

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

Richard Whittle, Sheffield Hallam  
University, UK

# In a nutshell – question one

- Does the UNCRPD provide a new legal framework in the context of EU disability law?
  - YES. But note – the CJEU is the final arbiter on its scope & nature
  - As a minimum, it provides a comprehensive resource of significant interpretative value to the CJEU from which a structured legal framework in the context of disability can evolve

# In a nutshell – question two

- Can one or more of the UNCRPD articles be invoked directly before national courts as matter of EU law (*i.e.*, give ‘direct effect’)?
- **Arguably**, YES provided:
  - the article(s) meet the CJEU’s requirements for direct effect AND
  - the EU has demonstrated a ‘sufficient interest’ in the general field of the Convention

# UNCRPD as a mixed agreement

- Multilateral agreements signed and concluded by the EU and its Member States on the one hand, and by a Third Party on the other hand
- ‘Mixed’ because part of the international agreement falls within the scope of EU powers & part within the scope of the powers of the Member States
- Like other multilateral agreements that allow participation by regional organisations such the EU, the UNCRPD requires a declaration of competence that demarcates the obligations between the EU and its Member States

# The immediate legal context

- Council Decision 2010/48/EC, its declaration of competence (Annex II) and 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
  - binds the EU institutions & its Member States (Article 216(2) TFEU) and
  - ‘forms an integral part of [EU] Law’ (Case 181/73 *Haegeman*);
    - Case 6/64 *Costa* – capacity of the UNCRPD to confer direct effect & supremacy

# 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

# An outline of the legal framework

- 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
- Direct effect can occur but only when the provision is self-executing and the EU has demonstrated 'sufficient interest' in the UNCRPD
- Infringement actions (failure by Member States)

# 'Sufficient interest'

- Existing case law suggests that this requirement will be met where:
  - The field in general is covered by EU legislation even though the alleged breach concerns an aspect of the [UNCRPD] not specifically covered (Case C-239/03 *Commission v France -Etang de Berre*)
- I would suggest a lower requirement in the context of the UNCRPD
  - the EU has (at least) 'shared competence' on the matter broadly defined & is capable of exercising that competence via a binding instrument with direct effects