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Main trends in human rights of persons with psychosocial disabilities (mental health problems)

- Increasing recognition that persons with mental health problems cannot be reduced to their diagnosis and they are not just “patients”: they are **rights-holders** – while those who exercise power (States, public authorities, doctors) are duty-bearers.
- Growing but still insufficient recognition that their rights cannot be reduced to the important issues of access to care and/or (non)coercion. They have **all other rights**, too.
- Still unfinished move from a top-down paternalistic approach to an interactive one: the person as an active subject. Growing emphasis on **autonomy and choice**.

Main relevant standards and their development over time: a narrative of progress

GENERAL:

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Other Conventions (children, women, racial discrimination)

SPECIFIC:

- Principles for the Protection of Persons with Mental Illness (MI Principles), 1991 – now significantly outdated;
- UN Convention on Rights of Persons with Disabilities, 2006

Universal Declaration of Human Rights – some highly relevant articles:

- Right to life, liberty and security of the person (Article 3)
- Prohibition of torture and cruel, inhuman or degrading treatment or punishment (Article 5)
- Right to recognition as a person before the law (Article 6)
- Equality before the law, non-discrimination (Article 7)
- Not being subjected to arbitrary arrest, detention or exile (Article 9)

Universal Declaration of Human Rights – other relevant articles:

- Right to privacy (Article 12)
- Right to marry and found a family (Article 16)
- Right to own property (Article 17)
- Right to social security (Article 22)
- Right to work (Article 23)
- Right to an adequate standard of living, including food, clothing, housing, medical care and necessary social services (Article 25)
- Right to education (Article 26)

It is about the right to medical care, too – but not just about it! We need to address all these domains.

International Covenant on Civil and Political Rights – concluding observations on Member States by Human Rights Committee, *examples:*

Greece 2015: Widespread use of restraints such as enclosed restraint beds (cages or net beds) and systematic sedation; call for an independent monitoring and reporting system, investigation of abuses, redress for victims.

Croatia 2015: Concerns about reports of “excessive and prolonged use of involuntary hospitalization” in mental health.

Austria 2015: Concerns about inadequate mental health care in correctional institutions (prisons).

France 2015: Concerns about continued use of “packing (wrapping autistic children and psychotic adults in extremely cold, wet sheets)”.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – review of Member States by the Committee Against Torture (CAT), *examples:*

United Kingdom 2013: Concerns about treatment of asylum seekers with “serious mental health conditions” and/or victims of torture or trafficking: their detention while their asylum cases were being decided, and the fact that such persons are in some cases “fast-tracked” (for speedy rejection) due to a lack of clear guidance and inadequate screening processes.

The Netherlands 2013: Concerns about frequent use of solitary confinement, restraints and forced medication “which may amount to inhumane and degrading treatment”. Frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health care institutions.

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

Article 1: Purpose

- The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.
- 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.

CRPD, Article 19 – key to other rights in the Convention

- Equal right of all persons with disabilities to live in the community and their full inclusion and participation in the community;
- **Opportunity to choose** their place of residence and where and with whom they live **on an equal basis with others** and are not obliged to live in a particular living arrangement;
- Access to a range of in-residential and other **community support services**, including personal assistance;
- Community services and facilities for the general population available **on an equal basis** to persons with disabilities and are responsive to their needs.

Convention on Rights of Persons with Disabilities – concluding observations of CRPD Committee to Member States, *examples:*

Denmark 2013: Use of straps or belts for over 48 hours, chemical restraints, involuntary electroconvulsive therapy.

Hungary 2012: Concerns about the situation faced by persons under guardianship, where a decision on institutional care is made by the guardian rather than the person him/herself, and guardians are authorized to give consent.

General approach: Disability (including psychosocial disability) should not be a ground for deprivation of liberty (*by contrast, the HRC demands legal safeguards, independent complaint mechanism and outside control, without ruling it out*).

Parallel development of international and regional (Council of Europe) human rights standards

- Council of Europe: Overall, similar direction towards more autonomy, reducing restrictions.
- Problem of outdated concepts – e.g., “unsound mind” justifying the deprivation of liberty in ECHR (Art. 5).
- European Court of Human Rights jurisprudence catching up between *Winterwerp vs. NL* (1979) and *Stanev vs. BL* and *Plesó vs. HU* (both 2012): what is “necessary”?
- Today: strong advocacy by CoE Human Rights Commissioner – but problematic proposal for additional protocol to Oviedo Convention on Bioethics.

Conclusions

- A narrative of progress towards recognition of human rights of persons with psychosocial disabilities (“the cognitive frontier as the last frontier for human rights”) on normative level, to some extent also in practice – need for more!
- Also, need for building bridges between different types of expertise (e.g., mental health care + human rights); important role to be played by “experts through experience”, i.e., persons with psychosocial disabilities.
- Efforts to be made: Human rights experts should learn about real-life challenges, while medical professionals should abandon “benevolent paternalism” (Roy Porter) and defensive reactions, engage in a critical evaluation of past and current practices, become allies of these persons in areas of life outside care, help them fight stigma.