

Legal capacity of persons with intellectual disabilities and persons with mental health problems

Some 80 million persons with disabilities live in the European Union (EU). Many have had their legal capacity restricted or removed, hindering their ability to live independently and take decisions about their lives.

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) marks a paradigm shift in the way disability is conceptualised. It considers persons with disabilities as holders of rights on an equal basis with others and puts the person at the centre of all decisions affecting him- or herself. Such a rights-based approach to disability has profound implications for legal capacity legislation and its implementation.

What is legal capacity?

Legal capacity is the ability of a person to take legally valid decisions and to enter into binding contractual relations. It makes a person a subject of law and a holder of legal rights and obligations. Legal capacity is particularly important because it affects all areas of life, from choosing where to live, whether and whom to marry, to signing an employment contract or casting a vote. The CRPD addresses legal capacity in Article 12 on 'Equal recognition before the law'.

"The centrality of [Article 12 of the CRPD] in the structure of the Convention and its instrumental value in the achievement of numerous other rights should be highlighted."

United Nations General Assembly Human Rights Council (2009), Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities

Policy context

With EU ratification, the CRPD became part of the EU legal order, creating legal obligations in those areas that fall under EU competences. Restrictions on legal capacity raise issues of discrimination and equality which are principles protected under EU law.

Key EU policy documents reflect the coordinating role that EU institutions can play in the area of legal capacity. The

EU Disability Strategy 2010–2020 notes that: "EU action will support and supplement national policies and programmes to promote equality, for instance by promoting the conformity of Member States legislation on legal capacity with the [CRPD]." In 2008, the EU Disability High Level Group highlighted implementation of Article 12 as a "common challenge" to be addressed; it also emphasised the importance of exchanging experiences on how best to implement the CRPD.

To help support CRPD implementation, FRA analysed international and national standards on legal capacity of persons with mental health problems and persons with intellectual disabilities. It supplemented this analysis with findings from interview-based research with persons with disabilities.

Legal context

The right to equal recognition as a person before the law is a long-established human rights principle reflected in national and international legal frameworks.

United Nations

Article 12 of the CRPD recognises that persons with disabilities "enjoy legal capacity on an equal basis with others in all aspects of life" and that disability alone does not justify the deprivation of legal capacity. It triggers a significant change in the approach to legal capacity, empowering persons with disabilities to take control of their lives.

"The [CRPD] Committee recommends [...] [the] move from substitute decision-making to supported decision-making, which respects the person's autonomy, will and preferences [...]."

Committee on the Rights of Persons with Disabilities (2012), Concluding Observations on Hungary

Council of Europe

Council of Europe standards, adopted before the CRPD, permit the restriction of legal capacity if certain conditions are fulfilled and safeguards put in place. The existence of a disability alone,

however, does not justify the deprivation of legal capacity. Any restriction must be both tailored to the individual's circumstances and proportional to his or her needs.

EU Member States

The entry into force of the CRPD has prompted discussions about the current legal frameworks governing legal capacity in the EU Member States. Those EU Member States that have ratified the CRPD may face challenges in shaping national legislation that allows for supported decision-making measures, in other words measures that respect a person's autonomy, will and preferences. The number of Member States currently reforming legal capacity legislation illustrates the fundamental reconsideration the CRPD requires.

FRA findings show that current laws on legal capacity in EU Member States share a number of common features. Almost all Member States require that in order to restrict an individual's legal capacity an intellectual disability or mental health problem should be combined with a second criterion linked to the person's 'inability' to manage his or her affairs. Typically, following a decision on legal incapacity, a guardian is appointed. National legislation in all EU Member States allows for an appeal of the decision depriving a person of legal capacity and appointing a guardian, although in several Member States the person concerned cannot trigger the appeal or actively participate in these proceedings.

Personal experiences

FRA interviews with persons with mental health problems and persons with intellectual disabilities underline the influence that legal capacity legislation can have on the everyday lives of persons with disabilities. Participants who had lost their legal capacity shared a sense of powerlessness.

"They did it all behind my back even though legally they were not allowed to." (Man, 69)

Once appointed a guardian, respondents expressed frustration at the restrictions on their ability to take decisions for themselves.

"I am under comprehensive guardianship. [...] Because of this I cannot vote and we cannot get married either." (Man, 53)

Nevertheless, very few challenged the decision to deprive them of their legal capacity or to change their guardian.

"The judge said that if I appealed there would be a review inspection followed by several court hearings. This presents a serious psychological burden for me." (Woman, 36)

The way forward

These findings provide valuable evidence that EU Member States can take into account when seeking to harmonise their legal frameworks with CRPD requirements. In keeping with the CRPD, this process should actively involve persons with disabilities through their representative organisations.

The consequences of restrictions of legal capacity described by interviewees underline the importance of developing models based on supported decision making which promote the independence and autonomy of persons with disabilities in line with the CRPD.

Further information:

An overview of FRA activities on disability is available at: <http://fra.europa.eu/en/theme/people-disabilities>

The report on *Legal capacity of persons with intellectual disabilities and persons with mental health problems* is available at: <http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems>

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