

Rule of law – wishful thinking? Exemptions from educational requirements and the use of coercion against people with intellectual disability

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The article focuses on two conditions related to the use of coercion vis-à-vis persons with intellectual disabilities in Norway. The first condition concerns the widespread use of exemptions from legally binding educational requirements. Based on three independent sources we claim that exemptions from educational requirements were made for 80% of the individuals affected by the decisions, and in 2007 only 3% of all applications were rejected by the county governor's office. The second condition relates to a five-fold increase in decisions regarding the use of coercion between 1999 and 2008. We have used registry data from The Norwegian Board of Health Supervision concerning notifications and decisions related to the use of force and coercion that was gathered between 1999 and 2008. Second, we carried out a pilot study in which we considered a sample of the notifications and decisions involving the use of coercion between 2007 and 2008. Third, we have carried out a telephone survey where all 19 county governors were asked questions about their routines regarding notifications to The Norwegian Board of Health Supervision in 2009. Our findings are that use of coercion and restraint, and the lack of legally binding qualifications, are closely related. Furthermore, the dominant practice of exemptions from legally binding educational requirements weakens the rule of law.

Keywords: rule of law; intellectual disability; coercion; legislation; (exemptions from) educational requirements; aggression; challenging behaviour; self-inflicted injury; prevalence; topography

Introduction

Was it wishful thinking to believe that the transition from institutional services to community-based services would reduce the use of and demand for coercion and restraint vis-à-vis persons with intellectual disabilities? Reactions to such changes (Odelsting Proposition no. 49. 1987–88, 13) ensured that the initial legal proposals (NOU 1991:20) were never adopted. However, a decision was made to review the practice of coercion. In 1993, The Ministry of Health and Care Services initiated a survey (Ot.prp.nr.58 (1994–95), 10) indicating that as many as 600 persons with intellectual disabilities had experienced situations involving the use of force on at least one occasion. The Norwegian Board of Health Supervision made a similar survey in 2000 (The Norwegian Board of Health Supervision 2000), which revealed that around 1000 persons with intellectual disabilities and about 200 persons with

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autism had experienced similar situations. In order to regulate and limit the use of coercion, The Social Services Act Section 6A (passed on 19 July 1996, no. 60) was temporarily in force from 1999 to 2002 and subsequently altered and made permanent from 2004. An advisory body was established to supervise the practical application of the legislation from 1999 to 2002. All use of coercion and restraint under the statutory provisions should from now on be registered and documented.

A council assessing the practice and legal rights submitted a report in 2002 (Advisory body/Rådet 2002) which concluded that the use of coercion and restraint against persons with intellectual disabilities seemed to be less prevalent than before. A more recent report from Nordland Research Institute (2008) made conclusions similar to those in the council's report. In addition, the report indicated signs of a profound change in the professional environments concerned with services for persons with intellectual disabilities. A report from The Norwegian Board of Health Supervision (2008), based on information registered from 1999 to 2008, highlights the fact that the number of decisions reached and individuals involved increased from 1999 to 2008. The Board asks if this increase could be due to more accurately registered information regarding the use of coercion and whether there is less coercion as a result of registered decisions and approved cases of coercion than the numbers would indicate (The Norwegian Board of Health Supervision 2008, 30).

The Social Service Act makes a distinction between use of force and coercion as an act of self-defence/principle of necessity (a); planned and repeated use of force and coercion as an act of self-defence/principle of necessity (b); and use of force and coercion required to protect and ensure fundamental needs (c). In 2008, 33,805 decisions affecting 1152 individuals were made in accordance with (a) (Act passed on 19 December 2003, no. 134). When it comes to the two other categories – planned and repeated use (b) and protection of fundamental needs (c) – figures show a five-fold increase in the use of coercion from 2000 (247) to 2008 (1369 approved decisions) affecting 696 persons in 2008. This means that approximately 10% of persons with intellectual disabilities¹ in Norway had been subjected to the use of coercion and restraint by state employees in the social services in 2008.

Data

The article is based on three surveys. First, we have reviewed registry data from The Norwegian Board of Health Supervision concerning notifications and decisions related to the use of force and coercion that was gathered between 1999 and 2008. Second, we carried out a pilot study in which we have considered a sample of the notifications and decisions involving the use of coercion. Third, we carried out a telephone survey where all county governors were asked questions about their routines regarding notifications to The Norwegian Board of Health Supervision.

Registry data from The Norwegian Board of Health Supervision

The Norwegian Board of Health Supervision has developed a special form to be used by the county governors in their reporting of coercion and force implemented in accordance with Chapter 4A (formerly Chapter 6A) of The Social Services Act. Based on the reports received from the 19 county governors the Board produces annual statistical summaries. In the spring of 2009, The Norwegian Board of Health Supervision published their own report based on analysis of the collected data. We

have used the Board's statistics from the beginning of the registrations in 1999 and until 2008 as a foundation for our own analysis. In our analysis we relied on the statistics programme SPSS.²

The pilot study

The Norwegian Board of Health Supervision asked all the county governors in Norway to submit 25 notifications on decisions regarding injury-preventive measures in emergency situations, ref. The Social Services Act, Section 4A-5, third subsection, letter a. Responding to this request, 14 county governors submitted up to 25 letter a decisions and 3 to 5 letter b and c decisions to the Board, which in turn made the notifications available to The National Institute of Intellectual Disability and Community (NAKU). Altogether NAKU reviewed 321 notifications on injury-preventive measures in emergency situations. We have also considered 75 decisions concerning injury-preventive measures in repeated emergency situations as well as decisions aimed at fulfilling the service recipient's basic needs.

The county governors have been quite free to decide which notifications and decisions from which municipalities to make available to NAKU via The Norwegian Board of Health Supervision. The sample has subsequently not been randomized. Because of this the analysis is based on data that leaves little room for general conclusions. However, we are able to gain a broad insight into the decisions reached at the municipal level and the premises on which the decisions have been based. In addition, the number of decisions reviewed is sufficiently extensive to justify statistical treatment (Ellingsen, Lungwitz, and Berge 2009).

The telephone survey

During the analysis of the registry data from The Norwegian Board of Health Supervision uncertainty arose over the basis for the county governors' reporting. This particularly concerned the issue of whether the applications for exemption from educational requirements had been treated on case-by-case basis or directly linked to the service recipient. Some service recipients have been subject to more than one decision. If the exemptions are linked to decisions, the number of individuals affected by the decisions could be reduced. The telephone survey was carried out in all of the 19 counties.

Comparing Scandinavian countries

Norway has relied on a descriptive approach to the definition of coercion, stating that whatever a person resists is to be considered force/coercion. In Sweden there is no legislation that directly concerns the use of coercion within the social services. A comparison with Sweden is therefore difficult both because coercion is basically a normative phenomenon and due to the lack of statistics. Denmark has similar legislation as Norway regarding the use of coercion in their Social Service Act, but applies other routines for reporting of coercion and restraint.³

Even if coercion occurs in services provided for persons with intellectual disabilities in all the Scandinavian countries, the phenomenon is discussed and understood differently (normatively vs. descriptively) and the legislation reflects these differences. In addition, there are clearly different practices when it comes to

regulation and registration of coercion. The data has been collected from the ministerial level in both countries.

Exemptions from educational requirements weaken the rule of law

Following the introduction of Section 6A⁴ of The Social Services Act (passed on 19 July 1996, no. 60) the municipalities have sought exemptions from the legally binding educational requirements for their staff. This involves both the requirement of education at university college level and education at secondary school level. The law also imposes restrictions on use of force and coercion, requiring professional and ethical justification for such action.

The statutory requirements regarding education are based on clear principles stating that the use of coercion against any citizen is among the most demanding challenges of a public employee. Further, educational and professional background is considered a decisive factor in preventing the use of coercion or making sure it happens in a professional and responsible manner when there are no other alternatives. To grant exemptions from these requirements should therefore only happen in exceptional situations, or as the law states: ‘only in extraordinary cases’ (Act of 19 December 2003, no 134). Still, the registrations (Norwegian Board of Health Supervision 2008) reflect an entirely different picture. In 2000, 119 exemptions from educational requirements were granted (50% of all cases)⁵, while in 2008 the number of exemptions increased to 601⁶ (86% of all cases). An indication of the true strength of the practice of exemptions is evident in the number of rejected applications. In 2007, only 3% of all applications were rejected (18 out of 554) by the county governor’s office. The numbers also reflect marked differences between counties that are otherwise quite similar, i.e. Sør-Trøndelag, Hordaland and Rogaland.

When it comes to decisions involving the use of planned and repeated coercion (b) and the protection of fundamental needs (c) (Act of 19 December 2003, no. 134), there are a total of 1268 decisions in 2007 affecting 679 persons, while exemptions were granted in 602 of the cases. In 2008, 1369 decisions affecting 696 persons were made and 601 exemptions were granted (Norwegian Board of Health Supervision 2008). In connection with the decision-making process there are cases where multiple decisions involve the same individual. This explains why 1369 decisions were made for 696 persons in 2008. The fact that more than one decision was made for the same person is confirmed by our telephone survey from March 2009, where all 19 county governors confirmed that exemptions applied to individuals rather than decisions.

In our pilot study (Ellingsen, Lungwitz, and Berge 2009), we considered 75 decisions made in 2007/2008. All of them we received from the Norwegian county governors. The decisions show that the municipalities have applied for exemption from educational requirements in four out of five cases. This means that as many as 80% of all persons who experience coercion related to the social services are subjected to this in cases where some of the employees do not fulfil the professional requirements.

Based on three independent sources – our study of a sample of the decisions, information from The Norwegian Board of Health Supervision and the survey – we can with a high level of certainty claim that exemptions from educational requirements were made for 80% of the individuals affected by the decisions. It seems obvious that use of coercion and restraint, and the lack of legally binding qualifications are closely related.

When the legislation pursuant to Chapter 6A of The Social Services Act became subject to a hearing in the mid-1990s, a number of the municipalities realized that they would not be able to satisfy the legally binding educational requirements. Because of this Trondheim municipality in 1988 established part-time courses in social education for employees who lacked the legally binding qualifications. Ten years after the legislation came into force, the vast majority of municipalities that reach decisions related to the use of coercion and restraint employ workers who lack the professional qualifications demanded by the law. The municipalities have had more than ample time to find solutions suitable for addressing deficiencies in the educational requirements. Figures from Statistics Norway⁷ also show that there are municipal employees with the required skills, but who operate in other areas of responsibility in the municipalities. These responsibilities do not require employees to have legally binding qualifications, as would be the case in work involving coercion and restraint. Different organizational structures and better use of available resources would subsequently reduce the need to seek exemption from the educational requirements. As it now has become the rule rather than the exception to apply for exemptions, 97% of all applications being approved from 2007 onwards (The Norwegian Board of Health Supervision 2008), the pressure and demands to implement skills-enhancing measures and structural change within the social services have subsided.

How does the true face of coercion look?

The coercion and restraint on which the regulations of Chapter 4A in The Social Services Act are based consist of two main types. One relates to the use of force aimed at preventing serious injury. The other is force, spanning from a physically and mentally repressive use of power to an impulsive exertion of control devoid of a concrete and urgent ambition to prevent injury. Chapter 6A, currently 4A, of The Social Services Act contains stipulations regulating these two forms and is meant to safeguard two important legal rights. The first is security and access to professional social services. Here, the use of coercion may become necessary. The other concerns the right to self-determination, where repressive and impulsive use of force is to be prevented and removed (Act of 19 December 2003, no. 134).

There are two other forms of coercion that are not as widely debated. One is coercion as part of a therapeutic treatment, i.e. like that used within psychiatry. The other form is coercion as punishment. Both these forms of coercion have to some extent been practiced in the social services offered to persons with intellectual disabilities. Today, the latter form occurs through verdicts in accordance with Section 39a of the penal code (Act of 22 May 1902) and in such cases primarily as a social service (forced social care). Studies show that as many as 10% of all offenders in Norway probably fulfil the criteria to be diagnosed as intellectually disabled without ever having received such a diagnosis (Søndenaa 2009). The background for this can be found in the relatively low administrative identified prevalence of persons with intellectual disability persons in Norway.

Good, caring services and/or self-determination

The legal right to safe, caring high-quality services on the one hand and self-determination on the other hand is to be maintained and regulated by the law.

Underpinning this are a number of legal provisions within private and public law. In this context it is important to know if one of the legal rights is better protected than the other. The answer can partially be sought in a legal principle called the legality principle, which requires that the public sector act in accordance with existing legislation when intervening against someone else's will. Also relevant are the provisions of the penal code that among other things regulate and protect the freedom and individual rights of the citizens. In other words, the legal right to self-determination has a stronger legal protection than care obligations.

Coercion – protecting whose interests?

In connection with the treatment of the legislation pursuant to Chapter 6A, currently 4A, Grunewald (1995) declared that he would file a case against the Norwegian authorities to the United Nations for the violation of rule number 15 of the standard regulations regarding full equality for persons with intellectual disabilities, in case this legislation should be adopted. This criticism received serious attention and the Norwegian parliament (the Storting) postponed implementation of the legislation until it had been assessed⁸ in relation to the Convention on Human Rights.

In the pilot study by Ellingsen, Lungwitz and Berge (2009), carried out on behalf The Norwegian Board of Health Supervision, the reports indicate that the service recipient in one out of three cases physically attacks the staff, while 1 in 10 cases relates to obstruction of attempted self-inflicted injury. Together these two categories account for almost half of all the reports. The other half includes attacks on others, destruction of material objects, etc. Other studies focussing on the topography of challenging behaviour under different organizational structures reveal that particularly aggression is more prevalent than, for instance, self-inflicted injury (Emerson et al. 2001; Lowe et al. 2007; Holden and Gitlesen 2006). In a circular related to The Social Services Act (IS-10/2004, 54–6) a similar categorization regarding the nature of injury has been made. The client behaviour can be divided approximately into three types: causing injury to other individuals, self-injury and material damage. As a remedy to prevent such action Grunewald (1995) emphasizes education, skills and supervision.

Challenging behaviour

Internationally, the prevalence of challenging behaviour is estimated in different ways (Lowe et al. 2007). An English study (Emerson et al. 2001), claimed that about 10–15% of all persons with intellectual disabilities display some degree of challenging behaviour of a serious nature. Based on all officially registered persons in Norway with intellectual disabilities (21,052)⁹ and the estimate from the English study, the average number of persons with different types of challenging behaviour is just above 2600.

Like other human action, challenging behaviour is based on developments in the interaction between biological conditions and qualities regarding physical and social circumstances (Tetzner 2003, 2). The interaction between individuals and society creates much of the basis for our cultural understanding through which we interpret challenging behaviour. With the reduced cognitive skills that often characterize persons with intellectual disabilities, situations occur where such persons

misunderstand or fail to see connections, and where the surrounding environment is unable or unwilling to reduce the social demands to a suitable level.

As we have seen, The Social Service Act justifies the use of coercion in order to prevent serious injury when all other solutions have been tried and proved useless. But it must be carried out in a professional and ethically justifiable manner. One important question to ask is what causes behaviour that leads to a situation where serious injury occurs?

Some of the reasons are related to the individual, some to society and some are found in the interaction between the individual, other persons and society as a whole. Use of coercion is mainly an intervention against the individual and a regulation of the person. Sometimes this has been carried out in a repressive and a punishing manner. If the person's behaviour is due to the nature of the cognitive disability, use of coercion assumes the character of punishment or at least reflects a lack of professionalism. If the person's behaviour is due to other biological/physiological reasons, it would be reasonable to conclude similarly. Some of the behaviour may originate in interaction with others or society in general, often in the form of misunderstandings, orders the persons is unable or unwillingly to follow, etc. In order to find other solutions, we need to know what causes behaviour or situations that lead to serious injury. The use of coercion will turn out to be a short term solution based on the lack of other alternatives in a situation marked by uncertainty and a feeling of risk for the relevant individual and his/her surroundings.

Many examples of 'other solutions' that have followed in the wake of the legislation concern circumstances that directly addressed the challenging behaviour. A lack of flexibility may enhance the tendency of a person with cognitive problems to react emotionally in situations where there is little willingness to find solutions through dialogue. Earlier studies of the use of coercion in Norway, which are based on Chapter 6A of The Social Services Act (Endresen 2003), revealed that in 40% of cases involving the use of coercion and restraint in accordance with the right to self-defence, 'demands' and 'fixed activities' caused the situations to occur. Relaxation of demands and activities becomes an obvious 'other solution'. Changes and adaptations primarily take the cognitive sides of intellectual disability into account; a focus on these aspects helps to address a vulnerability that affects persons with intellectual disabilities in a number of situations (Circular Letter IS-10/2004).

As we have learned that a relaxation of demands tends to have a positive effect, professional knowledge and interaction with the service recipient become important. Often, the service recipient requires assistance, and a complete cessation of all demands and activities will therefore be unfortunate. To have expectations and demands vis-à-vis a person with intellectual disabilities is also a way of respecting that individual. At the same time, it becomes professionally and ethically irresponsible if an expectation takes the shape of demands implemented through repressive and coercive means. The answer here is rather alternative solutions like professional and interactive skills. Good social work mainly implies a focus on cognitive aspects of the functional limitations of the person with intellectual disability as well as his/her surroundings (the society).

Viewed ideally, ethically and professionally our challenge is to discover work models that emphasize a form of interaction and professional expertise that do not encourage the use of coercion and restraint. The practical application of the legislation has shown that it is often possible to find other solutions. Still, when other solutions are found there are no obligations when it comes to reporting and we

subsequently do not know the extent of ‘dissolved’ cases or the nature of the solutions applied. Examples of such solutions are discovery of health problems, medical treatment/separation of pharmaceutical drugs, changes in shift work, changes in the organization of services, changes in the established activities and daily/weekly schedules, etc. A lot of good work that will benefit future research is being carried out in this field.

Still, the problem also includes exemptions granted in relation to educational requirements, which may contribute to undermine the legal rights of people with intellectual disability. There is reason to believe that weak and negative interaction as well as a lack of professional skills can explain much of the coercion we witness today. This is due to the fact that in 80% of cases involving use of coercion vis-à-vis persons with intellectual disability exemptions from educational requirements have been granted and that all but 3% of the applications for exemption have been approved.

Østenstad (2000) claims that the legal appendix in The Social Services Act, Chapter 6A, provides persons with intellectual disability persons with a reasonable protection against violations while satisfying the requirements of the human rights convention. But one of his preconditions is that it is realistic to expect that the legislation is put into practice. Here, he states that: ‘This is not something one should take for granted when considering our previous experiences with welfare services for persons with intellectual disability’ (Østenstad 2000, 216). For the system to work he emphasizes the necessity of functioning systems of control and supervision as well as voluntary self-management among the service providers. With regard to the latter point he remains optimistic as the professional organizations have pressed for legislation, which means that violations against Chapter 6A (Østenstad 2000) of The Social Services Act could be made illegal. There is reason to ask if the system of exemptions that is now being practiced is an example of insufficient control and supervision.

Figures and reports from 1999 to 2008

All use of coercion and restraint should be reported in accordance with Chapter 6A, currently 4A, of The Social Services Act. This means that there is a relatively extensive collection of data¹⁰ available in addition to reports from public institutions that are responsible for legislation and how it is implemented. This material is based on the three legally approved forms of coercion mentioned in the introduction to this article.

Preventing injury in emergency situations (a)

A situation where injury is prevented could for instance be if you forced someone away from the road in order to prevent this person from being hit by a car or if you stop a person from hitting him-/herself or others. Decisions will in most situations be taken by the service provider and normally in connection with services organized by the municipality. In 1999, as many as 99,108 separate emergency cases involving the use of coercion and restraint were reported. We do not have statistics on the number of individuals involved. The year after, the number of emergency cases was down to 35,247 involving a total 907 persons. Table 1 indicates that the numbers have gone up and down throughout the period from 1999 to 2008.

Table 1. The number of decisions aimed at preventing injury in emergency cases and the number of individuals involved, 1999–2008.

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of decisions	99,108	35,247	36,466	21,166	19,697	22,700	24,337	27,439	31,533	33,805
Number of individuals	–	907	987	905	876	815	1065	1095	1148	1152

Still, the most characteristic development is that the number of individuals affected by the use of coercion is rising. This is often explained by increasing attention vis-à-vis the use of coercion and improved routines for reporting (Advisory body/Rådet 2002; Handegård 2005). According to the legislation, other solutions¹¹ than the use of force should have been attempted. If the increase in reported cases is exclusively due to improved routines for reporting and if one has successfully managed to identify alternative solutions, we could conclude that the use of coercion is actually declining, which would have been good news. However, the problem is that the reporting regarding the use of coercion has not been subject to systematic analysis, and there are no certain estimates with regard to the actual use of coercion against persons with intellectual disabilities. Subsequently, the assumption that the increase in registered cases of coercion is due to better routines for reporting represents a hypothesis that has not been tested and subsequently cannot be confirmed.

Planned injury-preventing measures in repeated emergency situations (b)

Planned injury-preventing measures in repeated emergency situations basically concern similar situations as described above, but are also marked by repetition of situations that need to be more systematically evaluated than separate emergency situations. Here, the legislation contains strict requirements with respect to the executive work carried out in the municipalities before the final decision is reached. Among other things, advice from the specialist health care services is demanded and the decisions should be given a special review by the county governor.

Temporary legislation has involved solutions aimed at changing behaviour in order to prevent of injury. It is in relation to such action that the legislation places the most rigid demands on education. At least one of the persons who implement the measures should have higher education. Table 2 shows that relatively few decisions were made in accordance with this provision during the period in which the temporary legislation was in force (1999–2004).

One of the reasons for the relatively low number of decisions is that many municipalities failed to fulfil the educational requirements. In addition, the requirement that alternative solutions should have been tried first led to the

Table 2. The number of approved measures implemented in accordance with Section 4A-5, third subsection, letter b, of the Social Services Act 2000–07.

Year	2000	2001	2002	2003	2004	2005	2006	2007
Number of measures implemented	29	37	23	13	323	396	361	527

conclusion that solutions aimed at changing behaviour could be based on a type of interaction that excluded use of coercion and restraint against the service recipient.

When the new legislation was made permanent (year 2004), the figures indicating the use of force changed dramatically. It is impossible to compare the numbers from the first period of temporary legislation with those of the current legislation. They relate to entirely different factors. The question is whether we are sufficiently able to identify and prevent factors that generate emergency situations on a frequent and/or regular basis? The ability to evaluate such situations rationally is conditioned by professional knowledge and experience. When the number of decisions does not show a downwards trend, it could be fair to ask if such expertise has been available.

Measures aimed at covering the service recipient's basic needs (c)

Basic needs are, as the term indicates, requirements of a fundamental character like food and drink, clothes, sleep, hygiene and personal safety, including the possibility for training and exercise. For the needs to be basic, the life and health of an individual would be endangered if the needs were not satisfied. Earlier, when the temporary legislation applied, this was referred to as care measures. The municipalities must observe the same strict procedure as before when making decisions, but the educational requirements are slightly less strict as it is demanded that at least one of the individuals involved should have a secondary school education or higher. The new permanent legislation makes it possible to implement training measures related to the fulfilment of basic needs.

Throughout the period there has been an increase in the number of decisions made, and the trend has been more pronounced from 2005 onwards (Table 3).

As mentioned, the legislation demands lower educational requirements in cases related to basic need compared to cases of planned and repeated use of force and coercion. The municipalities would therefore be likely to reach decisions pursuant to the relevant legislation in case they lack qualified staff capable of reaching decisions in accordance with the most rigid requirements. Still, the figures tell a different story, and it seems like the municipalities rather rely on guidelines given for different types of decisions. If we consider the number of decisions and measures implemented as well as the number of persons affected by the decisions, there is reason to ask if the legislation works to strengthen the legal rights of persons with intellectual disability or if it subjects them to more rigid control. In particular, the practical application of the provisions concerning exemptions makes this a vital topic.

Education and experience-based skills: are they mutually exclusive?

How education and experience relate to one another and how they affect the ability to act in a professional manner is particularly important when providing services to persons with intellectual disability. This relationship becomes even more relevant

Table 3. The number of approved measures in accordance with Section 4A-5, third subsection, letter c, of The Social Services Act 2000–07.

Year	2000	2001	2002	2003	2004	2005	2006	2007
Number of measures	177	253	305	351	332	472	537	741

when coercion and restraint is used or considered in such services. Already, three factors stand out; first, the educational requirements given in the legislation; second, the extent of exemptions from educational requirements; third, Grunewald's argument concerning education and supervision as a counterweight to the provisions regarding the use of coercion.

Historically, health and social services for persons with intellectual disability have been criticized for the lack of qualified staff – a criticism that is still justified (Ellingsen 2006). Even today there is an ambivalent attitude among professionals and public officials with regard to the significance of education vis-à-vis experience (Ellingsen 2006). The work carried out by people without professional education is in many cases practical, individual-oriented and effective within the relevant framework. Accordingly, many of the skills available among people without education are just as valuable as academic expertise. In some cases it could even be of a higher quality.

In a comprehensive research project – The Crossfire Project¹² – Nygren (2004) studied the transformation from *qualification-based expertise* to *profession-based expertise*. According to Nygren, *general* skills are not demanded because the skills themselves are general, but because the contexts and work to be handled are of a general character (Nygren 2004, 134). Nygren argues that qualifications represent artefacts – tools created within certain cultures in order to fulfil objectives and interact with one's surroundings (Nygren 2004, 142). Sometimes, we encounter work or work contexts that are not directly related to our education. The work may also be organized in ways that we do not recognize from our education (not part of our qualification-oriented expertise). If employees make use of general qualifications acquired through their education as a basis for claiming knowledge about specific issues they may come into conflict with practical strategies for resolving problems.

In his study, Ellingsen (2006) emphasizes the ambivalent relationship between education and experience, or in the words of Nygren, qualification-oriented expertise does not always amount to profession-oriented expertise. This relationship can explain why some informants made statements (Ellingsen 2006) like: 'Professional knowledge is acquired when working' and 'The educational requirements are exaggerated. A common approach to our work is more important'. The kind of knowledge reflected here could be integrated into the work context based on a common practise, creating a collective knowledge base which includes people with and without education. This may be seen as a contrast to individual education-based knowledge which helps employees to make independent assessments or, to use the word of another informant: '*to not swallow everything uncritically*'. Such independent assessments based on education could represent a challenge to the collective knowledge base (Ellingsen 2006).

In the report from Nordland Research Institute (2008) it is evident that the county governors have a somewhat ambivalent relationship towards educational requirements. In the assessment of who are best able to protect the service recipient's rights, including in situations where the danger of serious injury has led to use of coercion and restraint, knowledge of the person involved as well as a long experience as his/her service provider is considered just as relevant and useful as education.

The problem is that we seem to treat knowledge, expertise, action, personal qualities and attitudes as aspects of the same dimension. Action-based skills, the ability to act in certain specified situations, are seen as a type of practical expertise that is diametrically opposed to academic formal expertise (qualification-oriented expertise). This leads to a conclusion that a competent social worker possesses

personal qualities that are reflected in his/her action and subsequently in his/her action-based expertise. However, if we separate education, experience, personal capabilities and other associated skills and qualities, we will be able to discover the complexity and interrelationship that the same factors combine to create. This will also underscore that education (qualification-based expertise) and personal skills represent independent categories which, when applied successfully, combine to reinforce the individual's action-based skills while providing him/her with a professional foundation.

Accordingly, we are not dealing with mutually exclusive phenomena, personal qualities *or* education. Both are important and represent key components of interactive, professional knowledge. The question is, rather, whether the ambivalence expressed by the county governors (Nordland Research Institutes 2008) is based on facts or merely reflects their own chain of reasoning. When they only find it necessary to reject 3% of the applications for exemption from educational requirements and when such exemptions are sought for 80% of the individuals affected by the decisions, the relevance of education seems to be downplayed. If it is possible to provide services without satisfying legally binding educational requirements in the most challenging and potentially degrading situations (involving the use of coercion), it would be all the more logical to claim that education is not a decisive factor within the expertise required.

Are we witnessing profound change, a professional revolution or mere adjustments?

Brunsson (1985) shows that fundamental changes in social values do not cause a similar transformation within the organizational structures. He points out that: 'In fact, organizations may even try to influence people's values, to bring them in line with their own current behaviour' (Brunsson 1985, 5). Through reform processes, the decline of institutional care and the emergence of open home-based services, Norwegian authorities sought to promote a profound transformation. However, to some extent organizations of a limited size have attempted to maintain their old forms of action and work methods (Ellingsen 2006).

On a general basis it seems like the professional environments and organizations have been willing and able to adjust to the fundamental changes that followed in the wake of the new legislation. Some have been less willing than others (Ellingsen 2006). According to Brunsson: 'Instead (of building on existing organizing devices – my insertion) it calls not only for organizational actions, but also for the creation of a new set of organizing devices' (1985, 10). Based on the requirements outlined in Chapter 6A, currently 4A, of The Social Services Act, the municipalities, professional environments and organizations have developed new organizational tools in order to adjust to the new situation. These could be a positive response to the profound social transformation that the legislation attempts to encourage, but they could also represent or develop into strategic tools to 'influence people's values, to bring them into line with their own current behaviour' (Brunsson 1985, 5).

The practice one wished to eradicate was a repressive and controlling approach where persons with intellectual disability had little or no influence on their own lives. The attempt to rely on other solutions than the use of coercion reflects an important development within the profession. But where professional expertise is missing and coercion is used without considering alternative solutions there can never be a genuine revolution or transformation. If the increase in the number of decisions is

not exclusively due to improved registration routines for coercive measures, but also involve a more extensive use of coercion, the positive trends we witness in some areas will be undermined by an unfortunate and unwanted revitalization of the professional practice based on coercion. It is extremely important to clarify how these processes are actually connected.

Conclusion

The number of notifications and decisions involving the use of coercion is on the rise. The number of exemptions is alarmingly high and indicates a lack of trained staff and limited adjustments and organizational development at the municipal level. Reports from The Norwegian Board of Health Supervision indicate discrepancies and shortcomings in a majority of the municipalities they have reviewed. Based on this, we can conclude that the internal control system in the municipalities is inadequate. The state authorities largely carry out systemic control and require a well-functioning internal control system in the municipalities, where local procedures for internal supervision are crucial.

When the increase in the use of coercion is not matched by upgraded skills on the part of the service providers, which at worst reveal a stagnant and declining tendency, this could result in serious legal challenges. The legal requirements (given by the parliament) that coercion should be carried out by qualified staff have been put aside to such an extent that it is far from certain that the situation would be acceptable to legislators familiar with the existing practice. Here, the county governors have a particular responsibility as they are the only ones allowed to grant exemptions from the educational requirements. When exemptions are granted in 80% of the cases, in which only 3% are rejected, this represents an obvious violation of the premises on which the legislation is based.

Coercion that primarily relates to protection of staff, other people, the property of other persons and similar objects, would in cases where this represents the main reason behind the coercion weaken the legal rights embedded in the legislation. Moreover, when coercion is carried out by persons who do not fulfil the legally binding educational requirements, the same rights are even further undermined. It is also a weakness that coercive methods are implemented over time without any consideration of alternative solutions. It therefore becomes evident that restraint and coercion is employed against persons with intellectual disability persons in order to protect employees and others from serious injury, while alternative solutions are not sufficiently considered – often due to lack of professional knowledge and qualified staff.

The state has several governing tools, including legislation. The reported effect of the introduction of new legislation in 1999, which became permanent in 2004, shows that the legislation has served as a ‘tipping point’. To ensure a continued protection of the legal rights reflected in caring social services and self-determination, it is not sufficient that the municipalities and organizations have developed procedures for decisions and reporting that satisfy the administrative bodies. Professional processes are also required. Both the mentioned legal rights belong to what we could call professional know-how, which is acquired through vocational training. Unskilled employees undoubtedly make extensive contributions of high quality and importance towards persons with intellectual disability persons within the social services. It is important to maintain this labour force, train employees and carry out proper

supervision. In addition, we would do this part of the staff a great disfavoured by involving them in tasks that require a specific education that they do not possess. In order to remove the use of coercion, relying on what may be considered a limited amount of necessary force, professional training and skills are demanded. If we are to achieve this, the practice of exemptions would have to be reduced significantly.

The use of coercion against persons with intellectual disability is repressive and degrading and potentially extremely harmful for their personal identity. To the extent that intellectual disability involves challenging behaviour (Emerson 2001), it must be expected that the professions that provide the services develop approaches and models that respond to this without depending on restraint and coercion. Insofar as coercion should be applied at all, it should be limited to emergency situations, repeated emergency situations or cases where there is a risk of serious injury when basic needs have been neglected.

In order to strengthen the legal rights of persons with intellectual disability persons, it is necessary that everyone involved in the implementation of the services act in accordance with the intentions embedded in the legislation (The Social Services Act, Chapter 4A). This includes everyone working in the municipalities, the specialist health care services, the county governor's office, The Norwegian Board of Health Supervision and the Norwegian parliament.

Notes

1. The percentage estimate is based on an administrative prevalence of 21,052 individuals with intellectual disabilities in Norway in 2009 (IS-7/2009).
2. Statistical Package for the Social Sciences.
3. Denmark does not have a centralized register in this respect, though an evaluation of the rules regarding the use of force and other types of intervention under the act of self-determination in the Social Services Act, Chapter 21, has been carried out. This evaluation, (Rambøll Management 2006) based on statistics from 2005, shows that 3.8 cases per 10,000 inhabitants took place in the municipalities, whereas the counties had an average 13.8 cases per 10,000 inhabitants. The quantitative data is based on a limited sample. In Sweden, The National Board of Health and Welfare has studied the use of coercion affecting people with intellectual disabilities in 2008. Five national boards have reported that they are aware of one or more cases of persons being restrained during the years 2006 and 2007. Nine national boards have reported the practice of locking up people (The National Board of Health and Welfare 2008). There is no specific legislation that allow for the use of measures that run contrary to the will of the individual within the municipal system, except for the emergency legislation given in 'Brottsbalken' (The Criminal Code) Chapter 24, Section 4.
4. Later modified to section 4A.
5. From 2004 the number of exemptions amounts to more than 80%, a figure which remained stable until 2008.
6. In 2001 the number was 152 exemptions (56% of all cases), in 2002 the number was 266 and in 2003, 270 exemptions were granted. With the introduction of new permanent legislation, the number of exemptions increased from 319 to 481 in 2005, 490 in 2006 and 536 in 2007.
7. Register-based employment statistics for health sector staff, Statistics Norway (SSB).
8. These were included in the additional proposition (Ot.prp.no. 57 (1995–96)) to Ot.prp.no. 58 (1994–95).
9. The officially registered number of persons with intellectual disability in Norway (2009).
10. For two of the years, 2003 and 2006, we only have flawed/unreliable data available.
11. The purpose of demanding that alternative solutions should have been tried is primarily to reduce the use of coercion. One effect of this requirement can also be that one separates contextual and relational episodes from pure emergency situations.

12. The Crossfire Project – ‘In the crossfire between education and the demands of vocational training’ – is a research project led by Pär Nygren of Lillehammer University College. The project attempts to establish whether health and social studies are out of step with the requirements of vocational training.

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