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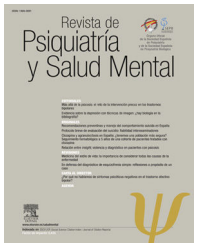

CONCEPTUAL STATEMENT

Stance of the Spanish Society of Psychiatry regarding the United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (CRPD), approved by the General Assembly of the UN in 2006 and ratified by Spain in 2007, constituted a positive advance for people with disabilities by dealing with this significant reality in the area of human rights. The principles of respect for dignity, autonomy, non-discrimination, equality between men and women, and accessibility, among others, thus became the cornerstones of the United Nations CRPD. Disability was therefore related not to the person, but to the society that prevented them from developing their potentiality, which was to be promoted to the utmost. Views change: it is not the knowledge a person lacks that is important but what their abilities are, so as to enhance them and encourage equality. Furthermore, the way in which disability was confronted has changed, from a model based on paternalism, where to a greater or lesser extent these people had to be tutored, to another based on fostering personal autonomy. When the Convention mentioned the term disability, it clearly stated which people it was referring to: ''persons who have long-term physical, mental, 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''. Regarding disability based on psychological (mental) disorder, leaving clear the beforementioned stance regarding the satisfaction produced by the recognition of rights, which had been particularly abandoned in the past for mentally ill patients, several aspects arousing doubts or controversies need to be detailed, for both its acceptance and practical application. Particular reference therefore needs to be made to article 12.4 of the CRPD and the observation from the Committee[1] on measures relating to the exercise of legal capacity in which the following must be respected: ''the will and preferences of the person, are free of conflict and undue interest''. The terms quoted are repeated on several occasions throughout the Convention and although as a guiding principle of a person with disability we would fully adhere to these terms, we would ask ourselves the question, do we always respect the will, including the will without the freedom because it has been changed due to illness? Do we respect the will always, even when this goes against the person's own interests or against those of others, knowing that in a situation where mental illness was lacking, the person would not have acted as they did? Do we respect the will of the person regardless of the fact this would involve law enforcement agencies with the subsequent stigma this would attach to the person? We believe there is a need to specify what is understood by will and preference and then to determine whether the pathological altered will is to be included.[2] In order for true autonomy to exist, it must be governed by the principle of freedom. However, the person who takes a decision in keeping with awareness, thought, perception or affectivity, due to their cognitive impairment, will not always be free to do so. Should that person not be supported in the knowledge that it is not right for the person in question and that its origin is medical? This has already been demonstrated

by Heny Ey in his Psychiatric Studies (study number 4) that ''organic illnesses are threats to life, mental illnesses are attacks on freedom... psychiatry is a pathology of freedom, it is *Medicine applied to diminutions of freedom*''.[3] Ultimately, the aim of psychiatry is to restore peoples' freedom, i.e. give them back their autonomy so that they can freely make decisions. Therefore, those persons whose will has been affected by a mental disorder or a mental handicap are vulnerable while the base disorder is unbalanced and they require protection until, in the many cases in which this is possible, the psychiatric treatment restores their ability to take decisions. However, to do this, on occasions it is necessary to intern them and treat them against their will. In this respect, article 14 of the Convention indicates that they ''are not deprived of their liberty unlawfully or arbitrarily and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty''. As we can see, a reading of the Convention raises the prospect of the possibility that ''deprivation of Liberty is in conformity with the law''; however, the declaration of the Committee on this article (Liberty and security of the person) of the Convention states:[4] ''The Committee has called upon State Parties to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints'' (Paragraph 12).'' The involuntary detention of persons with disabilities based on risk or danger, alleged need for care or treatment or other reasons relating to impairment or health diagnosis, such as severity of impairment, or for the purpose of observation, is contrary to the right to liberty, and amounts to arbitrary deprivation of liberty'' (Paragraph 13). We observe a restrictive interpretation of the Committee which we understand leaves the vulnerable person with special care needs unassisted. Their temporary lack of freedom whilst they are unbalanced by their illness, prevents them from taking decisions in keeping with free will. This is a vicious circle: if the person's sanity is not restored, one of the rights contained in the 1978 Spanish Constitution in its article 43.1, ''the right to health is recognized'' may not be complied with. The person who has no ability to decide, albeit transitory or permanent no longer has the standing of equal opportunity to the rest of the population, and the Convention, or its interpretation by the Committee, offers less opportunity to restore health and therefore, freedom and autonomy to the person who most needs it. As an example, let us consider the case of a person with autism or an intellectual disability who self-harms, bashing their head; or a person who is depressed and wishes to commit suicide; or a person with a bipolar disorder who during a manic depressive phase takes risky behaviour and leads him or herself and family into ruin; or a person who abuses their partner when under the influence of drugs, etc. We as doctors understand thar our job is to protect health and encourage access to the same to anyone who is vulnerable due to their disability. If they cannot access the health system we are prolonging the duration of their disability and thereby promoting their inequality compared to other people with a different type of disability. Another consideration regarding article 14 and the observations of the Committee to Spain (2019): 5it recommends in its section a) ''prohibit the involuntary placement and involuntary treatment on the grounds of disability and guarantee that mental health interventions are based on human rights''. In Spain there is no involuntary placement or treatment on the grounds of disability. Both situations exclusively occur in people with mental health issues who, at a specific moment and time, have temporarily lost their freedom and ability to self-determination, and are vulnerable and need support to restore the freedom of which they are deserving in their condition as a human being. Ultimately, they are not involuntarily placed in an institution because of a mental disorder but because of the resulting imbalance when the person does not have the ability to decide for themselves, as contained in art. 763, Code of civil procedure (CCP). Using a generalisation like that shown leads to confusion and stops protecting those who genuinely need it. Finally, the same Committee, when dealing with article 15 in 2019, again made generalised statements to the permissiveness of art. 763 CCP which allowed for the ''use of physical, mechanical and chemical methods of restraint on persons with psychosocial impairment; these methods include, among others, forced medication, electroconvulsive therapy and other treatments and internments without free and fully informed consent''.[5] It should be noted that in Spain, article 763 of the CCP permits the measures outlined by the Committee not because the person is disabled, but because it is considered that, with today's knowledge of science, these measures are necessary for the person to return to health and consequently renew the necessary autonomy to take decisions. The Committee mentions the need for ''free and fully informed consent''. This is exactly what is sought from the viewpoint of psychiatry and which Henri Ey pointed out2 many years prior to the existence of the Convention, the study and restoration of freedom, so that the fully informed person may choose as requested by the Convention. What does ''fully informed'' mean? We understand that it is about people being able to freely choose between the different options which are presented after analysis, in keeping with their own experience and interests. If this capacity is lost temporarily, or has not been acquired, as occurs on occasions with mental illness, the current limits of scientific knowledge must be expounded to protect the person with that disability for the sake of restoring it as much as possible and not strengthening stigmatization by inaction through the inappropriate use of ''pathological resolve''. In the end, from science we do not understand the disability as all or nothing, always or never existing, but as a state in which a person with a mental disorder finds him or herself, in most occasions temporarily and who on numerous occasions, with the appropriate treatments, may be fully autonomous. This is precisely what is sought, to help the person recover their health and at the same time be able to freely take decisions. The old adage *there are not diseases but rather patients* is applicable to mental impairment too: the specific case must be treated, and generalisations avoided. The latter merely convey the idea that the Conven-

tion is unable to encompass the particularity of mental capacity and its characteristics. For all that, acknowledging the unquestionable value of the Convention and supporting the initiatives promoting the rights of persons with disability in general and mental disability in particular, we understand that, when controversies or contradictions like those already mentioned arise, we must use our common sense to protect the best interests of citizens who at certain times, or for a duration of time, are unable to perform at will and with freely determined preferences.[6]