

# APOYOS Y ACOMPAÑAMIENTO EN LA TOMA DE DECISIONES

## COLECCIÓN

Documentos en clave de ética de los espacios de reflexión ética  
de las entidades federadas en Dincat

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# 1

## Introduction

Josep Tresserras Basela

When we began to talk about the reform of the state Civil Code and how this reform was being considered with the first drafts, ERAESS Dincat began to reflect on the importance of decision making, beyond what was envisaged to be regulated in the new law. At that time, it was already clear that the focus was on ethical reflection, and not only on the legal part.

The implementation of legislative changes that have been made in the State with the law 8/21 of 2 June, and Decree Law 19/2021 of 31 August in Catalonia pending the amendment of the Catalan Civil Code, has meant for people with intellectual disabilities a qualitative leap in the exercise of their rights. For the entities that support people it has special relevance, since it leaves behind the model of substitution in decision making and universalizes the model of support for legal capacity as the only valid option, so that people can decide with the necessary support how they want their life to be, and thus have a good life and be happy, as each person understands happiness.

Leaving aside legal considerations and focusing primarily on freedom as a fundamental value, this paper reflects on freedom as a basis for making decisions. The reflections that we find here are valid for any person of legal age, and reaffirm

The reflections we find here are valid for any person of legal age, and reaffirm the right to exercise freedom on equal terms for all people.

We reflect on the path we take to be able to make decisions freely and, if necessary, receive the necessary help to do so while respecting others.

Joan Canimas brings us closer to the different meanings of the word freedom in order to answer the question of what freedom is: to be able to do what one wants or has decided to do without harming anyone. Finally, he reflects on responsibility and happiness: responsibility as an inseparable part of freedom, and happiness as the sum of small moments and situations that lead us to have a good life.

From the philosophical reflections on freedom, this has become part of law. Andrés Labella takes us into the law and how the right to freedom has been gaining ground, so to speak. The right to personal freedom in its different manifestations. I would especially highlight its presence in the Convention on the Rights of Persons with Disabilities.

Nuria Ambròs takes this reflection to the field of people with disabilities. There will be some people with disabilities who have never made decisions, they are not used to it and they are not used to it.

and others will need support at different times and in different situations throughout their lives. She stresses the need to listen to and respect individual rhythms to ensure that everyone has the life of their choice.

Finally, Silvia Alba summarizes Joan Canimas' work on protective and perfect actions as to whether or not it is ethical to limit people's freedom when supporting them in making decisions. I think it helps us all to focus the reflection and to detach ourselves from the paternalism that has marked for many years our relationship with people with disabilities.

We have in our hands a good tool to help people who need it in their quest to have a good life and be happy. A useful instrument for all of us when facing the need to decide.

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# 2

## The importance of freedom, happiness and responsibility in people's lives

Joan Canimas Brugué

Among the most important characteristics of the human being is freedom, a good so important that we have made it a fundamental right. And it is so important because, as we shall see, it is the path that allows us to be responsible and happy.

Turning a good or value into a right means that respecting it no longer depends only on the goodness of individuals, but becomes part of a legal system behind which is the power of the State, which obliges and, therefore, threatens and punishes those who do not respect it.

However, the word *freedom* can have different meanings. The most common are, in my opinion, these four:

### 1. FREEDOM OF ACTION

It refers to the possibility of doing or saying without anyone or anything preventing it. For example, going for a walk because you feel like it or expressing an idea. In order not to have to talk about "freedom of action and expression" every time, it is easier to consider that freedom of action includes freedom of expression, because to expose is also an action, a fact.

Of the impossibility of performing some action, or of being able to perform it to a greater or lesser degree, it is sometimes also said not to have autonomy, or to have it limited, but this word is usually reserved for situations in which the limitation comes from the

person. For example, when we have a physical disability that prevents us from getting on a bus that is not adapted, or when we have an intellectual disability that prevents or hinders us from making a list of the groceries we need or finding them in a large supermarket and we need someone to help us do it or do it for us.

### 2. REFLECTIVE FREEDOM

Refers to the mental capacity to analyze things and, if necessary, to decide reasonably between two or more possibilities. For example, assessing the health risks of smoking and deciding not to smoke, despite the desire to continue smoking.

Reflective freedom can be limited by many things; for example, by lack of information, by the effect of drugs, by fear, anger or extreme need, by age-related immaturity, by a mental disorder or an intellectual disability, etc. In these situations, we can be considered to be slaves of ignorance, dependencies, emotions, desperation, impossibility to understand the situation and its consequences, etc. Therefore, for some important decisions or actions, it is necessary to have reflective freedom and to be able to give free consent.



A consent is free if it meets three conditions: the person (i) has truthful and adequate information and the necessary and possible supports and time to understand the information and make the decision, (ii) does not suffer undue coercion that determines the decision, and (iii) has the cognitive capacity to understand, retain, reason, comprehend and communicate the decision. However, the degree to which these three conditions are required is determined by a fourth variable: (iv) the magnitude of the possible consequences of the decision or action. The magnitude of the consequences has degrees and is deployed in a range that goes from those decisions or actions for which it makes no sense to take into account these three variables (for example, a person wants to drink some water and doing so will not cause any harm or discomfort), to those in which it must be very demanding on all three variables (for example, when someone asks for assisted suicide). These conditions are explained and expanded upon in **Chapter 5** (*Limiting Privacy and Freedom of Action: Protective and Perfect Actions*).

Reflective freedom has been called by many names, including free will, competence, self-government, and autonomy.<sup>1</sup>

### 3. SOCIAL FREEDOM

The way human beings are and act cannot be understood without their circumstances. What we have lived, what we live and what we imagine we will live, constructs and influences us. Therefore, in order to have full freedom of action and reflective freedom, material, social and political conditions are needed. For example:

- To have the basic material needs covered, because whoever goes through hardship or comes of age without having neither a job nor a home that allows him or her a

independent life, cannot or finds it difficult to do and think freely.

Another example of the importance of material conditions is urban planning and architecture, which are primordial to allow an adapted and accessible environment, to generate situations and states of well-being, and to favor tranquility and encounters with others and the manifestation of different ways of living and thinking, etc.

- To have a social environment that facilitates or even encourages freedom of action and reflection. Since we are not born taught, we must learn to exercise freedom. We must learn to understand, to compare and value the different positions and options, to decide, to have our own opinion, to not let ourselves be intimidated or dragged by others, to behave? And this is learned little by little, from a very young age and in a process of increasing difficulty that will allow us to go as far as possible, practicing and making mistakes. In a society in which, for example, people with intellectual disabilities do not have a quality education or are treated with paternalism from an early age, it will be difficult for them to learn to exercise the freedom of action and thoughtfulness to the extent that they could.
- That society and governments have a firm commitment to justice, the rights of all people and the recognition of diversity. Humans need the recognition and respect of others, which should not only be embodied in laws, but also in the attitudes of the citizenry. Those who are ignored, belittled or marginalised cannot do or think freely.

As is well known, the concept of autonomy is used today with many meanings. There is even talk of the autonomy of the batteries of telephones or automobiles, and in the few pages of this chapter I have already referred to two different meanings of autonomy.

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<sup>1</sup> *Autonomy* was the initial meaning that Immanuel Kant gave to reflexive freedom: I myself (*self-*), and not others (*hetero-*), through the correct use of reason, establish the laws or norms (*-nomos*) that guide my behavior.

## 4. EX-ISTENTIAL" FREEDOM

The three types or meanings of the word *freedom* explained so far move within the limits of what is given, mundane and possible: to be able to do this or that, to be able to think and decide this or that, and to have certain material, social and political conditions that allow and facilitate it. But the human being can go beyond this. He can have the experience of approaching or crossing his frontiers and expanding in feeling, longing and experiencing. Because, to paraphrase Immanuel Kant, our spirit is restless not only in doing and thinking, but also before the immensity of the starry sky and the depth of our interiority. The names given to these experiences of freedom are God, religion, spirituality, mysticism, art, poetry, love? In a generic way, I call it "ex-istential" to point to a being or being (-istential) that opens up or longs for one beyond its limits (ex-).

So, what is freedom? Paraphrasing Ludwig Wittgenstein, it can be said that whoever wants to grasp the meaning of freedom must do nothing more than superimpose the different definitions we give, as if they were transparencies placed one on top of the other, and he will get the answer.

There are people who ask themselves: to have freedom for what? The simplest answer is: to be able to do what you want or have decided to do, without harming anyone. And if we go a little further: to be happy, without harming anyone. We have then a very important triad in ethics:

### FREEDOM - HAPPINESS - RESPONSIBILITY

I have already talked about *freedom* so far. Let us dedicate the space we have left, however little, to happiness and then to responsibility.

*Happiness* is neither a metaphysical idea nor a grandiloquent word. It usually takes the form of small things that, added together, make up what we call a happy day or even a happy life.

Putting on the shirt we like, having a coffee with milk quietly at the time and place that pleases us, getting a piercing, going out with friends, sitting on that bench, kissing the person you love, making cannelloni for Christmas Day and having your children tell you that they are very good, having a good evening, living a moment of solitude open to what surrounds you, getting excited? And because everyone is happy in their own way, that's why freedom is so important.

Two and a half thousand years ago, Aristotle said that all decisions and actions pursue a good and that this good, in turn, pursues a higher good.

For example, good land is a good because it allows to grow good food, and good food is a good because it allows a healthy delicacy, and a healthy delicacy is a good because it allows to have health, and having health is a good because.... Aristotle says that this process would be a non-stop, never-satisfied chain of infinite desires if there were no ultimate purpose, a good that we want for its own sake, a target toward which to direct the small and great actions of our life, a place to stand so that the desires, wishes and decisions finally end and fade away. And he concludes, "*Almost everyone agrees on its name, as both the crowd and the refined say it is happiness.*"

And responsibility? *Responsibility* means, in my opinion, responding appropriately to the presence and needs of others and the other. Hans Jonas says that human beings are the only known beings who can have responsibilities, and they can have them because they have power and freedom.

*"He who can do nothing, must take responsibility for nothing; in a certain sense he may be said to have very little influence in the world, he is in the happy position of being able to have a good conscience. He must not be willing to answer to any instance, neither that of his own conscience"*



nor that of universal history or the final judgment, to the question, "What hast thou done."<sup>2</sup>

But whoever can decide to do something, even if it is to decide to do nothing, can choose between alternatives of action, thereby having responsibilities.

"Responsibility [continues Jonas], therefore, is complementary to freedom. It is the weight of the freedom of a subject who acts. I am responsible for my act as such (also for its omission), and that irrespective of whether there is anyone who - now or later - can hold me responsible."<sup>3</sup>

No one with a finger of judgment doubts that, out of responsibility, a person's freedom of action must be limited when it violates other people's rights. However, the paternalism that has prevailed for so many years in the field of disability has led some people to the other extreme, to consider that a person's freedom of action can never be limited in order to protect him or herself, even if the damage is significant and the person does not have the necessary reflective freedom for that act or decision. In short: that <sup>the</sup> will, desires and preferences of the person in those actions that affect him alone must always be complied with<sup>(4)</sup>.

These positions seem to me to be typical of liberal-abandonment, a position of extreme irresponsibility, because in some exceptional situations and when no other action is possible, responsibility towards the other demands coercive actions to protect him. To deny this possibility absolutely is libertarian dogmatism or abandonment.

However, a coercive action must not only meet the conditions outlined in **chapter 5** (*Limitation of privacy and freedom of action: Protective and perfect actions*) and of which Silvia Alba Ríos has made a summary, but it must be decided and applied by people who have a firm commitment to human rights, especially to the freedom and privacy of individuals, a good training in applied ethics and in the techniques and knowledge of the profession they practice and have humanistic virtues such as good treatment, the ability to love and be moved, patience and prudence.

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<sup>2</sup> JONAS, H. (1985): *Technik, Medizin und Ethik. Zur Praxis des Prinzips Verantwortung*. Spanish translation by C. Fortea: *Técnica, medicina y ética. Sobre la práctica del principio de la responsabilidad*, Barcelona: Paidós, 1997, p. 177.

<sup>3</sup> JONAS, H. (1985): "Zur ontologischen Grundlegung einer Zukunftsethik." Spanish translation d'A. Ackermann: "La fundamentación ontológica de una ética cara al futuro", a *Pensar sobre Dios y otros ensayos*, Barcelona: Herder, 1998, p. 137-138.

<sup>4</sup> I have expressly avoided the verbs "respect" and "attend" used in Law 8/2021, of 2 June, reforming civil and procedural legislation to support persons with disabilities in the exercise of their legal capacity ("[...] respect [or attend] the will, wishes and preferences of the person being supported."), to avoid entering into the assessment that this law deserves, and I have added "that affect only her".

# 3

## The legal framework of the right to freedom

Andrés Labella Iglesias

The right to liberty is a fundamental right of capital importance that must be analysed fundamentally from two main perspectives; on the one hand, from the right to free development of the personality, that is, the right to self-determination and decision-making; and, on the other, from the right to personal liberty, which implies the possibility of moving freely, without any person being held against his or her will.

### a) THE RIGHT TO FREEDOM OF CHOICE

Regarding the first dimension, the right to freedom of choice is based on the Kantian notion of human dignity, which means that no person can be used to achieve a purpose, be it war, labor, sex, etc.

This new philosophical notion of the human being as a subject entitled to rights from the moment of conception, which begins with the recognition of the right to life of the human being and the right to life of the child, is based on the concept of human dignity.

<sup>5</sup>In the feminist movement there are many parallels with the movement for the defense of independent life, known as *independent living*, which was born in the United States of America during the 1960s, in the context of the struggle for the conquest of the right to life of all people, laid the foundations for the development of the feminist movement.

This movement, known as independent living, was born in the United States in the 1960s in the context of the struggle for the conquest of freedom for all people and laid the foundations for the end of slavery in the 19th century, allowing everyone to progressively attain the status of a free person.

With respect to this process of acquisition by phases, if we were to analyse the conquest of rights from a gender perspective, we would see that women had to wait until the 20th century for the conquest of equality in the exercise of human rights, after a long crusade of social movements in a transversal current known as feminism.<sup>5</sup>

### 1. Constitutional law

To analyse the multilevel legal framework on which the right to freedom of choice is based, we find a first constitutional link in Article 10.1 of the 1978 Constitution, hereinafter EC, which guarantees human dignity, inherent rights and the free development of personality, as well as respect for the law and the rights of others.

The first step in the development of the rights of persons with disabilities, especially driven by people who had returned from the Vietnam War with injuries and mutilations that had left them in a serious situation of social exclusion, was to promote the rights of persons with disabilities, especially those who had returned from the Vietnam War with injuries and mutilations that had left them in a serious situation of social exclusion.



It is thus that the notion of dignity referred to above constitutes the cornerstone of our legal system and from a disability law perspective is of key importance, given that it breaks an old legal tradition that dispensed to persons with disabilities a treatment as an inferior being, which came to question their status as a person, as can be seen in the pre-2011 wording of Article 30 of the Civil Code that required having a human figure for being considered a person.

As for the constitutional system in Catalonia, the Statute of Autonomy, Article 15.2 guarantees the free development of the human person.

15.2 guarantees the free development of personality, and Article 19 includes it specifically for women, from a gender perspective, provided for in Article 41.

Furthermore, as a link with the international and European legal systems, it is necessary to take into consideration the constitutional mechanism provided for in Article 96 EC, and which, in addition, bind the interpretation of the rules of internal origin, under Article 10.2 EC, as we shall see below.

## 2. International law

With the entry into force of the Convention on the Rights of Persons with Disabilities, on May 3, 2008, we have an international legal framework for the guarantee of freedom of choice, specifically in its article 12, which under the title "Equal recognition of the person before the law", guarantees persons with disabilities access to the support they may need in the exercise of their legal capacity, prohibits the old incapacitations and obliges States to provide safeguards to ensure that the rights, will and preferences of the person are respected, freely and without undue influence or conflict of interest.

This precept developed by General Comment 1 of the Convention Committee, 2014, sets out the principles on which all support mechanisms must be articulated, leaving will representation mechanisms reserved for exceptional situations.

## 3. State law

The need to adapt the domestic legal framework to the regulations of international origin has been the driving force behind the reform of the model of support for persons with disabilities, which was established in Law 8/2021, of June 2, on the comprehensive reform of civil and procedural law in the State and its reflection in Catalan civil law, which motivated the modification of the institution of assistance as a reference support model for adults in Catalonia<sup>6</sup>, and which is currently in the parliamentary process of a comprehensive reform of the Civil Code of Catalonia<sup>7</sup>, as will be seen in the following section.

<sup>6</sup>Bill to update, incorporate and modify certain articles of the Civil Code of Catalonia, file number 200-00010/13.

<sup>6</sup>Decree-Law 19/2021, of August 31, adapting the Civil Code of Catalonia to the reform of the procedure for judicial modification of capacity.

## b) THE RIGHT TO PERSONAL FREEDOM

Regarding the second dimension of the right to liberty, the first thing to remember is that there is no justification for holding a person against his will, either by reason of an intervention by the State security forces and bodies, which are subject to compliance with the law and, therefore, any detention of his must be decreed by the judicial authority; or by actions carried out by private individuals that constitute criminally typified actions, such as, for example, cases of kidnapping or trafficking in persons.<sup>8</sup>

Both dimensions of the right to liberty have their point of connection to the Convention on the Rights of Persons with Disabilities, specifically in Article 19, which guarantees the right to live independently and in the community, which implies that no one can be forced to live against their will in institutions that do not respect the right to choose and that the activities that are developed do not take into consideration their will, wishes and preferences, as seen above.

The analysis of the legal framework of the right to personal freedom must also be carried out from a multilevel perspective and connected with the other human rights, insofar as the rights are indivisible and interdependent, so that, to facilitate accessibility to the information, we will separate it into three layers: international, European and Spanish State law.

### 1. International law

The Universal Declaration of Human Rights (1948) declares that all human beings have the right to life, liberty and security of person.

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<sup>8</sup>Due to the war in Ukraine, it is necessary to take into consideration the modification of the Spanish Penal Code, Organic Law 13/2022, of December 20, which modifies Organic Law 10/1995, of November 23, 1995, of the Penal Code, to increase the penalties foreseen for the crimes of "human trafficking".

The International Covenant on Civil and Political Rights (art. 1), which states that all human beings are born free and equal in dignity and rights (art. 1), that they have the right to life, liberty and security of person (art. 3), that all forms of slavery are prohibited (art. 4) and that no one may be detained, imprisoned or exiled (art. 9).



The International Covenant on Civil and Political Rights (1966) guarantees immunity from slavery and personal servitude (art. 8), liberty and security of person and immunity from arbitrary arrest or detention (art. 9), freedom of movement (art. 12), and freedom of expression and opinion (art. 19).

The American Convention on Human Rights (1969) recognizes the right to liberty and security of person, that no one may be deprived of his physical liberty or subjected to arbitrary arrest or detention, and that in such cases the person must be informed of the grounds and charges against him and must be brought before a judge (art. 7).

The African Charter on Human and Peoples' Rights (1981), known as the Banjul Charter, also guarantees the right to liberty and the prohibition of arrests and detention (art. 8).

trafficking in human beings displaced by armed conflict or humanitarian disaster, published in BOE 305, December 21, implementing Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting victims.

The right to freedom of conscience and profession, and the free practice of religion (art. 8).

From the perspective of disability law, the Convention on the Rights of Persons with Disabilities (2006), in its article 14, establishes that the situation of disability can in no case justify a deprivation of liberty and that, in case of detention for the purpose of a proceeding, they should be treated on an equal basis with others, including the provision of reasonable accommodation in the proceedings.<sup>9</sup>

From a gender perspective, the Convention on the Elimination of All Forms of Discrimination against Women (1979), in its Article 15, guarantees men and women the same rights in terms of legislation concerning the right of persons to freedom of movement and the freedom to choose their residence and domicile.

The Convention on the Rights of the Child (1989), in its article 37, recalls the prohibition of torture and inhuman and degrading treatment, as well as deprivation of liberty, and if necessary as a last resort, they must be separated from adults and be in contact with their families.

## 2. European law

Within the framework of the Council of Europe,<sup>10</sup> the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), hereinafter ECHR, devotes its Article 5 to the protection of the right to liberty, and any detention must be ordered in a procedure with all the guarantees (Art. 6 ECHR). Article 5(5) establishes the right to reparation for any violation of the right to liberty (art. 6 ECHR).

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<sup>9</sup>One of the most important adjustments is the figure of the procedural facilitator, regulated in Article 7 bis of the Voluntary Jurisdiction Law and the Civil Procedure Law, established in Law 8/2021 of June 8.

<sup>10</sup>It is composed of 47 European states, after the exit in 2022 of the Russian Federation, and is endowed with a jurisdictional protection body known as

(9) It is composed of 47 European states, after the exit of the Russian Federation in 2022, and is endowed with a judicial protection body known as the "judicial review body".

As regards European Union law,<sup>11</sup> the Charter of Fundamental Rights of the European Union (2000), Article 6, guarantees the right to liberty and security.

## 3. State law

As has been said, the right to the free development of the personality, that is, the capacity to choose, is configured as the foundation of political order and social peace, fundamental values in any democratic system. And it is from this dimension that it connects with the right to personal freedom, which is materialized in the power to move freely and without the need for authorization and proscribes any forced detention; both by the forces of State order and by any natural person, institution or residence, which would lead us to the application of criminal regulations.

The guarantees against arrests or detentions carried out by the State security forces and corps are included in article 17.4 CE. The *habeas corpus* procedure (imported from Anglo-Saxon law), qualified as an institutional guarantee (STC 44/1991, of February 25), and regulated by Organic Law 6/1984, of May 24, is established as a procedure that guarantees the immediate availability before the judicial authority, in an agile and simple manner, which obliges all representatives of the authority and is universal in nature, without exceptions.

European Court of Human Rights, based in Strasbourg.

<sup>11</sup>Published in the OJEU, No. 83, March 30.

In conclusion, the regulation of the fundamental right of freedom has a double dimension, a subjective one regarding the ability to choose and a social one regarding the ability to interact and move without barriers or limits, and its regulatory framework is multilevel in its origin, but indivisible in its application and interpretation, in accordance with the constitutional mechanisms of incorporation of international law into domestic law.

guarantee the free development of their personality by protecting their right to express their will, wishes and preferences.

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As will be seen below, from the perspective of disability law, the right to liberty must be placed in context with the totality of the rights recognised in the New York Convention, which has a dynamic conception of disability, given that, as reflected in its Article 1, the consideration of disability is the result of the interaction between the long-term limitations that people may have (whether physical, sensory, intellectual or psychosocial) and the barriers presented by the environment, so that these obstacles can be overcome by means of the adequate provision of supports, on the one hand; and by making the necessary adjustments to ensure participation, on the other.

In short, for people with disabilities, supports are essential for exercising the right to freedom, and we will now see how they should be articulated in order to



# 4

## Support and accompaniment in decision making

Núria Ambròs Roig

Decision-making is an essential part of life and can be complex on many occasions. We have already seen in the previous sections that everyone has the recognized right to freedom to make decisions about their lives, and that right must be exercised; but, for this, people with disabilities need to have accessible environments, without barriers that prevent their participation, and appropriate support.

When we talk about accessible environments, we refer to environments designed and adapted so that they can be used and experienced efficiently and safely by each and every person, regardless of their abilities or disabilities. This accessibility seeks, on the one hand, to eliminate or reduce barriers that could limit full participation and, on the other hand, to increase opportunities for a chosen life.

When we talk about appropriate supports, we refer to the additional resources, help, or assistance that people may need to address a given situation or to perform a specific task. These supports can range from the use of technical aids, such as a communication tablet, to the help of a personal assistant to assist with daily tasks or a specific strategy to be able to make a decision.

a specific strategy for making a decision.

### 1. WHAT DOES SUPPORTED DECISION MAKING MEAN?

We talk about supported decision making (hereafter, SDM) as a practical way for the person with a disability to ensure that they are at the centre of their decisions, with the necessary support guaranteed. Most of us seek support in making decisions at some point in our lives.



In this paper, we focus on accompanying people with disabilities who want or need support in making decisions. This may be due to an intellectual disability, brain injury, mental illness or other disability that affects a person's ability to make decisions. It may also be because people with disabilities have not had the opportunity to make their own decisions or learn from their mistakes.

For these reasons some people have not been able to gain experience in this area. Supported decision making is one way to give the person with a disability the opportunity to have more choice and control in their lives.

Having choice and control means that our decisions are listened to and respected. It means having influence over what happens in our environment. Many people lack the ability to have influence over their own lives, over those things in their daily lives or over more important things. Having influence over what we do, being the protagonists of our own actions, helps us to build our identity, to learn from our mistakes, to grow, to have more confidence in what we do; in short, to live.

Control has to do, then, with choice, decision making and participation. Therefore, it depends on the opportunities a person has in his or her daily life to participate and influence, and not on his or her capabilities. The more support needs a person has, the more efforts will be necessary to make effective the right to design his or her own life project, with the best possible interpretation of his or her will and preferences.

### Values!

SDM is based on important principles and values. Empathy, warmth, from a friendly and welcoming attitude, and respect are essential values to ensure a good accompaniment in decision making. The ability to understand the feelings of others

others, warmth in communication and respectful treatment are key elements to ensure a good accompaniment to each person who needs support to make decisions that affect relevant things in his or her life.



We must continually observe ourselves, be aware and ask ourselves what is our style of relating to people, how we establish safe and trusting spaces for open and sincere communication, how we enable more positive environments so that the person feels free to express what he or she thinks.

In this context, listening becomes an essential skill to develop, an essential tool to improve and ensure that we are correctly interpreting the person's words and understanding his or her wishes. Active listening, without judgment, that clarifies and shows genuine interest.

### The context!

Let's keep in mind that our decision-making style is influenced by aspects such as cultural background, life experience, age, gender, health and well-being. How we make decisions is also affected by the options available, any barriers to decision making, and time.

There are many factors external to the individual that have the potential to influence functioning, inclusion and participation in society, well-being and the overall life project in a variety of ways (Luis Simarro Vázquez, "What is really that thing we call context?", Siglo Cero). If we do not take these factors into account, we may encounter barriers in the decision-making support process. We can see the linked challenges we have with these factors.



## 2. HOW DOES SUPPORTED DECISION MAKING WORK IN BROAD STROKES?

Supported decision making has a structure and a process, although it is very flexible depending on the needs of each individual. We explore this process in the following phases:

- Who supports me and when. The person with a disability chooses people they know and trust to become part of a support network to help them make decisions. This may be a family member, a friend, an independent professional, an entity or another person chosen by the person.

The group undertakes to provide this information to the person so that he or she can make his or her own decisions and undertakes to respect them. The person and his or her group subsequently execute an agreement. The role of the support person may vary according to the context and the specific needs of the person being supported.



- Understanding the preferences, goals and aspirations of the decision maker. In this process, the person with a disability shares information relevant to him or her so that he or she and his or her support network can better understand each other. Good decision support consists of a mutual relationship of understanding, working together and deep listening, as mentioned above. There are

There are various person-centered thinking tools that can help us, including one-page profiles. These reflect the person's interests, wills, passions, skills and talents, curiosities, and what and how they need support. They are always built from a positive point of view. It should not just be about the disability and the challenges the person faces. If we focus only on the difficulties, we will miss the essential purpose.

- It is important to think about what the person's life is like now, today, at the present time. It will help us to know some areas, such as what is important and should stay the same, what is working and what is not working and would like to change.
- Exploration of what assets the person has when making decisions: what strengths the person has when making a decision, what community resources or technological resources, for example.
- Exploration of what support the person needs to make decisions in different areas of his or her life (e.g., economic, relationship, learning, health, work, rights, etc.) and assessment of the role of the support person if needed. We can consider three levels of support in decision making:
  - **Level 1. I can decide for myself.** This takes into account the natural supports that each person already has.
  - **Level 2. I need support to decide.** There may be different situations in which the person needs support to decide: accessibility of information and understanding of the consequences of his or her decisions and/or, in addition, direct intervention in the execution of the act (direct intervention in the execution of the act).  
direct intervention in the execution of the act (for example, if he/she must sign a contract and needs the support of the assistant to do so).



- **Level 3. Someone decides on my behalf,** taking into account who I am, my wishes and my preferences. The good practice is that, although it has no legal effect, whenever possible, the person should also be involved. Your participation is key.



- What is the decision to be made? At this point we need to clearly identify the decision or decisions to be made. It is important that we address them one by one and think about the possibility that as we accompany the person to explore and better understand their decisions they may change their mind and choose others.

This is also the time to explore how best to communicate about this decision; at what time, in what space, with what type of resource (visual, conversational, all at once...).

We also explore what information the person has about the benefits and risks of making this decision, what support we give to weigh this decision and what accompaniment we do to implement it.

In a practical way, we can better accompany this process:

- If we keep in mind that each decision is unique. A person may need different support to decide about different things. And, in addition, the support may vary according to the moment.
- Explaining the information in a visual way instead of writing.
- Knowing how much information each person needs to understand what we are saying.
- Giving additional time to discuss options or test options before making a decision.
- Creating "like/dislike" lists of options to help think through the final outcome of a decision.
- *Role-playing* to improve understanding of the options.
- Carrying a prop to help take notes on important things.
- Among others.

Sometimes it can happen that the person does not say what they really mean and this can be for a number of reasons. Let's explore them below:

- She does not have enough confidence with the person helping her, or in herself, as she has not lived through similar experiences.
- The spaces are not welcoming enough.
- The people accompanying her think they know what is best for her and therefore do not ask what she wants or listen to her when she is trying to say it.
- The relationship between the decision-maker and her support is poor and lacks respect and understanding.
- Many times, people, when making decisions, need time to understand the options. We all have different paces to respect. When supporters anticipate and work under time pressure, we all find it difficult to express what we want.
- Some decisions are very complex and can be difficult even with support.

Therefore, in this process of accompaniment, we will have to put a lot of emphasis on support networks and strategies for transforming the environment.



In conclusion, we would like to highlight the importance of supported decision making (SDM) as a crucial way to ensure that people with disabilities maintain control and freedom in their lives. This approach places a strong emphasis on inclusion and removal of barriers that may limit the full participation of people with disabilities.

PDS seeks to give more choice and control to each person and to ensure that their decisions are heard and respected. This is fundamental to personal growth, confidence and identity.

We must emphasize the importance of values such as empathy, respect and warmth in accompanying decision making.

We also want to highlight the need to take into account several factors that may influence this process, such as cultural background, health and available options.

PDS involves a structured and flexible process that includes forming a support network, understanding the person's preferences, valuing the person's assets, and identifying and executing the decision to be made. This approach also stresses the importance of providing information in an accessible manner and respecting individual rhythms.

Giving importance to what lies beneath the surface, all that is and is, but is not seen, makes our way of perceiving the world more complete and allows us to imagine radically different futures (Geoff Mulgan, 2022).

In summary, supported decision making is a fundamental approach to guarantee the right of every person with a disability to have a life of choice, which offers him or her the tools and support needed to make decisions that affect his or her life project.

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# 5

## Limitation of privacy and freedom of action: Protective and perfect actions.

Original document by Joan Canimas Brugué

Summary by Silvia Alba Ríos

This chapter is a summary of an updated and still unpublished version made by Joan Canimas Brugué of his work *Limitation of Privacy and Freedom: Protective and Perfect Actions* (1st ed.) [textual learning resource] published by the Open University of Catalonia Foundation (FUOC) in 2023.

The author of the abstract takes responsibility for its interpretation and content.

Professional actions have an impact on the lives of people who are cared for and accompanied in psychosocio-educational and socio-health services. This responsibility entails, in exceptional situations, taking actions that limit the privacy and freedom of the persons being cared for. This chapter specifies the conditions that must be met for such actions to be ethically justified. The requirement of these conditions is based on a firm commitment to the privacy and freedom of individuals, and makes it possible to appreciate the importance and scope of these actions.

### 1. CONCEPTS

#### 1.1. Coercive actions

First, second and third level coercive actions may or may not be coercive. Joan Canimas (2023) defines coercive actions as those that restrict certain individual goods and rights, mainly freedom of action and privacy, in order to preserve other rights, either of the persons directly affected or of third parties. These actions are carried out without the free consent of the person involved, with the manifest opposition of that person or without his or her knowledge, and occur in varying degrees of intensity.

For example, insisting on giving advice to someone who has stated that he or she does not want it is a coercive action of low intensity. On the other hand, involuntarily admitting someone is a high-intensity coercive action.

#### 1.2. Paternalism

Canimas defines paternalism as an attitude or disposition to treat those who are considered less capable of making decisions or taking actions in a protective or condescending manner. This attitude involves imposing protections or good life models on them, without taking into account their capacity to make decisions autonomously or with help.

In order to call an action paternalistic, it is a necessary condition to know whether the person is capable of making decisions or not. For example, when decisions are made for the sake of a person in a coma, it is not paternalism but a first-level protective action.

### 1.3. Basic goods, deficits and excellence

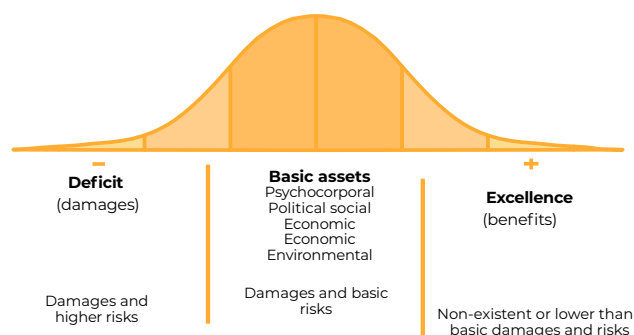
Basic goods are those elements necessary for the development and well-being of people according to the four domains defined by Canimas:

- Psychocorporal cognitive capacity, mental and physical health, etc.). For example, training and education offered in schools, or health standards covering psychological and physical care.
- Social-political (values, rights, virtues, cultural patterns, etc.). For example, privacy and freedom of action for individuals.
- Economic (food, housing, clothing, etc.). For example, adequate food and access to housing.
- Environmental (beings living on the planet, the planet and the cosmos). For example, the preservation of biodiversity.

They establish a threshold from which protective and perfect actions that determine their deficit or excellence conditions are defined....

Figure 1:

*Limit of basic goods, deficit and excellence.*



Source: Retrieved from *Limitacions de la intimitat i la llibertat: accions protectores i perfectores* (Canimas 2023).

It is necessary to consider that basic goods are gradual and may vary depending on the time and the cultural and social context in which they occur.

The loss of basic goods can remain at the threshold of basic damages or risks, or exceed that threshold and turn them into damages and risks higher than the basic ones. When we intervene to prevent or mitigate this loss of basic goods, we are taking protective action. For example, if a child stops going to school for a few days because he has a cold, it can be considered a basic harm, but if he stops going to school because of mistreatment by his family, it is an above-basic harm.

### 1.4. Protective and perfecter actions

Protective actions aim to.

"provide, maintain or increase basic goods in the person to whom they apply (first level), as well as protect basic or higher goods in other persons or beings (second and third levels)" (Canimas 2023).

Perfector actions aim to.

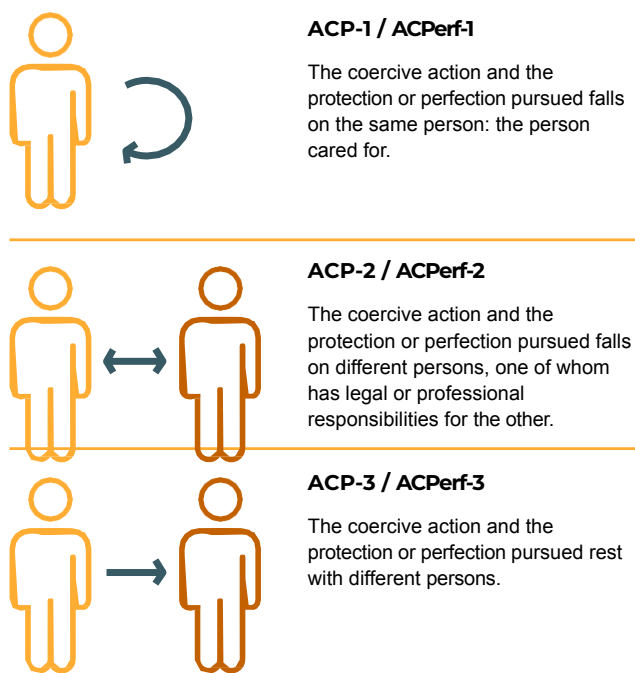
"provide, maintain or increase goods superior to the basic ones in the person to whom they are applied (first level); or provide and increase superior goods in other persons or beings (second and third level)" (Canimas 2023).

First, second and third level actions are based on the relationship existing between the coercive action and the recipient of the protection or enhancement.

- First-level actions: the action performed and the objective pursued by this action fall on the same person. For example, a dietary guideline for someone living in a nursing home, or professional restraint for a person with a behavioural disorder to prevent them from harming themselves.

- Second level actions: the action taken and the objective pursued by this action fall on different persons, between whom one of the parties has a professional or legal obligation towards the person in question. For example, that a professional first attends to the food needs of the persons served before his or her own, or a professional restraint of a person served in order to prevent an assault on a professional.
- Third-level actions: the action performed and the objective pursued by this action fall on different persons, between whom there is no professional or legal duty of care or attention. For example, giving one's own food to another person who needs it more, or a professional restraint to protect other people living together in the residence.

Figure 2:



Source: *Limitacions de la intimitat i la llibertat: accions protectores i perfectores* (Canimas 2023).

It is necessary to consider that basic goods are gradual and may vary depending on the time and the cultural and social context in which they occur.

The loss of basic goods can remain at the threshold of basic damages or risks, or exceed that threshold and turn them into damages and risks higher than the basic ones. When we intervene to prevent or mitigate this loss of basic goods, we are taking protective action. For example, if a child stops going to school for a few days because he has a cold, it can be considered a basic harm, but if he stops going to school because of mistreatment by his family, it is a harm above the basic one.

## 2. RIGHT TO BASIC DAMAGES AND RISKS

According to Canimas, all people have the right to take basic risks, if they want to, in the exercise of their freedom because this entails the acceptance of mistakes and human frailty. "Basic harms and risks are those that are considered normal and reasonable to assume in the analyzed activity, and for a population whose possibilities are similar to avoid, reduce, repair or eliminate harm in case it occurs and to face the consequences."

In addition, basic damages and risks are learning opportunities that generate valuable experiences for people, to know their capabilities, their limits and the consequences of their actions.

It is necessary to adjust risks to turn them into basic risks and thus ensure that adults with intellectual disabilities exercise their right to decide.

Canimas argues that coercive actions that seek to protect basic harms and risks are not ethically justified. Examples of basic harms and risks are falling in love, with the risk of falling out of love and death, or riding a bicycle or bus, with the risk of an accident.

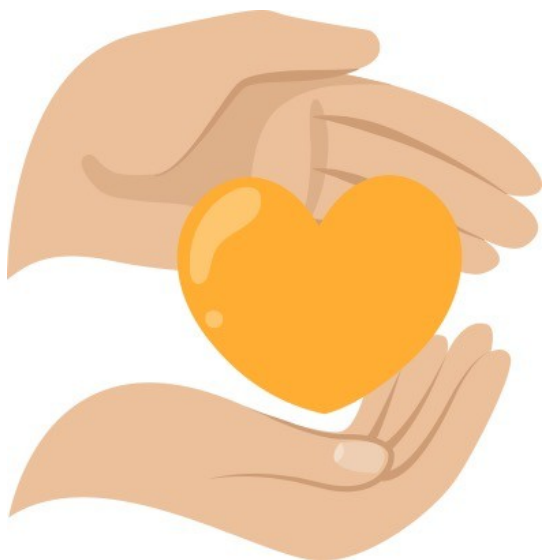
In conclusion, if the person acts by assuming basic risks, it is not necessary to exercise coercive action; therefore, the conditions regarding coercive actions described below should not apply.

### 3. ETHICALLY JUSTIFIED COERCIVE ACTIONS

#### 3.1. Protective coercive actions at the first level (PCA-1)

PCA-1s are actions that limit the rights of a person or persons without their consent for the purpose of protecting their basic assets.

It is important to emphasize that the conditions that ethically justify these actions are limited to the field of psycho-socio-educational and socio-health actions, and do not apply to other fields, for example, legislation (legal paternalism).



First-level protective coercive actions (ACP-1) may be ethically justified if five specific conditions are met, which will serve for decision making:

1) The protective coercive action is necessary, effective and efficient to protect the basic goods of the same person or persons, is proportionate, and is applied or will be applied in the most respectful way possible.

- **Necessary.** It means that it is essential to protect the basic assets of the person or persons concerned. It is necessary to assess which assets are protected and which are limited. For example, it must be considered whether it is necessary to break the professional right to protect the health of a person (basic good that is protected) to the detriment of breaking his privacy (basic good that is limited).
- **Effective.** There must be evidence that it produces the desired results and protects the basic goods effectively. For example, and continuing with the previous example, that the breach of professional secrecy will actually serve to protect the health of the person.
- **Efficient.** It means that there is no less coercive or intrusive alternative that can achieve the same results. For example, all possibilities for non-coercive help and support must have been exhausted before resorting to a breach of confidentiality to protect the person's health (the person must be made to understand the need to send this personal information and to do so him/herself or give permission to do so).
- **Proportionate.** The damage or risks that are intended to be avoided or reduced by the coercive action must be significantly greater than the damage, risks and inconvenience that the action itself may cause. It is necessary to know the subjective experience that the person will have when the coercive action is applied and its effects. For example, the harm that will occur if a person is not informed that he or she is being harassed is significantly greater than the harm that will occur if he or she is informed.
- **Respectful.** Ensure that coercion does not violate the dignity of the person or persons to whom it is applied and treat everyone with consideration and care. For example, and continuing with the

example above, information must be given and received with care and respect, and at the right time and place.

If this first condition is not met, it is no longer necessary to move on to the second condition and coercive action would not be ethically justified.

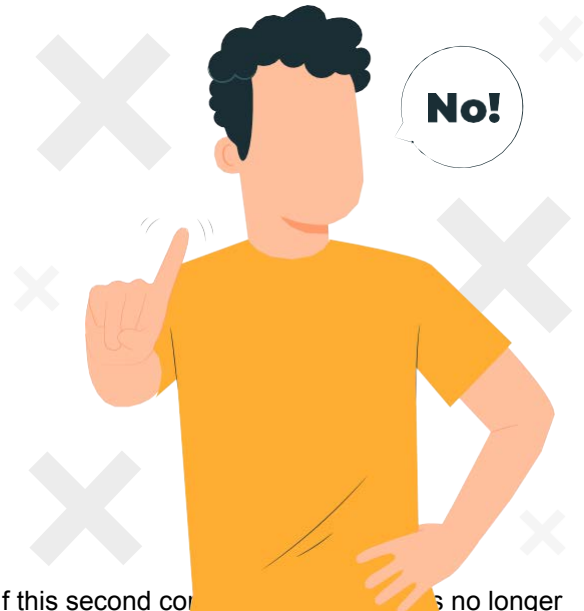
## 2) The person or persons cannot give free consent (or refusal) to the action under analysis.

This condition is based on an ethical principle that obliges us to protect those people who are unable to make free, informed and autonomous decisions to face situations that could cause them significant harm.

Canimas highlights three conditions, with a modulating variable, for a consent to be free:

- Having truthful and understandable information, and support and time to make the decision.
- Absence of coercion and undue external pressure.
- Cognitive and reflective capacity to make and communicate the decision clearly and expressly.

The modulating variable for these conditions is the typology and magnitude of the potential consequences of the decision. More rigorous and explicit consent is needed from the person involved if the consequences of the coercive actions are of great magnitude. For example, if consent or refusal may result in death, extreme care is needed on all three variables.



If this second condition is no longer necessary to move to the third condition and the coercive action would not be ethically justified.

## 3) It is known or can be reasonably presumed that the person or persons would freely consent to the protective coercive action if the conditions were available to them.

There are three scenarios:

- The person is a minor and it is reasonable to presume that as an adult he or she will agree to the coercive action taken.
- The person is an adult and has had a capacity for free reflection in the past (situation of supervening incapacity). His or her advance directives, if they exist, must be taken into account, whether they have been written in a document or clearly expressed. If the person does not have an advance directives document, it is necessary to explore his or her personal history, actions, known or intuited wishes and preferences, etc.
- The person is an adult and does not have a freely reflective past or his or her decision cannot be determined. It is necessary to resort to what is considered most prudent and reasonable.

If this third condition is not met, it is no longer necessary to proceed to the fourth condition and coercive action would not be ethically justified.

4) Protective coercive action does not infringe on the rights of others, unless they freely and reasonably consent to this limitation of rights.

There may be persons who, in certain situations, give up their rights and take risks in order to protect another, out of responsibility, solidarity or love. In these situations, it is necessary to determine whether the consent of these persons is free.

If this fourth condition is not met, it is no longer necessary to proceed to the fifth and coercive action would not be ethically justified.

5) The protective coercive action causes or will cause reasonable moral discomfort to those who decide or exercise it.

This condition points to the person or persons who decide or execute the coercive action:

- That an undesirable limit has been crossed (the limitation of values or rights) and that it is necessary to rectify it as soon as possible.
- That while remaining in this limit crossing, it is necessary to be attentive to the situation of the person, without neglecting it.
- That normalization and lack of sensitivity towards this situation cannot be internalized. It must be considered as something exceptional.

And to the people to whom coercive action is applied:

- It shows them recognition, appreciation and concern, and manifests dissatisfaction, distress, sadness, concern, empathy, compassion and humility for having exceeded a limit, even if it was done with valid ethical reasons.

The perversion of PCA-1 is paternalism.

### 3.1.1. Tolerance and support for actions with above-basic risks and harms for people who cannot give free consent.

In certain situations, it may be morally appropriate to allow and support people who wish to take actions or live a life that entails above-basic risks and harms, even if they lack the cognitive capacity deemed necessary to understand and reason it out. Failure to support in these cases could cause them even greater harm, discrimination or abandonment.

The following conditions must be accompanied by the good skills and attitudes of whoever interprets and implements the actions, to ensure professional respect for the person:

1 ) The person or persons are or will be significantly happier, or less unhappy, performing the action or living the life they desire than that which is imposed on them.

Before supporting actions or lifestyles with greater than basic harms or risks, it is necessary to have attempted some ethically justified ACP-1 process, so that the professionals offering the supports can objectively determine whether the person finds more happiness or less unhappiness in following his or her wishes, as compared to what has been proposed and then imposed, to a greater or lesser degree.

2 ) The person or persons are of legal age and manifest a persistent and significant desire to perform the action or live the life they desire.

In some situations, when a person's wishes involve higher than basic risks and they are unable to give free consent, it is necessary to take into account the persistence and significance of their wishes. This means that these must be maintained repeatedly and



repeatedly and continuously, and must be recognized as important to the person.

3 ) The action or type of life that the person or persons desire does not infringe on the rights of others, unless they freely and reasonably consent to it by limiting their own rights.

4 ) The action or type of life that the person or persons desire does not require inordinate resources or support that no one is willing to provide.

Tolerance of actions or types of life with above-basic harms or risks does not imply that professionals disengage from or abandon the person. If possible, they should monitor their situation, accompany them and provide support to reduce the harm or risk.



### 3.2 First-level coercive perfective actions (ACperf-1)

ACperf-1 are actions that limit the rights (usually freedom of action or privacy) of one or more persons, without their consent or knowledge, with the aim of providing, maintaining or increasing goods superior to basic ones.

ACperf-1s may be ethically justified as long as the five necessary conditions in PCA-1s are met, including three additional factors: low intensity, reduced temporality, and recoverability.

1.) Perfector coercive action is advisable, effective and efficient in maintaining, providing or increasing goods above the basics in the same person or persons. It is proportionate and is or will be applied in the most respectful way possible. Likewise, it is of low intensity, of reduced temporality and, in adults, it is possible to recover the initial option.

- Low intensity. The analysis of the proportionality of perfect coercive actions is compared with the realization of a good life model. In contrast, the analysis of protective coercive actions is compared with the proportionality of the damage caused by the loss of a basic good. Protective coercive actions can be of high intensity; in contrast, perfective coercive actions must always be of low intensity.
- Reduced temporality. Perfective coercive actions must be temporary, as opposed to protective coercive actions that may be long-term or even permanent. This distinction is based on the conception that the loss of a basic good can be considered permanent, whereas it is not ethically justifiable to force a person to indefinitely adopt a lifestyle or carry out actions that we think would make him or her happier.
- Recoverability. It is important that perfect coercive actions applied to adult persons allow recovery of initial desires or goods.

2.) The person(s) cannot give free consent (or refusal) to the action being analyzed.

- 3) It is known or can be reasonably presumed that the person(s) would freely consent to the protective coercive action if the conditions for doing so were available to them.
- 4) Protective coercive action does not infringe rights of other persons unless they freely and reasonably consent to this limitation of rights.
- 5) Protective coercive action causes or will cause reasonable moral discomfort to those who decide or exercise it.

Canimas gives as an example this question: *Would it be ethically justified to insist and even force an adult person with an intellectual disability who has never left his or her neighborhood to participate in an excursion to the beach where all his or her friends go, if one has good reason to believe that he or she will love the experience?* And consider that, if all the above conditions are met, it would not only be ethically justified, it would be a deontological duty to do so.

The perversion of these actions is also paternalism. paternalism.

### 3.3. Second-level coercive protective actions (PCA-2)

PCA-2s are aimed at protecting persons with professional or legal duties of care towards the person being cared for.

An example of coercive action towards professionals are obligations affecting their clothing, so that they can perform their work correctly. And an example of coercive action towards a person cared for is a restraint to prevent an assault on the professional.

PCA-2 may be ethically justified if three specific conditions are met:

- 1.) The protective coercive action is necessary, effective, and efficient to protect basic or higher-than-basic goods in a relationship in which one party has professional or legal duties of care or attention to the other. Coercive action is proportionate and applied as respectfully as possible.

In certain professional or legal protective situations, it is reasonable and fair to assume some low-intensity risks related to the responsibilities exercised. For example, a professional may have to tolerate some verbal violence from a patient with a mental disorder, while another person without any professional ties should not have to do so. In this context, coercive action against the person being cared for would not be justified to protect the professional (ACP-2), but may be justified to protect others (ACP-3).

- 2.) Protective coercive action does not infringe on the rights of others, unless they freely and reasonably consent to this limitation of rights.

Occasionally, persons with or without professional or legal caregiving responsibilities may decide to bear harm, risk or discomfort that is not theirs to bear. This sacrifice may be ethically justified and even admirable, as long as it does not unfairly affect others and the decision is made in an informed and free manner.

- 3.) Protective coercive action causes or will cause reasonable moral discomfort in those who decide or exercise it.

### 3.4. Third-level protective coercive actions (PCA-3)

PCA-3s are aimed at protecting persons who have no professional or legal duty to others. For example, a restraint to prevent an assault on a person passing by on the street, or a reprimand to prevent an assault on a person passing by on the street, or a

the street, or a rebuke to someone who is damaging a tree.

PCA-3s may be ethically justified if three specific conditions are met:

1.) The protective action is necessary, effective, and efficient to protect the basic or superior property of other persons or beings who are or will be wrongfully injured and they do not freely and reasonably consent to suffer these harms, risks, or inconveniences.

This action shall be applied or enforced in the most respectful manner possible, bearing in mind the dignity and rights of the persons affected.

In PCA-3, and unlike PCA-1 and PCA-2, proportionality does not apply, since it is not necessary for other persons to bear unjust damages, risks or inconvenience, however small they may be.



2.) Protective coercive action does not infringe on the rights of others, unless they freely and reasonably consent to this limitation of rights.

3) Protective coercive action causes or will cause reasonable moral discomfort in those who decide or exercise it.

The perversion of PCA-2 is "defensive and retributive" coercive actions, and that of PCA-3 is "retributive and exemplary" coercive actions.

In this sense, Canimas refers to defensive coercive actions when they prioritize the protection of professionals or institutions over the welfare of patients or users, and unjustifiably limit their rights.

Retributive coercive actions aim to punish offenders, solely to satisfy the desire for revenge or the feeling of justice, without taking into account the reparation of the harm caused. These actions do not promote reparation or the well-being of the persons involved.

Exemplary coercive actions seek to publicly scorn the persons who have caused the harm, with the intention of educating, setting limits and dissuading other individuals.

These practices are not ethically justified in the field of psycho-socio-educational and socio-health care, since they go against respect for individuality and help for the persons being cared for.

#### 4. ETHICALLY UNJUSTIFIED COERCIVE ACTIONS

In addition to the ethically incorrect coercive actions so far pointed out (not respecting the right to harm and basic risks, any coercive action that does not meet the conditions indicated and paternalistic, defensive, retributive and exemplary coercive actions), we must add:

##### 4.1. Perfective coercive actions of second level (ACperf-2) and third level (ACperf-3).

Perfective coercive actions that promote or enhance the basic or superior goods of persons who have professional or legal obligations towards persons (ACperf-2), as well as of third persons without these professional or legal obligations (ACperf-3), are never ethically justified in care services.

An example of ACperf-2 is that a professional uses information from the persons cared for for his or her own benefit without their consent or knowledge.

An example of ACperf-3 is imposing on a person with an intellectual disability to participate in a talk at an educational center, in which personal and intimate experiences that he or she does not want to tell are explained, with an educational purpose for the students.

#### 4.2. Normative-only coercive actions (ACUN)

Normative-only coercive actions are those that limit a person's rights without his or her consent (usually freedom of action and privacy) for the sole purpose of complying with established regulations, whether a law or other prescriptive documents.



It is important to note that these actions are only taken because they are dictated by law,

without preventing, repairing, reducing or producing any benefit to anyone.

For example, reporting a misdemeanor committed by a service user to the appropriate authorities in a situation where doing so will not repair or lessen any harm, nor produce any benefit to the person who committed the crime, nor avoid or lessen any risk to professionals, and is done on the sole grounds that it is required by law.

## 5. PROCEDURE FOR THE ANALYSIS OF THE ETICITY OF COERCIVE ACTIONS

Important decisions should always be deliberated as a team, for two reasons:

- To increase analytical rigour.
- To avoid taking individual professional and emotional responsibility for issues they do not touch.

The outline below summarises much of what has been said in the previous chapters about protective coercive actions:

**1. The first thing to determine is whether the harm or risk is first, second, or third level.**

**2. If it is first level:**

- 2.1. It must be determined whether it can be considered a basic harm or risk.
- 2.2. If it cannot be considered, it is necessary to analyze the eticity of ACP-1, and see if the five conditions are met.

- 2.3. The analysis of the first condition may lead to moving on to whether it would be ethically more correct to tolerate or support actions or types of life with higher-than-basic harms and risks.

**3. If it is second or third level, it is necessary to analyze whether the three conditions of each of these levels are met.**

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# 6

## Annexes

1. INFOGRAPHICS OF THE DOCUMENT
2. INFOGRAPHY ON DECISION MAKING SUPPORT | Nuria Ambrós

# FREEDOM

It is a fundamental value for all people

And because freedom is so important for people, it has become a right for everyone.

## IT HAS BECOME A RIGHT



It is recognized for all people.



There are mechanisms to exercise, defend and claim them.

There are people who need support to exercise their freedom.

Sometimes, even with support, it may be necessary to limit their freedom.





This must be done in a thoughtful  
and ethically justified way.



# SUPPORT AND ACCOMPANIMENT IN DECISION MAKING

A practical way for the person with a disability to ensure that he/she is at the center of his/her decisions, assuring him/her the support he/she needs.



QUALITY  
WELCOMING ATTITUDE

FRIENDLY AND  
WELCOMING

AND  
WELCOMING

RESPECT

EMPATHY  
NON-JUDGMENTAL

LISTEN

GENUINE  
INTEREST



*Formative factors*

*Ethical factors*

*Geographic*

*factors*

*Physical*



## TIPS



*Recognize the person as valuable.*



*Each decision is unique and your support varies according to the moment!*



*The information must be understandable!*



*Choose appropriate spaces!*

*Generate environments of confidence!*

*Use creative ways to communicate and participate.*

factors

*Legal and political factors*

*Social and  
behavioral  
factors*

We understand the preferences, objectives and aspirations of the decision maker.

We look for the assets that the person has.

We understand the decision to be made.

We agree with the decision.

1

3

5

5  
7

2

4

4 6

8<sup>6</sup>

Definimos how who gives support and when.

We think about is the life of the person at the present time.

We explore what support the person needs in different domains of his or her life.

We understand what may limit the decision.

We in and re de

In this process of accompaniment we will need to put a lot of emphasis on support networks and strategies for transforming the environment.



L'ÈTICA  
DE  
DINCAT

dincat



Generalitat de Catalunya  
Departament de Drets Socials