

Book Review

The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts

Edited by Lisa Waddington and Anna Lawson
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The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on December 13, 2006 at the United Nations and was opened for signature on March 30, 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol and one ratification of the Convention. Now, Convention on the Rights of Persons with Disabilities (CRPD) has 181 ratifications/accessions, 163 signatories, 96 ratifications/accessions and 94 signatories of the Optional Protocol.

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

According to the Convention, persons with all types of disabilities must enjoy all human rights and fundamental freedoms and that includes respect for inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons; non-discrimination based on disability, reasonable accommodation and universal design; 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; and respect for the evolving capacities of children with disabilities

and respect for the right of children with disabilities to preserve their UN Convention on the Rights of Persons with Disabilities in Practice.

The UN Convention on the Rights of Persons with Disabilities in Practice. A Comparative Analysis of the Role of Courts, edited by Lisa Waddington and Anna Laws, provides a systematic assessment of the CRPD implementation in the courts. The book compares the interpretation of the Convention with that of the court's application across different jurisdictions and investigates to fully understand the influence of the CRPD at the domestic level.

The book includes contributions from academic researchers of 11 different countries (Argentina, Australia, Germany, India, Ireland, Italy, Kenya, Mexico, Russia, Spain and the UK) and two regional jurisdictions (The Council of Europe – European Court of Human Rights and European Committee of Social Rights and The European Union). It also includes the *Interpreting of the Convention on the Rights of Persons with Disabilities in Domestic Courts*, by Anna Lawson and Lisa Waddington, which explains the domestic interpretations of specific CRPD and provides interpretative techniques used by courts in this study. Jurisdictions research includes contextual information about the country or regional organization, an approach to international law, the history of its engagement with the CRPD and an analysis of cases in that jurisdiction.

The introduction, by Anna Lawson and Lisa Waddington, outlines the different dimensions of the book and includes an explanation of the term “comparative international law,”

scholarship in the field of disability law, the different methodologies adopted in the study and their limitations, a discussion of disability-related terminology (despite not being a requirement of these authors to provide a uniform terminology) and an explanation of the organization of the book.

The book comprises 19 Chapters, the introduction, the jurisdiction-specific chapters (Chapters 2–14) and the comparative analysis (Chapters 15–18). These final chapters are the core of the book. They concern the interpretation of the Convention on the Rights of Persons with Disabilities in Domestic Court, the domestic legal status of the CRPD and relevance for court judgments, the uses of the Convention on the rights of persons with disabilities in domestic courts, the role of the judiciary and its relationship to the convention on the rights of persons with disabilities and human rights theory and comparative international law scholarship.

The jurisdiction Chapters include references to international human rights treaties incorporated within the domestic legal system, a methodologic framework and a general overview of judgments referring to the CRPD. Chapters finish with tables presenting the courts, the number of judgments decided per year and actions against the social welfare system. Regarding the two regional jurisdictions, The Council of Europe and The European Union, the book adopts a similar organization.

Oliver Lewis explains how the two principal adjudicative bodies of the Council of Europe – *The Council of Europe and International Law* with a focus on *European Court of Human Rights* (established by the 1950 European Convention on Human Rights and Fundamental Freedoms) and *European Committee of Social Rights* (established by the 1961 European Social Charter) bring international law into their

jurisprudence. Lewis also provides a section on how the Council of Europe Adjunctive Bodies uses the CRPD. The Chapter ends with reference tables providing a list of ECtHR decisions and judgments that cite the CRPD between December 1, 2006 and June 30, 2016 in chronological order of date of decision or judgment and the number of decisions and judgments of the ECtHR that cited the CRPD per year from January 1, 2008 to June 30, 2016.

In the Chapter relating to The European Union (Chapter 5), Lisa Waddington establishes the relationship between The European Union and International Agreements and provides a framework for the incorporation of the CRPD into EU law. In the conclusions, she draws a comparison between the Court positions and the advocate generals' [1] non-binding opinions. The conclusion regarding the court position is that "the Convention has been determinative of the Court developing a new definition of disability for the Employment Equality Directive," but "the Court has found that the Convention does not meet the standards needed for it to have direct effect in EU law." It mentions that the Convention referred in some cases to "reasonable 'accommodation,' and the 'Court's understanding of 'reasonable 'accommodation' set out in HK Danmark (Ring and Skouboe Werge) also reflects the language of the Convention." However, the court's approach to the definition of disability arguably shows, "there is no guarantee that the court's rulings will always be in line with the UN CRPD." The advocate generals "are more likely to engage in interpretation."

Valentin Aichele, responsible for the German analysis, mentions the different technical ways of using the CRPD in the federal courts. The author also summarizes the "Courts" interpretation of CRPD article by article relating to the right to equal recognition before the law, to mobility,

family life, work and employment. An example is given with regard to issues related to reasonable accommodation, and the point is if employer questions about reasonable accommodation in a job application process constitute discrimination for persons with a disability. This information includes a table showing a non-discrimination clause for women and girls with a disability. In conclusion, the author suggests that despite the criticism from legal scholars that the German courts neglected international human rights law, the CRPD is more cited than other human rights law instruments, and the courts are more receptive to CRPD in qualitative and quantitative senses.

The conclusion to the analysis of 28 cases in India by Shreya Atrey shows that there have been different approaches since 2016 when the Indian Parliament finally passed the Rights of Persons with Disabilities Act, but the CRPD model has not been fully adopted in the country. Nevertheless, according to the Indian researcher, there has been a favorable disposition to international law as in the CRPD and disability-friendly norms. However, the author concludes that it is essential to exploit the judicial work between 2007 and 2016 when the RPD Act adopted CRPD.

Ireland signed the Convention in 2007, and further to its ratification in March 2018, it entered into force as of April 19, 2018. When Eilíonóir Flynn wrote the Chapter, Ireland had not ratified the CRPD although it is relevant to understanding the position of the Irish state before the CRPD ratification.

Italy was one of the first countries that signed the Convention and is significantly influenced by the CRPD. The high protection of people with disabilities, according to Delia Ferri, is particularly relevant to the examination of Italian case law.

According to Elizabeth Kamundia in Kenya, there are just a few cases where courts have used the CRPD

with direct reference to interpreting the law, but according to her conclusions, the CRPD seems to have had a real influence on the outcome.

Matthew S Smith and Michael Ashley Stein conclude that CRPD's domestic application and interpretation by the Mexican Supreme Court of Justice of the Nation has been irregular and highlights the role of civil society in the CRPD implementation.

The Russian research carried out by Dmitri Bartenev and Ekaterina Evdokimova refers to the command of direct application of international treaties by courts of general jurisdiction and the significant number of cases initiated by state attorneys citing the CRPD. However, in just a few cases, the Convention was used to establish an affirmative obligation to accommodate special needs and to promote the rights of people with disabilities. There are no decisions where judges explicitly decided to apply the CRPD instead of domestic provisions conflicting with it.

The UN CRPD has been directly applicable in Spanish courts since May, 3 2008. The researcher, Ignacio Campoy Cervera, claims the application of the articles is not equal and confirms progress according to the application and interpretation of the Convention.

Regarding the UK, which ratified the CRPD and the Optional Protocol in 2009, Anna Lawson and Lucy Series conclude that there has been an increase in the number of cases referring to the CRPD. However, the majority of cases in which the UK judges have engaged with the CRPD have used it as part of the European Court of Human Rights (HCHR) or EU law.

The book includes a Chapter 15 *Interpreting the Convention on the Rights of Persons with Disabilities in Domestic Courts*, where Lisa Waddington and Anna Lawson explain how the courts interpreted the

Convention on the Rights of Persons with Disabilities in Domestic Courts. The Chapter is divided into sections, with Section 2 addressing CRPD provisions (from the preamble to Article 30) and Section 3, the convergence between CRPD interpretations. This Chapter is significant because it combines the different countries and courts according to the CRPD interpretation for different topics (reasonable accommodation, non-discrimination. . .), including an approach to the concept of disability, the link between impairment and disability and distinctions among categories of persons with disabilities.

In Chapter 16, *The Domestication of the Convention on the Rights of Persons with Disabilities*, Lisa Waddington reflects on the domestic legal status of CRPD and the relevance of the legal status for CRPD application, giving examples of that engagement with jurisdictions covered by the book.

In the final Chapters 17 and 18, *Uses of the Convention on the Rights of Persons with Disabilities in Domestic Courts* (Anna Lawson) and *The Role of the Judiciary and Its Relationship to the Convention on the Rights of Persons with Disabilities* (Lisa Waddington), there is a framework relating to the judiciary role and court use, where are mentioned decisions with more and less accomplishment with the Convention.

The monograph finishes with the Chapter 19, *Human Rights Theory and Comparative International Law Scholarship* by Christopher McCrudden, which incorporates mention of the skepticism toward human rights in a political and academic context and refers to features of the relationship between domestic courts and the Committee on the Elimination of Discrimination against Women.

This book is undoubtedly essential to any human rights academic research and a highly relevant resource of changing practices according to the CRPD application in the courts. The extensive list of court decisions, the significant number of countries/ jurisdictions analyzed and the profound reflection on the domestic legal status of the CRPD and the different judicial approaches of the CRPD show the impact of human rights and international law engagement. This work is a substantive tool toward changing the policies and the social consciousness of human rights, namely, the protection of the right of persons with disabilities.

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Note

1. Explanation of the role of the advocates general in the European Parliament: [www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2019\)642237](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2019)642237)