

Specific Substantive Obligations under the UNCRPD: Education, Health, Work and Employment, Standard of living and Social protection, Participation

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Structure of the Talk

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2. Impact on the individual - the inter-connectedness of these (and other) CRPD rights
3. Nature of implementation obligations – progressive and immediate
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1. These CRPD Obligations and the European Disability Strategy 2010-2020

1.1 CRPD Obligations

(a) Education – Article 24

- right to education “without discrimination and on the basis of equal opportunity”;
- “ensure an inclusive education system at all levels and life-long learning”;
- ensure that they take “appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education”;
- ensure that disabled people are not “excluded from the general education system” or from “free and compulsory primary education, or from secondary education, on the basis of disability”;
- ensure that they can access primary and secondary educations, on an equal basis with others, “in the communities in which they live”;
- ensure that “the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development”
- ensure that reasonable accommodation and support is provided;
- to develop the “personality, talents and creativity” and “mental and physical abilities” of disabled people “to their fullest potential”;
- to enable disabled people “to learn life and social development skills to facilitate their full and equal participation in education and as members of the community”;
- to facilitate “the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring”;
- to facilitate “the learning of sign language and the promotion of the linguistic identity of the deaf community;”

(b) Health - Article 25

- right to enjoy “highest attainable standard of health without discrimination on the basis of disability”;

- “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes“;
- “require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent“;
- prohibit discrimination on basis of disability in “the provision of health insurance, and life insurance” and through the “denial of health care or health services or food and fluids on the basis of disability“;
- “provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention ... and services designed to minimize and prevent further disabilities“; and
- “provide these health services as close as possible to people’s own communities, including in rural areas”.

(c) Work and Employment – Article 27

- recognise “right of persons with disabilities to work, on an equal basis with others” including “the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities“;
- prohibit discrimination and ensure reasonable accommodations are provided;
- ensure equal access to, and opportunity to exercise, labour and trade union rights;
- promote employment opportunities in public and private sectors and through guidance, training, work placements, entrepreneurship, self-employment and co-operatives;
- promote employment retention and return-to-work schemes; and
- “ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour”.

(d) Standard of living and social protection – Article 28

- recognise “the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions“;
- recognise “the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability“;
- take steps to ensure “equal access ... to clean water services” and “appropriate and affordable services, devices and other assistance for disability-related needs“; and
- take steps to ensure access “to social protection programmes”, “poverty reduction programmes”, “public housing programmes”, “to retirement benefits and programmes” and “access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care“;

(e) Participation – Article 3(c)

- **“Full and effective participation and inclusion in society”**
This is a cross-cutting, animating principle which runs throughout the CRPD – the “life blood” of the Convention.

1.2 The European Disability Strategy 2010-2020

“The overall aim of this Strategy is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market. Achieving this and ensuring effective implementation of the UN Convention across the EU calls for consistency. This Strategy identifies actions at EU level to supplement national ones, and it determines the mechanisms needed to implement the UN Convention at EU level, including inside the EU institutions. It also identifies the support needed for funding, research, awareness-raising, statistics and data collection.”

The 8 main “areas for action” are –

accessibility, participation, equality, employment, education and training, social protection, health, and external Action.

Overarching objectives for each of the relevant areas

(a) Education and Training

“Promote inclusive education and lifelong learning for pupils and students with disabilities.”

“EU action will support national efforts through ET 2020, the strategic framework for European cooperation in education and training , to remove legal and organisational barriers for people with disabilities to general education and lifelong learning systems; provide timely support for inclusive education and personalised learning, and early identification of special needs; provide adequate training and support for professionals working at all levels of education and report on participation rates and outcomes.”

(b) Health

“Foster equal access to health services and related facilities for people with disabilities.”

“EU action will support national measures to deliver accessible, non-discriminatory health services and facilities; promote awareness of disabilities in medical schools and in curricula for healthcare professionals; provide adequate rehabilitation services; promote mental health services and the development of early intervention and needs assessment services.”

(c) Work and Employment

“Enable many more people with disabilities to earn their living on the open labour market.”

“EU action will support and supplement national efforts to: analyse the labour market situation of people with disabilities; fight those disability benefit cultures and traps that discourage them from entering the labour market; help their integration in the labour market making use of the European Social Fund (ESF); develop active labour market policies; make workplaces more accessible; develop services for job placement, support structures and on-the-job training; promote use of the General Block Exemption

Regulation which allows the granting of state aid without prior notification to the Commission.”

(d) Social Protection

“Promote decent living conditions for people with disabilities.”

“In full respect of the competence of the Member States, the EU will support national measures to ensure the quality and sustainability of social protection systems for people with disabilities, notably through policy exchange and mutual learning.”

(e) Participation

“Achieve full participation of people with disabilities in society by:

- enabling them to enjoy all the benefits of EU citizenship;
- removing administrative and attitudinal barriers to full and equal participation;
- providing quality community-based services, including access to personal assistance.”

“EU action will support national activities to:

- achieve the transition from institutional to community-based care, including use of Structural Funds and the Rural Development Fund for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers;
- make sports, leisure, cultural and recreational organisations and activities accessible, and use the possibilities for exceptions in the Directive on copyright.”

2. Impact on the individual - the inter-connectedness of these (and other) CRPD rights

2.1 Experiences of Individuals

See, eg, quotes from interviewees in

- European Union Agency for Fundamental Rights, Choice and Control: The Right to Independent Living (Luxembourg: Publications Office of the EU, 2012);
- European Union Agency for Fundamental Rights, Involuntary Placement and Involuntary Treatment of Persons with Mental Health Problems (Luxembourg: Publications Office of the EU, 2012);
- European Union Agency for Fundamental Rights, Legal Capacity of Persons with Intellectual Disabilities and Persons with mental Health Problems (Luxembourg: Publications Office of the EU, 2013);
- Bulgaria's Abandoned Children, ???

2.2 Human Rights Law

'universal, indivisible and interdependent and interrelated' (Vienna Declaration and Programme of Action 1993)

Necessary relationship of rights to be free from discrimination, to accessibility, to legal capacity to support to live independently in the community etc with the CRPD rights of relevance here.

Necessary relationship of CRPD rights of relevance here with others.

How violation of one right may also constitute violation of others – eg treatment without consent may amount to torture (UN Special Rapporteur on Torture, February 2013).

3. Nature of implementation obligations – progressive and immediate

3.1 Traditional Understandings of the Differences between Economic, Social and Cultural Rights and Civil and Political Rights

Former associated with positive obligations and the latter associated with duties of restraint.

Former associated with investment of resources but not the latter.

Former (but not the latter) subject to "progressive realisation" – Article 4(2) CRPD.

3.2 Implementing Economic, Social and Cultural Rights

International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2(1) –
"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

Committee on Economic Social and Cultural Rights, General Comment 3 (1990) –

The full realization of economic, social and cultural rights may be achieved progressively but

"Steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008, Article 8(4) –

"When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant."

Elements of the duty with immediate effect –

- taking steps
- ensuring core minimum content
- ensuring non-discrimination

4. Selected Caselaw

4.1 Discrimination

(a) Education

DH v Czech Republic (ECtHR, 2007) and *Horvdth and Kiss v Hungary* (ECtHR, 2013)
(In both, the ECtHR found that Roma children had been indirectly discriminated against by being subjected to tests which had the disproportionate impact of classifying them as in need of special education in segregated schools.)

Belgian cases concerning provision of sign language in schools

(b) Health

HM v Sweden (Committee on the Rights of Persons with Disabilities, 2011)

"In this regard, the Committee notes that the State party, when rejecting the author's application for a building permit, did not address the specific circumstances of her case and her particular disability-related needs. The Committee therefore considers that the decisions of the domestic authorities to refuse a departure from the development plan in order to allow the building of the hydrotherapy pool were disproportionate and produced a discriminatory effect that adversely affected the author's access, as a person with disability, to the health care and rehabilitation required for her specific health condition. Accordingly, the Committee concludes that the author's rights under articles 5(1), 5(3), 25 and the State Party's obligations under article 26 of the Convention, read alone and in conjunction with articles 3 (b), (d), and (e), and 4(1) (d) of the Convention, have been violated."

Campeanu v Romania (Due September 2013)

(c) Social protection and Standard of Living

Burnip v Birmingham City Council (Court of Appeal of England and Wales, 2012)
(The Court found that a State benefit scheme to help people on low incomes pay for rented accommodation discriminated against disabled people because it failed into account their disability-related needs for additional bedrooms.)

(d) Employment

HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (CJEU, 2013)
CJEU revisited the definition of disability for purposes of Directive 2000/78/EC and looked to the CRPD for guidance. Also provided guidance on meaning of reasonable accommodation in the employment context.

(e) Health

4.2 Adequacy of Steps to Progressively Realise

Autism France v Europe (European Committee of Social Rights, 2003)

MDAC v Bulgaria (European Committee of Social Rights, 2008)

Nyusti and Takacs v Hungary (Committee on the Rights of Persons with Disabilities, 2013)

“General [Recommendations]: the State party is under an obligation to take measures to prevent similar violations in the future, including by:

...

- (b) Providing for appropriate and regular training on the scope of the Convention and its Optional Protocol to judges and other judicial officials in order for them to adjudicate cases in a disability-sensitive manner;
- (c) Ensuring that its legislation and the manner in which it is applied by domestic courts is consistent with the State party’s obligations to ensure that legislation does not have the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise of any right for persons with disabilities on an equal basis with others.”

5. Conclusion

- From segregation to inclusion
 - From ‘best interests’ to own decisions
 - From protection to participation
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- Requires radical rethinking of traditional approaches – social model emphasis on barrier removal
 - Requires understanding and co-operation of judges