

# Civil Rights or Social Rights? Europeanization and its impact on the German anti-discrimination policy relating to disabled people

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## 1 Introduction

Since the Amsterdam Treaty came into force in 1999, the European Union has increased its efforts to combat discrimination and to promote equal opportunities and equal treatment for all. In 2000<sup>1</sup> the Employment Equality Directive 2000/78/EC has been adopted which is legally binding for all member states: It requires national governments to establish anti-discrimination law in the field of employment and occupation on the grounds of racial or ethnic origin, religion or belief, age, *disability* and sexual orientation. This directive had to be implemented in national law by the year 2003. Germany was one of the last EU member states to fulfil this requirement. Why has this process taken so long in the case of Germany? In this paper we will try to find an answer for this question by analysing the German anti-discrimination policy in comparison with the ones in Sweden and the United Kingdom. All three countries stand for different welfare states. First empirical findings of our still ongoing research project indicate that specific welfare regimes make a difference in civil rights policy as well, since they provide different opportunity structures which either help or impede the implementation of anti-

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<sup>1</sup> In 2000 the Council Directive 2000/43/EC on racial equality was also adopted. It is groundbreaking for anti-discrimination law as well, but disability is not mentioned. For this reason this paper only deals with the Employment Equality Directive.

discrimination law. In the following, we will first explain the underlying typology of welfare regimes drawing on Esping-Andersen's approach which we use as a heuristic device in our own research. In a second step, however, comparative welfare state theory needs to be critically reflected: What relevance does the dimension of de-commodification have in the field of disability policy? Further, we will explore the relation between social rights and civil rights in more detail. Subsequently, disability policy needs to be systematized in the view of different welfare regimes and we present some hypotheses on the possible strength of civil rights policy in accordance to different welfare regimes. Finally, empirical data on the evolution of anti-discrimination law in the three EU member states Germany, the United Kingdom and Sweden is being presented.

## **2 Different types of welfare state regimes**

Social support and services for people with disabilities are part of the specific welfare state system of a country, and their effects and developments can only be understood within a certain social policy arrangement. That is why comparative welfare state theory offers a suitable framework for the better understanding of international disability policies (see Aselmeier, 2008; Maschke, 2007). During the late 80's Swedish social scientist Gøsta Esping-Andersen has developed a welfare state typology, which is still valid for comparative welfare state research. Despite some criticism (see for example Barnes, 2000; Lessenich & Ostner, 1998; Maschke, 2004; Sainsbury, 1996), Esping-Andersen's typology has been described as "trailblazing" (Schmidt, Ostheim, Siegel, & Zohlnhöfer, 2007: 42) and is still being consulted, more than twenty years after its setting up (see Aselmeier, 2008; Barnes, 2000; Mohr, 2007; Schmid, 2002). That is the reason why in our research Esping-Andersen's approach is also used. Following this concept we have opted for the comparison of Germany, Sweden and the United Kingdom, since we consider the United Kingdom as a representative of the liberal welfare state, Germany as the conservative-corporatist type and Sweden as typical for the social-democratic model (Esping-Andersen, 1990: 21-27; 31; 48;53). Let us have a look at these three welfare regime and their characteristics: Esping-Andersen (1990: 26) introduces the term "welfare state regimes" and identifies three ideal types of welfare states which each designates a cluster of certain characteristics. He points out, however, that there is no real existing welfare state that is actually congruent to one of these three ideal models. In fact, each empirical welfare regime represents a "system-mix" (Esping-Andersen, 1990: 49). The different types of welfare state regimes are differentiated on the basis of these three analytical dimensions:

First, one has to consider the degree of de-commodification, which describes the extent of personal freedom from the market. Esping-Andersen gives this minimum definition: "De-commodification occurs when a service is rendered as a matter of right, and when a person can maintain a livelihood without reliance on the market." (Esping-Andersen, 1990: 22) De-commodification directly correlates with the quality of social rights (see Esping-Andersen, 1990: 21, 35). The second aspect is the specific social stratification, i.e. the existing structure of social hierarchy in a given country, which is an indirect or direct outcome of social policies (see Esping-Andersen, 1990: 23, 55). This dimension implies that welfare states take an active part in establishing social structure: "The welfare state is not just a mechanism that intervenes in, and possibly corrects, the structure of ine-

quality; it is, in its own right, a system of stratification. It is an active force in the ordering of social relations." (Esping-Andersen, 1990: 23) Thirdly, the relations between the state, the market and the family are relevant, i.e. the relations between private and public spheres with regard to supplying social services (see Esping-Andersen, 1990: 79). Analysing these relationships is primarily important in order to understand the role of the state and/or the extent of political intervention into the market and the family. They can show to what extent social risks are privatized: "In other words regimes can be compared with respect to which essential human needs are relegated to private versus public responsibility." (Esping-Andersen, 1990: 80)

According to Esping-Andersen, these three dimensions of welfare are existent in each welfare state, but to a different degree. Setting up clusters of characteristics, he has classified existing welfare states in Western Europe and North America according to the following three ideal types (see Esping-Andersen, 1990: 26-29). First, there is the liberal model: Characteristically it has a universal, however low, basic social security system with means-tested assistance. In this concept, the clientele of national welfare typically consists of members of the lowest income class. In contrast, the welfare of the middle class and high earners is provided by the market, i.e. typically by private insurance, a system which is promoted by the state. Therefore in liberal regimes the degree of de-commodification is reduced and the social rights are minimal. The stratification of society is essentially hierarchical: On the one hand, there is a low level of social security for welfare recipients, on the other hand there is the market-dependent welfare for the (privately insured) majority. Examples of this model are Canada, Australia and the USA (see Esping-Andersen, 1990: 26-27).

The United Kingdom also ranks among the liberal type of welfare state, however, less clearly than the three countries just specified. In fact, not only this country shares a strong liberal tradition, but also the Scandinavian states. However, the United Kingdom has developed in a different way resulting from the relatively weakness of its labour movement: "Where social democracy comes to political dominance, as in Denmark, Norway and Sweden, the liberal model is broken and replaced with a highly de-commodifying social democratic welfare-state regime. Where on the other hand, labour fails to realign the nation's political economy and assert dominance, the result is continuously low or, at most, moderate de-commodification. This is exemplified by Britain at one end, and Canada and the United States at the other end." (Esping-Andersen, 1990: 53)

The second type which Esping-Andersen describes is the conservative model. This welfare state regime dominantly relies on occupation-oriented and status-conserving social security benefits. Social rights are coupled with social status and class affiliation. Since benefits are dependent on membership in the social insurance scheme with its wage-related contributions, there is less redistribution, and, as an effect, no little social stratification, either. Welfare is distributed by the state, not in the market; accordingly, private insurance has historically played only a minor role. In addition, the principle of subsidiarity is quite strong in conservative welfare regimes. As a consequence, the orientation to the family with a traditional distribution of roles – e.g. women as care-takers, men as earners – is predominating. Austria, Germany, France and Italy are regarded as typical examples of this type of welfare state (see Esping-Andersen, 1990: 27).

The third welfare model is called social-democratic, since in the respective nations social democracy was clearly the strongest force behind social reforms (see Esping-Andersen,

1990: 27). This welfare state aims at the universal security of the population, and on equality at a high level. Social benefits are conceptualised in orientation to the aspirations of the middle class. Income-oriented achievements are also organized to meet the demands of this social stratum. Another feature of this model is a high degree of de-commodification. Individual social rights are granted for everybody, irrespective of family, professional status or social class. A fitting cluster of this welfare model can be found in the Scandinavian countries such as Sweden and Norway (see Esping-Andersen, 1990: 27-28).

Esping-Andersen attributes the emergence of the three different welfare regimes to organized interests such as social movements, especially the workers' movement, and their ability to exert influence on official politics. Finding empirical correlations between the dominance of political parties with specific programs and the evolution of specific welfare states he draws the following conclusions: Countries with an absolutistic past and a dominance of catholic parties orientated to corporatism are more likely to develop a conservative welfare model. In contrast, liberal regimes tend to have left wing parties which are remarkably weak. However, if left wing parties are strong and able to participate in government, the development of a social-democratic welfare regime is very likely (see Esping-Andersen, 1990: 133-137). In summarising, Esping-Andersen uses the three criteria of de-commodification, stratification and the relations between state, market and family, and he forms three clusters which are to be characteristic of different welfare models. But how do this relate to disability policy? In our next steps we will examine whether this typology and its basic assumptions can be used for the analysis of this policy formation.

### **3 The significance of "(de-)commodification" in disability policy**

First of all, we have to think about the rationality of disability policy. If it is just a branch of 'normal' social policy, it should be easy to fit it into the overall pattern of welfare. But when one considers the three analytical dimensions of social policy being sketched by Esping-Andersen, the following question arises: Is disability policy – like social policy in general, as Esping-Andersen claims – primarily concerned with de-commodification, i.e. with the individual's independence from the labour market? Needless to say, disability policy programs can be studied in terms of the degree to which they provide social security independently of recipients' positions within the labour market. What is more, integration within the labour market is of course at the heart of disability policy – as it is indicated by the great importance of medical and occupational rehabilitation within the rehabilitation system. But the fundamental disability policy issues at work seem to be somewhat different from those behind other social policies that are not oriented primarily to people with disabilities. At a closer sight one will find at the heart of disability policy not a concern about temporary or partial de-commodification, but to the contrary: For the most part disability policy tends to focus on the establishment of commodification. Its rationality centres around the moulding of working capacity; it is concerned with pathing disabled people into the so called "employed labour society" (Castel, 2005: 41). In other words, disability policy primarily deals with commodification, and additionally with *re-commodification*, *quasi-commodification*, and also with *permanent de-commodification* (see for details Waldschmidt, 2007).

First, one main recipient group for disability policy includes children and young people with disabilities for whom risks of future commodification are assumed and who are thus considered in special need of support in kindergarten, school and vocational training. The aim of special and/or inclusive education is to qualify young people for the employment market, i.e. to guarantee their commodification. Secondly, disability policy deals with adults with acquired impairments who once were employees and, following accidents or a serious illness, need to be reintegrated into the work force under their new health circumstances. To ensure their successful (re-) integration within the labour market, such people are given social support in the form of retraining and work-promotion services. The aim for this group is thus re-commodification. Thirdly, there are all those who are considered employable to a limited extent, but who are hardly able, or unable, to enter the general labour market. These target groups get access to various forms of supported employment. Such opportunities include sheltered workshops and work programs for people with learning disabilities and psychological problems. In Germany, at least, people employed in such institutions do not have the official status of employees; instead, they are considered 'employee-like persons'. The tasks of disability policy thus include offering quasi-commodification, in special labour markets, to people with significant, permanent impairments. Fourthly, disability policy is focussed on those who are considered incapable (no longer capable) of working and thus not (no longer) marketable, persons whose opportunities for, or rights to, commodification are negated: so-called severely disabled people, persons permanently unable to work and elderly people with disabilities. Permanent de-commodification for such people is achieved via basic social benefits, pension payments and / or care services.

We thus see a reversed constellation, as it were, in disability policy: While in general social policy, social rights concern the degree to which the individual's dependency on the market (specifically: the obligation to sell his or her own work capacity) is decreased, disability policy is concerned predominantly with establishing the conditions of commodification: i.e. the marketability of those whose work capacity is considered to be of low market value. What is more, the de-commodification options offered to people with disabilities are usually not linked with liberties, but with stigmatization and exclusion. For such people, freedom from the labour market proves to be less than a right, since such freedom comes at a price – namely, reduced social participation, along with loss of status, both symbolic and factual. Consequently, social rights with regard to disability can be understood as the result of social struggle for economic participation. In other words, the social struggle in disability policy is concerned less with disabled persons' freedom from the labour market, and more with their right to be marketable, to be part of the workforce in which all other market participants are already taking part. This perspective leads to a critical examination of the underlying theory. The case of disability policy shows that it is an oversimplification to assume – as Esping-Andersen does – that commodification and de-commodification are irreconcilable opposites. In actuality, they are interrelated: There can be no commodification without de-commodification – and vice-versa (see Lessenich, 1998: 94). On the one hand, the welfare state is based on the market's organisation of working conditions; on the other hand, it limits and constrains market forces' impact on individuals. In this manner, it assures – precisely via a flexible interplay of commodification and de-commodification – the smooth operation of the production system. In light of this context, the general welfare-state function of disability policy becomes easier to understand.

#### 4 Social rights or civil rights?

With respect to social rights we also believe that Esping-Andersen's approach needs some differentiation. His concept of de-commodification as the basic social right seems too simplistic. Besides, he ignores other rights, such as civil and political rights which in recent years have gained prominence on the agenda of public debate. In order to understand the whole picture one can draw on another classical theory of political sociology. During the 40's Thomas H. Marshall (1992), sociologist at the London School of Economics, conceptualized a theory of rights which have evolved parallel to the making of capitalism and are still structuring the political order of current democracy. Marshall identifies three kinds of citizenship rights: civil or legal rights, political or democratic rights and social or welfare rights (see Marshall, 1992: 40). Marshall's contention is that in liberal democracies the struggles of past centuries have first delivered basic civil rights such as personal freedom, the freedoms of speech, opinion and belief as well as property right, freedom of contract and finally the right to legal procedure. In short, he maintains that the rule of law is the very first modern right. Secondly, the political element of citizenship has evolved which, for Marshall, refers to the universal franchise, namely the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body. Accordingly, Parliament and local governments are considered as the institutions most associated with these rights. Thirdly, Marshall makes out the social element of citizenship which means the right to a minimum amount of economic welfare and security as well as the right to have a share in the social heritage and to live the life of a civilized being according to the standards prevailing in the society. As the institutions corresponding to this dimension of citizenship Marshall mentions the education system and the social services, to which one can add others, most notably health care, social housing and income security.

If we concentrate on the two types of rights which are relevant for this paper, namely civil rights and social rights, we have to ask about their relationship. Marshall (1992: 52-65) is very clear about this point: As an effect of the differentiation of these rights conflicts have soon arisen in liberal society; in practice a line between social and legal citizenship was drawn. Until the beginning of the twentieth century poverty relief has often led to a loss of civil rights. Thus, civil rights and social rights seem to be an irreconcilable couple. But this is just one side of the coin. Not only Marshall, but also French sociologist Robert Castel (2005) points out that civil rights and social rights form a dyad and are interdependent. Civil rights which are based on the notion of equality are essential for capitalism, as they answer market purposes. Only free and equal subjects are able and entitled to enter into contracts, a precondition for commerce and trading. Civil rights and especially the property right give the individual the power to maintain his or her own living. However, not all people can possess their own property, and capitalism is based on the possibility of employing labour. But who would voluntarily work in a factory if not for the reason to get a living wage? In other words, benefits, pensions, social services etc. are a form of "social property" (Castel, 2005: 41) for all those who lack private property, and social rights are a way of compensating economic inequality. They have been the results of heavy social struggles, but at the same time are essential for the capitalist mode of production.

Of course, the form and substance of social rights have always been contestable. Different welfare regimes function with different notions of rights. Within the liberal tradition

there has been a tendency to look upon social rights in terms of safety nets for the relief of poverty or national minima for the prevention of poverty. In contrast, corporatist welfare states have tended to see social rights as compensatory rights for their workers, whereas social-democratic welfare states have been inclined to regard welfare rather more in terms of universal rights for all citizens. Fundamentally, social rights are rights that have in various ways been bestowed or demanded under capitalism. They are shaped through the exercise of political rights or processes; and civil rights are required for the purposes of their enforcement.

**5 Disability policy in different welfare state regimes**

In the next step, we need to answer the following question: What exactly *is* disability policy all about? The subject we are talking about is very broad and diverse; it is not only about health services, education, and rehabilitation, but also about bioethics, accessibility, housing, new assistive technologies etc. It deals with national (un-) employment schemes as well as provisions for invalidity pensions, basic income and poverty relief. Moreover, nowadays disability policy comprises non-discrimination and civil rights policies; it aims at guaranteeing participation and inclusion for all people with disabilities. However, taking an overall view and for the purpose of reducing complexity, we suggest that disability policy be defined as a policy-mix of social protection, labour market integration, and civil rights policy (see Maschke, 2007: 409). Using Esping-Andersen's typology it also makes sense to analyse whether and if yes, to which extent, certain welfare regimes relate to which aspect of disability policy. For example, one can ask the following questions: Is the national disability policy primarily concerned with the integration of people with disabilities into the labour market? Or is it predominately targeted at granting civil rights? Before turning to empirical data, we would like to present the draft of a model which may be helpful to reflect in a logical-deductive way how strong the three main dimensions of disability policy are likely to be in different welfare state models. Of course, the area of civil rights policy has not been covered by Esping-Andersen, since it is a relatively new policy field which has been developed only since the 90's. However, the degree of anti-discrimination and civil rights policy in relation to different welfare regimes can be deduced by taking system rationalities into account. These are the results of our reflections:

<b>Welfare regime</b>	<b>Liberal</b>	<b>Conservative</b>	<b>Social-Democratic</b>
<i>Disability Policy</i>			
<i>Social protection</i>	X	XX	XXX
<i>Integration into the labour market</i>	XX	XXX	X
<i>Civil rights</i>	XXX	X	XX

In the liberal welfare state with its focus on the market, surely social protection in terms of granting a minimum living wage will be in operation. However, it is probable that

schemes for job market integration will comparatively seldom be in operation, since they are rated as interfering with the forces of the free market. Instead, following the rationality of the liberal welfare state it is likely that anti-discrimination policy will strongly be represented, since it aims at providing free and equal access to the market for all individuals so that they are able to supply themselves. In contrast to the liberal approach, in conservative-corporatist welfare regimes a strong accentuation of labour market integration is very likely, since in conservative social policy the social insurance-based schemes rely heavily on the individuals' participation in the labour market. Due to the paternalistic orientation of this model, one can also expect that people with disabilities have access to basic social protection. In contrast, civil rights will only be of minor value, as this approach contradicts with the status orientation of the conservative model. With regard to the social-democratic welfare state it is probable that basic social care systems are of high importance, whereas measures of job market integration will be weaker. One can also conclude that civil rights and anti-discrimination policies are of middle relevance: On the one hand they are compatible with this welfare regime's orientation towards social solidarity, on the other hand the universalistic approach can foster the assumption that there is no need for civil rights given the high level of social rights. In short, we assume that in this welfare model social solidarity has a higher importance than individualist civil rights.

## **6 Civil rights for people with disabilities in Europe: A comparison**

The theoretical assumptions sketched above can serve as heuristic guidelines in order to compare anti-discrimination policies for people with disabilities in Germany, the United Kingdom and Sweden. In the following we will concentrate on the European Council Directive 2000/78/EC for equal treatment in employment and occupation. This directive involved, like all directives, a legal obligation for the EU member states: The old 15 member states had to convert it into national law by December 2, 2003, and the new ten states were required to do this by May 1, 2004. Considering that the Employment Equality Directive stands in the liberal tradition of market rationality, and that civil rights will of course be of great importance for any liberal welfare regime, one will expect no great implementation problems in liberal welfare states. But, according to our hypotheses this directive should most likely cause substantial problems in conservative welfare states. As a matter of fact, our empirical data shows that these assumptions are valid:

In September 2005, as an overview of the European Commission shows, 17 out of 25 member states had converted this directive in national law, amongst them being Sweden and the United Kingdom. The only countries which at that time still struggled to change fundamental laws in accordance with the European anti-discrimination regulation were Germany, Luxembourg, and Austria (Die Europäische Kommission & Generaldirektion Beschäftigung, 2005: 14). All three countries can be considered as belonging to the conservative welfare model. With regard to Germany it took until August 2006 before a federal anti-discrimination act was put into force, thus implementing at the same time both European directives, the one on employment and the other on racial equality, into national law.

When one compares the evolution of anti-discrimination law in Sweden (as representing the social-democratic welfare state) and the United Kingdom (accounting for the liberal



welfare regime) with the case of Germany, one can conclude the following: In all three countries the official definitions of disability in the context of civil rights are still closely oriented to the medical model of disability; in other words, even in this context disability is still being defined as an effect of long lasting physical, cognitive or psychological impairments. Only in the United Kingdom has the clientele been extended to people who suffer from HIV, cancer or multiple sclerosis. In this country there are also activities currently going on which might eventually lead to including people who suffer from so called 'discrimination by association', eg. family members, into the anti-discrimination law. These developments indicate a trend away from the medical approach and towards the social model of disability (see Waldschmidt & Lingnau, 2008: 69-70).

The United Kingdom also was the first European country to install anti-discrimination law for people with disabilities: The Disability Discrimination Act (DDA), which came into force in 1995, initially covered only the field of employment and occupation, but has been expanded in later years. In 1999 the first Swedish law against discrimination of people with disabilities with regard to working life has been introduced. In comparison, Germany is the late bloomer: With the disability specific equalization law, the so called 'Behindertengleichstellungsgesetz (BGG)' [Disability Equality Act], a first anti-discrimination legislation covering the field of public law at the federal level came into force in 2002. Four years later the General Equality Act, the so called 'Allgemeines Gleichbehandlungsgesetz (AGG)', was installed covering civil as well as private spheres (see Waldschmidt & Lingnau, 2008: 70).

One has to concede that in Germany and Sweden the prohibition of discriminating against people with disabilities is firmly established in the national constitutions. However, the constitutional provisions are mainly of symbolic relevance, as they have so far very rarely led to concrete consequences in the fields of civil law as well as employment and occupation. Even in this context the development in Germany has lagged behind, since in Sweden the constitutional ban of discrimination has already been established in 1974, whereas the German Basic Law [Grundgesetz] got amended only in 1994, when due to the reunification process the revision of the German constitution became necessary. In Article Three which deals with equality an additional sentence got inserted: "No person shall be disfavoured because of disability." However, it needed a further decade before equal rights – not only for disabled people, but for other minorities as well – appeared again on the agenda of German official politics: As mentioned before, the General Equality Act was finally put into force in 2006. The following overview shows the development of anti-discrimination law for people with disabilities in all three countries:

	GERMANY	THE UNITED KING- DOM	SWEDEN	EC/EU
1974			Kapitel 1, Artikel 2 der "Regeringsformen" (constitutional law)	
1994	Art. 3 Abs. 3 Satz 2 Grund- gesetz (Amendment of constitutional law)			
1995		Disability Discrimination Act (DDA)		
1996		Phase 1: DDA (employment)		
1997				Article 13 EC: Prohibition of discrimination; enables the Council to take appro- priate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disabili- ty, age or sexual orienta- tion.
1999		Phase 2: DDA (Accessibility of public services)	Prohibition of Discrimina- tion of People with Disabili- ty in Working Life Act	
2000				Council Directive 2000/78/EC: Establishing a general framework for equal treatment in em- ployment and occupation
2001			Equal Treatment of Stu- dents at Universities Act	
2002	Behindertengleichstel- lungsgesetz (BGG) (Pro- hibition of discrimination of people with disabilities in the field of civil law)			
2003		Disability Discrimination Bill - DDA Amendment Regulation (Transport, housing)	The prohibition of dis- crimination act	
2004		Phase 3: DDA (Accessibil- ity of the private sector)		
2006	Allgemeines Gleichbe- handlungsgesetz (AGG) (prohibition of general discrimination)		Act on the prohibition of discrimination and other degrading treatment of children and pupils	

Our empirical results confirm the theoretical assumptions we have made before: In accordance with the dominant liberal tradition we can witness remarkable activities in the United Kingdom which serve the aim at establishing civil rights for minorities and anti-discrimination law. Germany, on the other side, is clearly a late starter in the field of anti-discrimination policies; this delay can be attributed to its conservative and paternalistic traditions. Sweden as the third country lies in the middle between the two extremes.

However, things are changing, even in Germany. The reason for a rather slow change, though, can be traced back to the structures of the German welfare state. Civil rights traditions are weak in this country, but they are needed when anti-discrimination policy is to flourish. The internal logic of the segmented German welfare regime tends not to fos-

ter equality, but to the contrary: It promotes the preservation of social status and thus very often ends up even producing inequality. Therefore this conservative country needed strong impulses both from the outside and the inside. Clearly, there were two important factors that allowed to break with old traditions and to bring a change, firstly the Europeanisation of anti-discrimination policy, and secondly a change in government. In 1998 the conservative-liberal government, which had been into power since 1982, was superseded by a left-wing coalition. Nevertheless, another eight years had to pass by before after much public dispute the implementation of anti-discrimination law was finally accomplished.

In contrast, the United Kingdom was the first European country with anti-discrimination law for people with disabilities. However, one has to consider the rationality of the British welfare regime as a decisive background. The DDA is more or less an instrument which stands in a liberal tradition. In its first phase the law has covered only the field of employment and occupation. In other words, its original aim has been to make people with disabilities marketable. Overall, the rights of disabled people have been strengthened by the legislation, but at the same time more personal responsibility has been demanded as well (see Maschke, 2007: 248). The introduction of the DDA has been accompanied by new hurdles against purchasing benefits and by stronger controls of the recipients (see Maschke, 2007: 248).

In the middle of the range, between the United Kingdom as the pioneer of European anti-discrimination policy and Germany as the late bloomer one will find Sweden: Swedish policy has traditionally been oriented towards universal security and comprehensive social benefits. It seems that in this country civil rights are having a slightly minor significance in comparison to social rights (see Numhauser, 2007: 1-2). For example, the Swedish reform act for people with disabilities (Lagen om stöd och service till vissa funktionshindrade [LSS]) ruled in 1993 that people with disabilities are entitled to ten different social services and benefits (Lappalainen, 2004). This legislation highlights the great importance of social rights in this country. However, when the Swedish welfare state was confronted with a financial crisis during the 90's, a public discussion about the suitability of legal claims on benefits got started.

To put it all in a nutshell: In the case of the United Kingdom, we can assume that a bottom-up process has been in operation; there are indicators that the national level has indeed influenced the disability policy of the European Union (see Maschke, 2007: 256). In contrast, the two other countries needed pressure top down, namely by the European level in order to implement national anti-discrimination policies. The case of Germany shows that a welfare state which has a longstanding history of treating people with disabilities more as recipients of welfare than as citizens with equal rights will be reluctant to react to the impact of Europeanization with regard to anti-discrimination policy.

## **7 Conclusions**

In this paper we have pointed out that the United Kingdom was the first European country to develop anti-discrimination law for people with disabilities. The British disability policy has probably even affected the disability policy of the European Union. These findings lead to these questions: Which welfare state model is being applied at the European level? Has the liberal welfare regime the best chance to influence the European

social model? How will member states with conservative and universalist welfare states react to the pressure of liberalisation?

So far the results of our research indicate the enforcement of liberal and regulative policies at the European level. On the one hand the Employment Equality Directive serves market rationality, on the other hand, however, it also provides opportunities for active measures in order to realise job integration, eg. special support and job programs for people with disabilities. From this perspective, the concept of equality could be used not only to provide formal equality, but also to stimulate social policies by the state and supportive action by companies. Therefore the following question arises which will guide our next research phase: Will this directive be used by the member states as a means to implement innovative employment policies or as a legitimation to cut social benefits down? Will the underlying concept of equal chances be reduced to purely formal equalization? First findings indicate that the establishment of civil rights in European member states has actually been accompanied with a dismantling of social security and social services. For this reason this question remains on the agenda: To what extent do civil rights contribute to securing social security benefits and improving the quality of life for people with disabilities? Are nowadays civil rights and social rights two sides of the same coin or are they still competing against one another?

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