

Using the UNCRPD in litigating cases
involving persons with disabilities: the
EU law perspective.

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Direct Effect

- In order to be capable of producing direct effects (EU rights enforceable in national courts), a provision of EU law or a provision of an international agreement to which the EU is a party must place an obligation on a state or create a right for individuals which is clear precise and unconditional and leaves no discretion to the Member States.

The EU and International Agreements

- Article 216
- 1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.
- 2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

UNCRPD a Mixed Agreement

- Mixed agreements are signed and concluded between (a) EU and its Member States and (b) a third party. They are described as mixed because parts of the agreement fall within the scope of the powers of the EU, and other parts are within the scope of Member State powers.
- Article 43 of the UNCRPD allows regional integration organisations to sign and formally confirm it. Article 44 states that regional integration organisations ‘shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention.’ The Declaration of Competence entered by the EU is to be found at
- http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec

The Declaration of Competence

- Community has exclusive competence in relation to its own public administration
- The Community shares competence with Member States as regards action to combat discrimination on the ground of disability, free movement of goods, persons, services and capital agriculture, transport by rail, road, sea and air transport, taxation, internal market, equal pay for male and female workers, Trans-European network policy and statistics. The European Community has exclusive competence to enter into this Convention in respect of those matters only to the extent that provisions of the Convention or legal instruments adopted in implementation thereof affect common rules previously established by the European Community. When Community rules exist but are not affected, in particular in cases of Community provisions establishing only minimum standards, the Member States have competence, without prejudice to the competence of the European Community to act in this field. Otherwise competence rests with the Member States.
- The declaration contains an appendix listing relevant acts adopted by the European Community. The extent of the European Community's competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules.

The Treaty on the Functioning of the European Union

- Role of the Court of Justice
- Article 19(1) The Court shall ensure that in the interpretation and application of the Treaties the law is observed.
- The law includes the general principles of EU law, international agreements to which the EU is a party.
- Article 258 Enforcement actions brought by the Commission.
- Article 267 To give preliminary rulings on interpretation of the Treaties, and on the validity and interpretation of acts of the institutions.

The Treaty on the Functioning of the European Union

- Article 10 In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

'The Law' The Treaty on European Union

- Article 2 Union founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
- Article 3 The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
- Article 6(1) The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall have the same legal value as the Treaties.
- The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The Charter

- Article 20 **Equality before the law** Everyone is equal before the law.
- Article 21 **Non-discrimination** Art 21(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- Article 25 **The rights of the elderly** The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.
- Article 26 **Integration of persons with disabilities**
- The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community

Jurisdiction of the ECJ

- Article 258 Enforcement actions brought by the Commission.
- Article 267 To give preliminary rulings on interpretation of the Treaties, and on the validity and interpretation of acts of the institutions.
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Direct effects of the UN CRPD

Case 12/86 Meryem Demirel v Stadt Schwäbisch Gmünd CJEC has jurisdiction under Article 267 to give preliminary rulings on the interpretation of mixed agreements (including the direct effectiveness of provisions of international agreements) in fields already covered by EU Law. Hence, in order to have direct effect, a provision of the CRPD would have to operate in a field already covered by EU Law, and be sufficiently clear, precise and unconditional and leave no discretion to the Member States.

Could the CRPD be used as an aid to interpretation of EU Law

- Directive 2001/20/EC of 4 April 2001, on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use. Article 5 provides for Clinical trials on incapacitated adults not able to give informed legal consent, allowing the person to participate with the consent of the personal representative of the person allegedly lacking capacity. Article 12 CRPD would suggest that this should not be permitted against the will and preferences of the subject, and the General Medical Council Guidance on the subject takes this approach to, but the English regulations implementing the Directive do not require respect for the person's wish not to participate