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The Rights of Persons with Disabilities in Covid-19 Times

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CURRENT REFLECTIONS ON EU ANTI-DISCRIMINATION LAW
ONLINE SEMINAR FOR UNIVERSITY PROFESSORS AND LAW LECTURERS
ERA Trier , 2-3 February 2021

Impact of the Pandemic on Persons with Disabilities

**The Human Rights Model of Disability as
Framework for the Response to the Pandemic**

The Role of the EU



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According to the UN (Policy Brief- May 2020) Persons with Disabilities are

At **greater risk of contracting COVID-19** and of developing more severe health conditions and dying from COVID-19

At **greater risk of discrimination in accessing healthcare** and life-saving procedures

Particularly disadvantaged by the **socio-economic consequences** of COVID-19 and measures to control the pandemic

- Impact on rehabilitation/neurorehabilitation of people with disabilities (Negrini *et al*, 2020; Leocani *et al*. 2020)
- ICU triage protocols resulting in discriminatory exclusion of people with disabilities (Oakley *et al*, 2020)
- Lack of social care (IHREC, 2020)
- Underlying issues faced by people with disabilities during this pandemic is poverty (Smith *et al*, 2020)
- Intersectional discrimination (IHREC, 2020)
- Disproportionate detrimental impact (EP Resolution of 18 June 2020 on the European Disability Strategy post-2020)
- Vulnerability (Knijn and Lepianka, 2020)

Surveys and qualitative data confirm the disproportionate Impact of Covid-19 on PwD



COVID-19 Disability Rights Monitor Global Survey (October 2020)

- **Human rights abuses** in institutions and Inadequate measures to protect persons with disabilities
- **Breakdown of community supports** - Essential services that persons with disabilities rely on to live independently in the community were not available during the pandemic (confirmed by national studies such as Zaagsma *et al.*, 2020)
- **Disproportionate impact on certain groups of persons with disabilities** (e.g. children with disabilities – women with disabilities)
- **Denial of access to healthcare**



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“While the COVID-19 pandemic threatens all members of society, persons with disabilities are **disproportionately** impacted due to **attitudinal, environmental** and **institutional barriers** that are reproduced in the COVID-19 response” (OHCHR, April 2020)

Human Rights Framework

*“The COVID-19 pandemic highlights that protection, response and recovery efforts will not be effective unless everyone is equally valued and included. Only through the adoption of **a human rights approach** will we achieve **equitable, sustainable and resilient societies**” (G. Quinn, Special Rapporteur on the rights of persons with disabilities - 3 December 2020)*



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The CRPD

The CRPD represents “a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment” (ECtHR, *Glor v. Switzerland*, Application No. 13444/04, 30 April 2009, para 53)



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Human Rights Model of Disability

CRPD Committee, General Comment N. 6
(2018) – Degener, 2016

Lawson & Beckett, 2020



Social model – a descriptive and heuristic model of disability

Human rights model – a prescriptive model of disability policy

Art. 11 CRPD

“States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in **situations of risk**, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”

Obligation to “establish a **targeted, sustainable humanitarian emergency framework** to ensure the protection of the rights of pwd on an equal basis with others, and specifically in the context of the public health emergency resulting from the coronavirus disease (COVID-19) pandemic” (Lois Israel - 16 October 2020)

Systematic Reading of Art. 11 CRPD

Accessibility of
communication

Accessibility of
emergency
services

Reasonable
accommodation

Participatory and Inclusive Plans

The EU Legal Framework

EU Treaties- Charter

CRPD

Secondary Rights

Soft Law (European
Pillar of Social Rights)

OPINION OF AG SAUGMANDSGAARD ØE, Case C-795/19 *XX v Tartu Vangla*, 25 November 2020

“...the right not to be discriminated against on grounds of disability is a fundamental right enshrined in **Article 21 of the Charter** and given concrete expression in Directive 2000/78. **That right is also enshrined in the [CRPD], to which the [EU] has acceded.**

The [EU] has not only undertaken to combat discrimination on grounds of disability by seeking to eliminate inequalities based on disability, but has also affirmed the importance of promoting the integration of disabled people into the labour force by taking appropriate action to contribute to **their full participation in economic, cultural and social life and to the realisation of their potential**” (pars 50-51)

The CRPD in the EU Legal Order

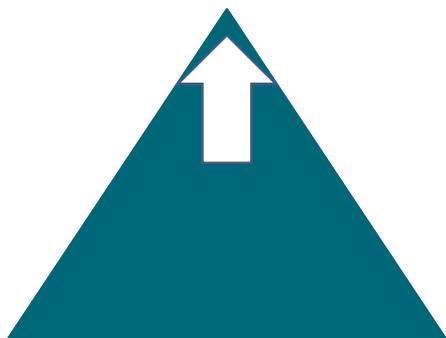
The CRPD forms integral part of EU law, and in hierarchical terms, it is

- inferior to the provisions of the Treaties
- but superior to secondary EU law



Secondary EU law must be interpreted in a manner **consistent** with the CRPD (Joined cases C- 335/11 and C- 337/11, *HK Danmark*)

...Indirect Constitutionalisation?



- CFR and CRPD are often cited one alongside the other
- The Court *de facto* uses the Convention (which is a sub-constitutional source within the EU legal order) to interpret a (formally) hierarchically superior source (see Case C-356/12 *Wolfgang Glatzel – Ferri*, 2020)

Disability Rights in the EU

European Disability Strategy 2010-2020

Mainstreaming of disability into its general legislation (e.g. in the area of transport)

Disability-specific legislation (e.g. EAA)

The Evaluation of the EDS

The European Disability Strategy 2010-2020
(Waddington & Broderick, 2020):

has contributed to embedding a human rights approach to disability in the policy discourse at EU level, and has supported the adoption of many important initiatives

But there are gaps between the Strategy and full compliance by the EU with CRPD

The New Strategy



“... next year we will present a new Strategy on the Rights of Persons with Disabilities. A strategy for change. Our goal is a Union of Equality. A Union where everyone can enjoy the same rights and opportunities. Where we are all equal, with all our differences. A continent where we can finally be united in diversity” (U. von der Leyen, 3 December 2020)



Mainstreaming of disability in all policies and programmes in the COVID-19 Recovery plan for Europe

New Disability Strategy addressing Covid-19 related **inequalities**

Gathering Data (e.g. IDA Survey on Experience of Persons with Disabilities Adapting to COVID-19)

Building on Best Practices

Delivering Guidance

Adopt an **Intersectional** approach

Improving accessibility



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Thank you for your attention!
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