

In his presentation for ERA in Krakow, Oliver Lewis will outline the growing trend in Europe to move from a system of substituted decision-making for people labelled with disabilities, to a system based on supports. He will outline several European Court of Human Rights cases, including the [judgment](#) in the case of *Kedzior v. Poland* of October 2012. In this case, the applicant was represented by the Helsinki Foundation for Human Rights in Warsaw. The Mental Disability Advocacy Center, of which Oliver is the Executive Director, submitted an independent [third party intervention](#) in the case.

Kędzior is the first Polish case which deals with the institutionalisation of a person with psycho-social (mental health) disability. Mr Kędzior is a Polish man who in 2000 was placed under the guardianship of his brother. Two years later the brother/guardian arranged for him to be transferred from his home to a social care institution against his will, where he has remained for ten years with no way to challenge his detention in court.

It is the second case, following the case of *Stanev v. Bulgaria* challenging segregation from the community, the other being *DD v. Lithuania*. As in the *Stanev* case, the Court found that Mr Kędzior “was not free to leave the institution without the management’s permission. Nor could the applicant himself request leave of absence from the home, as such requests had to be made by the applicant’s official guardian.” In finding a violation of the right to liberty, the Court found that Kędzior “was under constant supervision and was not free to leave the home without permission whenever he wished.” Reaffirming its views established the 2010 judgment of *Shtukaturov v. Russia* the Court said that Mr Kedzior’s detention was not justified, and that he should have been given an opportunity to challenge his detention.

This is the first judgment against Poland of its kind and should have important consequences which the Polish government now needs to act on. The Court noted the European trend towards granting individuals deprived of legal capacity direct access to the courts to challenge their guardianship status. Noting the 2009 legislative changes which allow people under plenary guardianship to request restoration of their legal capacity, the applicant himself was curtailed in challenging his guardianship, so the Court found a violation of his right to access to court as guaranteed by Article 6(1) of the European Convention on Human Rights. The Court awarded the applicant 10,000 EUR damages due to the violations found.

Oliver will explain the obligations under the UN Convention on the Rights of Persons with Disabilities to governments, such as Poland, which have ratified the Convention. These include the duty to ensure that everyone has formal legal capacity (which necessitates reform of the guardianship system), introduction of supports for people to exercise legal capacity (which necessitates looking at examples from other countries) and ensuring that there are systems to protect people against exploitation, violence and abuse. Participants are asked to read Articles 4, 12 and 16 of the Convention before attending Oliver’s lecture.

