

Disagreement among the United Nations Human Rights Bodies over the Legality of Deprivation of Liberty on the Grounds of Mental Disability

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Abstract : Mentally disabled people are the most discriminated against among other disabled people and face much stronger negative attitudes across many cultures. The most complex and severe form of exclusion of these people is deprivation of liberty on the grounds of their disability. This problem was for many years overlooked to a great extent by the core human rights instruments. However, the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, is considered a potential tool to successfully fill the gap. It is especially vital for the developing countries with the vast majority of disabled people of the world and the CRPD is presumed to be able to trigger drastic positive changes. Article 14 of the mentioned human rights treaty has brought into the international forum a new notion, as prohibits deprivation of liberty on the grounds of disability. It is to be understood as an absolute prohibition of deprivation of liberty on the grounds of disability, including mental disability, which manifests in the form of non-consensual psychiatric hospitalisation. The interpretation by the CRPD Committee indicates that this prohibition well embraces all types of non-consensual psychiatric hospitalisation – whether it is based on illness, impairment or disability. This prohibition also extends to such justifications as ‘dangerousness’, ‘need for treatment’ and ‘diminished capacity’. Moreover, providing due substantive and/or procedural safeguards does not render any legitimacy to application of deprivation of liberty on the grounds of mental disability. Logically, this new prohibition form was to be duly considered by different UN human rights bodies, and was subsequently to bring changes to their practices. However, the analyses of post-CRPD work of those bodies allows for asserting the contrary, as they have continued displaying the position which recognises deprivation of liberty on the grounds of disability to be legitimate. While such a position could be justified in the pre-CRPD time as stemming from the silence of human rights documents about it, the continuation of this course after the CRPD entered into force may call the integrity and coherence of the UN human rights treaty system into question. The non-coherent approaches of different UN bodies to this novelty give grounds for misinterpretation thereof, and hinder its due implementation by the States Parties. The paper will discuss the nature of the mentioned new prohibition and the controversial approaches to that notion by different UN human rights bodies.

Keywords : CRPD, deprivation of liberty, mental disability, non-consensual psychiatric hospitalisation, UN bodies

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