

# EPA 30<sup>th</sup> anniversary

Are people with mental illness  
truly citizens of Europe?

Strasbourg, 15 November 2013



# EPA 30<sup>th</sup> anniversary

Human rights in relation to vulnerable groups  
such as mentally ill

Thorsten AFFLERBACH, Council of Europe





# Human Rights

universal

interdependent

indivisible



# European Convention on Human Rights (1950)

## Art. 14 Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.



## Protocol No. 12 to ECHR (2000)

### Art. 1 General prohibition of discrimination

1. The enjoyment of the rights and freedoms set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.



# European Social Charter (revised) (1996)

## Part V, Art. E Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.



# Charter of Fundamental Rights of the European Union (2000)

## Art. 21 Non-discrimination

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.



## Access to social rights in Europe (2002)

7 types of obstacles:

inadequate ...

1. legal provisions;
2. enforcement or monitoring;
3. resources;
4. procedures or management;
5. information or communication;
6. attention to vulnerable groups or regions.
7. Socio-cultural obstacles





# **Access to social rights for people with disabilities in Europe (2003)**

obstacles in the areas of:

1. social and legal protection
2. housing, built environment, transport
3. vocational training and employment
4. education, schooling, higher education
5. information, communication, new technologies
6. health care



# **Access to social rights for people with disabilities in Europe (2003)**

## **European Year of People with Disabilities (2003)**

**2<sup>nd</sup> Council of Europe Ministerial Conference on Disability, Malaga, Spain, 7-8 May 2003**



## **2<sup>nd</sup> CoE Min Conf Disability, Malaga, Spain, 7-8 May 2003**

“Some of the fundamental rights contained in the European Convention on Human Rights and the European Social Charter are still not accessible, or not fully accessible, to many people with disabilities.”

Peter Schieder  
President of the Parliamentary Assembly  
of the Council of Europe



# **Council of Europe Disability Action Plan 2006-2015**

Recommendation Rec(2006)5 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015

(5 April 2006)



# **Council of Europe Disability Action Plan 2006-2015**

15 key action lines

education, vocational training, employment,  
built environment, transport,  
information and communication,  
participation in political and cultural life,  
health care, rehabilitation, community living,  
social and legal protection,  
protection against violence



# **Council of Europe Disability Action Plan 2006-2015**

15 key action lines  
41 objectives  
163 specific actions

31 languages  
Braille  
easy-to-read



# **Council of Europe Disability Action Plan 2006-2015**

Mid-term Review Report (2010)

Conclusions and Recommendations:

- People with mental health issues should be specifically mentioned in the Plan because of the unique stigma they experience in preventing their full inclusion in society.



# **Council of Europe Commissioner for Human Rights**

Mr Álvaro GIL-ROBLES, Spain (1999-2006)

Mr Thomas HAMMARBERG, Sweden (2006-2012)

Mr Niels MUIŽNIEKS, Latvia (2012-)





# **Council of Europe Commissioner for Human Rights**

Mr Thomas HAMMARBERG, Sweden (2006-2012)

Viewpoint:

Persons with mental disabilities should be assisted by not deprived of their individual human rights  
(2009)



# **Council of Europe Commissioner for Human Rights**

Mr Thomas HAMMARBERG, Sweden (2006-2012)

Issue Paper:

Who gets to decide?

Right to legal capacity for persons with intellectual  
and psychosocial disabilities

(2012)



# UN Convention on the Rights of Persons with Disabilities

CoE MS	Convention	Protocol
signed	45	35
ratified	38	27

(state: 14/11/2013)



## **UN CRPD**

### **Art. 12 Equal Recognition before the Law**

2. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal with others in all aspects of life.
  
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.



# UN CRPD

## Art. 12 Equal Recognition before the Law

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.



## **UN CRPD**

**Art. 12 Equal Recognition before the Law**

**Art. 14 Liberty and security of the person**

**Art. 3 General principles**

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;



# **UN Committee on the rights of persons with disabilities**

## **Concluding Observations on Art. 12**

States Parties must “review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.”



# **UN Committee on the rights of persons with disabilities**

## **Draft General Comment on Art. 12 (Sept. 2013)**

Art. 12 does not provide additional rights to people with disabilities; it simply describes the specific elements required to ensure the right to equality before the law for people with disabilities on an equal basis with others.





# **UN Committee on the rights of persons with disabilities**

## **Draft General Comment on Art. 12 (Sept. 2013)**

legal capacity ≠ mental capacity  
the 2 concepts are often conflated

Art. 12 does not permit perceived or actual deficits in mental capacity to be used as justification for denying legal capacity.



# EU Fundamental Rights Agency (FRA)

## Reports:

- The right to political participation of persons with mental health problems and persons with intellectual disabilities (2010)
- The legal protection of persons with mental health problems under non-discrimination law (2011)
- Involuntary placement and involuntary treatment of persons with mental health problems (2012)
- Legal capacity of persons with intellectual disabilities and persons with mental health problems (2013)
- Choice and control: the right to independent living. Experiences of persons with intellectual disabilities and persons with mental health problems in 9 EU member states (2013)



# **Mental Disability Advocacy Center (MDAC)**

Report:

Legal capacity in Europe.

A call to action to Governments and to the EU  
(2013)



# **Council of Europe Bioethics Committee (ex CDBI, now DH-BIO)**

Draft Protocol to the Convention on Human Rights  
and Biomedicine (“Oviedo Convention”)

on the protection of dignity and fundamental rights  
of persons with mental disorders  
with regard to involuntary measures



# Council of Europe Bioethics Committee (ex CDBI, now DH-BIO)

Draft Protocol to the Convention on Human Rights and Biomedicine  
("Oviedo Convention") on persons with mental disorders

## ECHR

Art. 5 – Right to liberty and security

## Oviedo Convention

Article 7 – Protection of persons who have a mental disorder

Article 26 – Restrictions on the exercise of the rights

Recommendation Rec(2004)10 of the Committee of Ministers to member states  
concerning the protection of the human rights and dignity  
of persons with mental disorder

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