



**THE LEGAL PROTECTION OF PEOPLE WITH  
DISABILITIES UNDER THE UNITED NATION'S  
CONVENTION ON THE RIGHTS OF PERSONS WITH  
DISABILITIES**

**WITH EXCEPTIONAL REGARD  
TO THE CONCEPT OF  
DISABILITY AND REASONABLE ACCOMMODATION**

**MOREOVER TO THE CASELAW OF  
THE UNITED STATES OF AMERICA,  
THE EUROPEAN COUNCIL AND THE EUROPEAN UNION**

**Abstract of Ph.D. Thesis**

Mikola Orsolya Irén

**Supervisors:**

Dr. Kovács Péter, D.Sc

Könczei György, D.Sc.

research professor  
PPKE JÁK, International Law  
Department

professor head of the institution  
ELTE BGGYK, Disability and Social  
Participation Institute

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Pázmány Péter Catholic University  
Doctoral School of Law and Political Science

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*Our desire is not that others might be relieved while you are hard pressed, but that there might be equality. At the present time your plenty will supply what they need, so that in turn their plenty will supply what you need. The goal is equality, as it is written: "The one who gathered much did not have too much, and the one who gathered little did not have too little."*

*2 Corinthians 8, 13-15 (NIV)*

## **Relevance and aim of the research**

The Convention on the Rights of Persons with Disabilities (UN CRPD) is the first, comprehensive legally binding human rights document of the XXI. century, that includes both civil, political and economic, social and cultural rights to protect people with disabilities.

Previously the protection of people with disabilities was ensured through direct or indirect, general human rights documents, but after the ratification, the UN CRPD ensures the legal protection and through its Optional Protocol people with disabilities can use the tool of individual complaint mechanism. It has been ratified by 174 states and 13 have already signed it, and only 11 states remained in silence.

Approximately 10% of the world's population, 650 billion people are living with some kind of disability, 37 billion people is living in the European Union, which is the biggest minority group of the world becoming bigger and bigger considering that we are living in an aging society.

From an economic perspective, to financially support people with disabilities means extra costs, reflecting the medical model's perspective, instead of an adapted environment, where the barriers are removed, therefore all people with disabilities can take part in all levels of society. Therefore the people with disabilities are not depending from the society, they are independent and active part of it.

The aim of my research is to create a context of the concepts of disability and reasonable accommodation through the interpretation of the UN CRPD and with the help of the relevant and critical analysis of the cases of the UN CRPD Committee, the European Court of Human Rights (ECtHR), the European Court of Justice (ECJ) and the Supreme Court of the United States (USSC), following the dimension of 'judicial dialogue' and 'normative osmosis'.

- Introduction of the path to the UN CRPD, focusing on its „groundbreaking” attributes, what was missing from the previous human rights instruments;
- what the role is of the equality models in connection to the reasonable accommodation;

- what is the interpretation of the disability and reasonable accommodation of the different forums;
- what is the correlation and ‘normative osmosis’ of the different forums and international documents;
- how the different international forums use the tool of the reasonable accommodation in the frame of the UN CRPD;
- the connection and relationship of the disability and reasonable accommodation;
- what parts are problematical of the concept of reasonable accommodation;
- what are the possibilities to extend the application of reasonable accommodation.

The main issue in my research is the usage of reasonable accommodation: in my opinion, reasonable accommodation would be an excellent tool ensuring substantive equality and would be able to fulfill its role, providing the full and effective participation in the society for all people with disabilities through appropriate and effective modifications, in a reasonable frame.

I would like to differentiate between three kinds of problems. Firstly, though the obligation of reasonable accommodation at least based on disability is a good starting point, it should be expanded to ‘other protected grounds’ as well, such as race, gender and to the related grounds, like religion, maternity, paternity, age.

Secondly, reasonable accommodation is currently interpreted only in relation to employment and occupation in the regional level, though the UN CRPD affects all level of life. Thirdly, the lack of reasonable accommodation is not regarded as discrimination under the EU law, inconsistently with the UN CRPD.

Moreover, the relationship of disability and reasonable accommodation is problematic. Meanwhile there is a fight against discrimination with the tool of reasonable accommodation to ensure equality; the claimant needs to be disabled to require reasonable accommodation.

Based on the case law of the different platforms, we can see an obvious picture: society makes people disabled through its barriers, and this precondition can be regarded as a barrier as well.

Additionally in connection to the requirement of reasonable accommodation, there is an unbalance between the necessities of the demonstration of disability and the necessary accommodation, which is barely costly in most cases.

The main problem of the concept of reasonable accommodation is the close relationship to disability, plus the criteria of reasonability, which is not clarified; therefore it ensures a wide possibility to acutance.

## Research methodology and sources

My research methodology is based on two key sources. On the one hand, I searched on the classical way and I analyzed the legal sources. On the other hand, my research field requires a subjective, personal attitude. Therefore I made several interviews to face with the current challenges of the field of disability. The interviews covered diverse and different groups of disability experts and people with disabilities.

During my work I used the comparative method analysis, which is essential in this kind of topic: firstly, the UN CRPD enroots in the *Americans with Disabilities Act* (ADA), secondly, the EU as a regional organization has ratified the UN CPRD, thirdly, the different platforms use 'normative osmosis' referring to each other.

During the comparison I focused on those cases of the UN CRPD Committee, the ECtHR, the ECJ and USSC, which have interpreted the concept of reasonable accommodation and disability.

The UN CRPD Committee based on its legitimacy by the Optional Protocol have analyzed some cases, from those the firstly analyzed, *H.M. v. Sweden* was one of the most progressive ensuring the right of reasonable accommodation.

Though the main role of the UN CRPD Committee is the monitoring and the preparation of general comments, it also plays an important role by controlling the fulfillment of the purpose of the UN CPRD.

As time goes on, the UN CRPD should be stricter to ensure the adherence of the UN CRPD and to expect its fulfillment without any excuse (e.g. the lodging of the claim preceded the UN CPRD's entering into force). Plus, awareness should rise following the principles of the UN CRPD ensuring the rights of people with disabilities.

ECtHR interprets disability as widely as the UN CRPD. It deals with sterilization, abortion, death and political participation as well. *Glor v. Switzerland* is especially important: it was the first case where the ECtHR referred to the UN CRPD, secondly, the ECtHR interpreted disability under ECHR Article 14 and thirdly, the ECtHR used the concept of reasonable accommodation for the first time.

On the level of the European Union, the interpretation of disability is defined by the ECJ. At the beginning, the ECJ followed the medical model of disability, like in the *Chacón Navas* case. After the ratification of the UN CPRD by the EU, the ECJ shifted: in the *HK Danmark* case, they followed the social model of disability and the human rights interpretation. In these cases, mainly the existence of disability was necessary to be under the scope of the Employment Framework Directive, in connection to employment and occupation. Moreover, in the *Coleman* case the ECJ expended the protection of the European Framework Directive, because they stated that the mother of a disabled child is protected as well, based on the association.

Reasonable accommodation enroots in the religious freedom of the United States of America. Its application was expanded to the field of disability law by the ADA in 1990. The USSC interpreted the question of reasonable accommodation in the *U.S.*

*Airways, Inc. v. Barnett* at the first time. In this case, the USSC decided that though to change a position might be considered as undue hardship, it is not unreasonable. Recently, the interpretation of the reasonable accommodation went beyond it, when in the *Abercrombie* case, the requirement of a claim was not expected.

Reasonable accommodation, defined by the UN CRPD, has an overreaching effect to the employment, education, access to justice, personal freedom, affecting all levels of the society. The UN CRPD Committee scrutinized the concept of reasonable accommodation in several cases. Like in the *Nyusti and others v. Hungary* in connection to the ATM's accessibility, or in the *Mr. F. v. Austria*, when the accessibility of the public transportation was the key question of the case, and in connection of employment and occupation at the case of *Ms. Jungelin*, and the imprisonment question was at the stake in *Ms. X. v. Argentina* case. The first scrutinized case by the UN CRPD Committee still holds an important message. The UN CRPD Committee stated that the claim to a hydrotherapy pool is reasonable, emphasizing the barriers, which are created by the society and which should be removed.

The ECtHR has reasonable accommodation related cases mainly together with imprisonment, education and accessibility. I would like to highlight the recent case of *Guberina*, where the ECtHR strengthens the obligation of reasonable accommodation, connecting it to accessibility.

Moreover, the ECtHR – similarly to the USSC – has important cases related to religious freedom handling the situation of reasonable accommodation. By highlighting some cases, I would like to emphasize the necessity of the application of this tool in the European Union as well.

In the European Union, there is regulation of reasonable accommodation by the *Employment Framework Directive*, focusing only on reasonable accommodation in the field of employment. In contrast to the UN CRPD, the Employment Framework Directive does not say that the lack of reasonable accommodation accounts as discrimination. Through its cases, it can be seen that the definition of disability is required as the precondition and we face some practical example to fulfill the requirement of reasonable accommodation.

Disability is a global question concerning every person, which is expressed through the social model of disability and which is reflected by the UN CRPD as well. The question of disability is persistent, the life and its circle continuously creates situations which need the solutions and answers of law, ensuring not only the formal, but also the substantive equality and equal opportunities.

### **Brief summary of the research results**

Through my research I try to clarify and summarize the concept and the related questions of the disability and reasonable accommodation, moreover I am trying to dissolve the necessity of the definition of disability in relation to reasonable accommodation, through its broader understanding, to ensure it in every situation in life. If we could understand the obligation of reasonable accommodation in a broader way, we could eliminate the paternalistic approach, emphasizing that people with

disabilities are equally able if we remove the barriers, and people with disabilities are not a burden to society.

Looking reasonable accommodation in a very utopian way can deplete the current understanding of people with disabilities and we can apply what was written in the second letter of Corinthians: changing the way of thinking about disability, we can reach equality.

Through my work, my aim was to locate the UN CRPD in the international law's context, introducing its international effects, depicting the potential role of reasonable accommodation to ensure equality.

Though most of the international documents which protected people with disabilities directly or indirectly, this protection was not enforced in practice and it did not reflect the life challenges and situations of people with disabilities, because of the lack of the protection of relevant rights or because the relevant rights were not legally binding.

The UN CRPD created the necessary legally binding frames to open the door for the member states to fulfil the obligations and the perspective of the UN CRPD followed the principles of social model creating a human rights perspective.

Introducing the current understanding of reasonable accommodation, I wanted to emphasize that it is applicable to all parts of life. Currently the enforcement of its obligations is problematic, because of the lack of coherent understanding and coherent requirements. Spreading it to the other level of society, understanding it as a human right through paradigm shifts would mean a significant step in the fight against discrimination.

The application and understanding of reasonable accommodation means the first step to the path reaching substantive equality. But to reach real equality, it needs to be applied more widely. The courts have started to apply and analyze its tool creating equality, but the cases brought the importance of a more general application to the surface. Additionally, if we could apply a more general perspective, these questions and situations would have not been raised at all.

Therefore, the concept of reasonable accommodation should be understood in the frame of a human rights model, spreading its application reaching equality.

All in all I would emphasize the following results:

The UN CRPD is a great starting point to understand the importance of reasonable accommodation and to see its potential directions. On the one hand it is in connection to people with disabilities, secondly, it is an international tool to create equality. To those states which ratified the UN CRPD, it would be necessary to create more detailed and practical guidelines, following the requirement of the UN CRPD, taking all appropriate measures to eliminate discriminations and ensuring reasonable accommodation.

With the ratification of the UN CRPD, the European Union is obliged to take all appropriate steps and adopt the necessary legislations following the principles of the

UN CRPD therefore it should be required to spread the concept of reasonable accommodation to all spheres of life as well. A good direction might be the 2008 Directive proposal, though even that would not reach the level of the UN CRPD.

The ECJ should interpret the concept of disability in harmony with the UN CRPD with a more precise definition. Furthermore; awareness-raising training in connection with reasonable accommodation is required.

This would help to move forward to a more widely applied reasonable accommodation, even if it might seem utopian right now. But it means an immanent part of the human dignity, respecting human diversity. As disability is an evolving concept and the law is a living instrument formed by the challenges of life, reacted by a legal perspective by the court. Similarly to the UN CRPD's paradigm shift, more steps and change is needed, by considering the long lasting effect of the interpretation of disability as a human rights issue, which should bring unquestionably positive legal and economic effects.

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