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Research Paper

The convention on the rights of persons with disabilities and mental health law: A critical review

La convention relative aux droits des personnes handicapées et le droit de la santé mentale : un examen critique

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ABSTRACT

The Convention on the Rights of Persons with Disabilities is an international treatise about human rights that was adopted by the United Nations in 2006. Although it is a welcome articulation of the rights of persons with disabilities, a detailed review of the text detects some insufficiencies and challenges, especially when analyzed in light of people with mental illness. This paper aims at revising critically the text of the Convention in order to detect such troubles. It would allow us a better understanding of the text if we really want to protect and defend rights of persons with disabilities. Thus, in this paper the author will revise concepts used by the Committee and the Convention such as “disability”, “legal capacity” and “mental capacity”, “discrimination”. Moreover, according to the concept of “safeguards”, this paper will introduce psychiatric advance directives and shared decision-making as two tools in order to defend persons with mental illness. Both preserve the background of the Convention, such as respect for the dignity and autonomy, provide care without discrimination, and encourage rehabilitation, which implies a better quality of life.

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R É S U M É

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La convention relative aux droits des personnes handicapées est un traité international des droits humains, adoptée par les Nations Unies en 2006. Bien qu'il soit une bonne mise en place des droits des personnes handicapées, un examen détaillé du texte révèle certaines insuffisances et laisse irrésolus certains défis, en particulier lorsqu'ils sont analysés à la lumière des personnes atteintes de maladie mentale. Cet article entend faire un examen critique du texte de la convention afin de relever de tels manques. Cela permet de mieux comprendre le texte, si nous voulons vraiment protéger et défendre les droits des personnes handicapées. Ainsi, dans cette étude, nous révisons les concepts utilisés par le comité et la convention tels que : « handicap », « capacité juridique », « capacité mentale », « discrimination ». En outre, en nous servant du concept de « garanties », nous présenterons l'anticipation des orientations psychiatriques et la prise de décision partagée comme des outils susceptibles de prévenir et de défendre les personnes atteintes de maladie mentale. Il s'agit à la fois de garder ce qui fonde la convention, tel que le respect de la dignité et de l'autonomie, de mettre à disposition des soins sans discrimination, et d'encourager la réadaptation qui implique une meilleure qualité de vie.

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1. The Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is an international treaty about human rights that was adopted by the United Nations in 2006 (United Nations, 2006). It has been accepted that this Convention does not propose new rights, but that it gathers a considerable amount of rights and principles founded in human rights legislation. Thus, this treaty addresses the full set of human rights, civil, political social, economic and cultural rights. The Convention recognizes and reaffirms some specific Human Rights such as dignity and individual autonomy. Moreover, the CRPD embraces this framework in order to promote, formulate and evaluate “the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities”.

In article 1, the Convention identifies its purpose, which is to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms for all persons with disabilities, and promote respect for their inherent dignity. Moreover, in article 3 the CRPD embraces its 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; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities.

At the same time it is also important to realize that the Convention underpins certain rights that must be guaranteed to all persons with disabilities. These rights include the following: right to life (article 10), equal recognition before the law (article 12), access to justice (article 13), liberty and security of person (article 14), freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15), freedom from exploitation, violence and abuse (article 16), protecting the integrity of the person (article 17), freedom of expression and opinion, and access to information (article 21), respect for privacy, (article 22), education (article 24), health (article 25), and habilitation and rehabilitation (article 26).

States parties have to respect and promote these rights, but this might provoke some controversial situations. Since one must have the right to choose freely in equal recognition how they want to live;

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