

Human Rights, Access to Justice and Rights Restrictions: Concepts and Context

Dr. Eilionóir Flynn
Centre for Disability Law and Policy



Overview

- ◆ Human Rights: Sources and Substance
- ◆ Convention on the Rights of Persons with Disabilities
- ◆ Learning for Human Rights Review Committees from international human rights norms
- ◆ Future directions – practice and procedures based on human rights framework

Where do human rights come from?

Legal frameworks

- ◆ International human rights framework (UN, EU, Council of Europe)
- ◆ National human rights law (Constitution, legislation)

Other sources

- ◆ Morality
- ◆ Philosophy
- ◆ Religion
- ◆ Culture

When we talk about 'our human rights' which sources of rights are we referring to? Which sources of rights should Human Rights Review Committees look to?

International human rights law

- ◆ UN Conventions (CRPD, CAT, CEDAW, ICCPR, ICESCR, UDHR) and decisions by treaty bodies
- ◆ European Union Charter of Fundamental Rights and Freedoms
- ◆ Council of Europe – European Convention on Human Rights
- ◆ Ireland is a 'dualist state' – bound in international law but can't argue in a national court unless incorporated

National Human Rights Law

- ◆ Bunreacht na hEireann 1937 specifies some rights (right to free primary education, right to equality before the law)
- ◆ Some rights are not written in the Constitution but implied from it (right to privacy, right to marry, right to earn a living)
- ◆ Legislation e.g. Employment Equality Act, Equal Status Act (ECHR Act in UK)

What does 'having a right' to something mean?

Rights 'to'

- ◆ Education
- ◆ Legal Capacity
- ◆ Support to live independently
- ◆ Reasonable accommodation

Freedoms 'from'

- ◆ Discrimination
- ◆ Torture, inhuman, degrading treatment
- ◆ State intervention: privacy
- ◆ Freedom of expression, association

Which of these are 'legal' rights and which are 'moral' rights? Which rights should Human Rights Review Committees make decisions about?

Focus on the CRPD

- ◆ Convention is an authoritative source of rights because:
- ◆ Covers all kinds of rights: civil, political, economic, social cultural
- ◆ Consolidates all existing IHRL and applies to a disability context
- ◆ International consensus, Ireland has signed and is committed to ratifying

Key messages from CRPD

- ◆ Participation of people with disabilities
- ◆ Respect for autonomy (human dignity) and support for capacity
- ◆ People with disabilities have the same rights as everyone else – they just might need to be applied in a different way to make them effective
- ◆ Key issues for Human Rights Review Committees: Access to Justice, Capacity (Decision-Making) and Participation

Access to Justice: Article 13

- ◆ States shall provide effective access to justice for persons with disabilities on an equal basis with others
- ◆ Procedural and age-appropriate accommodations
- ◆ Effective role of people with disabilities as direct and indirect participants
- ◆ Appropriate training for those working in the field of administration of justice

Natural Justice

- ◆ Procedural fairness – hearing both sides, and decision-makers or those judging the issue should not have a conflict of interest
- ◆ No one's rights should be restricted unless they have been given prior notice, and an opportunity to present their own views
- ◆ These principles apply broadly, not just to the formal legal system

Equality and Capacity: Article 12

- ◆ Right to recognition everywhere as persons before the law
- ◆ Persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life
- ◆ Appropriate measures to provide access to the support they may require in exercising their legal capacity
- ◆ Guidance: presume capacity first, offer support to exercise capacity (e.g. advocate)

Participation: Articles 3 4 19 21 29 30

- ◆ Enabling participation – rights to involvement in personal and public decision-making
- ◆ Furthering participation – rights to accessible information and freedom of expression
- ◆ Participation of service user in process
- ◆ Participation of support staff, parents, families, advocates
- ◆ Participation of other units of organisation in its human rights framework

Future Directions

- ◆ Human Rights Review Committees using Convention as guidance for their procedures, processes, and discussions about rights
- ◆ Organisations understanding the changes the Convention brings and planning programmes based on human rights framework
- ◆ Clarity on what 'human rights' are and what our responsibilities are to protect them