

# **TOWARDS RATIFICATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES BY THE NETHERLANDS**

**Senate of the Parliament of The Netherlands, 6 December 2011**

**Jan Jařab, Regional Representative of the UN High Commissioner for Human Rights**

Honorable Parliamentarians,

Ladies and Gentlemen,

It is a great honor and a pleasure to be with you here today, in the Parliament of the Netherlands.

*What does it mean to ratify an instrument of International Human Rights Law*

Our Regional Office of the UN High Commissioner for Human Rights represents the High Commissioner both before the EU Institutions and the EU Member States, candidate countries and a handful of other European States. Our principal task is the promotion of international human rights standards, including the most recent one – the Convention on Rights of Persons with Disabilities (CRPD).

The development of a number of specific instruments of International Human Rights Law illustrates the growing sensitibilities of mainstream societies – of political leaders, policymakers and lawyers as well as of the general public – to the rights of various groups in society, which are all part of the „everyone“ referred to in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights.

Since the Declaration (1948), mankind has spent more than six decades finding out and affirming that this „everyone“ meant not just the dominant ethnic groups, but also minorities (Convention on the Elimination of Racial Discrimination, CERD); not only men, but also women (Convention on the Elimination of Discrimination against Women. CEDAW); not only persons walking the streets but also human beings spending time in detention facilities or care institutions (Convention against Torture, CAT); not only adults, but also children (Convention on the Rights of the Child, CRC); and finally, not only those who are fully fit, but also those with varying levels of disability (CRPD).

Why am I making references to all these other instruments of International Human Rights Law?

First, to show that the adoption of the CRPD is part of the same logic of fulfillment of the promise of the Universal Declaration. It represents a tangible recognition that persons with disabilities are no longer to be seen as mere objects of charity, but as rights-holders. They have equal rights, those which everyone else takes for granted – but they sometimes may need special attention to guarantee the enjoyment of these equal rights (in the areas of barrier-free employment, inclusive education, independent living etc.).

Second, because I wish to emphasize that the process of ratification of this Convention does not represent a conceptual novelty for The Netherlands or for any other EU Member State which has ratified most of the other aforementioned instruments – or even all of them, as is the case of The Netherlands. In fact, The Netherlands is among the 15 EU Member States which have also ratified the Optional Protocol to the Convention against Torture.<sup>1</sup>

And all these Conventions are monitored by Treaty Monitoring Bodies to whom States report; the Treaty Monitoring Bodies issue concluding observations following the dialogue with a State over its report; and they also issue General Comments serving for better interpretation of the Treaty in question. (I have heard that ratification of such an instrument was being referred to, with concern, as being „soft law with hard supervision“, but in fact it is rather „hard law with soft supervision“, given that the Conventions are legally binding, but the Concluding Observations of the respective Committees are only of quasi-judicial nature.)

### *The CRPD in Europe*

The only important way in which the CRPD differs from its predecessors is that it allows for ratification by regional organizations, e.g., the European Union, which has already ratified it a year ago. The EU as such has thus become, for the first time in history, party to an instrument of International Human Rights Law.

The move of the EU to ratify the Convention without waiting for all of its Member States to do so deserves a brief comment. Initially, the EU intended only to ratify after all of its Member States had completed ratification. The first wave of Member State ratifications, starting with Spain in 2007, was fairly rapid. And as all EU Member States – including, of course, The Netherlands – had signed the Convention and thus clearly indicated their intention to assume their obligations stemming from it, the European Commission believed that it could afford to wait for all of the Member States before ratifying the Convention itself. However, as a minority of States continued to delay ratification, the European Commission came to regard it as

---

<sup>1</sup> The only core Convention which The Netherlands has not ratified is the International Convention on the Rights of Migrant Workers and their Families (CRMW), but this is an instrument which has not been ratified by any other EU Member State either.

politically untenable and undermining its credibility to continue waiting for them – and it moved towards ratification.

It also needs to be emphasized that when the European Commission proposed ratification by the EU without waiting for all the Member States, it could not achieve the process alone. It required consent of all Member States in the EU Council, including once again The Netherlands.

At present, 19 EU Member States have also ratified the Convention, while 8 have not yet done so – Bulgaria, Estonia, Finland, Greece, Ireland, Latvia, Poland and The Netherlands. Thus, it can be summarized that a clear majority of EU Member States decided first to ratify, and subsequently to proceed with step-by-step implementation of the CRPD. Among the minority of the others, Finland has indicated that it intended first to carry out some key legislative changes before finalizing ratification. This appears to be in line with Finland's usual approach to new international obligations – and it appears to be used not merely as an excuse for delay, but as an opportunity to actually carry out necessary legislative changes in favor of persons with disabilities.<sup>2</sup>

I would like to highlight, however, that none of the States in question has so far indicated (on the international scene) any doubts as to **whether** it would ratify; the only issue appears to be **when** to do so. And I am personally convinced that in the other aforementioned States, including the Netherlands, there should really be no way back to re-launching a discussion whether to ratify the Convention at all, given that all these countries have both signed the Convention and given the EU the go-ahead to become party to it.

### *Rights versus charity*

I have been informed that in The Netherlands, concerns have been expressed as to the appropriateness of being subjected to „external control based on an international treaty rather than leaving these policies as subject to democratic decisions on the national level“. I have already briefly explained the well-established character of the „external control“; but please allow me to address the second allegation, i.e., that of restricting the scope of democratic decisions.

Indeed, there is a difference between a rights-based approach, represented by accession to an instrument of International Human Rights Law, and a purely political one which identifies the

---

<sup>2</sup> In fact, Finland has many problems to resolve, above all a rather inflexible system of very large residential institutions for the care of persons with disabilities – a system which is more akin to those in Eastern Europe (though on a higher material level) than those in other Nordic countries, and which it is only now attempting to reform.

policies concerning persons with disabilities (or women or children, for that matter) and ensuring their equal enjoyment of rights as something that can be subjected to „yes“ or „no“ decisions in a democratic process, depending on which opinion prevails and receives a majority.

If we say that a State accepts obligations under International Human Rights Law, it means that there can no longer be a majority decision to the effect that, for instance, „because people with disabilities are an insignificant minority of low priority, their equal rights are suspended“. Of course, there will always be many concrete issues which will have to be decided in the democratic decision-making process anyway, even when the Convention is ratified. But leaving the issue to the democratic political process itself, without a basis in rights, would de facto mean leaving the question as one of charity. It would imply that this is simply something that the benevolent donors (on part of the majority) can vote on, to decide whether to continue being charitable or not. Once you have recognized something as a right, politicians cannot vote on it (at least not on its existence); if something remains an issue of charity, they can.

It seems clear to me – and it is a very dominant view throughout the so-called human rights community – that if we want our societies to continue progressing towards a full humanist concept of modernity, we must choose the first option.

### *CRPD ratification and its financial implications*

Will ratification of the Convention have financial implications? Yes – and no. It depends on what we compare it with.

Obviously, if we decide to replace large institutions by more individualized community-based care (as required by Article 19 of the CRPD which deals with independent living), there will be important costs involved. Indeed, for a transitional period there might be double costs as diverse types of services run in parallel, before the older types are fully replaced. However, research from various countries of Europe (e.g., United Kingdom) and elsewhere (e.g., USA<sup>3</sup>) indicates that in the long run, community-based care is in fact less expensive than institutional care. (In some Eastern European countries, high-quality community-care might turn out to be more expensive than very-poor-quality institutional care... but who could reasonably defend poor-quality institutional care as a realistic policy option?)

Similar lessons apply to accessibility. Of course, making old existing building accessible requires investment. However, as UN Secretary-General Ban Ki-moon has repeatedly pointed out, building new infrastructure in accessible form is not more expensive than building it non-

---

<sup>3</sup> Particularly the data provided by the Center for Outcome Analysis.

accessible. Indeed, aiming for so-called universal design is certainly cheaper and more practical than building non-accessible structures and then „retro-fitting“ them, at greater expense and with less satisfactory results. Moreover, universal design tends to be useful for other categories of persons besides those with disabilities (older persons, mothers with children etc.).

In addition, a barrier-free environment enables persons with disabilities to participate increasingly in society. The value thereof should not, of course, be reduced to economic benefits, but it is clear that it is also linked to their increased participation in economically productive life, which is (in the long run) beneficial to society. Conversely, confining persons with disabilities in their homes or in institutions due to society's incapacity to create universal design leads to economic losses.

Ultimately, I believe that it is important to realize that **doing the right thing as an obligation stemming from the ratification of an international Treaty is not more expensive than doing the right thing voluntarily**, without ratification, as an act of charity. In the short run, it is perhaps more expensive than not doing the right thing at all. Thus, if someone argues against ratification on the basis of costs, such a person is in effect saying that the costs could be avoided if environments were kept inaccessible, persons with disabilities remained safely locked up in care homes etc. As I said earlier, in the long run it might actually *not* be cheaper, but above all it is an argument which needs to be seen for what it really represents, i.e., an admission that in the absence of a legally binding, rights-based commitment, persons with disabilities could and should be told to wait for better times when more charity might (or else might not) be available.

***I strongly believe that the cost argument needs to be turned against those who raise it. In other words, the burden of proof should not be upon those who advocate ratification (i.e., it should not be upon them to prove that ratification would be cost-free), but on its opponents (i.e., it should be upon them to prove that in the absence of a legal obligation, they can achieve comparable improvements for persons with disabilities more cheaply just on the basis of political goodwill – or else they should admit that what they are in fact advocating is to postpone or resign on such improvements).***

#### *Complementarity with EU law*

The final dimension that I would like to mention is that of EU law. As you know, Council Directive 2000/78 already prohibits discrimination on the grounds of disability in employment and introduces the principle of „reasonable accommodation“ (which is referred to also in the CRPD) in this context. A broader draft Directive, proposed by the European Commission in 2008 but still not adopted in Council (where it requires unanimity) aims to offer protection from

discrimination on the basis of disability in the access to goods and services, including housing, health care, education and social protection.

Thus, we can say that EU law is clearly moving in the same direction as International Human Rights Law (and it is more easily enforceable, through infringement procedures that can be launched by the European Commission in case of violation, ending up at the European Court of Justice as the final instance). EU law and International Human Rights Law cannot replace each other, but they complement each other. The draft „horizontal“ Directive, though it is at present blocked in Council<sup>4</sup>, is likely to be adopted sooner or later because the current situation in EU law is untenable.

At present, there is a „hierarchy of discrimination grounds“ - with gender, race and ethnic origin being protected across the scope of possible situations while disability, age, religion and sexual orientation only in areas linked to employment. This is politically embarrassing. If Europe is to have a humane future and not merely a technocratic, economically reductionist one, it is difficult to imagine the EU some 10 or 20 years from now still maintaining that hierarchy of discrimination grounds in law, with accessibility remaining an arbitrary decision of those in the political majority, and with disabled persons lingering away in closed residential institutions.

Ladies and Gentlemen,

I would like to thank the Coalition for Inclusion for inviting me to the Hague and I wish you fruitful, constructive discussions.

---

<sup>4</sup> Above all by Germany, though there are several other States which have joined it at least partial opposition to the Directive.