Call for contributions

How the rights of persons are challenged by legal coercion -
Creating a forum for exchange in the fields of
mental health, disabilities and dependency

Background

Over the last few decades, health and social services policies have begun to focus on the rights and autonomy of persons receiving care or support. At the same time, the use of “legal coercion”1 in matters related to mental health, disabilities and dependency has been constantly rising. In France, court-ordered “protective” or guardianship measures have gone from a few thousand to over 800,000 in the last few years for example. Likewise, the number of cases of hospitalization and treatment without consent has been increasing regularly since the 1990’s and has picked up significantly since the latest French Mental Health Act dated July 5, 2011 was implemented (Coldefy, 2017) 2. France is not the only country where this trend can be seen, as the same could be said for a number of European and North American countries as well.

These changes are being widely discussed by specialists and activists, including those who promote the UN Convention on the Rights of Persons with Disabilities and who assert the validity of a disability model based on human rights, which prohibits the restriction of the right to exercise legal capacity on the basis of a disability or for health reasons and prohibits all legal measures which permit substitute decision making. This model, fostered by the UN Committee on the Rights of Persons with Disabilities (Degener, 2017), has been challenged by mental health professionals who fear that a model such as this would in fact “undermine” effective access to their rights by persons in situations of extreme vulnerability (Freeman, Kleinman, Saraceno, 2015).

1 “Legal coercion” is understood here to mean any intervention in another person’s life which is authorized by law without the consent of the person directly concerned being necessary.

2 Bibliography referred to

Coldefy Magali, Sarah Fernandes, Les soins sans consentement en psychiatrie : bilan après quatre années de mise en œuvre de la loi du 5 juillet 2011, Questions d’économie de la santé, No. 222, February 2017
Collectif Contrast, Une régulation enchevêtrée des pratiques contraignantes de soin en santé mentale ? Plaidoyer pour une approche inter-disciplinaire, dans Koubi G. (Dir.), L’institution psychiatrique au prisme du droit, Panthéon Assas, 2015
This debate raises questions about how to create the conditions necessary to exercise rights and be provided with decision-making support for those persons whose capacity to exercise their rights has become weakened or vulnerable. Are the coercive measures authorized by law designed for the purpose of restoring people’s capacities via therapeutic or educational dynamics? Or do they constitute a limit to the ideal of capacity as established in our fundamental rights?

Design

Following the success of the conference “Guaranteeing persons in vulnerable situations the capacity to enjoy and exercise their civil and political rights”, Collectif Contrast, in partnership with the French CFHE “National Council of persons with disabilities for European affairs” (Conseil français des personnes handicapées pour les questions européennes) invite you to take our analyses and discussions of these issues even further by providing a forum for exchange among a wide variety of persons with different social, professional and experiential backgrounds. This is a call for contributions to this forum asking you to share both your knowledge and expertise - and the issues and expectations you have identified based on your personal experience.

WHO?

We are calling on contributions from patients, mental health and social service users, family members, carers, professionals and researchers, in particular, who would like to share their experiences and expertise on legal coercion for the purpose of creating a forum for exchange. You may submit a proposal for an individual or group presentation to be made at this conference designed to allow persons from many different backgrounds to talk about the same situation from their different points of view:

- You are or have been personally subject to a legal decision or coercive practices (guardianship, hospitalization or treatment without consent or physical restraint, among others);

- Your profession involves making regular decisions for others based on the diminishing capacities of the person(s) or you participate in implementing these types of decisions on the social or administrative level;

- You have personally been in a situation where you made decisions on behalf of an adult family member or close friend whose decision-making abilities were diminished;

- Through your professional or non-profit work or with your own family, you have assisted and supported people to make decisions about their lives when they had
difficulties in doing so, in particular due to a temporary or long-term alteration of their mental capacity;

- You are engaging in research on situations involving care, support, decision-making and legal coercion.

**WHAT?**
We invite you to contribute to a repository of real-life experiences involving legal coercion to be used as a basis for exchange and analysis during this scientific and citizen-based conference taking place December 18, 19 and 20, 2017 in Paris.

Please submit your proposal using the following format in three sections: description of the situation and questions that arose, brief analysis and finally, ideas to improve and move forward.

1) First **describe a specific situation** involving care or support (frequent or exceptional) where you had doubts about or questioned the validity of using measures of legal coercion authorized by law and why you experienced these doubts.

2) Briefly analyze the situation based on the following questions or others you may have: What factors led up to **substitute decision-making** (justified for practical or organizational reasons, therapeutic expectations, decision made by superiors in a professional setting, legal specifications required, etc.)? What ethical questions came to mind in this situation? What was the outcome of the situation? Afterwards, did the use of coercion have a positive result? Or was it experienced as a loss of dignity? What was missing that could have avoided the use of coercion (financial resources, social support, time, details of involvement, etc.)? What other methods could have been used to resolve the situation when in this type of difficult situation to provide support?

3) Please suggest one or several ideas in this type of situation that would improve the possibility for people to exercise their rights and be adequately supported: would it have been possible to act differently? Would it have been preferable or on the contrary damaging to act otherwise?

Situations described may include involvement in or decisions related to at least six types of legal coercion:

- court-ordered protection measures (depending on the legal system, all types of full, partial, temporary or family guardianship)
- hospitalization or treatment without consent
- physical restraint in health care or residential settings (restraint, isolation, drug treatment, etc.)
- restriction of rights and freedoms of persons with disabilities or elderly persons (public spaces, institutions, etc.)
- forensic psychiatry, including outpatient treatment ordered by criminal courts
- reporting persons in situations of extreme vulnerability

HOW?
Send your intention to contribute by submitting a maximum of 500 words in writing or a 5-minute audio recording by **September 25, 2017** to the following e-mail: confcap2017@gmail.com

A review and support committee composed of academic researchers, user-researchers and professionals working in health care and social services will analyze the narratives, organize them into a repository and determine the methods used to communicate them during the conference. Support is available to those contributors who would like assistance in formulating their presentation.

This repository of experiences with different situations will constitute a basis to exchange and discuss the presentations given during the conference. A description of these situations will provide a starting point for discussion that will subsequently be targeted for both specific and wider-ranging comments giving everyone the opportunity to think about a number of possible resolution methods.

This repository of experiences could be submitted to the monitoring bodies of the UN Convention on the rights of persons with disabilities as a contribution to the debate on the interpretation and the integration into national laws and practices of this UN Convention.

At the various stages of the process, people can withdraw their contributions if they wish.

WHERE AND WHEN?
For more information, please contact via e-mail: confcap2017@gmail.com
Or feel free to contact a specific member of the organizing team:
Jean-Philippe Cobbaut: jean-philippe.cobbaut@univ-catholille.fr; Benoît Eyraud: benoit.eyraud@ish-lyon.cnrs.fr; Karine Lefeuvre: Karine.lefeuvre@ehesp.fr; Iulia Taran: ulia.taran@gmail.com; Tonya Tartour: tonya.tartour@sciencespo.fr

The conference will take place on **December 18, 19 and 20** at the **Maison des Sciences de l'Homme Paris Nord**.
Scientific and Partnership Advisory Committee

Peter Bartlett, University of Nottingham; Pierre-Yves Baudot, Curapp/Université d’Amiens; Arnaud Béal, Capdroits-GRePS; Béatrice Borrel, UNAFAM; Pierre Bouttier, ANDP; Dagmar Brosej, Technische Hochschule Köln; Agnès Brousse, UNAF; Nacerdine Bezghiche, Capdroits-Le Mas; Anne Caron Deglise, Cour d'appel de Versailles; Alice Casagrande, FEHAP; Magali Coldefy, IRDES; Hadeel Chansom, FNAT; Thierry Danel, F2RSM; Sylvie Daniel, Capdroits-Le Mas; Olivier Drumat, AP-HP; Michèle Dussaut Delorme, Schizo Oui; Pascale Estecahandy, DIHAL; Claude Ethuin, Capdroits-Nord Mentalité; Emmanuelle Fillon, Capdroits-EHESP; Eve Gardien, Université de Rennes; Véronique Ghadi, HAS; Vincent Girard, AP-HP, équipe Marss; John-Stewart Gordon, Vytautas Magnus University in Kaunas; Cristina Guilarte, Universidad de Valladolid; Fabrice Gzil, Fondation Médéric Alzheimer; Cécile Hanon, AP-HP; Nicolas Henckes, Cermes 3; Emmanuel Hirsch and Sébastien Moser, AP-HP-Eremand; Liora Israel, CMH-EHESS; Farbod Khansari, CFH; Alain Koskas, FIAPA; Julien Kounowski, DRJSCS; Emmanuelle Jouet, laboratoire Maison Blanche; Clémence Lacour, FNAQPA; Catherine Le Gales, économiste, Cermes 3; Christian Laval, Rhizome, Médecine du Monde; Valérie Lemard, Capdroits-Esqui; Jean-Paul Lanquetin, Groupe de recherche en soins infirmiers; Anne Lebas de Lacour, Unapei; Nicole Maestracci, Conseil Constitutionnel; Wayne Martin, Essex Autonomy Project; Bernard Meile, Capdroits-Advocacy France; Philippe Miet, CFHE; Julie Minoc UVSQ-Collectif Contrast; Isabelle Lolivier, revue Santé Mentale; Emilie Pecqueur, Cour d'appel de Douai; Albert Prevos, CFHE; Gilles Raoul-Cormeil, Université de Caen; Bertrand Ravon, Université Lyon 2-CMW; Jean-François Ravaud, Cermes 3; Jean-Luc Roelandt and Bérénice Staedel, CCOMS; Anne Saris, UQAM; Joan Sidawy, « comme des fous »; Sébastien Saetta, Cermes 3-Collectif Contrast; George Szmuckler, Kings College London; Mireille Tremblay, UQAM; Stephanie Wooley, ENUSP-Mental Health Europe; Halima Zéroug-Vial, CHS Le Vinatier.