

Oral presentation

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Children's rights to participate in medical decisions, with special reference to coercive treatment

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Background

The objective was to investigate legal rights of children with regard to medical matters, especially their right to make decisions of their own.

Methods

To fulfil the main objective traditional legal methods have been used. That means that above all the legal rules, the preparatory works and the precedents have been analyzed.

Results

Psychiatric care can in Sweden be given involuntarily in accordance with the Act on Coercive Psychiatric Care (LPT). In LPT, there are no legal rules that explicitly state who is to say yes or no to the recommended care. Instead guidance must be found in other sources of law including the common legislation on the relationship between parents and children. Even so the legal situation is unsure in some aspects. From these other sources of law I conclude that the right to say yes or no to recommended care – in the project analyzed as the negative right to decide – is divided between the parents and the children. For the small children the parents can make the decisions while older teenagers (15 – 17 years) normally have their own right to decide. The hard cases are the legal situation for the young teenagers. But at least some sources of law support that also teenagers in this group (perhaps as young as 11 – 12 years) have their own negative right to decide. Psychiatric care thus can't in such cases be given only out of the consent of the parents. Another important question is to what extent children on their own can ask for psychiatric care, i.e. the positive right to decide. The principles just mentioned can to some degree be applied also in this question.

Conclusion

As hinted, Swedish legislation in many questions consider adolescents competent to take their own decisions. However, the ideal situation is of course a situation where the care is given after a joint decision.