

Section 6: Global disability rights

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Introduction

- Section 5 → employment as a key stake in the history of disability policy
- Shift from welfare to rights around the issue of work → a specific model of antidiscrimination policy, combining non-discrimination with reasonable accommodations
- Disability rights beyond equal employment
 - Social rights
 - Education, accessibility
 - Fundamental human rights (ex. bodily integrity, dignity, protection against violence)
- Why « global » disability rights?
 - Role of supranational/international organizations in the promotion of disability rights (UN, EU)
 - Policy transfers from the US (the ADA as a model for disability civil rights) (Heyer, 2015)
- Yet important to remember that disability rights have national histories, too (cf case of France studied in section 5)

Learning objectives/key points

- The ADA (1990) as the first legal inscription of the civil rights model
- The shift to a rights model in EU employment law
- The UN Convention on the Rights of persons with disabilities (CRPD, 2006) as a broader human rights model
- Why do rights matter? Connection between legal discourse on rights and the social experience of disability → how rights may translate in practice (ex. political participation, protection against violence...)

The civil rights model

	Social welfare model	Civil rights model
Conception of disability	Disability as an individual defect (medical model)	Disability as social barriers
Target of policy (who/what must be adapted)	Disabled individuals (health care, rehabilitation, welfare)	Social contexts (workplace, education, public transportation...)
Form of policy	Disability as a specific policy sector	Disability mainstreaming/antidiscrimination
Form of citizenship for DP	Exclusion/segregation	Inclusion/Equality

The Americans with Disabilities Act (ADA, 1990)

- “**Title I** (...) prohibits private employers, State and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including State and local governments. It also applies to employment agencies and to labor organizations”.
- « **Title II** (...) protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities
- ” **Title III** prohibits discrimination on the basis of disability in the activities of places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings)—to comply with the ADA Standards “.

<https://www.ada.gov/>

The ADA's equal employment provision (Title I): antidiscrimination beyond equal treatment

- Title I on employment = the most debated provision of the ADA
- Equal treatment may result in unequal outcomes
- ADA provision =
 - Employers may not discriminate against qualified individuals who can « perform the essential functions of the job with or without accommodations »
 - Obligation for employers to provide « **reasonable accommodations** ». Failure to do so = discrimination

Disability policy at the EU level

Coexistence of 1) traditional social policy measures (social protection, labor market integration), and 2) antidiscrimination policy

1974-79: first EU programme targeting disabled people: focus on vocational rehabilitation

1980-86: influence of UN IYPD

1986-95: focus on labor market integration (HELIOS programmes)

1997 Amsterdam treaty: includes a non-discrimination clause for DP

Since then: focus on equal opportunity and non-discrimination. Proliferation of policy documents on equal rights for DP

→ Directive 78/2000

2003 European year of PWD

But disability non-discrimination legislation at EU level remains focused on employment.

(Waldschmidt, 2009; Lawson, 2015)

Disability policy at the EU level: reasonable accommodation in the 2000/78 directive

Council Directive **2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

- A general antidiscrimination framework (“any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community”)
- Specific provision regarding disability discrimination: Article 5: Reasonable accommodation for disabled persons

“In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation** shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned”.

Disability policy at UN level

Since the 1980s, very active role of the UN in the development of international disability rights:

- 1981 UN's international year of DP
- 1982 World program of action concerning DP
- UN decade of disabled persons
- 1993 standard rules on the equalization of opportunities for persons with disabilities
- 2006 Convention on the Rights of Persons with Disabilities (CRPD)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

The Convention's perspective on disability:

Definition:

Preamble: « disability is an evolving concept and [...] disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”

Art.1: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

+ insistence on “the **diversity** of persons with disabilities” (preamble)

The UN CRPD (2006)

Overview of main rights stated by the Convention:

- Right to equality and non-discrimination:
 - Accessible buildings, schools, programmes and public transport
 - Right to live independently and be included in the community
 - Personal mobility, freedom of expression and opinion, access to information, protection of privacy
 - Political participation, participation in cultural life, recreation, leisure and sports
- Right to life and to be free from torture or cruel, inhuman or degrading treatment or punishment
- Right to respect for home and the family, to health care, rehabilitation and work
- Right to an adequate standard of living and social protection

(Harpur, 2012)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

Policy perspectives on disability:

Antidiscrimination: “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person” (Preamble)

Disability mainstreaming: “*Emphasizing* the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development” (Preamble)

Connection to the fight against poverty: “the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities”

→ **Rights as a policy tool to counter social disadvantage:** “*Convinced* that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries”

(excerpts from Convention preamble)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

“Nothing about us without us” in the CRPD

- Representatives of disabled people’s organizations were included in the drafting process: over 400 NGOs took part
- Preamble of the CRPD: “persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them”
- The CRPD requires that the committee in charge of its implementation include experts with disabilities (art 34)

(Kanter, 2015)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

From rights discourse to implementation

- Precise definition of the rights involved
- Monitoring process: states are required to submit regular reports on their implementation of the convention
 - An incentive to develop human rights monitoring
 - Collaborations between lawyers and social scientists

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

2 examples of human rights monitoring under the CRPD:

- Political participation (presentation 6.1)
- Violence against disabled women (presentation 6.2)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

Political participation: the CRPD framework

«Article 29 obliges state Parties to ensure equal rights to participate in public and political life, including: engagement in non-governmental organizations and associations; joining political parties; free and accessible voting procedures, facilities and materials; standing for election and holding public office at all levels”. (Priestley et al, 2016, p.1-2)

The UN Convention on the Rights of Persons with Disabilities (CRPD, 2006)

Violence against disabled women and girls: the CRPD framework:

with articles specific to disabled women. The UNCRPD¹ is the first international treaty to promote the civil rights of disabled people in all aspects of social life. Articles 6, 15, 16, and 17 are particularly relevant to this topic. In Article 6, the UNCRPD recognizes that disabled girls and women encounter multiple discrimination and propose measures to ensure they can enjoy their human rights. Article 15 proposes to take legislative and other measures to prevent disabled people from being subjected to torture or cruel or degrading treatment. Article 16 is specific to ensuring disabled people are free from violence, exploitation, and abuse. Article 17 offers mechanisms to ensure disabled women can retain their mental and physical dignity.

(Shah et al, 2016, p.7)

Presentation 6.1: Political participation

Priestley, Mark et al. 2016. “The Political Participation of Disabled People in Europe: Rights, Accessibility and Activism.” *Electoral Studies* 42 : 1–9

Presentation 6.2: Violence against disabled women

Shah, Sonali, Lito Tsitsou, and Sarah Woodin. 2016. “Hidden Voices: Disabled Women’s Experiences of Violence and Support over the Lifecourse.” *Violence against women*.

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