

You can have, as the EU does have, strong enforcement machinery. But the best watchdog of individual rights are the intended beneficiaries themselves. And so if the intended beneficiaries can enforce their rights directly before national courts, then you are going to have a very high level of compliance in the long term. And it is that reasoning that the Court of Justice developed the notion or principle of direct effect. When it comes to direct effect of mixed agreements, such as the convention, the court of justice has been rather inconsistent. National constitution courts and their approach. The nature of international provision at a national level. In that sense the court of justice is no different. But in case Z and A, which is relevant in 2 cases. The court of justice was quite clear. In saying that none of the provision of the convention are conditional and sufficiently precise. To justify awarding then the status of having direct effect under EU law. It reasoned that the convention addressed to the states. This international agreement addressed to the state. It referred to article 4.1, which includes the general obligations under the convention. And within that, the obligation of states for example which would include to implement, take action, to prohibit discrimination for example. But if the reference to states. And if direction to states is enough to prevent an international human rights instrument, which is designed to advance the rights of individuals. If it is enough to prevent that from being effective, from enabling them to enforce their rights, that would also exclude a range of other international instruments, including human rights instruments, where the status of self executing has been given by one or more constitutional courts. And similarly, in other decisions on the court of justice, it did not preclude the court of justice analysing the provision in instruments were also to state parties. I note here, article 44.2 of the convention makes it very clear that to the extent the EU has competence it is a contracting state under the convention. So the direction in the treaty provisions are not just going to the member states, but to the EU institutions themselves. And if you look at article 4.1.B, the convention itself says, within the obligations of contracting states, including the EU, it is not to implement laws, but also to review laws and amend laws where they are incompatible with the convention. Which was the very reason why the court was considering this issue in Z and A. This issue involved a lady who due to an impairment could not get pregnant and as a result give birth. She commissioned a surrogate mother to perform that role for her. She was seeking equal treatment with other mothers in respect of maternity leave.

And because she was unable to get pregnant, the Court of Justice was of view that she could not rely on this extra quality provisions under EU law. The next question was whether she was being treated less favourably on the basis of disability. The question was, is she disabled, we'll talk about in a minute. And if the argument went that if she was not with, - did not come in the definition of disability, should the framework directive itself, which prohibits discrimination. Should that directive be reviewed? In the context of the convention. The Court of Justice was very clear. None of the provisions were of direct effect.

I refer to article 5.2 of the convention on the slide. If you look at the text. State parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. We have discussed the issue of state, the inclusion of the word state party. And compare it to article 18. Discrimination based on nationality under EU law. You see the wording is similar. It is no less precise or clear. And yes, one could argue that the direction in the convention is for the state parties, including the EU - institutions to take action. My response would be, with the EU directives. And, in any event, included within the institutions that have an obligation to implement the convention is the Court of Justice, in what better way could the Court of Justice implement its obligations under the convention. To provide direct effect to an article such as article 5.2 from the convention.

I was disappointed with the judgement. On reflection, it does make sense in that the member states, also signatories to the convention, some of, many of them would not allow automatic incorporation of the convention's provisions into their national law. So, the effect of the Court of Justice allowing direct effect to be given to provision in the convention would be to bring direct effect in through the EU legal order and through the backdoor.

And, perhaps, at the back of its mind, the Court of Justice is also aware that by giving direct effect to provisions such as article 5.2, it will give a legal status to human rights and the context of disability that would not exist within the EU legal order for other grounds.

And for other human rights. There is an issue of autonomy and legitimacy.