



Future Perspectives on Legal Capacity Law

Seminar

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I am delighted to be here today to welcome you all to Dublin to this important and timely seminar. The attendance by representatives of so many Member States reflects the priority being given to finding ways of ensuring that people with disabilities and people with a mental illness have the right to have their legal capacity acknowledged and the equal right to take decisions that affect them.

I would also like to welcome **Theresa Degener**, Vice Chairperson of the UN Committee on the Rights of Persons with Disabilities and **Irena Kowalczyk-Kedziora** of the Council of Europe, **Mario Oetheimer** and **Martha Stickings** of the EU Agency for Fundamental Rights (FRA) and the other speakers here today, who will enrich our discussion with their insights.

I am here today as Acting Chairperson of the Irish Human Rights and Equality Commission Designate; a new body that will bring together the existing Irish Human Rights Commission and the Equality Authority with the purpose of strengthening efforts to promote and protect human rights and equality in Ireland. We expect the legislation to formally establish the body to be published shortly, however, we still await the appointment of a Chief Commissioner designate. While we have agreed amongst ourselves to nominate an acting Chair on a rotating basis, the recruitment of a Chief Commissioner designate is now overdue and needs to be prioritised.

Both the Irish Human Rights Commission and the Equality Authority are pleased to be partners with the EU Fundamental Rights Agency and the Department of Justice, Equality and Defence in organising this seminar at a moment when our attention is focused on ensuring the introduction of ground breaking legislation on legal capacity in Ireland that meets the standards set out in the UN Convention on the Rights of Persons with Disabilities and those set out by the Council of Europe.

The discussion of legal capacity highlights the clear link between human rights and equality. Equal recognition before the law is a fundamental human right. As is so well put in the EU Fundamental Rights Agency's report which is being launched today; the coming into force of the Convention on the Rights of Persons with Disabilities puts people with disabilities at the centre of decision making. The principle of equal recognition before the law is clearly based on non-discrimination and equality for all persons with disabilities. I would like to take this opportunity to commend the work of the Fundamental Rights Agency in producing such a comprehensive and accessible report on such a complex issue.

The Irish Human Rights Commission and National Human Rights Institutions (NHRIs) more generally have been strong advocates for the introduction of a United Nations Convention to promote and protect the rights of persons with disabilities. Professor Gerard Quinn, here today, as a previous member of our Commission was the international focal point for NHRIs in inputting into the drafting of the UN Convention on the Rights of Persons with Disabilities over

a two year period and he has been one its strongest promoters and advocates of the convention's ratification and implementation. I pay tribute to those advocates who have worked tirelessly for the development of legal capacity legislation that upholds the autonomy of persons with disabilities and moves Ireland closer to ratification of the Convention.

The UN Convention is an extremely important development in international human rights law for a number of reasons. Firstly, the drafting of the Convention involved Disability Rights groups. This participatory approach signaled a shift in the way Conventions are now drafted, the phrase 'nothing about us, without us' that has been clearly linked to disability rights exemplifies this shift in the development of international instruments. Secondly, the Convention covers the full gamut of human rights and deals with their specific relationship to persons with disabilities. Thirdly, a particularly detailed and practical level of monitoring both at the national and international level is envisaged by the Convention.

That is not to say that human rights and equality standards do not protect persons with disabilities today. The Equality Authority has disability as one of its core grounds. Similarly the IHRC has undertaken significant work on disability rights in recent years including its last enquiry into persons with a severe to profound intellectual disability and several amicus curiae interventions before the High Court and indeed before the European Court of Human Rights with other national institutions in the European Group of NHRIs.

However, the CRPD offers a significant step change in the protections available for persons with disabilities as set out above. Amongst these is the need for a truly independent (i.e. Paris Principles compliant) monitoring body under Article 33 which will liaise with both State bodies and civil society including persons with disabilities and their representative organisations under Article 33(3).

When the Convention was opened for signature, our Commission praised the swift response of the Irish State in signing it, but we have consistently raised our concern at the delay in ratifying it. Today I would call again on Government to move swiftly to ratification.

We understand that ratification has hinged on the development of legal capacity legislation. The Irish Government has recently published the Assisted Decision-Making (Capacity) Bill 2013 which has been formally referred to our Commission for our observations under our legislation. While we are currently in the process of reviewing the Bill, there are a number of remarks which I would like to make based in part on our previous observations in 2008.

The legislation must fully reflect Article 12 of the Convention on the Rights of Persons with Disabilities by emphasising everyone's legal capacity. The supports and protections in the legislation for decision making must be accessible and not overly complex or costly. Each measure introduced pursuant to the legislation in relation to decision making needs to be tailored to the circumstances of the person concerned, this is particularly so in relation to Wards of Court transitioning to the new system. The legislation needs to be properly grounded in human rights and equality principles such as the right not to be discriminated against. The proposed capacity legislation needs to take account of the Mental Health Act, 2001, and to be integrated with it insofar as possible. The costs of the system should be minimised so that it does not disproportionately come out of the pockets of disabled persons. Where legal proceedings are instigated to seek Courts orders regarding the person whose decision making ability is in question, it must be ensured that the person concerned has access to full legal representation. The extent to which the legislation is compliant with the Convention as interpreted by its supervisory committee must be kept under review to ensure it does not lag behind what are clearly evolving standards. There should thus be a clear commitment to immediate ratification upon the passing of this legislation.

I would like to conclude by complimenting Alan Shatter TD, Minister for Justice, Equality and Defence and Kathleen Lynch TD, Minister of State for Disability, Equality, Mental Health and Older Persons and officials at the Department of Justice and Equality on its consultation process on the Bill which has begun. I would also like to emphasise the need for continued openness to taking on board the views of those both in and representative of the sector. In this regard we are impressed by the determination within the Department to improve the Bill. This should be our common aim. Capacity recognition in legislation is not about office-holders or rhetoric. It is

about us as a society and societies and whether we will continue to treat persons with disabilities as objects or subjects of our laws. If we are serious about treating everyone with respect for their full human rights based on the solid principles of equality for all, we must break down those barriers which inhibit effective access to rights, services and voices – whether they be cost, lack of supports or lack of choices.

Turning to our seminar today, we begin by taking stock of the human rights standards and principles set forth at UN and Council of Europe level that should inform the development of legal capacity legislation. The EU FRA Report then places the spotlight on what is happen in EU member States at a legislative level. We will benefit from hearing the experiences of some Member States in more depth before getting a real opportunity to delve into more detail in the working groups and share the results and what are the next steps to developing legal capacity legislation that is underpinned by human rights and equality, and the will of people with disabilities.

I wish you every success today.

Thank you.

Sunniva McDonagh SC

Acting Chair

Irish Human Rights and Equality Commission (designate)

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