

# A new legal framework? Implications of the UN CRPD for EU disability law

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# Key Questions

1. Does the UNCRRPD provide a new legal framework in the context of EU disability law?
2. Can one or more of its articles be invoked directly before national courts as a matter of EU law (*i.e.*, give ‘direct effect’)?

# In a nutshell...(i)

## A new legal framework



CONVENTION on the RIGHTS of  
PERSONS with DISABILITIES

YES. But its scope & nature is yet to be determined by the CJEU

As a minimum - a comprehensive resource of significant interpretative value to the CJEU



Joined cases C-335/11, *Jette Ring* & C-337/11, *Lone Skouboe Werge*

# In a nutshell...(ii)

Arguably, YES  
provided:

- the relevant article meets the CJEU's requirements for direct effect

AND

- the EU has demonstrated 'sufficient interest' in the general field that encompasses the article in question

Directly  
effective?



CONVENTION on the RIGHTS of  
PERSONS with DISABILITIES

# UNCRRPD as a ‘mixed agreement’

- Multilateral agreements - concluded by the EU and its Member States on the one hand and a Third Party on the other
- ‘Mixed’ because part of the agreement falls within the scope of EU powers & part within the powers of the Member States
- As with other multilateral agreements involving regional organisations, the UNCRRPD requires a declaration of competence demarcating the respective powers of the EU & its Member States

# The immediate legal context

- Council Decision 2010/48/EC, its declaration of competence (Annex II) & reservation to Article 27(1) (Annex III)
- Legal bases – Article 19 TFEU (combatting discrimination) and Article 114 TFEU (achieving the internal market)
- As of December 2010, the UNCRPD
  - bound the EU institutions & its Member States (Article 216(2) TFEU)
  - ‘forms an integral part of [EU] Law’ (Case 181/73, *Haegeman*). Application of Case 6-64, *Costa v E.N.E.L?*

# The wider legal context

- CJEU rulings inconsistent as regards the enforcement of international agreements
- EU accession to the UNCRPD represents a first for both the EU and the UN
- UNCRPD is arguably an articulation of the pre-existing fundamental rights protected by the Union as general principles
- Note recent use of general principles - Case C-555-07 *Seda Kucukdeveci*

# Outline of the legal framework (Part I)

- An integral part of EU law situated below the treaties but superior to secondary EU law
- CJEU has jurisdiction to interpret mixed agreements under Article 267 TFEU (eg., Case 12/86, *Demirel*)
- As a minimum, the duty of consistent interpretation



# Outline of the legal framework (Part II)

- Direct effect can occur but only when the article is self-executing and the EU has demonstrated ‘sufficient interest’ in the ‘field’ which the article relates to
- Duty of loyal cooperation:
  - to provide an effective remedy (Case, Rewe; Case C-415/10, Meister)
  - Infringement actions (failure by Member States)
- Judicial Review of EU action

# ‘Sufficient interest’

- Case law suggests that this requirement will be met where the:
  - EU has exercised powers & adopted provisions in the general field covered by the Convention article(s)
  - specific issue falls within a field which in large measure is covered by EU legislation - even though the alleged breach is not specifically the subject of EU legislation.
- Case C-240/09, Lesoochranárske zoskupenie (the ‘Slovak Brown Bear case’ ).
  - Does the Convention article(s) apply both to situations falling within the scope of national law and to situations falling within the scope of EU law?

# Discriminatory 'services', Article 5(2) UN CRPD & direct effect

- Sufficient interest?
  - Directives 2000/78; 2000/48; 2004/13/EC (& their common concepts)
  - Articles 20, 21 & 26 of the EU Charter of Fundamental Human Rights
  - Proposed Directive to combat discrimination outside of employment & occupation - COM(2008) 426 final; proposed European Accessibility Act; various existing 'accessibility' measures regulating the internal market.
- Unity in external representation