

Netherlands Institute for Human Rights

Written submissions

to the 24th session of the Committee on the Rights of Persons with Disabilities for the benefit of the forthcoming general discussion on the right of persons with disabilities to work and employment

Introduction

1. The Netherlands Institute for Human Rights (hereafter: the Institute) is an independent body established by law. Its objectives are set out in the Netherlands Institute for Human Rights Act of 2012 (hereafter: the Act): to protect human rights in the Netherlands, to increase awareness of these rights and to promote their observance. The Institute is the A-status National Human Rights Institution (NHRI) in the Netherlands.

2. The mandate of the Institute is set out in the said Act, inter alia: to investigate and to conduct research, to report and issue recommendations on protection of human rights and to cooperate with national, European and other international institutions engaged in the protection of human rights. Furthermore, the Institute is the national independent monitoring body under article 33(2) of the Convention on the Rights of Persons with Disabilities (hereafter: CRPD). In light of this latter mandate the Institute submits written comments for the benefit of the committee's forthcoming general discussion on the right of persons with disabilities on work and employment.

3. In 2018 the Institute has submitted its report concerning the initial report of the Netherlands to the Committee on the Rights of Persons with Disabilities (hereafter: CPRD-committee).¹ In this report the Institute has addressed some issues related to the right to work of persons with disabilities. More recently, the Institute has published a comprehensive advisory opinion on the position of persons with (work-related) disabilities from a young age in light of the CRPD (hereafter: comprehensive opinion) and a guideline on labour participation of persons with a visual and or hearing disability (hereafter: guideline) for the benefit of employers.²

4. The present input is based on the information and findings in these reports. In order to structure its written comments the Institute will follow the outline for the preparation of a general comment on article 27 of the CRPD.³ First, the Institute will provide comments on the interpretation of article 27. Secondly, the Institute will address the topic of States parties obligations. Finally, the Institute will shortly discuss the relationship with other provisions of the CRPD.

¹ Netherlands Institute for Human Rights, *Submission to the committee on the rights of persons with disabilities concerning the initial report of the Netherlands*, March 2018 (available at [Rapportage aan het Comité voor de rechten van personen met een handicap 2018 | Mensenrechten](#)).

² Netherlands Institute for Human Rights, *De positieve van mensen met een arbeidsbeperking van jongs af aan in het licht van het VN-verdrag handicap. Breed advies* [Comprehensive advisory opinion on the position of persons with a work-related disability from a young age in light of the CRPD], Utrecht 27 February 2020; Netherlands Institute for Human Rights, *Het werkt anders. Handreiking om de arbeidsparticipatie van mensen met een visuele of auditieve beperking te bevorderen* [It works differently. Guideline to improve the position of persons with a visual or auditive disability on the labour market], Utrecht September 2020.

³ Available at <[OHCHR | GeneralDiscussions](#)>.

Normative content

Interpretation of article 27(1) under (d) and (j)

5. It follows from Article 27(1) under (d) and (j) that persons with disabilities are enabled to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training and that States parties promote the acquisition by persons with disabilities of work experience in the open labour market. The Institute proposes a construction of the said provisions in the light of Article 24(5) of the CRPD which holds that States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. In relation to this provision, the CRPD-committee has previously pointed out that quality inclusive education must prepare persons with disabilities for work life. Persons with disabilities must acquire the knowledge, skills and confidence necessary for participation in the open labour market.⁴

6. Being able to do an internship during ones education is essential for students to get prepared for work life. However, young persons with disabilities in the Netherlands often encounter difficulties in finding an internship. For example, obstacles are reported to exist in arranging reasonable accommodations, due to the often short period an internship takes. Other obstacles are that employers are cautious to provide an internship to a student with a disability, or because of a lack of assistance. In addition, it is often unclear to students where they can apply for a reasonable accommodation and how to arrange funding.⁵

7. In relation to the abovementioned obstacles encountered by students with a disability, the Institute is anxious to point out that appropriate assistance from the educational institution in the search for an internship and in the transition from education to work life is necessary. Furthermore, cooperation between educational institutions, municipalities and employers should be further promoted in order to smoothen the transitioning from student life to the working life. To ensure that students with a disability have equal opportunities, reasonable accommodations must be available to them during an internship, too. Appropriate funding should be available in this regard, as well as adequate information on how to obtain it.⁶

Interpretation of article 27(1) under (a) and (i)

8. States parties to the CRPD should take appropriate steps to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment. Furthermore, reasonable accommodation needs to be provided to persons with disabilities in the workplace. In its general comment on article 5 CRPD the CPRD-committee has previously pointed out what States parties should do to achieve *de facto* equality in terms

⁴ Committee on the Rights of Persons with Disabilities , *General Comment No. 4 (2016) on the right to inclusive education*, CRPD/C/GC/4, 25 November 2016, para 56.

⁵ NIHR, *Comprehensive opinion*, pp. 14-15.

⁶ NIHR, *Comprehensive opinion*, pp. 15-16.

of the CRPD. One of these measures is to expressly recognize the denial of reasonable accommodation as discrimination.⁷

9. Even though discrimination on the basis of disability and the denial of reasonable accommodation are prohibited by law in the Netherlands,⁸ the Institute observes that discrimination and denial of reasonable accommodation still occurs in practice. For example, the Institute has heard cases brought by persons with disabilities who are rejected for a vacancy because of their disability.⁹ Other obstacles are, for instance, employers being quite cautious or suffering from a lack of knowledge about current possibilities for support and the provision of reasonable accommodation.¹⁰

10. The CRPD-committee has emphasized that States parties need to take specific measures in order to achieve de facto equality.¹¹ According to the Institute, accessible information about the possibilities and responsibilities in relation to discrimination and the provision of reasonable accommodation in the workplace is necessary. Such information may be helpful to both employers and persons with a disability. In this regard, the availability of an “independent client supporter” can be helpful as well.¹²

Interpretation of article 27(1) under (h)

11. Article 27(1) under (h) of the CRPD requires States parties to promote the employment of persons with disabilities in the private sector through appropriate policies and measures. The Institute points out that, in the Netherlands different policies and measures with different rules exist next to each other. These policies and measures aim to promote the employment of persons with disabilities in the private sector in different ways. For example, persons with disabilities may receive assistance from a so-called *job-coach*. Nonetheless, reports indicate that persons with disabilities do not always receive the support they need and that information about where and how to apply for support is unclear.¹³ The complexity of proposed and existing laws make it difficult both for persons with a disability and employers to understand what rules are applicable to them and which solutions may be available. In practice, this lack of clarity forms an obstacle in the realisation of the right to work for persons with a disability. Therefore, accessible and understandable information is of great importance.

States parties obligations

12. In its comprehensive advisory opinion mentioned above (see para 3), the Institute addressed the complexity of laws applicable to persons with disabilities and of their labour

⁷ Committee on the Rights of Persons with Disabilities, *General comment no. 6 on equality and non-discrimination*, CRPD/C/ GC/6, 26 April 2018, para 67.

⁸ Wet gelijke behandeling op grond van handicap of chronische ziekte [Equality (disability) act 2003].

⁹ NIHR, *Oordeel 2020-62*, 27 July 2020; NIHR, *Oordeel 2020-26*, 19 March 2020; NIHR, *Oordeel 2018-82*, 26 July 2018.

¹⁰ NIHR, *Comprehensive opinion*, pp. 18-21; NIHR, *It works differently*, pp. 10-20.

¹¹ CRPD, *General comment no. 6*, para 17.

¹² NIHR, *Comprehensive opinion*, pp. 18-21; NIHR, *It works differently*, pp. 22-23.

¹³ NIHR, *Comprehensive opinion*, pp. 18-21

market position in the Netherlands. Therefore, the Institute recommended the legislature¹⁴ to perform a visible (explicit) assessment of draft legislation in light of the CRPD when developing legislation affecting persons with disabilities. This assessment is to indicate, in addition to existing guidelines on compliance of draft legislation with treaties, *inter alia* how a legislative proposal may *contribute to the implementation* of the CRPD¹⁵ and *whether and how persons with disabilities and their organizations have been consulted* (cf. Article 4(3) of the CRPD). In order to do justice to the letter and spirit of the CRPD, this explicit assessment of draft legislation in light of the CRPD is recommended to be performed at an early stage of the legislative process.

13. The Institute has developed a *checklist* that may help the legislature to perform this visible (explicit) assessment in the light of the CRPD. The checklist is threefold. It includes a principles check, a rights- and obligations-check and a coordination check. This list may, *mutatis mutandis*, also serve as a guideline for those wish to carry out an assessment of draft legislation in light of the CRPD, including co-legislators and advisers, and, of course, persons with a disability themselves and/or persons and organizations protecting their interests. The checklist is attached to this written contribution.

14. The Institute wishes to emphasize the importance of the obligation under article 4(3) CRPD to closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies concerning persons with disabilities. As the CRPD-committee has explained before, effective participation means consultation based on transparency, mutual respect, meaningful dialogue and a sincere aim to reach a collective agreement. Consultation should not be a mere formality.¹⁶ The Institute has observed that for a meaningful dialogue to exist, proper feedback, explaining choices made and reflecting on input by persons with disabilities, is necessary.¹⁷

Relationship with other provisions of the CRPD

15. Participation in the labour market is closely connected to general principles laid down in article 3 of the CRPD. Participation in the labour market strengthens personal autonomy and the freedom to make one's own choices, it enables persons to participate in society and it improves equality of opportunity. Other provisions that are interconnected with the right to work and applicable general principles are article 24 on inclusive education, article 28 on an adequate standard of living and article 19 on independent living and being included in the community. Education is a stepping-stone for participation in the labour market. Furthermore, having a job provides income, enables persons to participate in society and offers them perspective for the future.

¹⁴ That is: government and Parliament, cf. Article 81 of the Netherlands Constitution.

¹⁵ Cf. Article 4(2) of the CRPD.

¹⁶ CRPD, *General comment no. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the convention*, CRPD/C/GC/7, 21 September 2018, paras 47-48.

¹⁷ NIHR, *Participatie van mensen met een beperking bij de totstandkoming van wetgeving en beleid. Jaarlijkse rapportage over de naleving van het VN-verdrag handicap in Nederland 2020* [Participation of persons with a disability in the development of legislation and policies. Yearly monitor on the implementation of the CRPD in the Netherlands 2020], December 2020, p. 32.

16. The right to work for persons with disabilities as laid down in article 27 CRPD is closely related to other provisions of the Convention. These written comments have offered some examples. This close relation has become even more clear to the Institute in exchanges with persons with disabilities and their (representative) organisations on the topic of the right to work, for instance at round tables held in January 2020. Articles 19, 24, 27 and 28 of the CRPD were said to be rather strongly connected.

Appendix I

CRPD checklist for (draft) legislation and regulations on and for persons with work-related disabilities from a young age

I Principles check

- a) Does the legislative proposal give (more) autonomy to persons with disabilities from childhood? For example, does the proposal allow for freedom of choice and does it contribute to the independence of these persons?
- b) Does the legislative proposal treat persons with disabilities the same as, or rather differently from persons without disabilities?
- c) How does the legislative proposal contribute to genuine participation and inclusion of persons with disabilities in society?
- d) Does the proposal allow for evaluation at some point?

II Rights and obligations check

- a) How and when was/is 'close consultation' with persons with disabilities and their (representative) organisations implemented with regard to this legislative proposal?
- b) Are the proposed measures understandable for persons with disabilities, or can their (representative) organizations at least explain these measures to them?
- c) Are there any specific questions about the interpretation of the Convention on the rights of persons with disabilities that require further investigation or additional advisory opinions?
- d) Does the proposal add to the implementation of the Convention in the Netherlands? Which provisions of the CRPD does the proposal implement or (partly) affect?
- e) If the proposal (partly) leads - or if it cannot be ruled out that it may lead - to a deterioration of the position of persons with disabilities from a young age, the question arises whether the following cumulative criteria have been met:¹⁸
 - there is reasonable justification for the proposal;
 - alternatives were comprehensively examined;
 - there was genuine participation of the groups affected by the proposal;
 - there is no direct or indirect discrimination based on disability;
 - there is no unreasonable impact on acquired social security rights;¹⁹

¹⁸ These criteria are derived from the wording of the CESCR in *General Comment no. 19. The right to social security*, E/C.12/GC/19 of 4 February 2008, paragraph 42.

¹⁹ See also Article 1 of the First Protocol to the ECHR.

- persons with disabilities are not deprived of access to the minimum essential level of social security, also in view of the explanation of this concept given by the Committee on the Rights of Persons with Disabilities; and
- an independent review was carried out or is still being carried out.

III Coordination check

- a) Is the legislative proposal part of the national programme implementing the CRPD in the Netherlands?
- b) How does the proposal relate to other (planned) measures that implement or are relevant to the implementation of the CRPD in the Netherlands?