

**SPECIFIC SUBSTANTIVE OBLIGATIONS  
UNDER THE UNCRPD OR EU PROVISIONS  
(EDUCATION, HEALTH, ADEQUATE  
STANDARD OF LIVING AND SOCIAL  
PROTECTION, PARTICIPATION IN POLITICAL,  
PUBLIC AND CULTURAL LIFE, RECREATION,  
LEISURE AND SPORT, PRIVACY AND DATA  
PROTECTION): IS THERE ROOM FOR DIRECT  
EFFECT?**

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## **Introduction**

- UN CRPD is in its infancy
- EU ratifying human rights Treaties also new
- Two ways to go:
  - Minimalist and attempt to avoid implications of UN CRPD
  - Generous and attempt to fulfill human rights of all.

## **Direct Effect?**

- Enables an individual to invoke a European provision before a national or European Court.
  - Was there an **express or implied intention** to give direct effect to this Treaty.
  - Are the provisions of the agreement **unconditional and sufficiently precise** to have direct effect.

## **Health – Article 25**

- State Parties, recognize the right to attainable standard of health without discrimination
  - Same range, quality and standard of free or affordable health care
  - Provide disability specific services such as early intervention
  - Services close to peoples home
  - Requirement on health professionals
  - Prohibit and prevent discrimination

## **Education – Article 24**

- States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education ... directed to:
  - The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity ;
  - ...

## **Direct Effect**

- Can these articles be considered either:
  - As implying an intention to give the provisions direct effect, or
  - As sufficiently, unconditional and sufficiently precise to have direct effect
- Unlikely to have direct effect

## **Economic, Social and Cultural Rights**

- Education
- Health
- Adequate Standard of Living
  
- Progressive realization
  - Minimum Core obligations
  - Some with immediate effect
  - Progressive realization measurement indicators

## **Interpretative Duty re UN CRPD?**

- *Case C-377/98 Netherlands v. European Parliament and Council*
  - Even where an agreement does not have direct effect:
    - ... *that fact does not preclude review by the courts of compliance with the obligations incumbent on the Community as a party to that agreement.*
- See also *Case C-61/94 Commission v Germany* [1996] ECR I-3989.

## **UN CRPD**

- 25 paragraphs in the preamble
- Article 1 – The purpose of the Convention
- Article 2 – Key Definition
- Articles 3-9 – Articles of general application
- Articles 10-30 – Substantive rights
- Articles 41-50 – Implementation and monitoring

## **General Obligations – Article 4**

- States Parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end States Parties undertake:
  - To adopt all appropriate legislative, administrative and other measure for the implementation of the rights recognised in the present Convention.
  - ...

## **Competence?**

- Directive 2000/43/EC Racial Equality Directive. This Directive prohibits discrimination in the area of employment, education, social protection including healthcare, social advantages, goods and services including housing.
- See also the Goods and Services Directive 2004/113/EC and
- Social Security Directive 79/7.

## **Agenda for Law Reform**

- European Disability Strategy:
  - Implementation of the UN CRPD features strongly in the Strategy.
  - Areas for action include, Education, Social Protection and Health.
- COM (2008) 426 proposes Equal Treatment Directive – addressing areas such as healthcare, education, social protection, social advantages, ...

## **What impact can this have?**

- Case C-61/94 *Commission v. Germany*
  - Primacy of international agreements over secondary Community legislation
  - Secondary legislation must be interpreted in a manner consistent with international agreement

## **Equality and non-discrimination**

- All equal before and under the law
- State Parties shall prohibit all discrimination and guarantee ...equal and effective legal protection
- State Parties shall ensure reasonable accommodation is provided
- Positive action permissible

## **Reasonable Accommodation – A.2**

- Failure to provide reasonable accommodation is discrimination
- A.2 – Reasonable accommodation:
  - means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;