

WorkShop 1 – December 13th Trier

Case Study 1

Mrs. Thyme was hired to work for Banana Inc., a computer manufacturing company. She was recruited by an employment agency and commenced employment with Banana Inc., in August 2009. She was initially employed on a six-month contract. Mrs. Thyme has epilepsy, but her condition is well controlled by medication, and has not had a seizure in over two-years. Equally, prior to the onset of an attack she would experience symptoms up to 24 hours beforehand. At the time of her employment she informed the employment agency of her medical condition.

She worked for Banana Inc. for 4 months without any difficulty, nor was she required to operate heavy machinery during this period. In November 2009 her supervisor informed her that her work performance was very satisfactory and that Banana Inc., would like her to apply for a permanent position. At this point Mrs. Thyme completed Banana Inc.'s application form, where she again declared her epilepsy. After submitting her application form she was told that she would not be required to attend for interview but would be required to undergo a medical examination by a Doctor nominated by Banana Inc. Mrs. Thyme attended the medical examination.

Immediately, following the examination, the Doctor spoke with Banana Inc.'s Human Resources Officer by telephone and told her that Mrs. Thyme suffered from epilepsy. As a result of this conversation, Banana Inc.'s Human Resources officer decided not to offer Mrs. Thyme a permanent post and to terminate her temporary contract with immediate effect, on the basis that she was not fit to operate heavy machinery.

1. Is Mrs. Thyme disabled within the terms of the UNCRPD?
2. How if at all can the UNCRPD be relied upon to undermine the decision of Banana Inc?
3. What should Banana Inc have done to demonstrate compliance with any obligation under the UNCRPD?

Case Study Two

The claimant, Mr. Basil, suffers from cerebral palsy and arthritis, is unable to walk for long distances and has difficulties in standing. He is not a permanent wheelchair user but does require use of a wheelchair to travel any significant distance. However he does not own a wheelchair.

Mr. Basil is an avid traveller and enjoys several trips abroad per year. Usually, he uses a state-owned and run airport near to his home and usually travels with the same commercial airline.

At the airport, after check-in there is a very long walk, through the duty-free shops, via various bars and restaurants, to the departure gate. Mr. Basil says that he cannot travel this distance without the use of a wheelchair. The airport authority will allow wheelchair users to take their own wheelchairs from the point of check-in to the door of the plane they are travelling on. It also makes available a small number of wheelchairs for others to use, but charges a fee of €20 for doing so. It also points out that there are numerous benches along the route to the departure gates so that Mr. Basil is able to make frequent stops and does not have to make the journey in a single go.

When Mr. Basil has travelled in the past he has regularly found that there is no wheelchair available for him to use. Even when one is available, he resents having to pay the fee to use it pointing out that non-disabled passengers are not charged to negotiate their way around the airport.

The airline provides no help or assistance at all, taking the view that how Mr. Basil negotiates his way around the airport is a matter solely for the airport authority. It allows up to four passengers per flight to be accompanied by a wheelchair.

1. What rights guaranteed by the UNCRPD are affected in the circumstances described above?
2. Should those who need a wheelchair to negotiate around the airport provide their own?
3. If a wheelchair ought to be provided, who should be responsible for doing so the airport authority, the airline or both? And how do you determine the number that ought to be provided?
4. Alternatively, is it enough that there are numerous benches along the route so that it is not strictly necessary for Mr. Basil to have use of wheelchair? Would this solution amount to a discrimination on the basis of a disability or could it be said to constitute a genuine alternative?

http://www.youtube.com/watch?v=l3_VjxfNuBA

Case Three

Mrs. Rosemary has manic depression. Mrs. Rosemary is able to live relatively independently, she is able to take care of herself adequately. She, as a result of her condition, has a tendency to be very irresponsible with money and occasionally can place herself in situations of danger. She consented to and was placed under a partial guardianship. This guardianship enabled the court to limit her legal capacity in particular as regards financial matters.

Mrs. Rosemary has always voted and always been conscientious about exercising her franchise. But she has now discovered that as a result of being placed under partial guardianship that she is subject to an absolute bar on voting.

1. What rights guaranteed by the UNCRPD are affected in the circumstances described above?
2. Should Mrs. Rosemary be allowed to vote?
3. Ought she be assessed to see does she understand the consequences of her decisions?

Case Study Four

Mr. Tarragon has a psychiatric disorder and was found by the courts to be partially incapacitated, on the grounds of his disorder and as a result it was held that he was unable to manage his own affairs or to realise the consequences of his actions. As a result he was placed under partial guardianship of a public official as he had no family to fulfil this function.

Without consulting or informing Mr. Tarragon his guardian placed him in a social care home for men with psychiatric disorders. This home was in a remote village some 250KM from where he grew up, he has lived there since (about 4 years). The home director subsequently became his guardian, and he was only allowed to leave the home with permission from his guardian. On one occasion when he failed to return home in a timely manner the director contacted the police who located him and returned him to the home. The conditions in the home were not optimal, the residents diet was poor, there were no therapeutic activities provided for them and they did not own any item even the clothes they wore.

Mr. Tarragon attempted to have his legal capacity restored last year. But his guardian refused to bring the case, believing the institution was the best place for him. Mr. Tarragon asked his local Mayor, wrote to the courts and asked his guardian on several occasions to apply for his release from guardianship all of which were refused.

1. What rights guaranteed by the UNCRPD are affected in the circumstances described above?
2. Assume you are a human rights lawyer appointed to Mr. Tarragon on a pro bono what would you advise?