



*Seminar "The United Nations
Convention on the Rights of
Persons with Disabilities"*

*Getafe (Madrid),
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ACCESSIBILITY

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I - INTRODUCTION

CONCEPT AND BACKGROUND TO UNIVERSAL ACCESSIBILITY:

"The condition that must be met by environments, processes, goods, products and services, as well as devices or instruments, tools and mechanisms, to ensure that they can be understood, used and applied safely, conveniently, and as autonomously and naturally as possible, by everyone"

Complemented by **Article 9(1) CDPD**: "To enable persons with disabilities **to live independently and participate fully in all aspects of life**, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas."

II - UNIVERSAL ACCESSIBILITY AND THE SOCIAL MODEL OF DISABILITY

1. **Recognised in Spanish law through Act 51/2003 on Equality of Opportunity, Non-Discrimination and Universal Accessibility for Persons with Disabilities (LIONDAU)**

SOCIAL MODEL / REHABILITATION MODEL

Integration mind set / **Protective mind set**

Disability is rooted in society / Disability is a personal attribute

Transform society / Change health care policy

ACCESSIBILITY -----> **SOCIAL MODEL**

The full, active integration of persons with disabilities, and their direct participation in all aspects affecting their own lives, require their full inclusion in society and provision of equal opportunities.

Achieving this calls for **universal accessibility**, i.e. universal design and policy mainstreaming, reaching every area of society and public life.

II - UNIVERSAL ACCESSIBILITY AND THE SOCIAL MODEL OF DISABILITY (2)

2.- Design of the Convention on the Rights of Persons with Disabilities (CRPD) of 2006 (entered into force in Spain on 3 May 2008)

The Convention should always be **read, interpreted and applied** from the perspective of non-discrimination. Before reading this instrument, we should "put on our non-discrimination glasses" and adjust our vision for each specific right or rule that we are analysing" (Agustina Palacios)

* Accessibility as a facet of the Equality Principle:
non-accessibility implies discrimination.

Discrimination on the basis of disability: "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation"
(Art. 2 CDPD)

II - UNIVERSAL ACCESSIBILITY AND THE SOCIAL MODEL OF DISABILITY (3)

* Cross-cutting focus: accessibility as a principle (Art. 3 (f)) and as a subjective right (Art. 9)

“ To enable persons with disabilities **to live independently and participate fully** in all aspects of life, States Parties shall take appropriate measures to **ensure** to persons with disabilities **access, on an equal basis** with others...”

* Accessibility as a means of preventing disability

“Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to **fully enjoy all human rights and fundamental freedoms**” (Preamble, v).

The absence of accessibility generates disability.

Ensuring accessibility eliminates the social factors which, according to the social model, combine to create disability.

III – MECHANISMS IN SOCIAL LEGISLATION FOR MAKING ACCESSIBILITY EFFECTIVE

Universal accessibility (FOR EVERYONE TO ALL ENVIRONMENTS) is a legal obligation established by laws enacted to promote and protect the rights of persons with disabilities.

1 - **UNIVERSAL DESIGN:** "the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design". The provision specifies that this universal design "shall not exclude assistive devices for particular groups of persons with disabilities where this is needed" (Art. 2)

This is a concept that goes beyond simple access to buildings.

It is a STRATEGY, a PHILOSOPHY, a MODUS VIVENDI: it helps to prevent and eliminate obstacles to full integration.

III - MECHANISMS IN SOCIAL LEGISLATION FOR MAKING ACCESSIBILITY EFFECTIVE (2)

2 - REASONABLE ACCOMMODATION: "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"

Constituent factors: (Pérez Bueno)

- 1.- Positive behaviour to transform the environment (factor: **creating facts on the ground**)
- 2.- This transformation must aim to adapt and match the environment to the specific needs of persons with disabilities, in all the specific situations they may find themselves in, offering them a solution (factor: **personalising and satisfying particular needs**);
- 3.- There will be cases beyond the reach of general obligations to protect the rights of persons with disabilities (factor: **subsidiarity**);

4.- The accommodation should not incur a disproportionate burden for the subject under obligation (factor: **reasonable nature**);

"In determining whether a burden is disproportionate or not, account will be taken of the costs of the measure, the discriminatory effects that its non-adoption can be assumed to have for persons with disabilities, the structure and characteristics of the person, entity or organisation who must apply it, and the possibility of obtaining official funding or other assistance" (Art.7 LIONDAU)

5.- The aim, whatever the case, is to facilitate accessibility for or participation by persons with disabilities concordant with that enjoyed by the other members of the community (factor: **ensuring the right to equality**).

* **These are specific measures – with the particular aim of achieving accessibility.**

* **Failure to comply with the obligation is discrimination (Art. 2)**

* **They guarantee and delineate the rights of persons with disabilities**

IV - MECHANISMS TO GUARANTEE AND PROTECT ACCESSIBILITY

1 – MECHANISM PROVIDED FOR IN THE CRPD: Presentation of a report to the **Committee on the Rights of Persons with Disabilities** (Art. 34).

The Committee will make appropriate proposals and recommendations in response to reports (Art. 36)

2 – General guarantees against discrimination provided for in LIONDAU: **system of offences and penalties** (Act 49/2007)

3 – **Mechanisms for scrutiny:**
Ombudsperson,
Defender of Persons with Disabilities,
National Council on Disability,

4 – Extra-judicial mechanism:
Arbitration system for persons with disabilities (Royal Decree 1417/2006)

5 – Judicial mechanisms:
Civil, criminal and administrative courts
Appeal before the Constitutional Court: Art. 53(2) of the Spanish Constitution of 1978

V- CONCLUSIONS

Awareness raising, training

Laws, technical rules and guidelines

Promotion of research, innovation and quality

Plans and programmes

Promotion of participation

Coordination for diversity of sectors concerned and complexity of specific interrelationships for full accessibility

Coordination for broadly spread competences and administrative roles, based on deconstruction and diversification of public agencies competent to organise specific changes



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