

## Article 12 of the Convention on the Rights of Persons with Disabilities

### Guarantee of the Right to Decision-Making by Oneself

- Denial of restriction on actions due to an impairment.
- No proxies are recognized whatsoever.
- Countries party to the treaty must make a paradigm shift to assisted decision-making after abolishing the proxy system.

All impaired persons, regardless of the type and severity of impairment, should be recognized to have exactly the same legal abilities as others in all facets of their lives, and be guaranteed the right to receive assistance to exercise these legal abilities.

The cause of the inability for self-determination has been reattributed from the impaired individual to society.

## TLS Totally Locked-in State

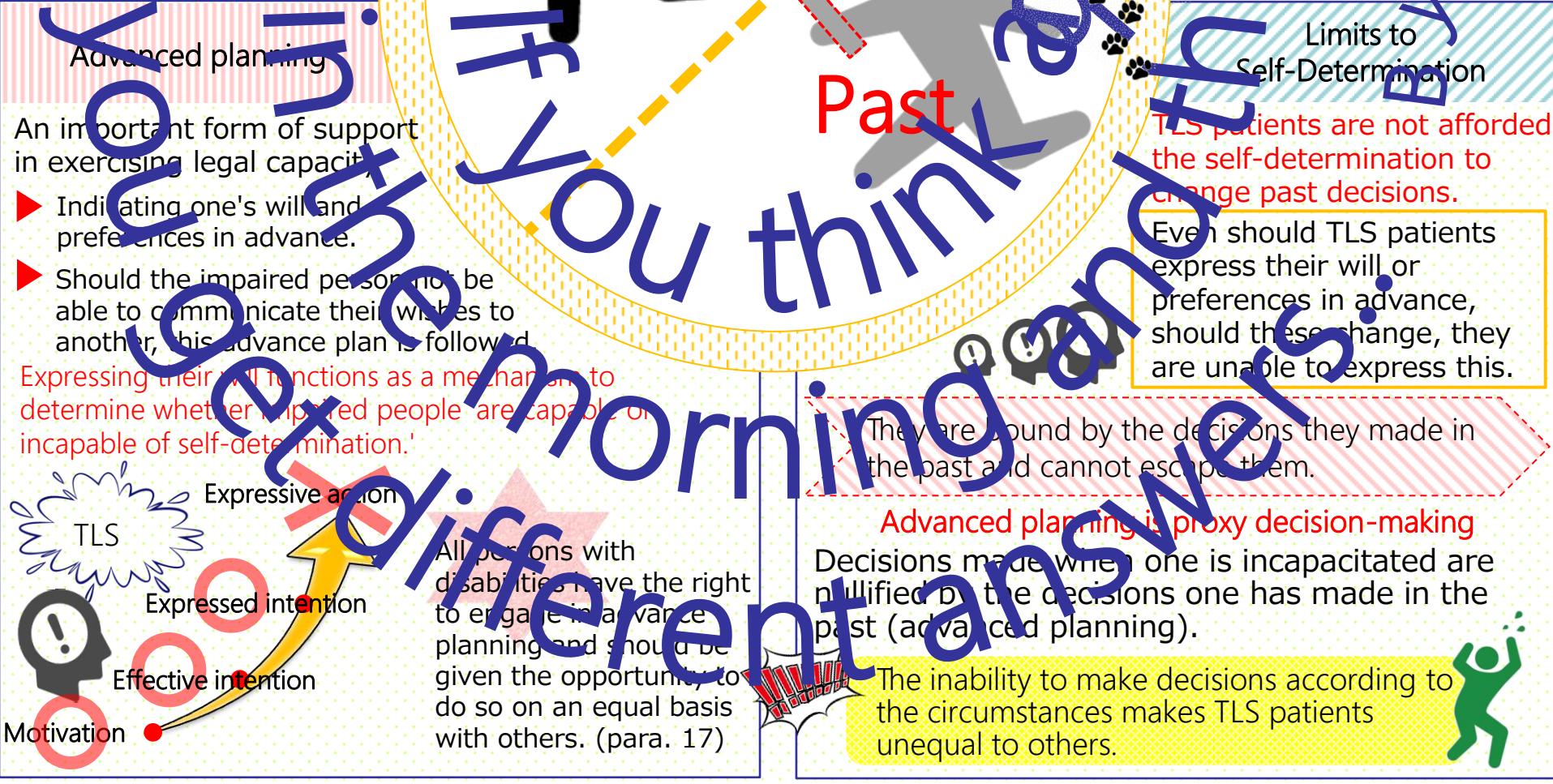
The patient is conscious, but their motor neurons, including their eye muscles, are impaired, making them unable to move their body and unable to communicate their will.



They are unable to gesture.

TLS robs the impaired person of the means to communicate their will to others, and no matter how clear their will is, they exhibit virtually no autonomy.

Since assistance is directed by way of interaction with available resources, it is restricted by these resources.



### Advanced planning

An important form of support in exercising legal capacity.

- Indicating one's will and preferences in advance.
- Should the impaired person not be able to communicate their wishes to another, this advance plan is followed.

Expressing their will functions as a mechanism to determine whether impaired people are capable or incapable of self-determination.

### Expressive action

All persons with disabilities have the right to engage in advance planning and should be given the opportunity to do so on an equal basis with others. (para. 17)

Expressed intention

Effective intention

Motivation

### Limits to Self-Determination

TLS patients are not afforded the self-determination to change past decisions.

Even should TLS patients express their will or preferences in advance, should these change, they are unable to express this.

They are bound by the decisions they made in the past and cannot escape them.

### Advanced planning is proxy decision-making

Decisions made when one is incapacitated are nullified by the decisions one has made in the past (advanced planning).

The inability to make decisions according to the circumstances makes TLS patients unequal to others.

- In Article 12, the efficacy of the paradigm of assisted decision-making is asserted, but this stops short of indicating the predominance of self-determination, and does not address the limitations of self-determination seen in TLS.
- Therefore, for individuals with limitations in self-determination, a scheme of advanced planning was adopted, thus making impaired persons unequal to others.
- Advanced planning is proxy decision-making, and does not escape the proxy decision-making-paradigm.
- There must be discussion of forms of self-determination that are not bound by the past decisions of the person in question.