THE EU RIGHTS BASED APPROACH TO DISABILITY: STRATEGIES FOR SHAPING AN INCLUSIVE SOCIETY

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ABSTRACT

This article examines some of the implications of a rights based approach to disability which, it is argued, is a necessary pre-condition of an inclusive society in which people with impairments are valued and able to participate fully. It considers the main ways in which this approach is shaping current EU law and policy. It identifies a number of strategies which may prove useful to disability organisations and other campaigners wishing to establish or consolidate a rights based approach in their own national laws and policies.

INTRODUCTION

The past ten years have witnessed a marked change in the legal and policy responses of many European countries, and of the EU itself, to the issue of disability. This new (and still emerging) response is often termed the ‘rights based approach’. In this paper I will attempt to outline the nature of this approach and to suggest a number of ways in which European disability organisations and others might work towards establishing or enhancing it in their own countries, particularly in those which hope to join the EU and those which have done so only recently.

My starting point will be a brief examination of the more traditional approach to disability. I will then attempt to set out the essence of the emerging rights based approach before explaining briefly how this approach is shaping EU law and policy. In the final section I will suggest a number of strategies which may prove useful to disability organisations and other campaigners in their efforts to ensure that disabled people are able to play a full part in the life of their communities and that they are respected and valued in the same way as other citizens.
THE TRADITIONAL APPROACH TO DISABILITY

Traditional legal and policy responses to disabled people have been shaped by an understanding of 'disability' which has become known as the 'medical' or 'individual' model (Oliver 1990; Oliver 1996; Priestley 1998; Finkelstein 2001; Bickenbach 1993, chs. 3 and 5). On this view people with physical, sensory or mental impairments causing some sort of loss of function are prevented or 'disabled' from leading normal lives or participating in normal society by that functional loss. Because they cannot climb steps, they cannot go to the gym or enter the local shop; because they cannot hear, they cannot participate in seminar discussions or follow a film in the cinema; because they cannot see, they cannot read their school books or their telephone bills. Disability, on this understanding, is seen as a problem located within the individual. Unless that individual can be cured or somehow adapted, they will not be able to participate in the life of mainstream society. It is they that must change or be changed in order to fit within a society designed for non-disabled people.

Correction (by aids such as spectacles, hearing aids); the provision of mobility aids (such as wheelchairs, guide dogs and long canes) and assistive technology (such as speech synthesisers); and rehabilitation (by the provision of training in life skills such as cooking); have often received considerable emphasis where the individual model of disability is predominant. Effective policies in these areas will play a vital role in any society in enabling disabled people to live independently. Traditionally, however, such services have tended to be delivered and administered by non-disabled 'experts' with the expectation that disabled people will be passive recipients having little influence over decisions and priorities (Finkelstein 1981; Abberley 1995; Drake 1996; O'Gorman 2004). Further, no matter how effective policies in these areas might be, many disabled people cannot be squeezed into narrow conceptions of normality. No matter how well designed a wheelchair might be, it will not allow its user to negotiate steps with ease. No matter how well trained a guide dog might be, it will not enable its owner to read printed labels on tins of food in supermarkets.

A predictable consequence of a medical model understanding of disability is the segregation of disabled people. If they cannot be made normal then they must remain abnormal outsiders unable to cope with the real world. Consequently in many countries a separate or parallel track has been established for disabled people who have thereby been segregated from the mainstream (Waddington and Diller 2002).

At its most extreme, this parallel track results in disabled people living completely outside mainstream society in institutions specially
adapted for their needs in which they may be 'cared' for. However, the distress and humiliation caused by such enforced segregation has too often been intensified by neglect and a disturbing lack of care (DHSS 1969; Oswin 1989; Daw 2000; Gostin et al. 2002, particularly chs. 4 and 5; Lewis 2002; Amnesty International 2002).

A less extreme example of the segregating effect of this parallel track for disabled people is special education. Many countries have invested in the provision of schools in which the teaching and the extra-curricula activities are organised specifically to cater for the needs of children with particular impairments. While some such schools may enable disabled children to attain a standard of education higher than that which they would have attained in a mainstream school not adapted to meet their needs, academic achievement is often not given a high priority in these establishments (Corker and Davis 2000; Middleton 1999; Hales 1996).

This type of segregation has also been evident in the employment field. Policies have frequently been developed on the assumption that disabled people will not be capable of working in mainstream environments and should therefore be catered for through separate sheltered employment schemes. These are generally subsidised by the state and offer work which is usually low paid and unskilled (Samoy and Waterplas 1992; Thornton and Lunt 1997).

Quota systems represent another common European response to disability in relation to employment. These proliferated after the Second World War, extending from their origins in the protection of injured soldiers to cover disabled people generally. Lisa Waddington has divided European quota schemes into three main categories (Waddington 1994; Waddington 2000; Waddington and Diller 2002). Under the first, illustrated by a now abandoned Netherlands scheme, legislation encourages employers over a certain size to ensure that disabled people make up a specified percentage of their workforce without imposing any penalty for non-compliance.

Under the second, illustrated by the now abolished UK scheme, a legislative obligation is imposed on employers but not supported by effective sanctions for non-compliance. Under the third, illustrated by the German scheme which has served as a model for many others adopted in the last quarter of the Twentieth Century, a legislative obligation to employ a quota of disabled people is imposed on employers and backed up by the sanction of a fine or levy to be paid by those not meeting their quota into a fund used to support disabled people in employment.

Essential to the success of a quota scheme is the existence of some means of identifying, labelling or registering people as disabled. Experience in the UK indicates that such registration is unpopular and often resisted by disabled people themselves (Waddington
1994, p. 373). Quotas also suffer from the difficulty that they may be satisfied in cases where disabled employees are clustered in low status and poorly paid roles. It is suggested, therefore, that quotas, which are not enforceable by disabled people themselves, do not provide an adequate substitute for anti-discrimination legislation of the type to be considered below. Nevertheless, they constitute a form of positive action which may, in some circumstances, be regarded as a useful supplement to such legislation.4

Disabled people then, if fortunate enough to secure employment at all, would traditionally find themselves in positions with very low wages. The link between poverty and disability is well documented (Barnes 1991, ch. 5). Because of this, disabled people have often become heavily dependent on assistance from charity or benefits. Western European states traditionally developed fairly generous social welfare systems to support people with impairments who found themselves on the parallel, non-mainstream track. These undoubtedly played an essential part in ensuring that disabled people did not starve or freeze and that their basic needs were generally met. However, they were frequently grounded on the assumption that disabled people were incapable of work and tended to foster exclusion and dependence (Hendriks 1999; Waddington and Diller 2002).

THE RIGHTS BASED APPROACH TO DISABILITY

The key to a rights based approach to disability is the idea that the inability of disabled people to participate fully in the life of their communities is not to be attributed solely to the limitation of function resulting from their impairment. Societal factors operate to exclude them. These include the design of buildings and vehicles, the structure and operation of organisations, and the hostile or mistaken attitudes of individuals towards them. The importance of these social factors in the exclusion of people with impairments is highlighted by the social model of disability which reserves the term 'disability' specifically for exclusion resulting from societal barriers (Oliver 1990; Oliver 1996; Priestley 1998; Finkelstein 2001).

On this view, then, the disabling, exclusionary barriers which should be tackled by laws and policies lie outside the individual. It is because the gym and the local shop do not have a ramp or a lift, that a person with a mobility impairment cannot enter; because there is no loop system or signing service that a deaf person cannot participate in seminar discussions or follow a film in the cinema; and it is because materials are not provided in alternative formats that a blind person is unable to read their school books or their telephone bills.
As is well known, disabled people themselves have played a leading role in the development of the social model of disability. Its origins are often traced to the following words of the Union of Physically Impaired Against Segregation (UPIAS 1976, p. 3):

“In our view, it is society which disables... Disability is something imposed on top of our impairments, by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group in society.”

Disability activists, influenced by this understanding of disability, have therefore campaigned for laws and policies designed to tackle the socio-economic and attitudinal barriers lying at the root of the exclusion of people with impairments. At the EU level this is illustrated by a resolution passed by the first European Disabled People’s Parliament on 3 December 1993 which called for anti-discrimination legislation and other measures to ensure that:

“disabled people should be guaranteed equal opportunity through the elimination of all socially-determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.”

What they called for, then, was a new approach to disability grounded on the conviction that disabled and non-disabled people should be equally valued: an approach focusing on the need to adapt society so as to enable (rather than disable) people with impairments.

EU LEGAL AND POLICY RESPONSES

Underlying the Council of the European Communities’ action plan for the rehabilitation of disabled workers in 1974 was the traditional medical or individual understanding of disability.\(^5\) Gradually, however, the emphasis shifted from policies grounded in the belief that the problem to be addressed lay within the individual, towards policies aimed at tackling the societal forces which operate to marginalise disabled people (Quinn 1999; Mabbett 2003; Priestley forthcoming). This is stressed in the Commission’s 2003 Action Plan which states that:

“The EU ... sees disability as a social construct. The EU social model of disability stresses the environmental barriers in society which prevent the full participation of people with disabilities in society. These barriers must be removed...”\(^6\)

This Action Plan details a wide range of ways in which the Commission is working to bring about the removal of these barriers. Though
these will not be set out in detail here, I will devote a few words to
the three key ‘operational objectives’ identified in that Plan: anti-
discrimination, mainstreaming and accessibility. I will also consider
briefly the relevance of human rights law to the development of a
rights based approach to disability in the EU. Anti-discrimination
legislation and human rights instruments, some of which confer
rights on individuals directly enforceable in the courtroom, will be
considered first. Mainstreaming and policy initiatives designed to
improve accessibility, which represent other important ways in
which barriers to inclusion may be tackled, will then be outlined.

In the context of EU anti-discrimination law, the adoption of
Article 13 represented a landmark development. It was inserted
into the EC Treaty by the Treaty of Amsterdam in 1997 and granted
competence to the European Council to take appropriate steps to
combat discrimination based on sex, racial or ethnic origin, religion
or belief, disability, age or sexual orientation. In 2000 this new com-
petence led to the adoption of the Framework Equal Treatment
Directive (FETD) which requires States to take measures, by the
end of 2006 at the latest, to prohibit various forms of discrimination
on grounds of disability (as well as religion, belief, age and sexual
orientation). It will ensure that disabled individuals will have
enforceable rights to be free from certain forms of discrimination
in certain contexts. The FETD is an extremely important develop-
ment in EU disability policy but a detailed examination of it falls
outside the scope of this paper (see further, Whittle 2002). Two
points, however, should be stressed here: first, the FETD applies
only in the context of employment and occupation. It therefore
stands in sharp contrast to the other Article 13 directive, the Race
Directive, which applies to social protection, education, housing
and goods and services as well as employment. Member States are
therefore not currently obliged to consider measures aimed at com-
bating disability discrimination in these other extremely important
non-employment fields. Second, despite the Directive’s name, it
does not simply require that a disabled person should be treated in
exactly the same way as a non-disabled person. This is because it is
not confined to prohibiting direct discrimination (the less favourable
treatment of a person on grounds of disability), but extends to
indirect discrimination and also requires reasonable accommodation
to be made for disabled people.

Indirect discrimination will occur if an apparently neutral provi-
sion, criterion or practice is applied to all but imposes a particular
disadvantage on disabled people which cannot be justified. Such a
provision, criterion or practice should not be applied in the same
way to a disabled person. An example might be the application of
a ‘no dogs’ rule to the owner of a guide dog or a requirement that
a job applicant unable to drive because of an impairment (such as blindness or epilepsy) hold a driving licence.

Under Article 5, employers are required to adopt measures where they would be needed in a particular case to enable a disabled person ‘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’. Where such measures would not impose a disproportionate burden, a failure to take them would thus itself constitute unlawful discrimination. Little guidance as to the meaning of ‘reasonable’ or ‘undue hardship’ is provided; though in time clarification will no doubt emerge from the European Court of Justice.

Whether a measure will be considered an undue burden is likely to depend on factors such as the size and wealth of the employer (FETD, paras 20 and 21). Bearing this in mind, employers may be required to make adjustments such as distributing materials to employees in advance of a meeting, or reading them out during the meeting, so as to enable visually impaired employees to be fully informed; scheduling events in accessible ground floor rooms to enable employees with mobility impairments to participate in them; providing equipment such as an accessible phone for an employee with a hearing impairment or a speech synthesizer for an employee with a visual impairment required to use a computer; installing alternative lighting in the office of an employee with conditions such as epilepsy; and allowing an employee with an impairment which requires frequent visits to the toilet to have shorter but more frequent breaks.

Thus, the model of equality underlying the FETD is not a strict model of formal equality based on treating people with no relevant difference in the same way. It reaches beyond this, towards some notion of substantive equality, by requiring that some attempt be made to remove the barriers which exclude and disable people with impairments (Fredman 2005). Its reach is severely and disappointingly limited, however, by its restriction to employment.

Turning now to human rights law, the European Convention on Human Rights 1950 confers important rights, enforceable in the Strasbourg Court of Human Rights, on citizens in all signatory States. Article 14 confers a right not to be discriminated against in the enjoyment of Convention rights and Protocol 12, if ratified, would confer a more general right to be free from discrimination. The concept of discrimination which has emerged from the Article 14 cases, however, is narrow and has not yet offered a great deal of assistance to disabled people (Wintemute 2004B; McColgan 2003, pp. 168–170). Nevertheless, other rights (such as the right not to be unlawfully detained contrary to Article 5, the right to be free from
torture, inhuman and degrading treatment under Article 3, and the right to respect for one's home and private and family life under Article 8) have an important role to play in protecting the dignity and independence of disabled people (Clements and Read 2003).

The revised European Social Charter 1996 confers on disabled people in signatory States a right to 'independence, social integration and participation in the life of the community' and requires those States to take measures to:

"promote their full social integration and participation in the life of the community, in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

Unlike the European Convention on Human Rights however, this Charter has been ratified by relatively few States and its rights cannot be enforced directly by individuals (Novitz 2002; Harris and Darcy 2001).

At the UN, work is currently underway to build on the 1993 Standard Rules for the Equalisation of Opportunities for Persons with Disabilities by the development of a Convention dealing specifically with the human rights of disabled people. The European Commission has taken steps under Article 13 to support this work. Although these international covenants will not be directly enforceable by individuals in many signatory States, they will be highly influential both at the EU level and within Member States. Indeed, the European Court of Justice has been keen to assert that human rights derived from such instruments are observed as they form part of the general principles of Community law.

Mainstreaming, the second key objective identified in the European Commission's 2003 Action Plan, refers to the inclusion of disability perspectives across all areas of EU policy making. Thus, the aim is to incorporate disability issues into mainstream policies rather than to segregate them into an isolated, independent policy sphere. They have therefore influenced policies in fields such as public procurement rules, telecommunications standards, and health care. The Commission's 2003 Action Plan indicates that its efforts in this regard will be concentrated particularly on ensuring the inclusion of disability perspectives in employment related policies, especially in education and lifelong learning.

Finally, in relation to accessibility (the third key objective), much work has already taken place at EU level to promote the principle of 'universal design'. In particular, technical access standards have been drawn up to ensure that various types of public transport vehicle will be designed and constructed so as to facilitate their use by disabled people. In relation to the design...
and construction of the built environment (particularly in the context of work environments, leisure, culture and education) some work has already taken place and more is promised. It should be noted, however, that in the absence of anti-discrimination legislation beyond the employment field, many disabled people may be denied the use of accessible vehicles and buildings by hostile attitudes or refusals to provide necessary assistance or accessible information.

POSSIBLE STRATEGIES FOR DISABILITY ORGANISATIONS AND CAMPAIGNERS IN PROMOTING A RIGHTS BASED APPROACH

Disability organisations have played a leading role in promoting rights based models both within the EU and beyond (Campbell and Oliver 1996; Olson et al. 2003; Olson et al. 2004). Internal reform has been an essential preliminary to the success of many such organisations as campaigners for broader legal and social change. Such reform occurred as a result of pressure from disabled people who argued that organisations claiming to represent their interests should be controlled by, and responsible to, disabled people themselves. The process, sometimes termed ‘democratisation’ (Campbell and Oliver 1996, p. 22), went hand in hand with the establishment of umbrella organisations such as Disabled Peoples International (Drieger 1989), the British Council of Disabled People, and now the EU funded European Disability Forum. Disability organisations may join these umbrella organisations but only if they are judged to be sufficiently ‘democratic’ in this sense – which generally requires demonstrating that disabled people must have at least 51% of the vote.

This democratisation process is fundamental to effective campaigning for a rights based approach to disability. Without it, disability organisations themselves are likely to send out a message which runs directly counter to the approach for which they are campaigning: a message that disabled people are passive recipients of care and charity, to be looked after by others and not to be troubled by the need to make decisions.

Disability organisations and other campaigners for a rights based approach should also turn their attention to the manner in which impairment-related aids and services are made available to disabled people. The focus of this type of intervention is on fitting the individual for society, rather than on fitting society for the individual. An exclusive concentration upon it, which excludes consideration of policies aimed at adapting society, therefore appears inconsistent with a rights based approach to disability. However, it should not be forgotten that this type of service plays a vital part
in facilitating the independence of people with impairments and will continue to do so even when the society in which they operate has been adjusted so as to facilitate inclusion – we will still need our guide dogs, our long canes, our wheelchairs and hearing aids. Instead of being expected to accept these services unquestioningly with gratitude, however, disabled people should be permitted and encouraged to play an active part in their development and delivery (O’Gorman 2004). The well known maxim of the disability movement: ‘Nothing about us without us’ is particularly relevant in this context. Disability organisations are well placed to work towards this end.

Disability organisations should also work to promote mainstreaming of disability issues, along the lines adopted by the EU, within their own countries. This should occur in the development of national policy but also at the more local level. Ensuring that committees with policy making roles in fields such as planning, transport, education and health have representation from organisations of disabled people is often a helpful start.

Consideration might also be given to campaigning for a legislative requirement, such as the one likely to be introduced in Britain, to place a positive duty on public authorities to promote disability equality. This would oblige them to consider the impact of all aspects of their design and operation on disabled people and to draw up plans for minimising any exclusionary or unfavourable consequences.

Lobbying national parliaments is perhaps the most obvious strategy by which campaigners for a rights based approach might seek to bring about change. In countries which belong to the EU, or which hope to join it, such campaigners have an important role to play in working with national governments to ensure that legislation is enacted, if not already in place, which complies with the FETD’s requirements in relation to disability. Useful support in this role may be gained from the European Disability Forum and from disability organisations in other countries where legislation has already been introduced. It should be remembered, however, that the FETD lays down minimum requirements only. Since legislative action is likely to be needed in order to comply with it, it would be worth investing energy and expertise into a campaign for that legislation to provide greater protection than that actually required. For instance, the legislation relating to disability (and the other grounds covered by the FETD) could be drafted so as to prohibit discrimination in all the areas in which it must be prohibited in relation to race. Thus, instead of confining it to employment, arguments should be made for a more consistent scheme which would also extend to areas such as education, housing and goods and
services. Unless legislation prohibits discrimination in these areas, there is a danger that disabled people will be prevented from using accessible public transport vehicles or buildings by a simple refusal of organisations to allow them entry or to make reasonable adjustments in the form of providing them with assistance or information.

There is no requirement under the FETD for Member States to set up independent enforcement bodies charged with tasks such as providing advice to victims of discrimination and others; providing support to litigants in key cases; monitoring the effectiveness of the legislation and advising the government on desirable changes. Such a body is required, however, in relation to race and to gender. Again, therefore, disability organisations should lobby energetically for the establishment of such a body to cover disabled people.

The UK’s Disability Rights Commission has undoubtedly played a key role in enforcing and developing the rights of disabled people under the Disability Discrimination Act 1995 (O’Brien 2005). Unfortunately, however, the support it is able to offer to disabled victims of human rights abuses falling outside the scope of the DDA is currently extremely limited. The Disability Rights Commission (along with the Commission for Racial Equality and the Equal Opportunities Commission) is shortly to be replaced by a single Commission for Equality and Human Rights (Department of Trade and Industry 2004A; Department of Trade and Industry 2004B). Though this new Commission will have a duty to promote awareness and understanding of the legal entitlements of disabled people under both human rights law and anti-discrimination law, its power to support litigants will remain considerably more limited in human rights cases than in anti-discrimination cases.

Disability organisations, then, should argue strongly for the establishment of State funded enforcement bodies covering disability with powers in the field of human rights as well as that of anti-discrimination. Once such bodies are established, disability organisations should, of course, work closely with them to maximise the effectiveness of legal protection.

Whether or not in conjunction with an enforcement body, disability organisations should work hard to ensure that disabled people are made aware of their basic human rights and of their right to be free from discrimination. Without such awareness it is extremely difficult to challenge injustice, exclusion and abuse. Thought should be given to the publication of guidance alerting disabled people to types of behaviour or situations which may constitute breaches of their human rights (such as abusive treatment in residential care or the denial of family contact) or be discriminatory against them (such as a failure to make a reasonable adjustment to the workplace). Such a guide has recently been produced in Finland.
Potential victims of such infringements should also be made aware of methods by which they might seek relevant legal advice and obtain financial or emotional support. If publicised appropriately (and accessibly) to reach their intended audiences, such guides could play an important role in changing the lives of disabled people.

Article 12 of the FETD imposes a duty on States to disseminate information to all those affected about the requirements of the Directive. Disability organisations may therefore be able to form useful partnerships with State authorities (or to obtain funding from the latter) in their efforts to promote awareness of legal entitlements.

Similarly, it is important that employers and others to whom the legislation might apply (such as providers of goods and services) are made aware of their obligations to treat disabled people with respect and to take steps to accommodate their needs wherever this would be reasonable. Indeed, efforts should be made to increase awareness amongst the public generally and to develop an understanding that the segregation and exclusion faced by disabled people results from limitations in society (which it may be possible to alter) rather than from limitations in the particular individuals concerned.

Disability organisations are uniquely placed to perform the important task of monitoring the impact of any rights based law or policy on the lives of disabled people. They should gather evidence demonstrating areas in which exclusion and disadvantage continue. Only if such areas are identified and documented will it be possible to mount effective campaigns for improved laws and policies.

Further, Article 9(2) of the FETD requires States to ensure that ‘associations, organisations or other legal entities’ having a ‘legitimate interest’ may engage in any national mechanism set up for enforcing the FETD either ‘on behalf or in support of’ a complainant. Disability organisations are likely to be able to demonstrate such a ‘legitimate interest’ and, particularly in countries where there is no relevant independent enforcement body, should develop strategies for using this power to maximum effect. This would involve identifying and supporting cases likely to establish useful precedents resulting in significant changes on the ground. Part of this monitoring role should, therefore, involve tracking legal developments. Not only will this be a prerequisite of drawing up effective strategies relating to the support of potential litigants but it may also provide invaluable publicity opportunities. The failure of a case brought by a disabled person may well provide a focus for a campaign for legal reform. An example of this is the successful campaign of disability organisations in Ireland in 2001, following the failure of Sinnott v. Minister of Education concerning the obligation of the State to provide adult education to an autistic man.23
Finally, it scarcely needs adding that the effectiveness of disability organisations in promoting a rights based approach to disability will be immeasurably enhanced if these organisations develop close links with others. In particular, links with other disability organisations within their own country and outside are likely to prove invaluable in terms of strengthening and targeting campaigns. Membership of existing umbrella organisations (such as the European Disability Forum and the Disabled Peoples International) would provide an obvious means of forging such links on an international level. On a national level, consideration should be given to the establishment of umbrella organisations such as the British Council of Disabled People.

Links with organisations which campaign for equality for other traditionally disadvantaged groups (such as women, members of racial or ethnic minorities and people who are gay or bisexual) are also likely to prove fruitful. Through the development of links such as these, disability organisations will be able to gain insights into campaigning strategies which have proved successful when used elsewhere and to consolidate the campaign for a society in which inclusion and diversity are valued.

CONCLUSION

In this article I have attempted to identify some of the strategies which might be employed by European disability organisations and others to promote or consolidate a rights based approach. In those countries which already belong to the EU, and in those which hope to do so in the future, campaigners will be assisted by the various EU measures designed to support such an approach which have been outlined above. It should be remembered, however, that although this assistance may be invaluable it is nonetheless limited. Campaigners should, in particular, work for the establishment of anti-disability-discrimination laws which are not confined to employment but also extend to areas such as public transport, education, housing and goods and services. The establishment of appropriately empowered and funded enforcement bodies must also be a high priority for disability campaigners, despite the fact that it is not a requirement of the FETD.

Which of the strategies outlined here will be available to, and effective for, a particular organisation or campaigner at any particular time will depend on a wide range of factors – both internal and external. I have concentrated here on strategies which assume the possibility of dialogue and discussion with State authorities. Such dialogue is not always possible and, both in the US and in Western
Europe, disability organisations have therefore resorted to gaining publicity through various forms of public protest and direct action. Whatever strategies are adopted, disability organisations have a key role to play in the struggle to achieve a society in which people with impairments are able to participate to the full and in which they are valued as equals. Such a society would necessarily be grounded on a rights based approach. In order to achieve it, efforts must now be devoted, not to making us as disabled people fit for our society, but to making our society fit for us.

NOTES

* This article is based on a paper delivered at the Equal Opportunities for People with Disabilities: Cooperation and Partnership Conference organised by the European Commission in Sofia, Bulgaria, on 10 December 2004.
1 Handicapped Workers Employment Act 1986.
2 Disabled Persons (Employment) Act 1944 (abolished by s. 61(7) of the Disability Discrimination Act 1995). Though this scheme included provision for employers to be prosecuted for non-compliance and to be punished by fine or imprisonment, such prosecutions were extremely rare.
4 Article 7 of the FETD allows Member States to continue using such forms of positive action.
5 Council Resolution of 27 June 1974, establishing the initial community action programme for the vocational rehabilitation of handicapped persons. See, in particular, the pre-amble where ‘handicap’ is defined as “any limitation, congenital or acquired, of a person’s physical or mental ability which affects his daily activity and his work by reducing his social contribution, his employment prospects, his ability to use public services”.
9 Article 2(2)(b).
10 This Protocol, which required ten ratifications before coming into force, has now been ratified by eleven countries (Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Netherlands, San Marino, Serbia and Montenegro and Macedonia) and will


12 According to Rule 15: ‘States have a responsibility to create the legal basis for measures to achieve the objectives of full participation and equality for persons with disabilities… States must ensure that organizations of persons with disabilities are involved in the development of national legislation concerning the rights of persons with disabilities, as well as in the ongoing evaluation of that legislation… Any discriminatory provisions against persons with disabilities must be eliminated. National legislation should provide for appropriate sanctions in case of violations of the principle of non-discrimination…’.


16 Council of Europe Resolution of 15.2.2001 on the introduction of the principles of universal design into the curricula of all occupations working on the built environment.


21 Directive 2000/43.

22 Directive 2002/73.


REFERENCES


