 from the Permanent Representative of Iraq to the United Nations addressed, in his capacity as Chairman of the Group of Arab States for that month, to the Chairman of the Committee, which contains the interpretation of the Arab Group concerning article 12 relating to the interpretation of the concept of "legal capacity".

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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Reservations:

Equal Recognition before the Law – Convention Article 12.4

The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review."

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The discussion today

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Particular interest have the conclusions of the *Symposium on the legal capacity of persons with disabilities in the light of the UN Convention on the Rights of Persons with Disabilities*, organized by the European Foundation Centre and the European Disability Forum in Brussels on June 4, 2009.

In them, **Miguel Angel Cabra de Luna** highlighted the challenges of Article 12 and the need to explore the impact of this provision in the national and the European Union level, and the clear protection of legal personality and legal capacity of persons with disabilities will require the revision of national legal institutions such as guardianship or incapacitation.

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Yannis Vardakastanis, president of the European Disability Forum, intervened saying that for too long the rights of persons with intellectual and psychosocial disabilities, people living in institutions and others have been deprived of their most basic human rights, and that the Convention deleted the outdated system of guardianship, which suppresses the rights and duties of persons with disabilities, and replaces it with the support system in making decisions, imposes on governments the obligation to ensure the political right to vote of persons with disabilities, and ensures that the communication will be developed so that every person, regardless of disability, will be heard and heeded.

He emphasized that understanding the impact of the Convention on the legal capacity involves the reassessment of concepts like the dignity, integrity and equality, and a review civil and criminal legislation to improve accessibility for people with disabilities in communication and procedures and educate all relevant actors in the paradigm shift.

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Johan Ten Geuzendam, head of the Unit for the Integration of Persons with Disabilities in the European Commission, explained that with regard to the implementation of the Convention, the Commission has identified some key issues including the development of consistent and comparable data, targets and indicators, the exchange of good practices and sharing experiences with the following initial priorities with respect to the Convention: Accessibility, Access to justice, Independent living and Right to vote, Monitoring mechanisms, Empowerment of people with disabilities and Legal capacity.

So, the legal capacity is one of the priority areas in Europe. He noted that on that date -June 2009 - seven States were currently reviewing their legislation in the light of the Convention.

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Gerard Quinn said why the reform discussion with regard to Article 12 is so important in both practical and symbolic terms. Article 12 is the vehicle that allows us to complete the journey of non-discrimination to protect people from the behavior of others, giving voice to people to run their own lives. For **Quinn**, the revolution of the Article 12 is emblematic of a paradigm shift that has been happening in the field of disability in the last fifteen years at European level and through the heart of the Convention.

Dignity, autonomy and equality are essential values.

Dignity, all human beings are ends in themselves. People with disabilities were traditionally viewed as objects and not subjects worthy of equal respect.

Autonomy, we decide our fates, the Government's job is to provide our freedom.

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The balance between autonomy and protection was not present in our laws inherited on legal capacity. An excessive paternalism and over-protective attitude led us go against the autonomy of individuals.

Quinn stressed that many of the first laws were decreed to protect assets or property rather than people. A perverse result of intervention to protect them against each other has been the institutionalization, I mean, placing people in institutions where their exposure to violence, exploitation and abuse were even worse.

The bridge here is equality, this is what the Convention brings back to the field of disability, and is what clearly animates Article 12. Respect for equality means to extend to people with disabilities the same expansive freedom that allowed other people to commit their own lives and make their own mistakes.

Gerard Quinn added another value to the dignity, autonomy and equality, the solidarity. If we are serious about respecting the autonomy of persons with disabilities on an equal base with others our first impulse to a certain lack of functional capacity should not remove it but to support.

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Gabor Gombos in his speech at the symposium, about the obligations that the Article 12 of the Convention imposes in the future to the European Union and its member states.

In his opinion, the Convention indicates the way to follow. First, "*nothing for us without us*", which means the involvement of persons with disabilities, having the Government a legal obligation to consult civil society. In second place, the Convention recognizes personality to all persons with disabilities, which involves two aspects: identity and capacity to act.

He remembered that during the negotiations in the ad hoc Committee of the UN some States were opposed to accept that Article 12 could mean that the legal capacity should include capacity to act. But in his opinion, this can not be refuse now because Convention engages an equalitarian principle that includes both aspects of the personality and clearly includes all persons even those with severe disabilities.

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Currently, the most guardianships of the member states are not consequent with the Convention. In his view, any attempt to present the guardianship as a support mechanism is problematic.

In his opinion, there is a minimum core of aspects in relation to Article 12:

- Complete protection (incapacitation) should be deleted or removed.
- The main gaps should be identified.
- New laws are needed.
- Article 12 is an ambitious article.
- The Convention calls for full legal inclusion and not only for legal recognition.
- How to access to support decision making within the institutions.

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“The full legal equality of persons with disabilities is an area where the effects of the International Convention on the Rights of Persons with Disabilities are most strongly felt. Disability is now no longer an excuse or justification for limiting or reducing people’s capacity in the legal system. Systems, like the Spanish system, based on substituted decision-making on the grounds of disability – usually intellectual or mental– must cease to be effective, as they go against the new paradigm of the free determination of individuals, all individuals, including men and women with disabilities”.

CERMI

In the associative’s field (remember: *Nothing about us without us*) it is also remarkable The Human Rights and Disability (Spain report 2009) drafted by the **CERMI** State Delegation for the UN Convention, approved by the executive committee of CERMI the May 27, 2010

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CERMI considers that Spain's system of legal capacity limitation is not compatible with the mandates of the Convention, and therefore just a few adjustments to details would not be acceptable (an easy way out which some courts find tempting), a new model needs to be created which focuses on autonomy and support. For CERMI, the Convention presents an historical opportunity to abandon paternalistic systems which compromise the equality of persons with disabilities under the law, and exchange them for others, in tune with the times, which promote free determination with the necessary supports and safeguards.

One essential aspect concerning to the legal capacity is the right of suffrage, active and passive.

In a letter from **Luis Cayo Perez Bueno** as a president of the Spanish Committee of Representatives of Persons with Disabilities (CERMI) dated October 5, 2010, states that the current electoral law in Spain allows the deprivation of the right of suffrage, active and passive for persons incapacitated by court if the sentence expressly declares it.

This possibility also applies to persons interned in a psychiatric hospital with judicial authorization, during the period of their internment if the court's authorization expressly states the inability to exercise the right to vote.

This deprivation of fundamental rights, which may affect mainly persons with intellectual disabilities or mental illness, it has no sense from a human rights vision and comes in contradiction with International Convention on the Rights of Persons with Disabilities of United Nations signed and ratified by Spain.

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This international treaty, in its article 12, recognize the full legal equality of persons with disabilities in all aspects of life without any restrictions by reason of disability. It also guarantees the right of persons with disabilities to participate in the political and electoral processes without any kind of exclusions.

That's why the current Spanish legislation is against the UN convention, so it has been changed urgently so that persons with disabilities can exercise fully their basic rights, and it is requested the intervention of the Ombudsman in order to amend the Organic Law of General Electoral System to eliminate the possibility to deprive the right of suffrage to persons with disabilities.

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In relation to this matter is remarkable the Sentence of the court of first instance number 15, Las Palmas de Gran Canarias, dated April 27, 2010 (Magistrate Judge **Carmen Maria Simon Rodriguez**).

In the legal basis, making an appointment of article 12 of the Convention states "So, is inferred of Article 12, that provides for a fundamental change in the way of dealing with the issue of legal capacity in situations where a person with disability may need the help of a third party. This change can be called the replacement of the model of substitution in the making-decision for the model of support or assistance in the making-decisions so the total inability (incapacity) stops as a rule and becomes exceptional.

Therefore, in processes for modifying or denying the capacity to act it is necessary to promote, protect and ensure on an equal basis with others the human rights and fundamental freedoms, by adopting measures to support and protection necessary".

In this way, evaluating all the circumstances, the sentence issued to-suit or a dress as unique to that person, has to fit his needs, so the inability, accommodates perfectly only and exclusively to him, each person with disability needs his special measure of protection.

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Concerning the right of suffrage, whose deprivation is interested in demand it is not appropriate.

The interpretation of the General Election Law, according to the spirit of the Convention requires respect, to the greatest extent possible, of the autonomy and fundamental rights of persons with modified capacity, so they may not be deprived of the right to vote generally, except in exceptional cases, because it would be a setback for the necessary social integration that is advocated in this treaty.

In the particular case prosecuted, has not been accredited the special inability to choose a particular option and exercise his right to vote, because this exercise requires only a manifestation of will, which is necessary, not so much a certain level of reasoning or knowledge but the expression of a personal decision or choice on the various electoral Offers, depending of the cultural education of each person.

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Another issue denounced by the CERMI is the impossibility to perform certain acts, for example, complains that the Notary law discriminates persons with disabilities because it states "*are unable or unqualified to act as witnesses in writing, the persons with mental disabilities, blind, deaf and dumb.*"

CERMI considers that the regulation violates the Convention, recalling that Article 12. 2 states that persons with a disabilities enjoy legal capacity on an equal basis with others in all aspects of life, recalling also the content of Article 12. 3. concerning to the adoption of appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity, and recalling that Article 13 of the Convention states that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

CERMI considers that if the Convention clearly recognizes the rights of persons with disabilities to be witnesses in the area of justice, they can not understand the opposition to amend the regulation of notarial acts, taking into account that the law should not deprive persons with disabilities the exercise of this right, just should ensure a reasonable adaptation.

Carlos Ganzenmüller, about judicial pronouncements:

At the conference organized by the **Disability State Observatory** in Spain on 15 December 2010 under the title "Legal Capacity and Disability: From the replacement of the capacity system to the support model", **Carlos Ganzenmüller** prosecutor of the Supreme Court made a complete study of other aspects **about judicial pronouncements**.

He highlighted the Supreme Court sentence of April 29, 2009, the already mentioned sentence of Las Palmas de Gran Canarias and other one of Gijón which adopts an intermediate form using the institution of partial guardianship (*Sentence October 13, 2009 1st instance Court No. 8 in Gijón, Judge Angel Luis Campo*) respect the Supreme Court judgment, the court was questioned in the appeal if the support or institutional care specifically regulated in our laws were in line with the convention or not. And basically if the curatorship was an institution accredited by the convention because the existence of a natural and complemented capacity, the rest of the capacity needed for persons with disability could promptly act on certain issues without a general supervisory institution of guardianship which completely deprives the capacity to decide of the person, by supplanting and representing.

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Carlos Ganzenmüller said that this was our approach. Also he said that the Supreme Court does not enter into the question, because he knows the commitment of government, in a law of April 25, 2009 will regular within six months the capacity procedures of individuals subjects. So they do not resolve this issue just reiterates the traditional doctrine.

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On the doctrinal level, the report made by the Institute of Human Rights **Bartolomé de las Casas of the University Carlos III** in Madrid about the impact of the Convention in the Spanish legal system starts about the shift of model that will require gradual changes, in which there are probably periods where both institutions, the incapacitation and the new measures "must coexist" because while this mechanism is not articulated should be set curatorship, understood as a model of support and assistance under the principle of best interests of the person with disability, as the mechanism to which the judge should go as a general rule, and the guardianship will be reserved - always waiting for a normative reform that means its disappearance because it is directly confronted with the provisions of the convention-, for those decisions takings when the circumstances and needs of a person with disability can prevent know his will in relation to traffic (relative with a economic acts) but never in relation with a fundamental rights.

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Torcuato Recover:

"We are talking about fundamental rights, the Human Rights. It is a substantial nuance because it means that the provisions of Article 199 and following of the Civil Code are not rules of interpretation and conflict of interest between individuals, no. When the Civil Code regulates if a person should give or not his opinion, his will to lease or dispose of his patrimony, if his will should be eliminated or ignored, we are not talking about individual rights but a fundamental right..

And these are patrimonial questions, but if we go to a more personal level, if a person should be in an institution, if a person can exercise his right to parenthood, this can not be decided by others without taking into account his opinion, the person can exercise those rights."

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Luis Cayo Pérez Bueno, president of CERMI

"The Convention is such a deep charge for the more traditional view and mediocrity of what was the disability it seems that we are not yet aware of the size and scope of this transformation and what takes place in all areas", he notes that "The approach of Article 12 is openly opposed to regulating the civil code, which says the opposite, persons with disabilities subject to a process and a judgment that meant his total inability, is openly opposed, not only for the terminology and the nature of the underlying concepts behind words, is absolutely opposed to that definition in paragraph 2 of Article 12.

"We can not, therefore, today, continue to dictate judgments in which it is said that the person is incapacitated. This approach conflicts with the legal practice. The family courts are dictating decisions that are contrary to a law that is already directly applicable as the International Convention. It is urgent, therefore, a reform in line with the principles of the Convention."

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Fabián Cámara, President of Down Spain states that the UN Convention opens up new horizons for equal legal capacity before the Law.

In his opinion, "The International Convention on the Rights of Persons with Disabilities (CIDPCD) supposes the ratification of the fact that persons with disabilities are subjects of law, situation that already had been recognized in a general way by the Universal Declaration of Human Rights and the Spanish Constitution.

This reiteration is justified by the existence of a legal protectionist attitude and a social perception of the collective as special citizens, which have resulted an endless selection of restrictive measures that prevent literally their enjoyment, because of their safety and security, producing even situations of continuous violation of their most fundamental rights.

The situation becomes even more evident in the collective of persons with intellectual disability, whom are permanent considered incapable without any type of previous evaluation. The immense majority of people with intellectual disability are not aware of their rights, and this fault of recognition carries them to assume naturally the violations suffered without any protest, and not consider even the slightest claim of change in the social, legal, and judicial treatment for themselves.

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This situation has generated a legal and judicial system that aims to protect from potential abuses, especially in the property field, based on denying their capacity of decision and moving it to their guardians. In the practice, it is necessary incapacitate legally persons so they can "enjoy" its patrimony or inheritance or to make routinely prohibitions from exercising their right to vote.

In this context, the appearance of the CIDPCD supposes a radical change in the situation, a before and an afterwards. The highest degree of friction between the content of the CIDPCD and the Spanish legislation is about the regulation of personality rights and legal capacity of persons with disabilities. The Article 12 of the Convention declares explicitly the full equality under the law of persons with disabilities without any kind of distinction.

This statement comes into full confrontation with some of the institutions that in our law regulate the legal capacity, such as the guardianship, the conservatorship, the extended parental authority or the judicial incapacitation.

Given this diatribe, the Spanish Down's position is absolutely support the statement of the article 12 of the Convention and therefore, requires:

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The disappearance, because it is unacceptably and discriminatory, of any judicial or administrative proceeding which removes, deletes, forbids or simply restricts the legal capacity of a person by reason of disability, this is, the institution generally known as "judicial incapacitation" (or any other name that is tried to give it in the future).

The disappearance (with the transitional arrangements necessary respect of situations existing and settled in the practice) of any institution that replaces the civil will of persons with disabilities, such as the guardianship, the conservatorship or any other similar institution.

The establishment of the new system of supports to the legal capacity of the convention respecting the basic principle of "respect the rights, the will and the preferences of the person with disability, ensure the other conditions also established by the convention, this is, the "appropriate and effective safeguards to prevent abuses", "the conflict of interests and the undue influence "

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Legislative level

Catalan Civil Code (Law of July 29, 2010), concerning to the person and the family, invokes in its preamble, the Convention

"The present law keeps the traditional institutions of protection linked to the incapacitation, but also regulates other ones which operate outside it, because in many cases the person with disabilities or their families prefer not to promote it. This diversity of protection systems recognize the duty to respect the rights, the will and the preferences of the person and the principles of proportionality and adaptability to the circumstances of the protection measures, as advocated by the Convention ... "

"Along with the provision that allows not provide the guardianship if it had been granted a power in anticipation of the loss of capacity, changes in relation to the custody of fact are a reflection of the new model of protection of the individual subject...that´s the reason why ... includes a new instrument of protection, assistance, created for the adult who needs to take care of his person or property because of the decrease nondisabling of his physical or mental faculties.

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So we start from a conception of the protection of the person who is not necessarily linked to lack of capacity but also includes instruments based on the free development of personality to protect them in situations such as aging, mental illness or disability.

This instrument can be very useful to certain vulnerable groups for which the incapacitation and the implementation of a system of guardianship or conservatorship (curatorship) are disproportionate, as the individuals affected by mild mental retardation or other for which the type of decrease suffering, the traditional instruments are not appropriate for their needs.

In line with the guidelines of Committee of Ministers of the Council of Europe's recommendation of 28 February 1999 and following the precedents existing in different legal systems in Cataluña is considered more appropriate this model of protection parallel to the guardianship or curatorship. Also, this is the trend that inspires the Convention on the Rights of Persons with Disabilities. "

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AS A FINAL: THE CONVENTION AS A PRINCIPLE

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I want to maintain the illusion that defined the Convention itself and for that, the parameters to define a support system are clear: equality, respect for autonomy, the article twelve states with absolute clarity that should be taken into account the will and preferences of individuals subjects this is essential especially for provisions regulating in anticipation of future disability, and support measures must be proportionate, fit in the shortest time possible, that is absolutely incompatible with long processes. Those are the parameters that should define the adaptation to the Convention.

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Unfortunately, I am watching passive attitudes and that is not what I've lived when people who were discussing the Convention wanted and that's not what that day (December 13, 2006) was crystallized at the headquarters United Nations. Depends on us that this is a fundamental text for the development of Human Rights, Just on us, with a critical and realistic view.

Of course, taking into account those who know, do not place these discussions in intellectual circles far from the associations. I can only conclude with a sense of hope, perhaps enforced at the moment.

Despite all obstacles, despite the legal conformity, despite all, hope.

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