

The Development of the Right of Access as a Part of Human Rights

Research on accessibility has been intensified due to CRPD. Sometimes, even a new discipline of accessibility studies, separate from disability studies, is distinguished. It is a broad field at the intersection of all disciplines whose theory and practice concern various aspects and areas of accessibility. It needs to be defined as its discipline, with its unique set of methods, ideas, and models.^[1] There is undoubtedly a lack of in-depth consideration of accessibility in legal studies. Accessibility has not yet received such considerations as Disability Law or Disability Legal Studies.^[2] Accessibility Law awaits similar discussion on its place in the legal studies and legal system. Undeniably, the legal standards of accessibility included in the CRPD are part of human rights law. What is missing, however, is an in-depth consideration of how far Disability Law should be seen as a subdiscipline of human rights law, in which the CRPD has played a crucial role, and in how far it is already becoming a separate discipline. In the development of the accessibility law, issues related to identifying other sources and the place of accessibility in the legal system, its role, its legal nature and the scope of accessibility standards can be distinguished. Attempts are made to assess the content of the Convention concerning accessibility, to analyze General Comment No. 2 (2014) „Article 9 Accessibility”,^[3] and to review the subject literature on accessibility law.^[4] Detailed legal solutions

¹ Gian Maria Greco *The need for accessibility studies*, 2015 (unpublished), cited in: Gian Maria Greco, „On Accessibility as a Human Right, with an Application to Media Accessibility”, [in:] Anna Matamala, Pilar Orero, *Researching Audio Description. New Approaches* (Barcelona: Palgrave, 2016), 18; Gian Maria Greco, „The Nature of Accessibility Studies” *Journal of Audiovisual Translation*, 1 (2018).

² Anna Lawson, „Disability Law as an Academic Discipline: Towards Cohesion and Mainstreaming?” *Journal of Law and Society*, No. 4 (2020): 560–570. <https://onlinelibrary.wiley.com/doi/full/10.1111/jols.12258>.

³ Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014) Article 9: Accessibility, Committee on the Rights of Persons with Disabilities CRPD/C/GC/2.

⁴ Katarzyna Roszewska, „Accessibility – One of the Human Rights or the Means of Their Implementation” *Law and Social Bonds*, No. 3 (2021): 163–167.

within the different areas of accessibility are slowly emerging. Lawyers may struggle with the relationship between the normative and technical content of accessibility. Thus, it becomes important to provide not only legal guarantees but also guarantees of complementary technical standards. Finally, although accessibility is considered in the context of an international human rights standard, its assessment is not insignificant from a regional or national perspective, including the role of soft law and governance in promoting the rights of persons with disabilities at the EU level^[5].

KATARZYNA ROSZEWSKA associate professor

Cardinal Stefan Wyszyński University in Warsaw

ORCID – 0000-0002-1452-2497 / e-mail: katarzyna.roszewska@gmail.com

KEYWORDS: the right of access, accessibility, persons with disabilities, human rights

⁵ Dalia Ferri, „The role of soft law in advancing the rights of persons with disabilities in the EU: A ‘hybridity’ approach to EU disability law” *European Law Journal*, (2023): 1-20. [accessed: 8.04.2023].

1 | Accessibility in the work on the draft UN Convention on the Rights of Persons with Disabilities

The work on the draft Convention sheds light on the difficulties in defining the legal nature of accessibility. The idea of adopting a convention on this subject first emerged in 1987 when Italy presented a draft to the General Assembly. Subsequently, it appeared regularly on the agenda of meetings of various UN institutions supported by international organizations. From the outset, it was seen as complementary to, rather than opposed to, existing international treaties and instruments^[6].

In 2000, a study of previous UN human rights treaties was commissioned regarding their implementation with respect to persons with disabilities. The results were included in the study *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*. It was intended to present the experience and potential of international treaty bodies in monitoring and promoting protection. In the author's opinion, there was no urgent need to increase the use of existing instruments and no absolute necessity to adopt a specific or thematic treaty on disability rights. Moreover, several recommendations to UN institutions and specialized bodies were made, including close monitoring of the implementation of the rights of persons with disabilities under the existing treaties and preparation of general commentaries dedicated to disability issues^[7].

However, Resolution 56/168 of 19 December 2001, adopted by the General Assembly, established an Ad Hoc Committee^[8] to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities based on the holistic approach in the work done in the fields of social development, human rights, and nondiscrimination. Drafting the CRPD was arduous and fraught with regular informal plenary meetings. What distinguished it was the inclusion of other stakeholders, notably a coalition of dozens of various organizations of people with disabilities (the International Disability

⁶ Gerard Quinn, Theresia Degener et al., *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (New York-Geneva: United Nations, 2002), 32, 293–294.

⁷ Quinn, Degener et al., *The Current*, 288–289, 297.

⁸ Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities [A/RES/56/168].

Caucus). The Working Group prepared the draft for this purpose and then considered and adopted it by the Ad Hoc Committee. The difficulty was, on the one hand, to consider many proposals in such a democratic mode of work and, on the other hand, to take a completely novel and comprehensive view of rights without rigidly distinguishing between civil and political rights and economic, social, and cultural rights, and without creating the appearance of a hierarchy of rights; many articles were given a „hybrid” character. Furthermore, the final product was the result of capturing multiple perspectives from such a wide range of writers.

A key issue was to impose the obligation to act towards accessibility. However, the distribution, character, and content of accessibility changed while drafting the Convention. It was a period when the UN „discovered” the significance and place of accessibility among human rights. It traced its relations to other international treaties^[9]. Through trial and error, parts of a provision on accessibility were merged with other stipulations or placed near nondiscrimination and general provisions. Furthermore, it was planned to include it in the list of specific rights (Article 19). The International Disability Caucus proposed a coherent content of Article 19^[10]. However, accessibility was not initially considered as a principle. The drafters planned to define it in the glossary of the Convention, making the final decision on introducing a definition and its content contingent on the outcome of the discussions in the Ad Hoc Committee on the draft of Article 19 on accessibility^[11].

Ultimately, Thailand proposed to adopt the principle of accessibility in the Convention, which gained the support of Japan and South Africa^[12].

⁹ Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *Accessibility to Information and Communication: perspectives of the visually impaired Background conference document prepared by the Department of Economic and Social Affairs* Seventh session, New York, 16 January – 3 February 2006, A/AC.265/2006/CRP.3, 11 January 2006. <https://www.un.org/esa/socdev/enable/rights/ahc7bkgrndaccess.htm>.

¹⁰ Comments, proposals and amendments submitted electronically Sixth Session 3 August 2005. <https://www.un.org/esa/socdev/enable/rights/ahcstata9sscomments.htm>.

¹¹ Report of the third session of the Ad Hoc Committee 2004.

¹² Article 3 – General Principles, Third Session, Compilation of proposed revisions and amendments made by the members of the Ad Hoc Committee to the draft text presented by the Working Group as a basis for negotiations by Member States and Observers in the Ad Hoc Committee (updated after the completion of

At the same time, the need to include accessibility as a principle was likewise pointed out by the National Human Rights Institutions. Originally, a proposal was made to call it Accessibility, Accessibility and Universal Design, or Realization of a barrier-free environment. Although some states voiced concerns about their ability to meet the obligations under Article 9, eventually, all agreed that without the right to accessibility, the other stipulations of the Convention would be worthless^[13].

Compared to other principles, accessibility was completely novel. In general, however, it was maintained at the convention's drafting stage that it would not create any new human rights. The work was carried out with respect to and invoking the comprehensive nature of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Bill of Human Rights (1966), and six other human rights treaties. The rights of persons with disabilities were found to be enshrined in earlier treaties but had not been exercised or enforced with respect to this group of people^[14]. The adoption of the Convention resulted from the lack of effective implementation of rights guaranteed by other conventions concerning persons with disabilities. It aimed to adapt existing rights to persons with disabilities by changing the paradigm of disability. The CRPD was even referred to as an „implementing convention”^[15].

the first reading at the Fourth Session, 26 August 2004). <https://www.un.org/esa/socdev/enable/rights/ahcstata3tscmpilation.htm>. [accessed: 10.02.2023].

¹³ Francesco Seatzu, „Article 9 [Accessibility]”, [in:] *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary*. ed. Valentina Della Fina, Rachele Cera, Giuseppe Palmisano. 225–242. (Switzerland: Springer, 2017), 231.

¹⁴ Press conference on convention protecting rights of persons with disabilities, 4 lutego 2005. https://www.un.org/press/en/2005/Disabilities_Press_Cfc_050204.doc.htm. [accessed: 18.02.2021]; Einat Albin, „Universalizing the Right to Work of Person with Disabilities: An Equality and Dignity Based Approach”, [in:] *The Right to Work*, ed. Virginia Mantouvalou (Oxford-Portland: Hart Publishing, 2017); *Hebrew University of Jerusalem Legal Studies Research Paper Series*, No. 15–9 (2015): 7. Convention on the Rights of Persons with Disabilities Advocay Toolkit. Professional Training Series No. 15, New York/Geneva, 2008, p. 10. https://www.ohchr.org/documents/publications/advocacytool_en.pdf. [accessed: 17/02/2021].

¹⁵ Don MacKay, *Chairman of the Ad Hoc Committee on Convention on Persons with Disabilities, Committee negotiating convention on rights of disabled persons concludes current session*, 12.08.2005. <https://www.un.org/press/en/2005/soc4680.doc.htm>. [accessed:17/02/2021].

2 | Understanding accessibility by the UN Committee on the Rights of Persons with Disabilities

After the Convention on the Rights of Persons with Disabilities had been adopted, it was consistently emphasized in working, promotional and information documents that the act did not create “new rights” but only recognized and expressed existing human rights (civil, cultural, economic, political, and social) rights, but in a way that was relevant to the needs and situation of persons with disabilities, and that it clarified what these rights meant in the context of disability. It imposed obligations on governments, sometimes also on private actors, to realize the human rights of persons with disabilities. It strengthened the position of the human rights of this group of people in the mainstream human rights discourse^[16].

The solution adopted in the Convention had its consequences in the general comment. The Committee gave no clear answer on the legal qualification of accessibility. General Comment No. 2 (2014) Article 9 Accessibility faced criticism for lacking a clear, consistent interpretation of accessibility that would foster its application^[17]. At this point, we cannot ignore general criticism concerning the lack of consistency in the Convention’s stipulations and that none of its provisions are sufficiently clear, precise, and unconditional to grant rights to individuals^[18].

It can be inferred from the content of the comment that the Committee recognizes accessibility – depending on the context – as a basic principle that underlies the implementation of the remaining provisions (paragraph 1), a precondition for persons with disabilities to participate fully and equally in society and to enjoy all human rights and fundamental

¹⁶ Arlene S. Kanter, *The Development of Disability Rights Under International Law: From Charity to Human Rights*. (London–New York: Routledge, 2015), 291.

¹⁷ Greco, „On Accessibility as a Human Right, with an Application to Media Accessibility”, 18–19.

¹⁸ Delia Ferri, *The UNCRPD within the EU legal system* – Conference „Human Rights of Persons with Disabilities in International and EU Law” organized by the EUI Human Rights Working Group and the EUI Academy of European Law (European University Institute, Florence, 27 April 2012), 76. https://www.academia.edu/26653617/_The_UNCRPD_within_the_EU_legal_system_2012_Conference_Human_Rights_of_Persons_with_Disabilities_in_International_and_EU_Law_organized_by_the_EUI_Human_Rights_Working_Group_and_the_EUI_Academy_of_European_Law_European_University_Institute_Florence_27_April_2012_.

freedoms without limitations, (2) as a principle, (3) as a measure, but also (4) as an independent human right – the right to access^[19]. At the same time, the Committee, like the authors of the Convention, attempts to prove that, without establishing new rights, the Convention redefines and develops existing rights from the perspective of a new paradigm of disability. To this end, it cites examples of access regulations in earlier international treaties. In the view of the Committee, international human rights law established a precedent involving the classification of the right to access as a right *per se* (paragraph 3) years ago. The Committee saw accessibility origins in earlier treaties and therefore “embedded” accessibility in earlier treaty law. Furthermore, it confirmed the existence of the right to access under the Convention on the Rights of Persons with Disabilities. Accessibility is a right yet by no means a new one^[20].

3 | Discussion on the scope of rights in the United Nations Convention on the Rights of Persons with Disabilities

The position expressed by the UN itself determined the first discussions on the CRPD. Although the Convention on the Rights of Persons with Disabilities introduced a new paradigm of disability, a new concept of equality, a new definition of non-discrimination, and new instruments of protection, it was claimed that it created no new or special rights for persons with disabilities^[21]. The view that it created new obligations was more readily accepted^[22]. As for rights, the Convention was mainly supposed to provide certain rights with an additional semantic structure in

¹⁹ *General comment No. 2 (2014) Article 9: Accessibility*, Committee on the Rights of Persons with Disabilities CRPD/C/GC/2, para 2, 3, 14. See also the preceding *General comment No 2: The Day of General Discussion on Accessibility*, 7 October 2010, Committee on The Rights of Persons with Disabilities, Outline p. 1 with submissions. <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGD7102010.aspx>. [accessed: 19.02.2021].

²⁰ Katarzyna Roszewska, *Accessibility – One of the Human Rights*, 162.

²¹ Theresia Degener, „Disability in a Human Rights Context” *Laws*, No. 3 (2016): 15.

²² Degener, „Disability in a Human Rights Context”, 19–20; Andrea Broderick, „Of Rights and Obligations: the Birth of Accessibility” *The International Journal of Human Rights*, No. 4 (2020): 407.

that it explained how they should be applied regarding persons with disabilities. It would outline a range of key properties of the rights it listed that had not been defined in previous human rights treaties and redefine and expand the content of existing rights^[23]. This view was initially shared by Polish legal scholars, as well^[24].

However, the position was not consistent. Another time, it was pointed out somewhat less tenaciously that the Convention „mainly” did not create new rights but determined a detailed implementation code and explained how individual rights should be exercised in practice^[25]. It was cautiously argued that it was the first legally binding international treaty that provided a comprehensive range of rights for persons with disabilities and had the potential to make a fundamental change in the way disability policy was worded and implemented^[26]. Even if it did not create new rights, it emphasized the accessibility and inclusion aspect of all human rights. Accessibility itself could become one of the fundamental principles of human rights^[27].

²³ Frederic Megret, „The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?” *Human Rights Quarterly*, No. 2 (2008): 498, 503, 515.

²⁴ Cf. Anna Błaszczak, „Zastrzeżenia i oświadczenia interpretacyjne Polski do Konwencji o prawach osób z niepełnosprawnościami”, [in:] *Prawa osób z niepełnosprawnościami intelektualną lub psychiczną w świetle międzynarodowych instrumentów ochrony praw człowieka*, ed. Dorota Pudzianowska (Warszawa: Wolters Kluwer, 2014), 25; Joanna Połatyńska, Ewa Staszewska, „5.4. Prawo do pracy szczególnych grup społecznych w świetle prawa międzynarodowego”, [in:] *System Prawa Pracy*, t. IX, *Międzynarodowe publiczne prawo pracy. Standardy globalne*, ed. Krzysztof Wojciech Baran (Warszawa: Wolters Kluwer, 2019), LEX [accessed: 17.02.2021]; Julia Kapelańska-Pręgowska, „Wdrażanie, stosowanie i kontrola wykonywania Konwencji ONZ o prawach osób niepełnosprawnych”, [in:] *Zatrudnianie osób niepełnosprawnych. Regulacje prawne*, ed. Aneta Giedrewicz-Niwińska, Marzena Szablowska-Juckiewicz (Warszawa: Difin, 2014), 26.

²⁵ Don MacKay (Chairman of the Ad Hoc Committee on Convention on Persons with Disabilities), *Committee negotiating convention on rights of disabled persons concludes current session*, 12.08.2005. <https://www.un.org/press/en/2005/soc4680.doc.htm>. [accessed: 20.01.2023].

²⁶ Raymond Lang, Maria Kett, Nora Groce, Jean-Francois Trani, „Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations” *European Journal of Disability Research*, 5 (2011): 208. 206–220.

²⁷ Marianne Schulze, *Understanding The UN Convention on the Rights of Persons with Disabilities, A Handbook on the Human Rights of Persons with Disabilities* (New York, 2010), 45. https://www.internationaldisabilityalliance.org/sites/default/files/documents/hi_crp_d_manual2010.pdf.

Over time, questions were raised as to whether the CRPD actually merely codified existing rights established by the UN human rights treaties from the perspective of persons with disabilities into a single legally binding international instrument or whether it nevertheless created a new portfolio of rights. Several scholars noted that it changed the broader framework within which human rights were conceptualized^[28]. It was suggested that the normative character of accessibility be reviewed. A proposal was made to establish by elimination what obligations and rights were created by the accessibility provisions of the Convention, to what extent accessibility could constitute a negative or positive right, whether it was an individual or a group right, and to what generation of rights it should be classified^[29].

Yet some scholars expressed a further-reaching view that a simple redefinition of rights would sometimes be insufficient and leave them without protection^[30]. Ultimately, attempts were made to assess the broader framework for conceptualizing human rights. It was noted that some rights (Article 19) had no equivalents in earlier treaties^[31]. Next, efforts were made to include the accessibility standard in the canon of human rights. Accessibility was proposed to be viewed as a socio-economic right. This interpretation of its nature was inferred from Article 3 and Article 21, even though the Convention omits to mention this right directly in these or other stipulations^[32]. It is not always the case that seeking to adapt „preexisting” human rights to the situation of persons with disabilities means merely reaffirming existing rights, possibly redefining and expanding them. Even if the legal basis for a separate right of access to international human rights is questionable, the States’ obligations may materialize in certain circumstances even before human rights materialize^[33]. In the case of Article 9, the Convention results in the emergence of a new human right – the right to accessibility^[34]; incidentally, it crystallizes alongside other new rights singled out in the CRPD, e.g. the right to full and effective participation

²⁸ Lang, Kett, Groce, Trani, *Implementing the United Nations Convention*, 211.

²⁹ Greco, „On Accessibility as a Human Right, with an Application to Media Accessibility”, 14–15.

³⁰ Frederic Megret, *The Disabilities Convention: Human Rights*, 503.

³¹ Degener, „Disability in a Human Rights Context”, 5–6; Cf. Kanter, *The Development of Disability*, 2–9.

³² Francesco Seatzu, „Article 9 [Accessibility]”, [in:] *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary*, ed. Valentina Della Fina, Rachele Cera, Giuseppe Palmisano (Cham: Springer, 2017), 225.

³³ Broderick, „Of Rights and Obligations”, 398, 407.

³⁴ Broderick, „Of Rights and Obligations”, 406.

and inclusion in society, the right to live in the community, and the right to be free from forced institutionalization on the grounds of disability^[35].

The validity of accessibility as a human right was also noted by the international community^[36]. The European Economic and Social Committee (EESC), in turn, put forward the idea to view accessibility as a human right in two ways: as a human right *per se* referring to the possibility to participate, act, communicate, and be informed independently and securely, and as a human right that is crucial for the implementation of other human rights, which renders it a fundamental stimulus facilitating their implementation^[37].

4 | The usefulness of the concept of the dynamic nature of human rights

Interpretations of the legal rule of accessibility in the UN Convention reveal divergent views, particularly on its legal nature. These divergences often accompany the emergence of „new” human rights. Therefore, the paths of development of the right to access must be sought in the very nature of these rights. Human rights are dynamic by nature, and each generation contributes to their evolution in line with the aspirations and values of a given period^[38]. Sometimes, new human rights emerge as a result of changing circumstances that require strengthened protection, changes in the economic situation, or technological developments that make it possible to meet needs that were previously impossible, too difficult, or too costly. Moreover, each society and each age has its important points of reference

³⁵ Kanter, *The Development of Disability*, 2–3, 5.

³⁶ European Economic and Social Committee Hearing: *Accessibility as a Human Right*, 4 June 2013. <https://www.eud.eu/news/accessibility-human-right/>. [accessed: 10/01/2023].

³⁷ Opinion of the European Economic and Social Committee on ‘Accessibility as a human right for persons with disabilities’ (own-initiative opinion), OJ EU 2014/C/177/15.

³⁸ *Promotion and protection of all human rights, civil, Political, economic, social and cultural rights, including the right to development, Human rights and international solidarity*, Note by the United Nations High Commissioner for Human Rights, HRC 12th Session, Report of the Independent Expert on International Solidarity, UN Doc A./HRC/12/27, 22 July 2009, para. 11.

and paradigms that it seeks to place within a larger unity characterized by a certain constancy^[39]. Therefore, new concepts of human rights are incorporated into fundamental, universal, constant, and inalienable human rights. These human rights are extended or filled with new content, redefined, or provided with new control and enforcement mechanisms. New rights have often been perceived as a normative instrument or a prerequisite for implementing existing rights, a synthesis of various rights of earlier dates^[40]. As a result, however, human rights evolve, sometimes so strongly that new rights are formally identified^[41]. When studying the status of the right to access, it is well-founded to cite the right to equality and non-discrimination, which, as established human rights, do not in themselves constitute rights to specific goods but are meant to guarantee the enjoyment of rights without discrimination and on equal terms^[42]. At the same time, the right to access may be associated with the right to equal treatment and nondiscrimination. Another example of the operation of a human right that guarantees the exercise of other rights, apart from the right to equal treatment and non-discrimination, is the indisputable right to justice.

The adopted form of accessibility regulations is not only due to the specific vision of this new legal institution. Accessibility is strongly correlated with the new understanding of disability, reflecting the paradigm shift in disability contained in the Convention on the Rights of Persons with Disabilities. It can potentially become one of the horizontal, fundamental human rights principles, emphasizing the multiple dimensions of accessibility. And since we are talking about a new paradigm of disability, in this context, one must wonder whether it is at all possible that we have the same rights when the scope of meaning varies, and the legal perspective is different. The content of these rights must be changed, at the very least. These questions are particularly relevant in the context of accessibility. Defining accessibility is crucial (extremely important) for properly

³⁹ James Roland Pennock, „Rights, Natural Rights, and Human Rights—a General View” *Human Rights*, vol. XXIII (1981): 7, 22.

⁴⁰ Piotr Kowalski, „»Nowe prawa człowieka«. Perspektywy i zagrożenia [»New Human Rights«. Prospects and Threats]” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 2 (1988): 69–71.

⁴¹ Wiktor Osiatyński, *Prawa człowieka i ich granice*, translated by Sergiusz Kowalski (Kraków: Znak, 2011); original title: *Human Rights and Their Limits* (Cambridge–New York, 2009), 314.

⁴² Broderick, *Of Rights and Obligations*, 400.

implementing Article 9 by the States Parties. A new understanding of disability significantly impacts the differences found in various legal systems that implement even universal human rights for persons with disabilities.

5 | Conclusions

The dilemma faced by the drafters of the Convention was serious. It would have been pointless to designate this institution as one of the specific rights in the catalog, as originally contemplated. The drafters of the Convention rightly decided to place it among the treaty principles. The prominence of accessibility as a general principle means that it has to be applied to all rights enshrined in the Convention.

Thus, accessibility has become a normative principle of international law, which does not yet amount to a right. Furthermore, neither the stipulation of Article 9, which describes the purpose of accessibility, its scope, the means of achieving it and the persons to whom the rule is addressed, nor the specific rights included in the Convention explicitly refer to the right of access. In none of the provisions is accessibility directly equated with a „right of access” *per se*. The Committee took a somewhat euphemistic stand, maintaining that it discovered a right already existing. After all, the right of access *per se* had not fully crystallized in international law. Following, in turn, the views of the subject literature on the right of access as a human right, it should be noted that the greatest confusion arose from firm declarations that the Convention created no new rights. Meanwhile, highly disability-specific interpretations of existing human rights have transformed previously essentially noninterventionist rights (or „negative” rights) into positive obligations of the state. The Convention combines civil and political rights with economic, social, and cultural rights within its overall structure and within individual articles. This implies rejecting the traditional distinction between rights subject to immediate and progressive realization^[43]. And even if the drafters of the Convention did not

⁴³ Rosemary Kayess, Philip French, „Out of Darkness in to Light? Introducing the Convention on the Rights of Persons with Disabilities” *Human Rights Law Review*, No. 8 (2008): 32–33; Kanter, *The Development of Disability*, 3.

intend to create any new human rights, they ultimately did. And the right to accessibility is just one of them^[44].

Its binding force is not only to set the direction of the states or to interpret the specific rights contained in the Convention. It also contains specific obligations. It makes accessibility not just a principle but a general right affecting others, without which the other rights guaranteed by the Convention become worthless^[45] and an unenforceable right.

Accessibility was predicted to become one of the more powerful drivers of change in the rights of people with disabilities^[46]. Article 9 is undeniably one of the most discussed provisions of the Convention on the Rights of Persons with Disabilities. It is also one of the most significant and „radical” provisions. The radicalism of Article 9 lies in its recognition that all persons with disabilities have a right to accessibility and are entitled to enjoy it on an equal basis^[47].

The Convention can potentially influence the development and expansion of national law and international rules, although the CRPD cannot solve all the world’s problems^[48].

⁴⁴ Kanter, *The Development of Disability*, 5; Arlene S. Kanter, „Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities” *Vanderbilt Journal of Transnational Law*, No. 3 (2019): 601–602; Simo Vehmas, Nick Watson, „Chapter 6. Disability and human rights”, [in:] *Routledge Handbook of Disability Studies*, ed. Nick Watson, Alan Roulstone, Carol Thomas. 2nd ed. (London–New York: Routledge, 2020), 78.

⁴⁵ *Seatzu Article 9 [Accessibility]*, 231.

⁴⁶ *Ibidem*, 239–240.

⁴⁷ *Ibidem*, 229.

⁴⁸ Kayess, French, *Out of Darkness in to Light?*, 32; Kanter, „Do Human Rights Treaties Matter”, 608.

Bibliography

- Błaszczak Anna, „Zastrzeżenia i oświadczenia interpretacyjne Polski do Konwencji o prawach osób z niepełnosprawnościami” [*Poland’s Reservations and Interpretative Statements to the Convention on the Rights of Persons with Disabilities*], [in:] *Prawa osób z niepełnosprawnościami intelektualną lub psychiczną w świetle międzynarodowych instrumentów ochrony praw człowieka* [*Rights of Persons with Intellectual or Mental Disabilities in the Light of International Human Rights Instruments*], ed. Dorota Pudzianowska. 25. Warszawa: Wolters Kluwer, 2014.
- Broderick Andrea, „Of Rights and Obligations: the Birth of Accessibility” *The International Journal of Human Rights*, No. 4 (2020): 393–413.
- Einat Albin, „Universalizing the Right to Work of Person with Disabilities: An Equality and Dignity Based Approach”, [in:] *The Right to Work*, ed. Virginia Mantouvalou. 61–86. Oxford-Portland: Hart Publishing, 2017.
- Hebrew University of Jerusalem Legal Studies Research Paper Series*, No. 15–9 (2015): 7.
- Ferri Delia, *The UNCRPD within the EU legal system*; Conference „Human Rights of Persons with Disabilities in International and EU Law” organized by the EU Human Rights Working Group and the EU Academy of European Law (European University Institute, Florence, 27 April 2012), 76. https://www.academia.edu/26653617/_The_UNCRPD_within_the_EU_legal_system_2012_Conference_Human_Rights_of_Persons_with_Disabilities_in_International_and_EU_Law_organized_by_the_EU_Human_Rights_Working_Group_and_the_EU_Academy_of_European_Law_European_University_Institute_Florence_27_April_2012_.
- Greco Gian Maria, „On Accessibility as a Human Right, with an Application to Media Accessibility”, [in:] Anna Matamala, Pilar Orero, *Researching Audio Description. New Approaches*. 18–19. Barcelona: Palgrave, 2016.
- Greco Gian Maria, „The Nature of Accessibility Studies” *Journal of Audiovisual Translation*, No. 1 (2018): 205–232.
- Kanter Arlene S., „Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities” *Vanderbilt Journal of Transnational Law*, No. 3 (2019): 577–609.
- Kanter Arlene S., *The Development of Disability Rights Under International Law: From Charity to Human Rights*. London–New York: Routledge, 2015.
- Kapelańska-Pregowska Julia, „Wdrażanie, stosowanie i kontrola wykonywania Konwencji ONZ o prawach osób niepełnosprawnych” [*Implementation, Application and Follow-up of the UN Convention on the Rights of Persons with Disabilities*] [in:] *Zatrudnianie osób niepełnosprawnych. Regulacje prawne* [*Employment of Persons with Disabilities. Legal Regulations*],

- ed. Aneta Giedrewicz-Niwińska, Marzena Szablowska-Juckiewicz. 26. Warszawa: Difin, 2014.
- Kayess Rosemary, Pillip French, „Out of Darkness in to Light? Introducing the Convention on the Rights of Persons with Disabilities” *Human Rights Law Review*, No. 8 (2008): 1–34.
- Kowalski Piotr, „»Nowe prawa człowieka«. Perspektywy i zagrożenia [»New Human Rights«. Prospects and Threats]” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 2 (1988): 69–71.
- Lang Raymond, Maria Kett, Nora Groce, Jean-Francois Trani, „Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations” *European Journal of Disability Research*, No. 5 (2011): 206–220.
- Lawson Anna, „Disability Law as an Academic Discipline: Towards Cohesion and Mainstreaming?” *Journal of Law and Society*, No. 4 (2020): 560–570. <https://onlinelibrary.wiley.com/doi/full/10.1111/jols.12258>.
- MacKay Don (Chairman of the Ad Hoc Committee on Convention on Persons with Disabilities), *Committee negotiating convention on rights of disabled persons concludes current session*, 12.08.2005. <https://www.un.org/press/en/2005/soc4680.doc.htm>.
- Osiatyński Wiktor, *Prawa człowieka i ich granice*, translated by Sergiusz Kowalski. Kraków: Znak, 2011.
- Pennock James Roland, „Rights, Natural Rights, and Human Rights – a General View” *Human Rights*, vol. xxiii (1981): 1–28.
- Perlin Michael L., „Human Rights Law for Persons With Disabilities in Asia and the Pacific: The Need for a Disability Rights Tribunal” *Journal of Policy and Practice in Intellectual Disabilities*, No. 2 (2013): 96–98.
- Połatyńska Joanna, Ewa Staszewska, „5.4. Prawo do pracy szczególnych grup społecznych w świetle prawa międzynarodowego” [*The Right to Work of Special Social Groups under International Law*], [in:] *System Prawa Pracy*, t. ix, *Międzynarodowe publiczne prawo pracy. Standardy globalne* [*The System of Labour Law. Volume ix. International Public Labour Law. Global Standards*], ed. Krzysztof Wojciech Baran. Warszawa: Wolters Kluwer, 2019. LEX
- Quinn Gerard, Theresia Degener et al., *The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*. New York–Geneva: United Nations, 2002.
- Roszewska Katarzyna, „Accessibility – One of the Human Rights or the Means of Their Implementation” *Law and Social Bonds*, No. 3 (2021): 158–176.
- Schulze Marianne, *Understanding The UN Convention on the Rights of Persons with Disabilities, A Handbook on the Human Rights of Persons with Disabilities*. New

York, 2010. https://www.internationaldisabilityalliance.org/sites/default/files/documents/hi_crpd_manual2010.pdf.

Seatzu Francesco, „Article 9 [Accessibility]”, [in:] *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary*, ed. Valentina Della Fina, Rachele Cera, Giuseppe Palmisano. 225–242. Switzerland: Springer, 2017.

Szwed Marcin, „Relacje między Europejską konwencją praw człowieka a Konwencją o prawach osób niepełnosprawnych” [Relations between the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities] *Państwo i Prawo*, No. 2 (2023): 132–147.

Vehmas Simo, Nick Watson, „Chapter 6. Disability and human rights”, [in:] *Routledge Handbook of Disability Studies*, ed. Nick Watson, Alan Roulstone, Carol Thomas. 2nd ed. 72–88. London–New York: Routledge, 2020.

