The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?

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1 Introduction

As will be evident from other chapters in this volume, disability-related law and policy has emerged from both the European Community and from the Council of Europe. Its emergence, however, has not reflected a clear, unified and comprehensive European response to the Disability Movement’s claims for equality and respect for human rights. Despite very positive developments, some needless inconsistencies of approach and coverage remain.

The traditionally fractured nature of European disability law reflects certain deeply grooved structural divisions. Most prominent amongst these is perhaps the division between the European Community, with its origins in economic co-operation, and the Council of Europe, with its emphasis on the protection of human rights. The past decade has witnessed some blurring of the disability-related ramifications of this distinction as a result of the considerable strengthening of the profile of human rights concerns within the EC. Thus, although ‘separated at birth’, the two institutions may fairly be described as ‘twins’.

Another significant distinction, in the context of European disability law, is the traditional dichotomy between human rights which are classified as civil or political on the one hand, and those which are classified as social, economic or cultural on the other. It is this distinction which underlies the division between

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1 Statute of the Council of Europe 1949, art. 1(b).
the Council of Europe’s two principal instruments – the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). The disability-related jurisprudence associated with these two instruments contains marked differences of approach.

It is not the purpose of this chapter to provide a detailed analysis of the disability-related law which has emerged in the specific contexts of the EC, the ECHR and the ESC. That purpose is fulfilled by other chapters in this book. This chapter aims instead to provide a broader overview of disability law at the European level and to assess the potential impact of the new United Nations Convention on the Rights of Persons with Disabilities (CRPD) upon it. It will focus, in particular, on the question of whether the CRPD might act as a catalyst to the development of a more comprehensive and cohesive European approach. It will be suggested that the CRPD is indeed likely to operate in this way and thereby to manifest the dynamic and cyclical nature of the relationship between European and UN disability law and policy – the EC, drawing upon the former, played a highly influential role in the elaboration of the CRPD and that instrument is now in its turn likely to play a highly influential role in the further development and strengthening of disability-related law and policy at the European level.

The chapter will contain four substantive sections. The first of these, Section 2, will highlight the broad disability policy frameworks operating within the EC and the Council of Europe. It will draw attention to the powerful similarity between them. Section 3 will examine the extent to which the principle of inclusion is reflected in EC, ECHR and ESC law. Section 4 will address the extent to which the concept of reasonable accommodation has been accepted in the law emerging from these three sources. Finally, Section 5 will address the material scope of current EC disability equality law and compare this with the coverage of the ECHR and the ESC. The impact of the CRPD will be considered throughout. 4

2 Policy Background

As mentioned above, the origins of the European Community lie in the furtherance of principles, not of human rights, but of market economy. The profile of

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