

UN Convention on Rights of People with Disabilities

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Origins

- UN CRPD and Additional Protocol adopted by the General Assembly of the UN on 13 Dec 2006, entry into force on 3 May 2008 (after ratification by 20th state party)
 - Leading role of New Zealand
 - **Ratification success**
 - UN CRPD - 155 signatories, 127 state parties
 - Optional Protocol - 91 signatories, 76 state parties
 - **EU is a party to the UN CRPD** (mixed agreement)
signature – 30 March 2007 / ratification 23 Dec 2010
- Poland** – signature on 30 March 2007, ratification on 25 September 2012

Key concepts

UN CRPD does not create new rights

BUT:

- It has to make current guarantees more effective
- it has to make obligations of state parties more precise

CHANGE OF PARADIGM

- model of aid by the state to persons with disabilities supplemented by the human rights' model
- material equality - rejection of neutrality criteria and replacing it with acknowledgment of differences due to disability

Models of disability

1. Individual model – disability is a problem of an individual

⇒ Medical and functional approach

2. Social model – disability is a problem of society

⇒ human rights and community approach

UN CRPD and holistic approach to human rights

- Human rights are
 - universal
 - indivisible
 - Interdependent
 - Interrelated
- UN CRPD takes into account majority of rights guaranteed in other international human rights documents, that sometimes reflect division of rights into different generations

Aim of UN CRPD

- Article 1
 - *„...to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities”*
 - *„... to promote respect for their inherent dignity”*
- Promotion of full and effective participation in society on an equal basis with others

Definitions

- 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“

- Communication

„languages, display of text, Brailled, tactile communication, large print, accessible multimedia as well as written, audio, plain language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology“

- Universal design

Basic principles of UN CRPD

Article 3

- respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- non-discrimination,
- full and effective participation and inclusion in society,
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity,
- equality of opportunity,
- accessibility,
- equality between men and women
- respect for evolving capabilities of children with disabilities (and right to preserve their identities)

Obligations of state parties to UN CRPD

- three dimensions of obligations of state parties - protect, respect & fulfill
- Article 4 of the UN CRPD
- progressive implementation of social rights
- principle of cooperation and participation of persons with disabilities and their NGOs
- non-derogation principle as regards more advantageous rights
- raising awareness
- collection of data

Rights and obligations

- individual freedoms (*every person with disabilities has a right to*) vs. obligations of states (*states Parties shall take...*)
- promotion of social change
- guarantees of accessibility (removing barriers and hindrances)
- right of every human being to life
- protection and safety of persons with disabilities in situations of armed conflict, humanitarian emergencies and occurrence of national disasters
- recognition before the law and legal capacity
- access to justice
- right to inclusive education
- right to attainable highest standard of health without discrimination on the basis of disability

Rights and obligations

- right to physical and mental integrity
- respect for family life – prohibition of forced sterilization and right to adopt children
- obligation of the state to organize habilitation and rehabilitation (Art. 26)
- participation rights – in order to secure inclusion into society
- right to vote
- right to work (comprehensive guarantees)
- BUT: reservations to some articles (e.g. UN CRPD as not conferring the right to abortion)

Committee on the Rights of People with Disabilities

- monitoring mechanism – reports by state parties (2 years after ratification and then every four years)
- 12 individual human rights experts, 18 members after ratification by at least 80 state parties, elected by the Conference of State Parties
- elected for four years term (except for first team – half elected for two years)
- individual complaint – need to ratify the Optional Protocol
- Optional Protocol is modelled on the CEDAW Optional Protocol

Multi-level system of protection of persons with disabilities

UN

CoE

EU

European Social
Charter

European
Convention on
Human Rights

Framework
Directive
2000/78/EC

Multi-level system

- different personal scope of applications – different definitions of disability
- different material scope – non-discrimination principle and its applicability in different spheres
- different remedies and their availability at domestic level

Exhaustion of domestic remedies ↔

Complaint ↔

Judgment / decision at the international level ↔

Enforcement at local level

Non-discrimination principle due to disability in the UN CRPD

- Definition of discrimination
 - any distinction, restriction or exclusion on the basis of disability
 - having the purpose or effect of
 - Impairing or nullifying the recognition, enjoyment or exercise
 - on 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 the denial of reasonable accommodation.

Article 6 – women and girls with disabilities are subject to multiple discrimination

Disability in UN CRPD

- Definition of disability
- Approach: result of interaction between persons with disabilities and environmental and societal barriers and hindrances, which limits the full participation in the social life, on equal footing with other persons
- *„long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others“* (Article 1 Section 2 UN CRPD)

Prohibition of discrimination due to disability in the EU legal system

- Directive 2000/78/EC
 - Applicable only to employment and labour relations
- Draft horizontal directive (2008) – lack of consensus
- Right of passengers with disabilities – relevant EU regulations
- Jurisprudence of the ECJ
 - C-13/05 *Chacón Navas v Eurest Colectividades SA* (2006)
 - C-303/06 *Coleman v Attridge Law* (2008) – discrimination by association
- Pending cases
 - C-335/11 *Jette Ring v Dansk almennyttigt Boligselskab DAB*
 - C-337/11 *LoneSkouboe Werge v Pro Display A/S*

Disability according to the EU Law

- Judgment of 11 July 2006, *Chacón Navas*, C-13/05
- Contradiction with UN CRPD and the social approach to disability
 - limitation being a result of violation of physical, intellectual or mental functions that constitutes a barrier for a given person to participate in professional life (para. 43)
 - it refers to impairment, which is a cause for different treatment – so „medical approach”

Prohibition of discrimination in the ECtHR

- Article 14 of the Convention
 - Enjoyment of rights and freedoms guaranteed in the Convention....
- Protocol No 12 to the Convention
 - ratified by a few states
 - limited number of case-law
 - enjoyment of any right set forth by law...
 - principle of equal treatment by state authorities

Disability in case-law of the ECtHR

- *Glor v Switzerland* (2009)
- Refusal to join the army as protected under Article 8 ECtHR
- “Reasonable accommodation” with respect to persons with disabilities as regards access to military service
- The Court suggested that people in the applicant’s case might be offered the possibility of alternative forms of service in the armed forces that entailed less physical effort and were compatible with the constraints of a partial disability – in his case, insulin injections four times a day – or of civilian service, without that option being reserved for conscientious objectors alone
- *Alajos Kiss v. Hungary* (2010)
- Cases concerning deprivation of liberty of mentally-ill persons (e.g. *Stanev v. Bulgaria*, *Kędzior v. Poland*)

Implementation of UN CRPD standards at domestic level

Problem No. 1: automatic deprivation of voting rights for incapacitated persons

- CRPD Committee – violation of Article 29 of the CRPD, negative assessment of the national report, if Optional Protocol is ratified - violation
- EU – lack of competence to deal with the problem, except for voting to the EU Parliament
- ECHR – violation of Article 3 Protocol No. 1 to the Convention (Alajos Kiss v. Hungary)
- Poland – necessity to change Constitution (Article 62 Section 2)

Implementation of UN CRPD standards at domestic level

Problem No. 2 – discrimination due to disability in employment / access to public service

- UN CRPD – violation of Article 27 in connection with Article 5 Section 3 UN CRPD
- ICCPR – violation of Article 25c in connection with Art. 26 ICCPR
- ECHR – violation of Protocol 12 (if ratified) or violation of Article 14 in connection with Article 8 ECHR
- EU – violation of Directive 2000/78/EC
- PL– violation of the constitutional principle of equal treatment

BUT: case of disabled prosecutor and limitations of protection

Thank you for your attention

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