December 2020

Access to Justice for Persons with Psychosocial Disabilities & Mental Health Problems:

Reflection Paper and Promising Practices

Key takeaways

Legal aid cannot be made mandatory

Although legal aid should be accessible, available and affordable, it cannot be made mandatory. This is particularly important for persons with psychosocial disabilities since some regimes of supported decision making still include the condition of compulsory support.

Substitute decision-making still prevails

Despite ratification of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), all countries in the European Union still include some type of substitute decision-making schemes as a last resort. In most European countries, substitute decision-making remains the only possible option without another form of supported decision-making regime in place.

Legal reforms matter

While practices from civil society are crucial to ensure supported decision making, they do not substitute the importance of legal reforms, nor does it exempt States as main duty bearers. Instead, States have the duty to ensure that support is systematically provided and available regardless of the existence of supports offered by private entities.

Involuntary measures deny legal capacity

Involuntary measures, such as involuntary treatment and placement against persons with psychosocial disabilities justified on mental health grounds, constitute a de facto denial of legal capacity, even though the person was not formally deprived of legal capacity. Thus, seeking legal remedy and justice when having experienced such human rights violations remain a challenge due to the persistence of national mental health laws.

The EU must step up its efforts

Despite challenges in competencies to implement UN CRPD obligations, the European Union should use its own voice as well as its leadership role to promote the shift towards inclusive and accessible justice systems.

Further training needed

Being confronted with widespread stigmatisation, persons with mental health problems often find themselves marginalised from wider support systems. People with psychosocial disabilities belong to the most vulnerable victims; it is often that judicial bodies and courts would not recognise them as rights holders in the proceedings and deny their victim status in favour of professionals and institutions who may harm them. Judicial staff, including judges, prosecutors and defenders, often require further training and education towards disability-inclusive justice.

Accessible communication is crucial

For many people, accessing justice systems and seeking legal aid means navigating through complex, physical, structural and legal environments. Too strict legal language constitutes another barrier when accessing justice. Considering the right of everyone to self-represent, legal processes for people with (psychosocial) disabilities should be accessible in communications, with the obligation to judges and judicial bodies to provide reasonable explanations.

Exclusion must be addressed

The various factors of exclusion of persons with psychosocial disabilities in justice systems need to be tackled on different levels, and any initiatives must be multi-levelled, as mentioned in the OHCHR resource package on the Goals and the Convention, published in December 2020.

01 | What are we talking about?

Let's start with some definitions...

Access to justice

For the purpose of this work, access to justice refers to the human right to enforce rights. Thus, access to justice constitutes a right in itself and an enabling and empowering right to allow individuals to enforce their rights and seek redress. It combines common elements such as fair trial, due process, access to court, judicial protection, effective remedies and redress.[1]

Coercive measures

Coercive measures refer to involuntary, forced or non-consensual measures carried out in mental health services against people with mental health problems. (See also definitions on involuntary, forced or non-consensual placement and treatment, seclusion and restraint).

Guardianship

Guardianship is a form of substitute decision-making where a person, usually with a disability, is deprived by law of their legal capacity (see definition below) or found to be 'incapacitated' and is appointed a guardian (or trustee or curator etc.) who is empowered to make decisions for or represent the interests of that person. Different types of guardianship regimes exist across Europe, including partial guardianship, which allows guardians to make decisions in certain areas of life and full or plenary guardianship which empowers guardians with total control over the lives of their wards.

Involuntary, forced or non-consensual placement/commitment or treatment

Involuntary, forced or non-consensual placement/commitment or treatment can be defined as any treatment or placement in/commitment to the hospital or other institution administered against someone's expressed wishes – expressed verbally or by any other means (body language, advanced directive etc.). This also includes non-informal placement of adults in foster care families or placed under community treatment orders (CTO). Legal definitions of involuntary placement and treatment vary from country to country.

Legal aid

Legal aid can be considered the ability to seek support from a lawyer. Legal aid shall be made available to those who lack their own resources. Those who have insufficient financial resources shall have legal aid made available since it is necessary to ensure effective access to justice. Legal aid can also be considered in the context of reasonable accommodation for persons with disabilities. Thus, denial of legal aid may constitute a violation of the fundamental right of accessing justice. The denial of legal capacity can negatively impact the right to access legal aid.

Legal capacity

Legal capacity is a human right and ensures that people have the capacity to be a holder of rights and an actor under the law. At its most simple, legal capacity enables people to make decisions for themselves and for those decisions to be recognised, including through the law. It refers to all the rights and obligations that come from persons and their interactions with others that may affect that person and others too. For the purpose of the paper, legal capacity is attained by entering an age of majority.

1 Fundamental Rights Agency (2011): Access to Justice in Europe: An Overview of Challenges and Opportunities. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/1520-report-access-to-justice_EN.pdf (11.12.2020).

People with lived experience

People with lived experience people who experience or have experienced mental distress. The term is broader and more descriptive than 'mental health problems'. Its underlying assumption is that mental distress is a meaningful human experience, and that it is for the individual to make sense of their own experiences within the context of their personal story. It positions the person as having expertise in their own experience (hence the equivalent term 'expert by experience'). It can be used on its own, or in conjunction with specific experiences, for example, 'lived experience of hearing voices' or 'lived experience of coercive measures'.

People with mental health problems

People with mental health problems are people who experience or have experienced mental distress, some of whom may have received a psychiatric diagnosis, such as depression, schizophrenia, or psychosis.

Persons with psychosocial disabilities

Persons with psychosocial disabilities are persons that due to a mental health problem face various barriers in society. It does not require a medical definition, for example, through a psychiatric diagnosis. Neither do persons with psychosocial disabilities need to define themselves as such. Instead, the term describes the experiences of people who have long-term mental impairments which, in interaction with various societal barriers, may hinder the full realisation of their rights. This definition echoes the resolution adopted by the Human Rights Council on 28 September 2017 (A/HRC/RES/36/13).

Users/ex-users

Users/ex-users are people with lived experience of using mental health services.

Survivor

Survivor is a rights-based term used mainly by mental health/survivor advocates. The term survivor seeks to show that some psychiatric treatments can be abusive (e.g. forced/ involuntary treatment) and may not comply with human rights. It can also refer to a person who has been living/is still living with mental distress.

Supported decision-making

Supported decision-making is the practice of supporting people with disabilities and mental health problems to decide for themselves rather than substituting decisions with those made by a substitute decision-maker (see guardianship above for an example of substitute decision-making regime).

The United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities - legally binding human rights convention that was signed and ratified by all EU Member States and the European Union itself.

02 | General outline

Being able to seek legal support and accessing justice systems is a central pillar in societies adhering to the rule of law. The reasons for seeking legal support can cover a wide range of topics, such as housing rights, inheritance, or workplace issues. Seeking legal aid in a situation of legal uncertainty or even in a dispute is crucial. Right at the start, it is important to mention that, in general, every person will seek legal support at some point in life and be supported in one's decision-making on the matter.

Although legal aid should be accessible, available and affordable, it cannot be made mandatory. This is particularly important for persons with psychosocial disabilities since some regimes of supported decision making still include the condition of compulsory support. Instead, persons with psychosocial disabilities must always be considered as the central holders of rights and must have the right not to choose legal support.

A continued disharmony between national (mental health) laws and human rights obligations

Access to justice is a key element towards the full enjoyment of all human rights for all persons irrespective of disability. For the first time in international human rights law, the UN Convention on the Rights of Persons with Disabilities (UN CRPD) dedicates a specific article towards access to justice (Art. 13 UN CRPD) as a stand-alone right.[2] With the ratification of the UN CRPD, States accept the binding nature of the treaty and commit to national implementation of the UN CRPD, for example, through law reforms, strategic policies and action plans, and awareness-raising initiatives.

However, until today States have been struggling to fully implement obligations of the UN CRPD. For persons with psychosocial disabilities, this is particularly the case with questions of autonomy and equality and non-discrimination. In its guidelines on Article 14 (right to liberty and security of persons with disabilities) of the UN CRPD, the Committee of the UN CRPD points at the disharmony between human rights obligations under the Convention and prevailing mental health laws that curtail the enjoyment of human rights:

> *"Persons with intellectual or psychosocial impairments are frequently considered dangerous to themselves and others when they do not consent to and/or resist medical or therapeutic treatment. All persons, including those with disabilities, have a duty to do no harm. Legal systems based on the rule of law have criminal and other laws in place to deal with the breach of this obligation. Persons with disabilities are frequently denied equal protection under these laws by being diverted to a separate track of law, including through mental health laws. These laws and procedures commonly have a lower standard when it comes to human rights protection, particularly the right to due process and fair trial, and are incompatible with article 13 in conjunction with article 14 of the Convention"*
>
> **- UN CRPD Committee 2015**

2 Flynn, Eilionóir Flynn; Moloney, Catríona; Fiala-Butora, Janos; Echevarria, Irene Vicente (2019): Final Report. Access to Justice of Persons with Disabilities. Available at: http://www.nuigalway.ie/centre-disability-law-policy/news/cdlp-final-report-for-un-special-rapporteur-on-access-to-justice-for-persons-with-disabilities-21jan.html (10.12.2020).

In 2020, the UN Special Rapporteur on the Rights of Persons with Disabilities, together with the UN Office of the High Commissioner on Human Rights (OHCHR) and the Special Envoy of the Secretary-General of the United Nations on Disability and Accessibility, released a ground-breaking guidance report, outlining International Principles and Guidelines on Access to Justice for Persons with Disabilities. It outlines ten principles, starting with the first necessity to recognise that all persons with disabilities have the full legal capacity and thus should not be denied access to justice on the basis of disability.

Legal Capacity – the Backbone of Disability Rights lacks Implementation

Not only is the legal question of concern influenced by existing legal mental health laws and frameworks, the problem of disharmony between human rights provisions and national laws also can affect the legal ability of persons with psychosocial disabilities to access justice and legal aid. Article 12(3) of the UN CRPD requires States Parties to move away from "substitute decision-making regimes", like guardianship, towards arrangements that guarantee that persons with disabilities have the support they need to make their own decisions and enjoy their rights ("supported decision-making"), ensuring the right to legal capacity. With a lack of legal capacity, often described as the backbone of disability rights, many people, in fact, have been stripped of the possibility to be in charge of legal affairs – including the possibility to seek legal aid. The UN CRPD Committee and others, however, have stated that such denial of legal capacity is not reasoned in an evaluation of mental capacity. In fact, in whatever mental capacity a person might be, whatever mental health problems a person experiences - under human rights principles, the decision to replace legal capacity with substituted decision-making regimes can never be justified on the grounds of disability, including mental capacity.

Following the ratification of the UN CRPD, several European countries have begun to reform laws on legal capacity, moving closer to regimes of supported decision-making. However, all countries in Europe still include some type of substitute decision-making schemes as a last resort. In most European countries, substitute decision-making remains the only possible option without another form of supported decision-making regime in place. In these countries, substitute decision-making is not even the last, but rather the first resort of action. In other countries, even where there is a choice between the two forms, substitute decision-making prevails over supported decision-making. Both practices represent human rights violations in view of compliance with the Convention.

In addition, the UN CRPD Committee regularly reiterates that reforms that alter but do not abolish substitute decision-making continue to be in conflict with the Convention. For example, in Germany, a current draft law presented by the Federal Ministry of Justice and Consumer Protection (BMJV) aims to reform its Civil Code (BGB) with a stronger emphasis on supported decision making. Yet, crucial differences to UN CRPD obligations remain, as outlined by the German Institute for Human Rights (DIfM). This includes the draft terminology of the wish of the person which constitutes a somewhat lighter approach to the UN CRPD obligation of the will of the person to appoint supported decision-makers. Similar developments were observed in Croatia when in 2015 plenary guardianship was abolished. Yet, in practice, Croatian courts tend to "partially deprive" people of all possibilities to take

any legal actions, thus *de facto* fully depriving people of their legal capacity and rendering the system of supported decision making non-existent. The examples show that sole changes in laws and legislative compromises do not lead to compliance with the UN CRPD.

Beyond the level of reforming the legal frameworks to further harmonisation with the UN CRPD, extra-legal initiatives are often initiated and carried out by non-governmental organisations (NGOs), Organisations of Persons with Disabilities (OPDs), and other actors on a grass-root level. These range from support for specific matters such as voting, housing, legal proceedings or medical treatments to support in everyday activities. For example, the Swedish Personal Ombudsman Programme is a programme that supports decision-making for persons with severe mental or psychosocial disabilities through the appointment of "personal ombudsmen" (PO). The PO is a professional who works full-time for the interests of their clients and does only what the person receiving support wishes. The PO supports clients in all kinds of matters ranging from family-matters to housing, accessing services or employment, and being well-skilled to argue effectively for the client's rights in front of various authorities or court. The support can be stopped at any time at the request of the assisted person. The PO has been recommended by the UN CRPD Committee as a supported decision-making programme specifically useful for persons with psychosocial disabilities. While the PO and other extra-legal initiatives, often coming from the grass-level, are crucial to apply supported decision making in reality, such practices from civil society do not substitute the importance of legal reforms, nor does it exempt States as main duty bearers. Instead, States have the duty to ensure that support is systematically provided and available regardless of the existence of supports provided by private entities.

What constitutes a reason to address the court?

Discussing access to justice by persons with psychosocial disabilities also requires understanding that not all experiences of human rights violations meet a national system and laws that comply with international human rights obligations. This is particularly important when remembering national mental health laws that allow for some form of involuntary treatment and/ or placement. Here, coercive measures need to meet certain criteria to be legally justified; for example, the person posing a potential threat to oneself or others usually to be determined by a psychiatric assessment. However, the UN CRPD forbids any form of measures without free and informed consent. In 2020, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment writes:

> *"It must be stressed that purportedly benevolent purposes cannot, per se, vindicate coercive or discriminatory measures. For example, practices such as (…) psychiatric intervention based on "medical necessity" of the "best interests" of the patient (…) generally involve highly discriminatory and coercive attempts at controlling or "correcting" the victim's personality, behaviour or choices and almost always inflict severe pain or suffering. In the view of the Special Rapporteur, therefore, if all other defining elements are given, such practices may well amount to torture.[3]"*

Going back to the previous chapter, legal capacity is closely tied to the experience of involuntary treatment and placement. **Involuntary measures against persons with psychosocial disabilities justified on mental health grounds constitute a *de facto* denial of legal capacity, even though they were not formally deprived of legal capacity.** This notion corresponds to the UN CRPD Committee's General Comment No.1 dividing legal capacity into two strands: the ability to hold rights and duties (legal standing) and exercise those rights and duties (legal agency). The latter can be understood "to act on those rights and to have those actions recognised by the law. It is this component that is frequently denied or diminished for persons with disabilities." (CRPD/C/GC/1).

3 https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_49_AUV.docx

Legal capacity thus also entails assessing and producing legal effects concerning the rights of others. So, in a way, involuntary treatment and placement against persons with psychosocial disabilities, regardless if formally deprived of legal capacity or not, constitutes an informal deprivation of legal capacity.

Next to introducing policies to reduce and end coercion in mental health, some EU Member States have begun to revise their mental health acts, albeit with slow progress. For example, in Ireland, the Mental Health Act commenced its reform in 2001 with several amendments made (the last amendment entered into force in 2018). However, the act still provides for forms of involuntary treatment and placement.[4] Although in violation of UN CRPD obligations, national reforms are accompanied by concerning inter-national legal initiatives such as the development of the additional protocol to the Oviedo Convention at the Council of Europe (CoE), which if adopted by the CoE would provide for further standardisation of involuntary treatment and placement. Over the last years, the preparation of the draft additional protocol has been heavily criticised by many stakeholders from civil society, the United Nations and other Council of Europe bodies.

Thus, seeking legal remedy and justice when having experienced such human rights violations remain a challenge due to the persistence of unfavourable national mental health laws. While national jurisprudence as well as jurisprudence from the European Court of Human Rights (for example, Rooman vs Belgium) have not yet sufficiently responded to the legal mismatch between human rights and national mental health laws, several Committees of UN Treaty Bodies have reacted to individual claims possible after the ratification of the additional protocol.[54]Recently several scholars have pointed to a reparations approach to experiences of institutionalisation, outlining the systemic human rights violations within systems of forced psychiatry.

The role of the EU – stuck within competency issues?

Despite increased involvement by the European Union, for example, through the upcoming launch of the EU Disability Rights Strategy 2021-2030, the primary responsibility for the implementation of the UN CRPD rests with the Member States. In fact, the EU does not have full competences in all areas of law: in some cases, the EU can alone pass laws, while in others, it has only shared or supporting competences along with its Member States. This is particularly the case for civil and political rights that concern persons with disabilities, such as legal capacity, freedom from coercive measures and access to justice.

However, in ratifying the UN CRPD, the EU committed itself to promoting practices compliant with the treaty. Following the Victims' Rights Directive 2012/29/EU,[6] the recent launch of the EU Victims' Rights Strategy bears the potential to improve the situation of persons with psychosocial disabilities to seek justice; in our view, the EU has not used its competency enough to further change on this important issue. Similar hopes can be made with the European Disability Rights Strategy 2021-2030, to be unveiled in the first quarter of 2021. This is a view which was reinforced by the Concluding Observation of the Committee following its review in 2015 in which it recommended the EU to 'step

4 Mental Health Act 2001 https://revisedacts.lawreform.ie/eli/2001/act/25/revised/en/html#SEC8

5 https://ccprcentre.org/files/media/(ENG)_YEARBOOK_2019_(WEB).pdf

6 The Directive includes several provisions with regards to disability and mental health, for example on respective professional and sensitive manner of treatment (9), equality & non-discrimination (3, 15), information (21), and protection from secondary and repeat victimisation (57).

up its efforts' in this areas as well as to 'take appropriate measures to ensure that all persons with disabilities who have been deprived of their legal capacity can exercise all the rights enshrined in European Union treaties and legislation, such as access to justice, goods and services, including banking, employment and health care, as well as voting and consumer rights'.

Although MHE is appreciative of the support received from the European Commission, we believe that **the Commission should use its own voice as well as its leadership role to promote the shift towards inclusive and accessible justice systems.** For example, the Commission could support the establishment of cross-national training programmes to educate the judiciary and medical professionals across Europe and financially support joint actions, which could help the Member States interested in implementing good practices on supported decision-making for people with psychosocial disabilities. The Commission could also encourage the Member States to finance the work being done in this area by national NGOs and particularly service user organisations whose members are directly concerned by these issues.

Negative attitudes prevail – even in judicial procedures

For persons with psychosocial disabilities, however, it is more likely to get in contact with, or rather be confronted with legal questions rather than being linked to their experience of mental health problems such confrontation is tied to obstacles in the environment. Often, negative attitudes lie at the core of putting persons with psychosocial disabilities in conflict with mental health service providers, law enforcement officials and the justice system. However, in judicial terms, conflict is unavoidable due to the above-mentioned persistence of national mental health laws allowing for involuntary treatment and placement. For example, if a person appeals to the court about a hospital's decision on forced treatment, they come into *de facto* conflict with the legal system. Thus, calling for de-stigmatisation and tackling negative attitudes, as well as ensuring "equality of arms" in the judicial system, are ultimately tied to reforms of mental health laws that systematically put persons in conflict with the law.

While there is a growing understanding of how attitudes on disability and mental health influence judicial procedures, several studies have focused on gender bias. For example, a study by Jumen e.V. in Germany demonstrates victims of sexual violence being confronted with negative attitudes by judges, prosecutors and defenders. Many women report feeling made responsible for having experienced sexual violence. Despite legal frameworks providing legal obligations for victim protection, such as the Istanbul Convention or the mentioned EU Victims' Rights Directive, implementation is lacking. Not only do these negative attitudes affect the outcome of judicial proceedings, but they also discourage persons from seeking justice in the first place.

While further research is needed, similar assumptions can be made in the context of mental health. Being confronted with widespread stigmatisation, persons with mental health problems often find themselves marginalised from wider support systems. People with psychosocial disabilities belong to the most vulnerable victims; it is often that judicial bodies and courts would not recognise them as rights holders in the proceedings and thus deny their victim status in favour of professionals and institutions who may harm them. When attempting indictment, fear prevails that persons are not taken seriously with a risk of secondary victimisation. Often such fear is well-founded, for example, due to the doctrine of unfitness to trial, which continues to exist in several member states despite UN CRPD ratification. Judicial staff, including judges, prosecutors and defenders, often require further training and education towards disability-inclusive justice. And in a criminal court setting, any vulnerability on the victim's side, including mental health problems, should not be taken as a proof that the criminal act or any other wrongdoing has not been committed.

Procedural barriers: a re-evaluation of language

For many people, accessing justice systems and seeking legal aid means navigating through complex, physical, structural and legal environments. Beyond the dimension of physical accessibility, for example, inaccessible court rooms, persons with psychosocial disabilities can face barriers with the costs of legal procedures.[7] Although many Member States provide the possibility to obtain legal and financial assistance when seeking legal redress, many persons are unaware of their rights.

Furthermore, too strict legal language constitutes another barrier when accessing justice. Considering the right of everyone to self-represent, legal processes for people with (psychosocial) disabilities should be accessible in communications, with the obligation to judges and judicial bodies to provide reasonable explanations. This requirement does not mean that proceedings should be less formal but should consider the needs of persons with disabilities as rightful parties.

Perhaps most of all, however, the persistent issues of legal capacity denial and coercion in mental health care constitute fundamental reasons of (justified) mistrust in the current justice systems. Thus, negative attitudes may interact vice-versa: unjustified stigmatisation by judicial bodies towards persons with psychosocial disabilities on the one hand, and justified concern for persons with mental health problems to seek legal aid in the first place. Last year, MHE published a reflection paper on what accessibility could mean for persons with psychosocial disabilities.

What can be done – a multitude of initiatives

The various exclusion factors of persons with psychosocial disabilities in justice systems need to be tackled on different levels and any initiatives must need to be multi-levelled. To reach full implementation of the UN CRPD, the Office of the Commissioner for Human Rights (OHCHR) developed sets of indicators for all provisions of the Convention, divided into structure, process and outcome. While structural indicators reflect the enactment of legal instruments and the adoption of policies to implement human rights, process indicators measure efforts (e.g. policies, budget allocation) to transform commitments into desired results. Finally, outcome indicators measure the results of efforts to further human rights.[8]

While preparing this scoping exercise, MHE launched an online call for good practices. In this initial exercise, several stakeholders (National Human Rights Institutions, NGOs, User-Survivor-led Networks, Lawyers Associations etc.) from the different EU Member States sent a variety of activities, including legal assistance programmes for persons with mental health problems, procedural adjustments and modifications, communication support, peer-support initiatives, university courses as well as human rights training with the judiciary and/or law enforcement officials. We collated some examples below, demonstrating the diversity of initiatives, yet all submitting parties emphasised the need for more action. Regarding UN CRPD Indicators, they demonstrate efforts to improve process and outcome but are often challenged in the absence of structural measures such as legal reforms. Some stakeholders also outlined the current legal context, which we decided to include as well.

7 On a general note, MHE published a reflection paper on the implications of accessibility for persons with psychosocial disabilities: https://www.mhe-sme.org/new-reflection-paper-accessibility/

8 https://bridgingthegap-project.eu/crpd-indicators/ The indicators for access to justice (Art. 13) in annex.

03 Country Situations

Practices on Access to Justice and Legal Aid

Albania

According to Article 1 of the Civil Code, every person enjoys full and equal capacity to have civil rights and obligations. This capacity begins with the birth of the living person and ends with one's death. However, Article 10 curtails legal capacity on the basis of a mental health problem. Adults (over 18 years old), who due to mental illness or mental development, are completely or partially incapable of taking care of one's affairs, may be deprived or limited of the ability to perform legal actions by the court's decision. Referring to Article 10 of the Civil Code, the removal or restriction of the capacity to act can be decided only by a court decision and is always accompanied by the placement in custody. The person who has been deprived of the ability to act is represented by one's legal custody regarding the decisions. International observers have also pointed out that these legal provisions are not in line with the UN CRPD, which considers that the provisions on deprivation of the capacity to act of persons with disabilities are contrary to the right to equality before the law. These provisions create serious barriers to access to justice for this category of people. In the new action plan 2021-2025 "For persons with disabilities", the Ministry of Health and Social Welfare has undertaken to implement the necessary legal changes to ensure the compliance of Albanian legislation with the Convention, for changes in the Civil Code, regarding the deprivation of the capacity to act of persons with disabilities.

Under Law no. 111/2017, the first form of legal aid or otherwise (Primary Legal Aid) is the type of legal service which consists of:

- Providing information regarding the legal system of the Republic of Albania, normative acts in force, the rights and obligations of the subjects of law and the methods for exercising these rights in the judicial and extrajudicial process; providing counselling;
- Providing advice on mediation procedures and alternative dispute resolution; providing assistance in drafting and compiling the necessary documents to mobilise the state administration or to request secondary legal assistance; representation before administrative bodies; AND
- Providing all other forms of necessary legal support that do not constitute secondary legal aid.

The second form of legal aid, or otherwise Secondary Legal Aid, is the type of legal service provided for problems whose solution can be realised only through the court or the prosecution. This type of assistance is provided by attorneys licensed by the National Chamber of Advocates. Through a free lawyer, the person addresses the court or the prosecutor's office to resolve issues or problems in any field (civil, criminal, administrative).

Persons benefit from the exemption from:

- Payment of court fees and costs (costs for witnesses, experts, translators);
- Prepayment of the execution fee of the decision at the state judicial bailiff service.

Czechia – Forensic Social Workers

In January 2020, the programme Forensic Social Workers started as part of a bigger project carried out by the Czech Judicial Academy (central institution of the justice sector for the training of judges, state prosecutors and other target groups) to enhance access to justice for vulnerable groups of people. The pilot testing of forensic social workers in 10 selected courts started in 2020. The aim is to help courts meet the increasing demands on communication with children and adults with psychosocial and other disabilities.

You can find more information here: https://www.jacz.cz/images/Projekt_Zlepseni_pristupu_zranitelnych_skupin_osob_ke_spravedlnosti/Improvement_of_access_to_justice_for_vulnerable_groups.pdf

Malta – Office of Commissioner for Mental Health

Already commenced in 2011, the Office of the Commissioner for Mental Health launched the awareness-raising programme to promote and protect the rights of persons with psychosocial disabilities and their caring others. The programme advocates for mental health and well-being in Maltese society and combat stigma and discrimination by empowering stakeholders and tackling challenges together. The office provides public information about patient rights, monitors the involuntary care process and reports on the quality of patient care and the care environment by involving users, families, staff, NGOs and other public and private entities and providers. It advocates for the promotion of mental well-being across all age groups and life settings; active prevention, including suicide prevention; combating stigma and discrimination; mainstreaming mental health and well-being in all policies and services; moving the focus of care from institutions to the community; moving acute psychiatric care to the acute general hospital setting; supporting rehabilitation through specialised units preferably in the community; providing long-term care in dignified facilities. According to the Office, a core challenge remains stigma and discrimination that keep persons from speaking up personally about their rights.

You can find more information here: www.mentalhealthcommissioner.gov.mt

Germany – Landschaftstrialog by Kellerkinder e.V.

An organisation by persons with psychosocial disabilities, Kellerkinder e.V. initiated the awareness-raising programme to fill the expressions of the UN CRPD with user-led understanding. While coming from the perspectives of persons with psychosocial disabilities, the programme also cooperates with professionals and relatives. The programme includes workshops concerning supported decision making, tackling the lack of effective participation of people with psychosocial disabilities, legal right to be free from forced medical treatment, stigmatisation of people with psychosocial disabilities, difficult access to legal and social support. Kellerkinder e.V. consists exclusively of people with psychosocial disabilities, it's an organisation of and not for people with disabilities.

You can find more information here: www.seeletrifftwelt.de and here: www.landschaftstrialog.de

Luxembourg - Service d'information juridique Info-Handicap

Supported by the Ministry of Family and Integration since 1999, the service informs people with disabilities and their family and friends, regardless of their disability, about their rights (benefits, laws and regulations). It organises legal assistance with a lawyer when they feel they are being discriminated against because of their disability. Individuals decide for themselves whether they want to access the service, guaranteeing confidentiality. Legal advice is free of charge for the individual, and the service covers the lawyer's costs at the legal aid rate; however, the service does not include legal support should the person wish to go to court. While the authors hope that more persons with disabilities are aware of the service it suggests greater financial resources to enable the service to take legal action on behalf of people with disabilities based on free and informed consent.

You can find more information here: https://info-handicap.lu/

Netherlands - Advocacy for psychiatric patients in the Netherlands

Under the Dutch National Foundation of Patient Advocates in Mental Health Care, attention is paid to the patient counsellor's role ('patient advocate'), a figure rarely seen in Europe who assists clients within (compulsory) mental health care services. In the Netherlands, persons with psychosocial disabilities subject to involuntary and voluntary measures have a right to the individual support of a patient advocate. Since 1982, the support of patient advocates has been organised and facilitated by the Dutch National Foundation of Patient Advocates in Mental Health Care. How patient advocates have to perform their statutory tasks has been elaborated in rules of conduct formulated by the Foundation mentioned above. Some cornerstones in the Dutch model are independence from the psychiatric hospital, easy accessibility, confidentiality, receptivity to a persons' questions and complaints, an orientation to the individual patient's legal position, partiality, promotion of the persons' healthcare-related interests and the requirement of person consent for actions. The combination of these cornerstones results in a very specific role for the advocate.

The information given by the patient advocate involves both material and formal law. If the patient has a complaint or a request in relation to her or his psychiatric care, the patient advocate will analyse the feasibility of it from a legal viewpoint and suggest possible actions. Practical actions undertaken by the patient advocate usually start on the informal level, e.g., by arranging one or more meetings between the patient and the healthcare professional responsible for the action with which the patient is dissatisfied. If such meetings do not take away the patient's discontentment, the strategy might be moved to a more formal level. As soon as the patient plans to raise the matter to the judicial level, the patient advocate must pass on the case to a solicitor or barrister.

You can find more information here: https://www.pvp.nl/WVGGZ/

Georgia - Legislative safeguards for access to justice of persons with psychosocial disabilities and mental health problems

Under the Georgian Human Rights Institution, the programme provides free legal aid to persons with mental health problems in the procedures related to the judicial process of recognising a person as a support recipient and persons subjected to involuntary hospitalisation through State funding.

Following its Legal Capacity Reform, implemented in Georgia in 2015, which had abolished plenary guardianship and moved to the supported decision-making system, legal safeguards were placed in the Civil Code of Georgia giving person with disabilities free legal representation in the judicial procedures related to the recognition of a person as a recipient of support. Moreover, new amendments allow withdrawing the appointment of a supported decision-maker. However, the implementation of supported decision making remains problematic. Additionally, Georgian legislation includes the provision of mandatory free legal aid to any person subjected to involuntary mental health treatment and hospitalisation. However, low awareness within the judicial system (including judges) and few professionals providing legal aid free of charge are major barriers preventing implementation of the legal provisions. Additionally, free and informed consent of persons with mental health problems remains problematic, showing insufficient full and meaningful participation.

Greece - Action Platform for the Rights in Mental Health

From 2015-2016 operated under the Bodossaki Foundation, the project's cornerstone was the establishment of the first Advocacy Office for people with mental health problems in Greece, offering individualised support jointly by lawyers and clinicians. The main services included information provision, consultation, guidance, and referral to other services and institutional bodies for users of mental health services. It worked closely with representative users' and families' associations, trying to empower people to claim their rights, to recover from mental illness and "passive" position and adopt active citizenship. The project combined these services with community awareness activities, networking with relevant services, targeted capacity building for professionals (lawyers, judges, mental health professionals, police) and lobbying activities, including proposals for institutional changes, based on the development of the cases, to address the gaps regarding rights mainstreaming in mental health and barriers in access to adequate clinical and legal services. The project worked closely with representative users' and families' associations, aiming to empower people to claim their rights, to recover from mental illness and "passive" position and adopt active citizenship. People with mental health problems were part of the trainers' team in capacity building activities. Equally, they participated in the Pan-Hellenic Network as speakers and representatives in our lobbying activities.

You can find more information here: https://www.slideshare.net/ssuserd2c2b0/fitsiou-easteuropean-psychcongress-2015

Hungary – Validity Foundation

An international NGO based in Budapest, Hungary, Validity Foundation uses legal strategies to promote, protect and defend the human rights of people with mental disabilities worldwide. Taking a small number of individual cases to national, regional and international courts, Validity is a global leader in pushing for legal validation of the human rights of people with mental disabilities. Each case seeks to improve the lives of clients and many other people who suffer similar human rights violations.

You can find more information here: https://validity.ngo/

Do you consider yourself a person with psychosocial disabilities? Have you sought justice & legal aid? Tell us your story to shape our work & advocacy! Jonas.bull@mhe-sme.org (any information will be treated confidentially).

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