

# Democratic Psychiatry – EU fundamental rights perspective

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## Presentation Outline

- What is the FRA?
- Disability Rights as Human Rights
  - Social model of disability
  - UN CRPD
  - European Disability Strategy (2010 – 2020)
- FRA disability project



# The EU Agency for Fundamental Rights

- Established by Council Regulation 168/2007 of 15 February 2007
- An independent body of the European Union (link DG JUST)
- Research covering all EU-27
- Located in Vienna, Austria



Morten Kjaerum, FRA  
Director  
About 70 staff members  
Three “operational”  
departments



# The EU Agency for Fundamental Rights

- Our mission:

*Helping to make fundamental rights a reality for everyone in the European Union*

- How?

*Providing evidence-based advice*

## Scope of work

- Two criteria
  - 1) The EU competence
  - 2) The 9 thematic areas of the Multi-annual Framework (MAF)
    - Racism, xenophobia, data protection, access to justice, rights , asylum and borders , victims' rights, participation in EU democratic functioning and discrimination on all grounds, including disability

## Evidence Based Advice

- 1) Solid research methodology
- 2) Relevant advice for informed decision making
- 3) Up to our stakeholders to draw the relevant conclusions and to take appropriate actions

# **DISABILITY RIGHTS AS HUMAN RIGHTS**

## From medical to social model of disability

- **Medical model** diagnoses the wrong in the impairment. The impairment causes disadvantages. Treatment / cure / management will make the person fit into society
- **Social model:** barriers are the problem



*You must not go out  
on your own!*

*The person  
with a disability  
is the problem.*



*You don't need  
an education!*



*You are **sick!***



*You should not have  
a **relationship!***

**The “unable” model of disability**

# The enabling model of disability



I'm a great cook!

With the right kitchen tools!



I run my own business!

With an adapted computer.

The barriers are the problem.



I can go to a restaurant!

With a personal assistant, friends and/or by taxi.

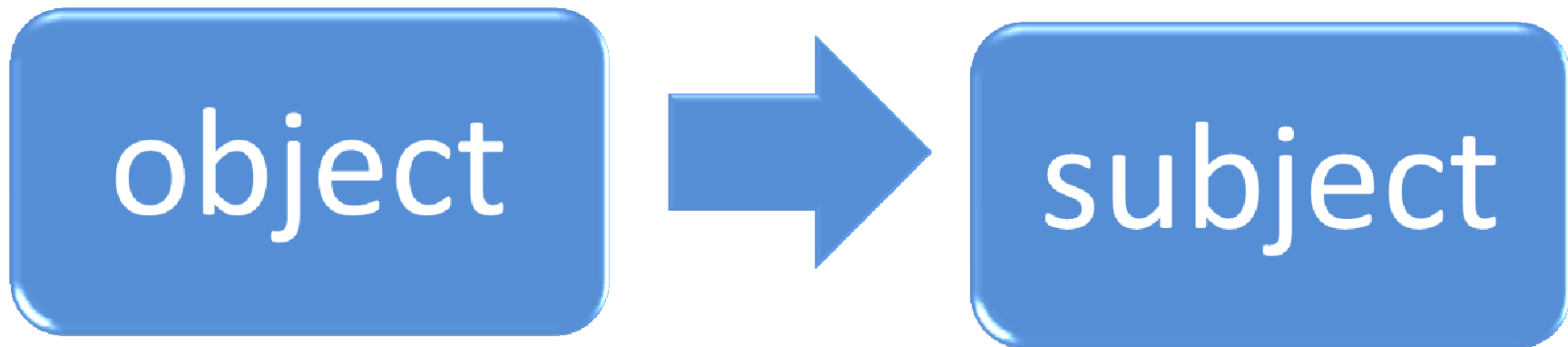


I can drive!

With an automatic car!

Are you taking the rights approach?

THE RIGHTS-BASED APPROACH TO DISABILITY



Paradigm shift

## UN CRPD (1)

United Nations Convention on the Rights of Persons with Disabilities (UN CRPD):

- Signed in 2006, entered into force 2008
- Signed by all EU Member States
- Ratified by 19 EU MS to date
  - Not ratified by: Bulgaria, Estonia, Finland, Greece, Ireland, Malta, the Netherlands, Poland;
- European Union ratified the Convention as well as a “regional organisation”

## For whom



“Persons with disabilities **include** those who have long-term physical, **mental** (psycho-social), **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”. (Art. 1)

## Purpose

“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.” (Art. 1)

## Disability definition

“Disability is an **evolving concept**, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others”

(Preamble)

## General principles

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

## Art. 19: Living independently and being included in the community

- (a) *Persons with disabilities have the 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;*
- (b) *Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*
- (c) *Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

## EU Framework

- Charter of Fundamental Rights of the EU: “the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community” (Article 26)
- Treaty on the Functioning of the EU (TFEU) requires the Union to combat discrimination based on disability when defending and implementing its policies and activities (Art 10) and gives it the power to adopt legislation to address such discrimination (Art 19)

## European Disability Strategy 2010 – 2020: a renewed commitment to a barrier-free Europe

- Accessibility
- **Participation**
- Equality
- Employment
- Education and training
- Social protection
- Health
- External Action

## European Disability Strategy 2010 – 2020: participation

- *Promote the transition to community-based care by: using Structural Funds and Rural Development Fund to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people;*
- *EU action will support national activities to achieve the transition from institutional to community based care, including use of [...] Funds for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers*

# FRA DISABILITY PROJECT

# The Fundamental Rights of Persons with Intellectual Disabilities and Persons with Mental Health Problems



*“Even if I cannot speak, it doesn’t  
mean I have nothing to say”*

JAG client, Sweden

# Two groups of individuals

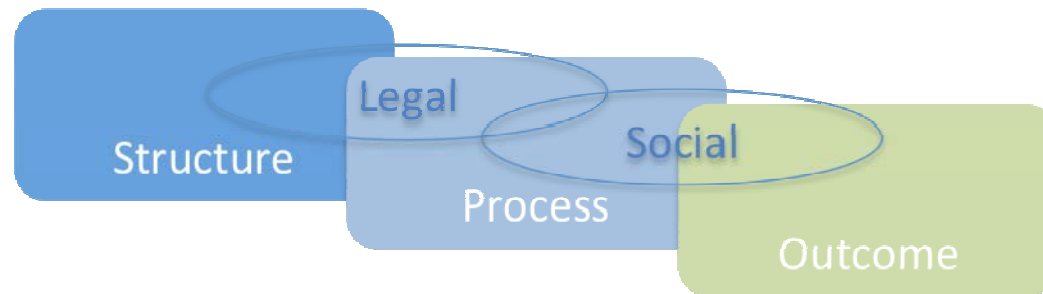
Considered decision to include two distinct groups of individuals:

- Persons with intellectual disabilities
- Persons with mental health problems/psychosocial disabilities

**Different groups, but often face similar reaction from society: discrimination, stigmatisation and social exclusion**

# Work methodology

- ❑ Socio-legal research: looking at law, policy and practice



- ❑ Linking up with key partners in the field  
(DPOs, European Institutions, Member States)

# Legal research

- ❑ Anti-discrimination and equality framework
  - Incorporation of the CRPD in national law
  - Incorporation of the European Union acquis
- ❑ Protection of specific fundamental rights
- ❑ Involuntary placement and involuntary treatment
- ❑ Competence, capacity and guardianship

# First report



**The rights of people with mental health problems and intellectual disabilities to take part in politics**



**The right to political participation of persons with mental health problems and persons with intellectual disabilities**

October 2010



# Social research

## □ Themes:

- independent living (Art. 19 CRPD)
- institutional living (Art. 14, 15, 16 CRPD)
- legal capacity (Art. 12 CRPD)
- access to justice (Art. 13 CRPD)

## □ Coverage:

- Background research in EU27 + report international standards
- Fieldwork in 9 countries

**Countries covered  
by the social study  
(in dark green)**



## Future work in the area of disability

- The legal protection of persons with mental health problems under non-discrimination law (late October)
- International developments on the fundamental rights of people with intellectual disabilities and people with mental health problems (December)
- Involuntary placement and involuntary treatment of persons with mental health problems (January 2012)
- 9 Case studies and a comparative report

For more information:  
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