A Future of Multidimensional Disadvantage Equality?

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1 Introduction

The UN Convention on the Rights of Persons with Disabilities (CRPD) is the first human rights convention adopted in the 21st century.\(^1\) By tailoring the existing human rights catalogue to the unique situation of persons with disabilities it represents a giant leap forward in the protection of the rights of persons with disabilities. At a more abstract level the Convention is an extremely important contribution to a paradigm change that is taking place and moves the approach of international human rights law from a concept of formal equality to a concept of multidimensional disadvantage equality.

This contribution argues that the principle of equality is the leitmotif of the CRPD, but that the significance of this can only be properly understood against the background of the development of the principle of equality in international human rights law and practice. It will be argued that the development of the principle of equality has occurred in three phases or eras that, although overlapping on some ways, can be outlined from a chronological perspective. These three eras of international legal protection of equality will be analysed against the backdrop of the elaboration of the principle of equality in legal theory. The focus is on the international human rights regime, with an emphasis on the United Nations and the Council of Europe.\(^2\) The analysis will look at the legal

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\(^2\) The themes and eras discussed also have a clear resonance in the development of the law of the European Union, but the EU regime will not be the subject of discussion in the present contribution. The reader is referred to Oddný Mjöll Arnardóttir, ‘Non-discrimination in International and European Law: Towards Substantive Models’ (2007) 25 Nordisk Tidsskrift for Menneskerettigheter, 140 and the contributions of Anna Lawson and Lisa Waddington in the present volume. Although developed independently of it, the themes and eras outlined in this contribution also resonate with Jill Lovecy’s account of the women’s rights discourse at the Council of Europe, cf. Jill Lovecy, ‘Gender Mainstreaming and the Framing of Women’s Rights
practice from two perspectives; firstly from the perspective of the development of discrimination grounds and the related scope of protection offered by international human rights law and secondly from the perspective of the concepts of equality that emerge in the law and its application. In particular, the advent of the CRPD will be placed in this context with the aim to elaborate what kind of equality the Convention reflects and the related consequences. It will be argued that the CRPD and its approach to equality is the logical result of previous developments in international law and that it reflects a substantive and multidimensional disadvantage approach to equality, which is informed by an understanding of disability as a social construct. It will also be argued that the CRPD decisively places disability on the list of internationally suspect discrimination grounds.

2 The Principle of Equality as the Leitmotif of the CRPD

Article 1 of the Universal Declaration of Human Rights (UDHR) proclaims that: “All human beings are born free and equal in dignity and rights.” Further, Article 2 stipulates that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind. The opening of the UDHR exhibits the central place of the idea of equality in human rights discourse. Indeed, human rights are essentially conceived of as rights owed equally to all human beings by virtue simply of their equal humanity. The principle of equality is reflected in some form or another in all the major international human rights instruments and its importance is further reflected in scholarly discourse as to whether the principle, or some more narrowly construed aspect of it, have the character of a *jus cogens* norm. It can, therefore, be stated without hesitation that the principle of equality is a fundamental principle that lies at the heart of the international protection of human rights.

in Europe: The Contribution of the Council of Europe’, (2002) 10 Feminist Legal Studies, 271. She argues that the first phase between the 1950s and 1970s focused on the political rights and legal position of women (276), that the second phase in the 1980’s was characterised by focus on the socio-economic status of women (276) and controversies about positive action and quotas in relation to political representation (279), and finally that this was replaced by the gender mainstreaming approach originating in the 1990s (280).


4 See for example Hersch Lauterpacht, *An International Bill of the Rights of Man* (Columbia University Press, New York 1945) 115: “The claim to equality before the law is in a substantial sense the most fundamental of the rights of man. It occupies the first place in most written constitutions. It is the starting point of all other liberties.”