Chapter 1

Introduction: The European Convention on Human Rights and Mental Disability

Mental disability has come of age as a subject of concern under the European Convention on Human Rights (ECHR). It was only in 1979 that the first significant decision of the European Court of Human Rights (ECtHR) was decided on the subject, and after that, cases were relatively few for many years. It is only recently that this has begun to change. Between 2000 and 2004, there were over forty judgments of the European Court of Human Rights relating to mental disability or to detention in psychiatric and related facilities. In some areas, such as the law relating to detention of individuals with mental health difficulties, it is possible now to speak of a jurisprudence of the Court. In others, the increased profile of disability rights internationally combined with the broader jurisprudence of the Court makes it possible to articulate likely patterns of future development in the Court’s case law.

With the rise of the Court’s caseload in this area has been a corresponding increase in academic literature. Further, the importance of human rights is increasingly accepted by

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1 This figure refers to Court judgments, and does not include admissibility decisions.
mental health and social care professionals. As yet however there is no systematic and detailed analysis of the topic as a whole, focussed specifically on the ECHR. That is the primary purpose of this book. It is written with two groups of readers in mind: those with an interest in the ECHR who have an interest in how cases relating to mental disability may shape the ECHR jurisprudence, and those with an interest in the rights of people with mental disabilities who have an interest in discovering what the ECHR may bring to those people. With those readers in mind, this first chapter is intended to provide introductory information about ‘mental disability’ and people affected by it within the countries of the Council of Europe, an introduction to the ECHR and its place among human rights instruments, and an introduction to the European Court of Human Rights.

‘People with mental disabilities’

Statistics would suggest that roughly one in four of the population will experience mental disorder at some time in their life. For the majority of those people, the disorder will be relatively minor. Nonetheless, one tenth of the population will be subject to a serious neuropsychiatric condition such as schizophrenia, depression, addictive disorders, and dementia at some time in their life. These figures are relatively constant internationally, and do not appear to vary markedly based on wealth or distinctions between urban and rural environments. The human rights questions regarding people with mental disability are therefore not marginal questions, but rather directly relevant to a significant proportion of every country’s population.

People with mental disabilities are not a homogeneous group. To take an example, it is fair to wonder what if anything a person with an intellectual disability will have in common with a person with schizophrenia, other than the label ‘mental disability’? They have quite different disabilities with different manifestations, and different needs. While language such as ‘symptoms’, ‘treatment’ and ‘illness’ can apply (albeit controversially in some circles) to people with problems relating to mental health (or ‘psychiatric disorders’, ‘mental illness’), they are difficult to apply to the people with intellectual disabilities,
