Choice and control for persons with psychosocial disabilities: links to legal capacity and involuntary placement

Symposium on the human rights of persons with psychosocial disabilities

Brussels, 16-17 October 2014

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The importance of choice and control

• Independent living highlights the interdependence of the rights of persons with disabilities

• FRA research shows how barriers – including involuntary placement and restrictions of legal capacity – work to exclude persons with disabilities from community life

• Outcome of other CRPD rights: putting the person at the centre of decisions affecting him- or herself
CRPD: From substituted to supported decision-making

- Legal capacity affects all areas of life

- CRPD reconceives the notion of legal capacity:
  - Legal capacity on an equal basis with others
  - De-linking legal capacity from disability
  - Obligation to provide support to exercise legal capacity
  - Safeguards to prevent abuse
A gap between standards and implementation

• CRPD Committee has repeatedly called for states to replace substituted with support-decision making. States parties must: “take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making”

• There is a significant discrepancy between CRPD standards and their implementation
  – All EU Member States’ legal frameworks allow for restrictions of legal capacity

• A shift is underway in national legislation on legal capacity
CRPD: Reconceiving involuntary placement

- De-linking the deprivation of liberty from disability. States parties must ensure that:
  
  “no person is deprived of his/her liberty on the basis of his/her disability”

- Deprivation of liberty based on disability is discriminatory
Harmonising national law with the CRPD

• De-linking involuntary placement from disability requires a significant legal evolution at the national level
  – Most EU Member States have specific laws on mental health regulating involuntary placement
  – Legislation in all EUMS identifies the presence of a mental health problem as one of the criteria for involuntary placement

• More than half of EUMS have made significant reforms to their legal frameworks in this area since 2006
What next?

- Harmonisation of national legislation with the requirements of the CRPD
- Link to EU non-discrimination law
- Involvement of DPOs
For more information

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