Severe mental illness can have a considerable impact on people’s ability to act and make decisions. In medical care settings this may result in conflicting priorities between patients’ right to self-determination and her right to receive optimal treatment. One way to avoid such conflicts is supported (or assisted) decision-making which aims at improving the patient mental capacity to decide.

The UN Convention on the Rights of Persons with Disabilities (CRPD) strongly supports supported decision-making and favours it upon substituted decisions. In order to debate the possibilities and borders of supported decision-making for psychiatric practice in Germany and Europe the German Association for Psychiatry, Psychotherapy and Psychosomatics (DGPPN) invited the UN Special Rapporteur on the right to health and other experts in the fields of psychiatry and law, and former users of the mental health services to a symposium in Berlin on 5th July.

In his key note lecture the UN Special Rapporteur on the right to health, Prof. Dainius Pūras, pointed out the differences in the implementation of human rights in mental health between regions of the world and called for a strong leadership of the relevant stakeholders, especially of psychiatrists and their associations. He questioned the concepts of dangerousness and medical necessity and advocated a global paradigm shift towards more and better community-based and psychosocial services, support models and concrete measures to reduce coercion.

Prof. Thomas Pollmächer, member of DGPPN’s executive board and head of its task force on patients’ autonomy, described the area of conflict between a patient’s right to autonomy and his well-being. He presented criteria for rating a person’s decision-making ability and approaches to support the patient with the goal to raise the threshold for substituted decision-making and thus reduce coercive measures. In order to implement such an objective rating process, he highlighted the need for empirical research on decision-making ability, multidisciplinary discussion and training in supported decision-making.

This view was shared by Prof. Silvana Galderisi who disagreed with the interpretation of article 12 of CRPD by the General Comment of the UN Committee on the Rights of Persons with Disabilities. While this article ensures equal recognition before the law for people with disabilities it does not, according to Prof. Galderisi, preclude all non-consensual treatment and substituted decision-making as this would endanger a person’s well-being. In her speech she presented the concerns among European medicals and called for testing and evaluation of different models.

The legal point of view was outlined by Beate Kienemund, until recently head of the department of civil law in the German Ministry of Justice. She pointed out that only the CRPD is legally binding, not the General Comment. The Convention guarantees non-discrimination of persons with disabilities in comparison to persons without disabilities. As the latter can also be restricted in their decision-making capability, the Convention would not generally prohibit substituted decision-making but calls for equal procedures. Therefore, knowledge and competency regarding assisting in decision-making need to be implemented into the training of mental health professionals.

The workshop was concluded by the presentation of Dr. Elke Prestin, a former user of the mental health system and currently working as a research assistant in the field of mental health. She presented different concepts of medical ethics and regarding the principal of justice favoured the fairness model that accords the highest amount of help to those who need it most rather than
egalitarian or efficiency-driven models. Supported decision-making in her view means informed consent and aims to identify the person’s will in close cooperation and with sufficient amount of time. Moreover, she said that users of the mental health system need to be included in the development of mental health services and research projects.

In the closing discussion the experts agreed on the need for empirical, large-scale research regarding decision-making capability as well as its potential limitations. For this, a thorough and anonymous documentation of coercive measures is important. The experience with best-practice models should be shared and the discussion among the different stakeholders needs to be continued. As part of its commitment, the DGPPN has just released a guideline on the handling of aggressive behaviour in psychiatry and prevention of coercive means.

DGPPN Guidelines (in German):
Short version
Long version

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