

Liberty (and security) on an equal basis

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Outline

- Article 14 as pure non-discrimination provision
- Prohibition of mental health detention
- Criminal liability, other generally-applicable detention
- Institutionalization – Articles 12, 14, 19
- CRPD and other human rights mechanisms



Article 14

- [Text](#) – balanced, paragraphs 1 and 2
 - No discriminatory deprivation of liberty
 - Disability-specific or disproportionately targeting PwD
 - No discrimination in lawful processes of detention or conditions of detention
- [Ad Hoc Committee Chair's Comments](#)
- Article 14 Guidelines, on non-discrimination character and drafting history – paras 4-5, 7-9



Prohibition of mental health detention

- A14 Guidelines paras 10, 13-15, 16, 19, 22-23, 24
- Selected Concluding Observations
 - Compare [Spain](#), [Austria](#), [Australia](#); see recent [Moldova](#)
- Describing the discrimination:
 - Discriminatory regime conceptually and practically based on actual or perceived impairment (psychiatric diagnosis/self-described distress)
 - Discriminatory grounds of detention (legislation contains reference to impairment – stand-alone mental health legislation, or to proxy for impairment such as mental capacity and risk to self/others)
 - Examine why and how these criteria are proxy for impairment



Criminal liability, other generally-applicable detention

- Equality, not exemption
- Distinction between disability-specific detention and vulnerability to state power on an equal basis with others
- Examine for de facto equality
 - As applied (individual instances of selective targeting or unfairness)
 - Systemic unfairness/disproportionate impact (e.g. criminalization of poverty and non-violent unusual behavior)



Criminal liability etc. continued

- [Article 14.2](#) and balance
- A14 Guidelines paras 16, 17-18, 20-21, 24
- See also OHCHR expert meeting materials
- Implications:
 - Right to be tried and to have procedural and other accommodations
 - Abolition of insanity acquittals (Article 14, 12, 13 or all?)
 - Reform or abolition of penal system and other forms of detention – promotion of restorative justice, and fairness considerations in adjudication
 - E.g. taking account of person's social circumstances including discrimination
 - Be careful that restorative justice does not turn back towards compulsory mental health interventions or 'fixing the person' and remains in the social arena



Institutionalization – Articles 12, 14, 19

- What is ‘institutionalization’?
- All lockups in psychiatry however long? Only placements treated as residential, not temporary/short-term?
- Detention (not able to leave at will)/ denial of legal capacity (decision to refuse admission or to leave not respected)/ obligation to live in particular living arrangement (placement against one’s will or without one’s free and informed consent) – Article 14, overlap with Arts 12 and 19
 - Also re Article 12, no third-party decision-maker
 - Hospitalization/institutionalization, Article 25 if not 19 for short-term mental health detention (basis for prohibition along with Arts 12 and 14)
- Monitoring of institutions and review of detentions addresses current reality, transitional? – Doesn’t imply approval of these practices
 - See A14 Guidelines paras 9 and 19



CRPD and other HR mechanisms

- A14 Guidelines paras 1-2
- Absolute prohibition vs toleration of forced treatment and involuntary internment
 - Human Rights Committee (ICCPR) GC35 para 19
- Working Group on Arbitrary Detention BP&G as bridge towards absolute prohibition, or simply unclear?
- What can be done to motivate understanding of any and all mental health detention as unlawful discrimination?

