

# THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES *VERSUS* THE RIGHT TO HEALTH CARE

*Ingrida Baranauskienė*  
*Klaipėda University, Lithuania*

## **Abstract**

By employing the research methodology of thematic analysis, the paper presents the investigation of the Convention on the Rights of Persons with Disabilities in the aspect of the right to health care. The revealing of fundamental resolutions of the Convention on the Rights of Persons with Disabilities, manifestation of them in the aspect of the health care system are the object of the present paper; moreover, these emphasise the social relevance seeking to ensure comprehensive and equal use of all human rights and fundamental freedoms, dignity, full participation in public life and, naturally, health care system for persons with disabilities. The research problem is formulated within this context: What resolutions of the Convention on the Rights of Persons with Disabilities are the most important to successfully ensure persons' with disabilities rights to health care? What is the semantic manifestation of these resolutions and what are the contexts that ensure successful implementation of them?

**Keywords:** *The Convention on the Rights of Persons with Disabilities; Right to Health Care; Equal Rights.*

This research is funded by the European Social Fund according to the activity 'Improvement of Researchers' Qualification by Implementing World-Class R&D Projects' of Measure No. 09.3.3-LMT-K-712.

## **Introduction**

Eleanor Roosevelt, wife of the president who had a disability himself, asked a question addressing the United Nations back in 1958: "Where, after all, do the universal human rights begin? In small places, close to home – so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual persons; the neighbourhood; the school or college; the factory, farm or office. Such are the places where every man, woman and child seek equal justice, equal opportunity, equal dignity without discrimination." (Lash, 1972) It can be stated that people with disability, their relatives and the entire part of advanced society fight for the rights of people with disabilities for many decades. We would point out approval of the Convention on the Rights of Persons with Disabilities of the United Nations (hereinafter referred to as the Convention) and its Optional Protocol on 13 December 2006 in New York as

the victory in this struggle. After approval of the Convention, the struggle for implementation of this document continues. Scientists contribute to this striving by analysing the ontological, epistemological, methodological and practical aspects of the Convention (Hodgson, 2012; Phillips, 2011; Series, 2015; Shakespeare, 2015; Tschanz & Staub, 2017; Werner, 2015, etc.). The speeches and scholarly papers of the professor Jonas Ruškus, member expert of the Committee on the Rights of Persons with Disabilities of the United Nations, stand out in the area of Lithuanian science (Ruškus, 2014, 2017a, 2017b, 2018).

The findings of the paper published in the previous issue of the journal allow stating that “architectonics of legislations of the World Health Organization has a clear jurisprudential foundation; whereas **the Law on the Health System** of the Republic of Lithuania **provides preconditions for various stipulations**, which results in **people with disabilities facing manifestations of discrimination in Lithuanian system of health care**” (Baranauskienė, 2018). This scientific conclusion gave an impulse to carry out a new investigation – a thematic analysis of the Convention on the Rights of Persons with Disabilities in the aspect of the health care system. On the one hand, the Republic of Lithuania, as a modern state, provided conditions for implementation of the Convention: the Parliament of the Republic of Lithuania approved the law No. XI-854 on the Convention on the Rights of Persons with Disabilities and Its Optional Protocol on 27 May 2010, which ratified the Convention, thus assuming responsibilities to comply with it. A series of resolutions have been approved (e.g. No. 1740, “On the Amendment of the Resolution of the Government of the Republic of Lithuania “On Approval of the Composition and Regulations of the Council for the Affairs of the Disabled under the Ministry of Social Security and Labour” approved on 23 December 2005, No. 1426” (2010), the National Programme for Social Integration of Persons with Disabilities for 2013–2019 (2012) was prepared; moreover, plans for implementation of the National Programme for Social Integration of Persons with Disabilities for 2013–2019 (2012) were prepared (cf. Convention on the Rights of Persons with Disabilities, 2018). On the other hand, in 2016, after evaluation of the implementation of the Convention in Lithuania, it was noted that “the committee recommends to the state, the country of the Convention, to change the legal definition of a disability in compliance with the criteria and principles indicated in Articles 1–3 of the Convention and to effectively adjust it **in all laws and regulations**” (Committee for the Rights of the Disabled, *Final Remarks on the Initial Report of Lithuania 2016*), emphasis by the author of the paper). The mentioned documents present over seventy paragraphs of remarking comments which deal with naming of major “areas and recommendations causing great concern” (Ibid). As the concluding notes suggest, laws and legal acts of Lithuania do not comply with important regulations of the Convention; therefore, it is impossible to expect achieving some practical progress without amending the laws. **The disclosing of the content of resolutions of the Convention, manifestation of them in the aspect of the health care system** are the **object** as well as **social relevance** of the present article seeking to ensure comprehensive and equal use of all human rights and fundamental freedoms, dignity, comprehensive participation in public life, naturally including the health care system. In this context, the **research problem** is formulated: Which resolutions of the Convention are the most important to successfully ensure the right of persons with disabilities to health care? What is the semantic expression of these resolutions and what contexts do ensure successful implementation of them?

### Research Methodology

In my research context, I grounded on the post-positivist approach: “The opinions of sociologists and political scientists following the post-positivist approach provisions contradict: an investigator cannot view social reality from the outside; one can only view it from the inside. First of all, they underline the differences between the social and natural worlds more than majority of post-positivists. They emphasise that **people create social reality on the ground of their ideas**. Relations of people depend on what they think of each other. Institutions are a result of implementation of specific ideas.” (Nakrašas, 2010). In this paper, following the post-positivist approach provisions, I analyse the Convention on the Rights of Persons with Disabilities in the aspect of persons’ with disabilities **right to health care**. Grounding on the research data, I formulate the findings in compliance with my, as researcher’s and scientist’s, experience, perception, knowledge.

**The research methodology was influenced by ethnography** which is treated as a **methodological approach** viewing the social reality from the **post-positivist point of view** as well. **Ethnography is a way of my (as researcher’s) thinking** while investigating the Convention on the Rights of Persons with Disabilities. I learnt to create the social reality while studying the works of Spradley (1980) who is considered to be an ideologist of ethnography; in his works, he not only searches for answers on how to perceive reality while staying together with people, but also provides concrete methods. Grounding the ethnographical approach on ethno-semantics, Spradley (1980) created and practically applied the 12-step strategy which is referred to by present-day researchers, too: locating a social situation; doing participant observation; making an ethnographic record; making descriptive observations; making a domain analysis; making focused observations; making a taxonomic analysis; making selected observations; making a componential analysis; discovering cultural themes; taking a cultural inventory; writing an ethnography (Spradley, 1980). Spradley (together with David W. McCurdy) developed ethnography while investigating the culture of society (Spradley & McCurdy, 1972). I did not employ all the principles and provisions of ethnography in my investigation because I was exploring the document; knowledge on ethnography simply transformed to ethnographical thinking used in the analysis of the Convention on the Rights of Persons with Disabilities. It can be sated that ethnographical thinking manifested in “creation” of the research field: the process of the analysis of the document proceeded while searching for the common points in both statements of the Convention and experience of myself as a researcher in generalising themes and forming new findings. The discourse of the analysis of the Convention on the Rights of Persons with Disabilities in the aspect of the right to health care was influenced by the perception of the impact of the systems theory in social work (cf. Wagneris, H., 2003).

I conducted investigation of the Convention on the Rights of Persons with Disabilities grounding on the principles of thematic analysis. In my view, this **method of data analysis** (hereinafter referred to as ThA), is the most suitable for singling out and revealing themes present in laws: “Two major reasons to use ThA are accessibility and flexibility. We view it as strength because the ThA method ensures accessibility and flexibility of a point of view” (Braun & Clarke, 2012). Advantages of thematic analysis in qualitative research, including analysis of laws, were revealed by Boyatzis, 1998; Guest, MacQueen, & Namey, 2012, and others. **After studying the works of the mentioned authors, the investigation proceeded in compliance with the stages indicated in Table 1, grounding on inductive reasoning.**

I analysed the Convention while performing five steps. The steps of the analysis and the meaning of each stage are presented in Table 1.

**Table 1.** Stages of the thematic analysis

Stages of the analysis	Purpose and meaning of the analysis stage
Step one <b>Acquaintance with the text</b>	First, I explored the laws while getting acquainted with the texts in general. This allowed understanding the whole of laws as documents, to perceive their structure, master the terminology.
Step two <b>Selection of relevant parts of the law</b>	I conducted the secondary text analysis while selecting parts of the laws which, in my mind, were related to the field of investigation. I have decided that I will start the thematic analysis of the Convention from two articles: Article 1, <i>Purpose</i> , and Article 25, <i>Health</i> . Thus, I narrowed down the search by making it more specific.
Step three <b>Emphasis on basic statements</b>	In the next stage of the analysis, I emphasised the key, in my opinion, statements related to preconditions for comprehensive medical care for people with disabilities. In such a way, I made the research field even narrower. Grounding on the findings of the thematic analysis of these two articles, I expanded the research field again, while analysing the articles which had at least some relation to the findings of Articles 1 and 25.
Step four <b>Naming of themes and analysis, interpretation of related situations</b>	After repeated assessment and reconsideration of key statements, I divided them on the basis of meaning to thematic groups while analysing and interpreting them. The singling out of notional elements, naming of semantic objects and themes continued throughout the entire period of investigation and writing of the paper, while correcting their titles in detail according to the change of my perception.
Step five <b>Linking/ separation of themes by using contrastive analysis</b>	By using contrastive analysis, the themes were linked (or separated) to achieve higher understanding for myself and seeking to explain it to a reader about their meaning and content in the contexts of the Convention on the Rights of Persons with Disabilities as well as health care for the people with disabilities.

### Research results

I started deeper investigation of the Convention with acquaintance with the first article, “**Purpose**”, and Article 25, “**Health**”. In my opinion, these are the most relevant articles for the current research. I labelled them as fundamental ones. I investigate other articles of the Convention grounding on emphasised basic statements and themes in these articles.

As the Convention reads, its purpose is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent **dignity**.”

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their **full and effective participation in society on an equal basis with others.**” (Convention on the Rights of Persons with Disabilities, Article 1), p. 3, emphasis by the author of the paper).

By the Article 25, “**Health**”, of the Convention, states parties “recognize that persons with disabilities have the right to the enjoyment of **the highest attainable standard of health without discrimination on the basis of disability**” (Ibid, Article 25, p. 16, emphasis by the author of the paper); “to ensure access for persons with disabilities to **health services** that are gender-sensitive, **including health-related rehabilitation**” (Ibid, emphasis by the

author of the paper). The parties that signed the Convention, including Lithuania, assumed the responsibility in six aspects:

“(a) Provide persons with disabilities with **the same range, quality and standard of free or affordable health care and programmes** as provided to other persons, **including in the area of sexual and reproductive health and population-based public health programmes**; (b) Provide those health services **needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate**, and services designed to **minimize** and prevent **further disabilities**, including among children and older persons; (c) Provide these health services **as close as possible to people’s own communities**, including in rural areas; (d) Require health professionals to provide care of **the same quality to persons with disabilities as to others**, including **on the basis of free and informed consent** by, inter alia, **raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care**; (e) **Prohibit** discrimination against persons with disabilities in the **provision of health insurance, and life insurance** where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner; (f) Prevent **discriminatory denial of health care or health services or food and fluids on the basis of disability**” (Ibid, emphasis by the author of the paper).

After conducting analysis of the purpose of the Convention (Article 1) and Article 25 “Health”, the following semantic elements were pointed out:

*dignity; full and effective participation in society; the highest attainable standard of health; without discrimination on the basis of disability; the same range, quality and standard of free or affordable health care and programmes; including in the area of sexual and reproductive health programmes; population-based public health programmes; needed by persons with disabilities specifically because of their disabilities; including early identification and intervention as appropriate; to minimize (...) further disabilities; services as close as possible to people’s own communities; of the same quality to persons with disabilities as to others; on the basis of free and informed consent; raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training; the promulgation of ethical standards for (...) health care; prohibit discrimination (...) in the provision of health insurance, and life insurance; discriminatory denial of health care or health services; discriminatory denial of food and fluids on the basis of disability.*

After repeatedly assessing and considering the semantic elements, I have divided them to six themes: *equal rights; discrimination and ethics; inclusive health care system; quality; accessibility* (cf. Table 2).

**Table 2.** Major themes as highlighted after conducting thematic analysis of Articles 1 and 25

Theme	Semantic elements and objects	Personal perception and explanation of the theme
Equal rights	<p><b>Elements:</b> <i>without discrimination on the basis of disability; including in the area of sexual and reproductive health programmes; prohibit discrimination (...) in the provision of health insurance, and life insurance; discriminatory denial of health care or health services; discriminatory denial of food and fluids on the basis of disability</i></p> <p><b>Objects:</b> <i>right to reproductive health and full provision of health care in case of any kind of disability</i></p>	First of all, I understand as implementation of human rights despite existing disability. In this aspect, Articles 1 and 25 of the Convention focus on programmes in the area of sexual and reproductive health, health and life insurance, comprehensive health care support in a case of any kind of disability in general.
Discrimination and ethics	<p><b>Elements:</b> <i>discrimination on the basis of disability; dignity; the promulgation of ethical standards for (...) health care</i></p> <p><b>Objects:</b> <i>political will preventing discrimination and unethical behaviour; dignity; improper standards of health care</i></p>	<p>In the context of investigation, I understand <i>discrimination</i>, first of all, as restriction of rights or absence of them in general in the health care system.</p> <p>In the context of investigation, I understand <i>ethics</i>, first of all, as health care specialists' behaviour norms which, first, ground on moral obligation to help a patient with disability without diminishing one's dignity.</p>
Inclusive health care	<p><b>Elements:</b> <i>full and effective participation in society; on the basis of free and informed consent; raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training</i></p> <p><b>Object:</b> <i>Promotion of full participation of persons with disabilities</i></p>	My perception of <i>inclusive health care</i> , first of all, relates to the following statements of the Convention: full and effective participation when a patient is a full-fledged participant of the process, who receives just and comprehensive information in an acceptable form, has the rights to make decisions concerning one's treatment.
Quality	<p><b>Elements:</b> <i>the highest attainable standard of health; population-based public health programmes; including early identification and intervention as appropriate; minimize (...) further disabilities; needed by persons with disabilities specifically because of their disabilities</i></p> <p><b>Object:</b> <i>the highest attainable standards of health; accessibility and availability of health promotion and rehabilitation programmes</i></p>	My personal perception of <i>quality</i> is characterised by the first statement: "the highest attainable standard of health". The rest what are identified in the Convention as the purposes, programmes and methods, in my mind, are the measures that provide preconditions for achieving quality.
Accessibility	<p><b>Elements:</b> <i>the same range, quality and standard of free or affordable health care and programmes; services as close as possible to people's own communities</i></p> <p><b>Object:</b> <i>assurance of multiple accessibility</i></p>	In the sense of accessibility (Articles 1 and 25), only two aspects were pointed out: financial and physical (geographical). I understand accessibility in a much broader sense. It is likely that its concept in other articles of the Conventions will alter.

Further in the present paper, grounding on the pointed out themes – *Equal Rights – Discrimination and Ethics – Quality – Inclusive Health Care – Accessibility* – the findings, new knowledge are being constructed and influence on Lithuanian system of health of people with disabilities is being formed.

### **Equal Rights**

After carrying out investigation of the entire Convention on the theme *Equal Rights*, besides fundamental articles, semantic elements on the theme were found in the Preamble and eight articles: Articles 3, 4, 5, 6, 7, 12, 17, 23. The explored semantic elements were merged to six notional objects which were named as follows: *Political Will; Body and Mental Inviolability; Right to Reproductive Health; Rights of Children with Disability; Equality between Men and Women; Legal Support*.

The semantic object *Political Will* was highlighted in the Preamble, Article 3, *General principles*, and Article 5, *Equality and non-discrimination*. Namely these parts of the Convention express the political will emphasising that people with disabilities have equal and indisputable rights in general, including those related to health care: (...) ***inherent dignity and worth and the equal and inalienable rights*** of all members of the human family as the foundation of freedom, justice and peace in the world (...), (...) everyone is entitled to all the rights and freedoms set forth therein, ***without distinction of any kind***, (...) the importance for persons with disabilities of their individual autonomy and independence, including the ***freedom to make their own choices*** (...), (**Preamble**). The semantics of the political will is also complemented with Article 3 which underlines not only freedom of choice but also independence: (...) including ***the freedom to make one's own choices, and independence of persons*** (**Article 3**). The semantics of Article 5 point out importance of the law as a precondition for assurance of equal rights: (...) ***all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law*** (Article 5).

The semantic object *Physical and Mental Integrity* was found out when investigating Convention's Article 17, *Protecting the integrity of the person: Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others* (Article 17).

***The right to reproductive health*** on an equal basis is ensured by *Article 23 of the Convention, inviolability of the private life: (...) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided; (...) persons with disabilities, including children, retain their fertility on an equal basis with others* (...) (Article 23).

***Equal rights of children with disabilities*** are ensured by the statements of the *Preamble: (...) children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children* (...) (Preamble). In Article 7, *Children with disabilities*, not only fundamental rights and freedoms are ensured but also importance of interests of children with disabilities is underlined: (...) ***to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration*** (Article 7).

Principles of *Equality between Men and Women* are defined in Article 3, *General principles*, seeking to achieve (...) *equality between men and women* (Article 3). Concrete manifestation of equality is ensured by Article 6, *Women with disabilities*, which consider the situation and assurance of measures to ensure equal rights of women and girls: (...) *women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms* (Article 6). Moreover, Article 6 ensures continuous and comprehensive improvement of the situation, in the context of our investigation and health care system: (...) *to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms* (Article 6).

Manifestation of the semantic object *Legal Assistance*, first of all, is related to the amendment of laws, legal acts and practice seeking equal rights, including the system of health care, for persons with disabilities: (...) *to take all appropriate measures (...) to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities* (Article 4, General obligations). Obligations of *legal assistance* are linked to all aspects of life; the system of health care cannot be an exception: *to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; (...) to ensure that public authorities and institutions act in conformity with the present Convention* (Ibid). Article 12, *Equal recognition before law*, ensures legal capacity of persons with disabilities in all aspects of life, including the system of health care: (...) *persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; (...) safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, and are free of conflict of interest and undue influence, are proportional and tailored to person's circumstances* (...) (Article 12).

### Discrimination and Ethics

After carrying out investigation of the entire Convention on the theme *Discrimination and Ethics*, the semantic elements were found, besides fundamental articles, in the *Preamble*, *Optional Protocol* and five articles: 3, 5, 6, 15 and 31. The explored semantic elements were divided to six notional objects, namely: *Political Will Preventing Discrimination and Unethical Treatment*; *Active Stance of the State*; *Prohibition of Discrimination of Women and Girls with Disabilities*; *Respect for Children with Disabilities*; *Prohibition of Degrading and Cruel Treatment*; *Assurance of Medical and Scientific Ethics*; *Assurance of Confidentiality*.

The semantic object *Political Will Preventing Discrimination and Unethical Treatment* was titled after the analysis of the notional elements in the *Preamble*, Article 3 (*General principles*) and Article 5 (Equality and non-discrimination).

*Political Will Preventing Discrimination and Unethical Treatment* is rendered by recognising (...) *the diversity or persons with disabilities* (*Preamble*); by respecting person's *inherent dignity* (Article 3); showing respect for *persons with disabilities as part of human diversity* (Article 3). Prohibition of discrimination of persons with disabilities in all aspects of life in general, logically linking to the system of health care, is manifested in Article 3 (*non-discrimination*) and Article 5 (*discrimination on the basis of disability*).

Several notional elements reflect manifestation of the semantic object *Active Stance of the State*. By Article 5, *Equality and non-discrimination*, states parties seeking to prohibit discrimination on the basis of disability, *in order to promote equality and eliminate*

*discrimination, (...) shall take all appropriate steps to ensure that reasonable accommodation is provided* (Article 5). States parties must *comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics (...)* (Article 31, *Statistics and data collection*). Moreover, states parties assume obligations to recognise *the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention* (Optional Protocol, Article 1).

The semantic object *Prohibition of Discrimination against Women and Girls with Disabilities* comprises two notional elements which have it that women and girls with disabilities constitute the social group which is *subject to multiple discrimination* (Article 6, *Women with Disabilities*); or violation of ethics: *women and girls with disabilities (...) at greater risk (...) of neglect or negligent treatment, maltreatment (...)* (Preamble).

Manifestation of the semantic object *Respect for Children with Disabilities* is revealed through a notional element found in Article 3 (General principles) emphasising that states are obliged to seek *respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities* (Article 3). No doubt, children's abilities and retaining of identity are primarily related to the categories of education, other psycho-social ones; however, the influence of health care, in my mind, is important as well.

The theme *Discrimination and Ethics* deals with a semantic object *Prohibition of Degrading and Cruel Treatment: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment* (Article 15, *Freedom from torture or cruel, inhuman or degrading treatment or punishment*).

Compliance with *medical and scientific ethics* is ensured by the semantic element of Article 15: *In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation* (Article 15, *Freedom from torture or cruel, inhuman or degrading treatment or punishment*).

Manifestation of the theme on Non-discrimination and Ethical Treatment is complemented with a semantic object *Assurance of Confidentiality*. Article 22, *Respect for privacy*, reads that states must ensure *privacy of (...) health (...) information* (Article 22) and *to comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities* (Article 31, *Statistics and data collection*).

### Quality

After investigating the entire Convention while focusing on the theme Quality, besides fundamental articles, the semantic elements of the theme were found in Article 4, *General obligations*, Article 9 *Accessibility*, and Article 26, *Habilitation and rehabilitation*. Having explored the theme, the following semantic objects have been singled out: *Research and Development; Training of Professionals and Staff; Accessibility and Availability of Health Promotion and Rehabilitation Programmes*.

Assuming common obligations, states parties take measures or promote the undertaking of *research and development of universally designed goods, services, equipment and facilities (...)*, (Article 4); also (...) *promote the availability, knowledge and use of assistive devices*

*and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation (...), Article 26 (semantic object **Research and Development**).*

Development of applied activities involves the semantic object **Training of Professionals and Staff**. A state party assumes obligation to *promote training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights (...)* (Article 4); *(...) provide training for stakeholders on accessibility issues facing persons with disabilities (...)* (Article 9); *promote (...) training for professionals and staff working in habilitation and rehabilitation services* (Article 26).

The semantic object *Accessibility and Availability of Health Promotion and Rehabilitation Programmes* emphasises the obligation of the state to extend (...) **comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social service (...)** *are available to persons with disabilities as close as possible to their own communities, including in rural areas* (Article 26).

### **Inclusive Health Care**

After conducting investigation of the Convention on the theme **Inclusive Health Care**, besides fundamental articles, the semantic elements on the theme were found in the *Preamble*, Article 3, *General principles*, Article 4, *General obligations*, Article 7, *Children with disabilities*, and Article 29, *Participation in political and public life*. After exploration of the theme, the following semantic object have been pointed out: *Sustainable Development Is Inseparable from Solution of Disability-Related Issues; Promotion of Full Participation of Persons with Disabilities; Nothing about Persons with Disabilities, Except for Persons with Disabilities Themselves; Involvement of Persons with Disabilities in the Monitoring Processes*.

The semantic object **Sustainable Development Is Inseparable from Solution of Disability-Related Issues** is clearly articulated in the statement of the Preamble emphasising that improvement of the disability situation should be inseparable from sustainable development in a state party: *(...) the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development (...)* (Preamble).

According to both Preamble and Article 3 pointing out general principles, states parties provide persons with disabilities opportunities for (...) **full enjoyment be persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society (...)** (Preamble); and ensure **full and effective participation (...)** (Article 3) in public life in general, as well as in the health care system (semantic object **Promotion of Full Participation of Persons with Disabilities**).

After carrying out investigation of the Convention in the aspect of inclusive health care, the semantic object **Nothing about Persons with Disabilities, Except for Persons with Disabilities Themselves** was singled out. This provision is ensured by three articles: *In the development and implementation of legislation and policies (...) shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations* (Article 4). In both Articles 4 and 7, states parties are obliged to provide conditions for children to express their views to be considered: *(...) shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight (...)* (Article 7). States parties must encourage

persons with disabilities take part in the life of the state, including the health care system: (...) *to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs* (...) (Article 29). States parties also assume obligation to involve persons with disabilities in the monitoring processes (Article 33): *Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process* (semantic object *Involvement of Persons with Disabilities in the Monitoring Processes*).

### Accessibility

Having conducted investigation of the Convention on the theme *Accessibility*, besides fundamental articles, semantic elements on the theme were found in the *Preamble* and six articles: Article 2, *Definitions*, Article 4, *General obligations*, Article 9, *Accessibility*, Article 19, *Living independently and being included in the community*, Article 21, *Freedom of expression and opinion, and access to information*, Article 28, *Adequate standard of living and social protection*. After exploration of the theme, the following semantic objects have been found: *Assurance of Multiple Accessibility* (as a result of investigation of fundamental articles and the entire Convention); *Perception of Disability*; *Universal Design*.

Manifestation of the semantic object *Perception of Disability* is reflected by a statement of the *Preamble* reading that (...) *disability results from the interaction between persons with impairments and attitudinal and environmental barriers* (...) (*Preamble*). In the context of such perception, the theme *Accessibility* is specifically actualised.

Manifestation of the semantic object *Assurance of Multiple Accessibility* encompasses many spheres: conditions provided by political will, accessibility of physical environment, assurance of communication, accessibility to services, financial accessibility, accessibility conditioned by geographical environment etc. For instance, *Preamble* actualises political will concerning assurance of all rights: (...) *persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities* (...) (*Preamble*) as well as the right to accessibility to health: (...) *the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication* (...) (*Preamble*). Article 19 ensures that *community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs* (Article 19). Another article ensures financial accessibility and compensation of disability-related expenses: (...) *and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs* (...) *to ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including* (...) *financial assistance and respite care* (...) (Article 28). The article *Accessibility* practically lists elimination of all possible barriers, without exclusion of those in the health care system: (...) *to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and other facilities open or provided to the public, both in urban and in rural areas* (...) *buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities* (...) *information, communications and other services, including electronic services and emergency services* (...) *to provide in buildings and other*

*facilities open to the public signage in Braille and in easy to read and understand forms (...) to provide forms of live assistance and intermediaries (...) to facilitate accessibility to buildings and other facilities open to the public (...)* (Article 9). Articles 2 and 21 ensure accessible communication: (...) **communication** (...), (...) **language** (...) (Article 2). If Article 2 displays only semantic elements, Article *Freedom of expression and opinion, and access to information* provides everything in detail: (...) *providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kind of disabilities in a timely manner and without additional cost (...) sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions (...)* (Article 21).

The research logic would require attributing the semantic object **Universal Design** to the object **Assurance of Multiple Accessibility**; however, seeking to emphasise importance of universality while adjusting environment, conditions and services, these objects were opted as separate ones. The obligation to apply a universal design is reflected in Article 2: (...) **reasonable accommodation** (...), (...) **universal design** (...) (Article 2) and Article 4, where states parties are obliged to ground on the universal design idea while preparing standards and other documents: *promote universal design in the development of standards and guidelines* (Article 4).

**Findings.** The thematic analysis based on inductive reasoning as well as the analysis of pointed out themes allow formulating the following findings:

In the aspect of the theme **Equal Rights**, it was found that, when analysing fundamental articles of the Convention, semantic elements were highlighted in relation to the programmes of sexual and reproductive health sphere, insurance of health and life, full support in health care in case of any kind of disability in general (semantic objects *Right to Reproductive Health* and *Full Health Care Support in Any Kind of Disability*). Having explored other parts of the Convention, manifestation of the theme **Equal Rights** is complemented by the following semantic objects: *Political Will, Body and Mental Inviolability, Rights of Children with Disabilities, Equality between Men and Women; Legal Assistance.*

In the aspect of the theme **Discrimination and Ethics**, it was found out that the analysis of the fundamental articles of the Convention revealed those semantic elements related to *discrimination on the basis of disability; dignity; the promulgation of ethical standards for (...) health care* (semantic objects *Political Will Preventing Discrimination and Unethical Treatment; Dignity; Improper Standards of Health Care*). After investigation of other parts of the Convention, manifestation of the theme **Discrimination and Ethics** is complemented by these semantic objects: *Active Stance of the State; Prohibition of Discrimination of Women and Girls with Disabilities; Respect for Children with Disabilities; Prohibition of Degrading and Cruel Treatment; Assurance of Medical and Scientific Ethics; Assurance of Confidentiality.*

In the aspect of the theme **Quality**, it was found that the following semantic elements became highlighted when analysing the fundamental articles: *the highest attainable standard of health; population-based public health programmes; including early identification and intervention as appropriate; minimize (...) further disabilities; needed by persons with disabilities specifically because of their disabilities.* Semantic elements of the analysis of the fundamental articles were merged to the following objects: *the Highest Attainable Standards of Health; Accessibility and Availability of Health Promotion and Rehabilitation Programmes.* After investigation of other parts of the Convention, manifestation of the theme **Quality** was

supported by the semantic objects of the fundamental articles as well as highlighted new ones: *Research and Development; Training of Professionals and Staff*.

In the aspect of the theme **Inclusive Health Care**, the analysis of the fundamental articles revealed the following semantic elements: *full and effective participation in society; on the basis of free and informed consent; raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training*. The semantic elements of the fundamental articles were merged to a notional object *Promotion of Full Participation of Persons with Disabilities*. After exploring other parts of the Convention, it was found out that the manifestation of the theme **Inclusive Health Care** was supported by the semantic object *Promotion of Full Participation of Persons with Disabilities* of the fundamental articles as well as highlighted new ones: *Sustainable Development Is Inseparable from Solution of Disability-Related Issues; Nothing about Persons with Disabilities, Except for Persons with Disabilities Themselves; Involvement of Persons with Disabilities in the Monitoring Processes*.

In the aspect of the theme **Accessibility**, it was found that the analysis of the fundamental articles of the Convention revealed these semantic elements: *the same range, quality and standard of free or affordable health care and programmes; services as close as possible to people's own communities* (semantic object *Assurance of Multiple Accessibility*). After investigating other parts of the Convention, two semantic objects were found: *Perception of Disability; Universal Design*.

The findings allow formulating the **conclusions**:

1. The Convention on the Rights of Persons with Disabilities ensuring **equal rights** in the system of health care ensures that persons with disabilities have the right to the support of the political will, equal rights to full health care, right to reproductive health, body and mental inviolability, assurance of equal rights of children with disabilities, equality between men and women in the health care system and full legal assistance grounded on the Convention.
2. The Convention on the Rights of Persons with Disabilities safeguarding **non-discriminative and ethical** services in the system of health care states that political will of states parties must prevent discrimination and unethical treatment; ensure dignity of persons with disabilities, non-discriminative standards of health care. A state party must take an active stance concerning issues of discrimination and ethics. Discrimination of women and girls with disabilities is prohibited; respect for children with disabilities is expressed. Cruel and degrading treatment is prohibited. Medical and scientific research ethics is fully safeguarded. The system of health care ensures confidentiality of persons with disabilities.
3. The Convention on the Rights of Persons with Disabilities ensuring **quality** of health care obliges states parties to seek the highest attainable standard of health, to ensure accessibility to and availability of preventive health promotion and rehabilitation programmes, to systematically and consistently develop scientific research and to apply them in practice, to provide conditions for professionals and all staff members to learn to ensure quality of services for persons with disabilities.
4. The Convention obliging the states parties seek full participation of persons with disabilities; inclusion of disability-related issues into sustainable development strategies of states parties on the parity basis; collaborate at all levels, both macro- and micro-levels, with representatives of persons with disabilities. Moreover, states parties must involve persons with disabilities into the monitoring processes.

5. The Convention on the Rights of Persons with Disabilities safeguarding **accessibility** in the system of health care obliges states parties to perceive disability as a problem of interaction among health, attitude and environment. In the context of such perception, the theme *Accessibility* is specifically actualised. States parties are obliged to ensure accessibility in all aspects: political will must provide conditions, physical environment, communications, services, financial accessibility, eliminated determination of geographical environment must be safeguarded. States parties are obliged to support the idea of the universal design.

## References

- Baranauskienė, I. (2018). The Right of People with Disabilities to Health: What Is Expressed by the Architectonics of Legislation? *Social Welfare: Interdisciplinary Approach*, 8(2), 40–52.
- Boyatzis, R. E. (1998). *Transforming Qualitative Information: Thematic Analysis and Code Development*. SAGE Publications, Inc.
- Braun, V., & Clarke, V. (2012). Thematic Analysis. In H. Cooper (Ed.), *APA Handbook of Research Methods in Psychology, 2: Research Designs*. (pp. 57-71). DOI: 10.1037/13620-004.
- Convention on the Rights of Persons with Disabilities (2009). Retrieved from <http://www.ndt.lt/neigaliuju-teisiu-konvencija/>
- Guest, G., MacQueen, K., & Namey, E. (2012). *Applied Thematic Analysis*. SAGE Publications, Inc.
- Hodgson, D. (2012). The educational rights of persons with disabilities: International human rights law and Australian law perspectives. *International Journal of Discrimination and the Law*, 12(4), 183–220.
- Lash, J. P. E. (1972). *The Years Alone*. New York, NY: WW Norton.
- National Programme for Social Integration of Persons with Disabilities for 2013–2019* (2012). Retrieved from: <http://www.ndt.lt/nacionaline-programa/>
- Neįgaliųjų teisių konvencija [Convention on the Rights of Persons with Disabilities]* (2019). Retrieved from: <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-integracija/neigaliuju-teisiu-konvencija>
- Nekrašas, E. (2010). Pozityvizmo ir postpozityvizmo ginčas socialiniuose moksluose [Positivism-postpositivism debate in social sciences]. *Politologija [Politology]*, 1 (57), 76-97.
- On Approval of the Composition and Regulations of the Council for the Affairs of the Disabled under the Ministry of Social Security and Labour (approved on 23 December 2005, No 1426) (2010). Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1809cf119a8611e68adcdca1bb2f432d1?positionInSearchResults=0&searchModelUUID=63ee5ac7-dde2-4754-b7aa-71090c3bb952>
- Phillips, S. D. (2011). EU disability policy and implications of EU accession for disability rights in education and employment in Bulgaria, Romania, Croatia, and the Former Yugoslav Republic of Macedonia. *Journal of Disability Policy Studies*, 22(4), 208–219.
- Plans for implementation of the National Programme for Social Integration of Persons with Disabilities for 2013–2019* (2012). Retrieved from: <http://www.ndt.lt/nacionaline-programa/>
- Recommendations of the Committee for the Rights of the Disabled to Lithuania* (2016). Retrieved from <http://www.ndt.lt/neigaliuju-teisiu-konvencija/>
- Ruškus, J. (2014). Neįgaliųjų teisių įgyvendinimas – socialinės gerovės valstybei kurta [The implementation of the rights of people with disabilities to build a social welfare society]. *Socialinis darbas. Patirtis ir metodai [Social Work. Experience and Methods]*, 14(2), 167-169.
- Ruškus, J. (2017a). Kaip negalią turinčių žmonių teisės prisideda prie Darnaus vystymosi tikslų įgyvendinimo [How the rights of people with disabilities contribute for achieving the sustainable development goals]. Retrieved from <http://manoteises.lt/straipsnis/kaip-negalia-turinciu-zmoniu-teises-prisideda-prie-darnaus-vystymosi-tikslu-igyvendinimo/>
- Ruškus, J. (2017b). Lygybės ir nediskriminavimo neįgaliesiems gali tekti laukti dar šimtą metų, jei... [Equality and non-discrimination for people with disabilities may have to wait another hundred years, if.. ]. *Socialinis darbas. Patirtis ir metodai [Social Work. Experience and Methods]*, 20(2), 117-122.
- Ruškus, J. (2018). Diskriminacijos, kylančios iš lytiškumo ir negalios sankirtos, sprendimas žmogaus teisių požiūriui [The human rights' approach addressing discrimination based on the intersection of

- gender and disability]. *Tarptautinė konferencija "Lyčių lygybė savivaldoje: Šiaurės Europos patirtis" Spalis 4–5 d., 2018 m. [International Conference "Gender Mainstreaming in Municipalities: Sharing of the Nordic Experience" October 4-5, 2018]*. Vytauto Didžiojo universitetas.
- Series, L. (2015). The development of disability rights under international law: from charity to human rights. *Disability & Society*, 30(10), 1590–1593.
- Shakespeare, T. (2015). Human rights and disability advocacy. *Disability & Society*, 30(2): 316–318.
- Spradley, J. P., & McCurdy, D. W. (1972). *The Cultural Experience Ethnography in Complex Society*. Waveland Press, Inc.
- Spradley, J. P. (1980). *Participant observation*. Holt, Rinehart and Winston.
- Tschanz, C. & Staub, I. (2017). Disability-policy models in European welfare regimes: comparing the distribution of social protection, labour-market integration and civil rights. *Disability & Society*, 32(8), 1199–1215.
- Wagneris, H. (2003). Sistemų teorija ir socialinis darbas [Social theory and social work]. *Socialinė teorija, empirija, politika ir praktika [Social theory, empiric, policy and practice]*, 2, 4-32.
- Werner, S. (2015). Public stigma and the perception of rights: Differences between intellectual and physical disabilities. *Research in Developmental Disabilities*, 38, 262–271.

## THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES VERSUS THE RIGHT TO HEALTH CARE

### Summary

Ingrida Baranauskienė, Klaipėda University

By employing the research methodology of thematic analysis, the paper presents the investigation of the Convention on the Rights of Persons with Disabilities in the aspect of the right to health care. The revealing of fundamental resolutions of the Convention on the Rights of Persons with Disabilities, manifestation of them in the aspect of the health care system are the object of the present paper; moreover, these emphasise the social relevance seeking to ensure comprehensive and equal use of all human rights and fundamental freedoms, dignity, full participation in public life and, naturally, health care system for persons with disabilities. The research problem is formulated within this context: What resolutions of the Convention on the Rights of Persons with Disabilities are the most important to successfully ensure persons' with disabilities rights to health care? What is the semantic manifestation of these resolutions and what are the contexts that ensure successful implementation of them? The research methodology grounds on the ideas of post-positivism and ethnographical approach. The analysis of the Convention on the Rights of Persons with Disabilities is based on the principles of thematic analysis. The thematic analysis based on inductive reasoning as well as the analysis of pointed out themes allow formulating the following findings. In the aspect of the theme **Equal Rights**, it was found that, when analysing fundamental articles of the Convention, semantic elements were highlighted in relation to the programmes of sexual and reproductive health sphere, insurance of health and life, full support in health care in case of any kind of disability in general (semantic objects *Right to Reproductive Health* and *Full Health Care Support in Any Kind of Disability*). Having explored other parts of the Convention, manifestation of the theme **Equal Rights** is complemented by the following semantic objects: *Political Will*, *Body and Mental Inviolability*, *Rights of Children with Disabilities*, *Equality between Men and Women*; *Legal Assistance*. In the aspect of the theme **Discrimination and Ethics**, it was found out that the analysis of the fundamental articles of the Convention revealed those semantic elements related to

*discrimination on the basis of disability; dignity; the promulgation of ethical standards for (...) health care* (semantic objects *Political Will Preventing Discrimination and Unethical Treatment; Dignity; Improper Standards of Health Care*). After investigation of other parts of the Convention, manifestation of the theme *Discrimination and Ethics* is complemented by these semantic objects: *Active Stance of the State; Prohibition of Discrimination of Women and Girls with Disabilities; Respect for Children with Disabilities; Prohibition of Degrading and Cruel Treatment; Assurance of Medical and Scientific Ethics; Assurance of Confidentiality*. In the aspect of the theme **Quality**, it was found that the following semantic elements became highlighted when analysing the fundamental articles: *the highest attainable standard of health; population-based public health programmes; including early identification and intervention as appropriate; minimize (...) further disabilities; needed by persons with disabilities specifically because of their disabilities*. Semantic elements of the analysis of the fundamental articles were merged to the following objects: *the highest attainable standards of health; accessibility and offer of health promotion and rehabilitation programmes*. After investigation of other parts of the Convention, manifestation of the theme *Quality* was supported by the semantic objects of the fundamental articles as well as highlighted new ones: *Research and Development; Training of Professionals and Staff*. In the aspect of the theme **Inclusive Health Care**, the analysis of the fundamental articles revealed the following semantic elements: *full and effective participation in society; on the basis of free and informed consent; raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training*. The semantic elements of the fundamental articles were merged to a notional object *Promotion of Full Participation of Persons with Disabilities*. After exploring other parts of the Convention, it was found out that the manifestation of the theme *Inclusive Health Care* was supported by the semantic object *Promotion of Full Participation of Persons with Disabilities* of the fundamental articles as well as highlighted new ones: *Sustainable Development Is Inseparable from Solution of Disability-Related Issues; Nothing about Persons with Disabilities, Except for Persons with Disabilities Themselves; Involvement of Persons with Disabilities in the Monitoring Processes*. In the aspect of the theme **Accessibility**, it was found that the analysis of the fundamental articles of the Convention revealed these semantic elements: *the same range, quality and standard of free or affordable health care and programmes; services as close as possible to people's own communities* (semantic object *Assurance of Multiple Accessibility*). After investigating other parts of the Convention, two semantic objects were found: *Perception of Disability; Universal Design*.

**Corresponding author's email:** [Ingrida.Baranauskiene@ku.lt](mailto:Ingrida.Baranauskiene@ku.lt)