Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2091 (2016)[1]

The case against a Council of Europe legal instrument on involuntary measures in psychiatry

Parliamentary Assembly

1. Involuntary placement and involuntary treatment procedures give rise to a large number of human rights violations in many member States, in particular in the context of psychiatry. Relevant provisions of the European Convention on Human Rights (ETS No. 5) and the Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention"), as well as Committee of Ministers Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder, authorise but strictly regulate the use of involuntary measures in psychiatry, with a view to protecting people with mental health problems (better termed "people with psychosocial disabilities") from human rights abuses.

2. Since 2013, the Committee on Bioethics of the Council of Europe (DH-BIO) has been working on drawing up an additional protocol to the Oviedo Convention, aimed at protecting the human rights and fundamental freedoms of people with mental disorder with regard to the use of involuntary placement and involuntary treatment.

3. While the Parliamentary Assembly understands the concerns that prompted the Committee on Bioethics to work on this issue, it has serious doubts about the added value of a new legal instrument in this field. Nevertheless, the Assembly's main concern about the future additional protocol relates to an even more essential question: that of its compatibility with the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

4. During the public consultation on a draft version of the additional protocol conducted in 2015, a number of high-profile human rights bodies, including the Commissioner for Human Rights of the Council of Europe and the committee which is responsible for monitoring the implementation of the CRPD ("CRPD Committee"), expressed fundamental concerns about the draft additional protocol, underlining the incompatibility of its approach with that of the CRPD, and requested that the proposal to draw up a protocol be withdrawn.

5. The Assembly recalls that since its entry into force in 2008, the CRPD is the international benchmark in the field of disability, in the light of which measures taken at international and national levels are evaluated. Thus, the CRPD should be the point of departure for any Council of Europe work in this area.

6. The CRPD does not explicitly refer to involuntary placement or treatment of people with disabilities, including people with psychosocial disabilities. However, Article 14 on liberty and security of the person clearly states that a deprivation of liberty based on the existence of disability would be contrary to the CRPD.

7. The CRPD Committee interprets Article 14 as prohibiting the deprivation of liberty on the basis of disability even if additional criteria, such as dangerousness to one's self or others, are also used to justify it. The committee considers that mental health laws providing for such instances are incompatible with Article 14, are discriminatory in nature and amount to arbitrary deprivation of liberty, as other people who might be at risk of being a danger to themselves or others are not subjected to the same limitations of their rights. It also considers that forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the right to personal integrity, among others.

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1. *Assembly debate* on 22 April 2016 (18th Sitting) (see Doc. 14007, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Guguli Magradze). *Text adopted by the Assembly* on 22 April 2016 (18th Sitting).

8. In view of the above, the Assembly concludes that any legal instrument that maintains a link between involuntary measures and disability will be discriminatory and thus violate the CRPD. It notes that the draft additional protocol maintains such a link, as having a "mental disorder" constitutes the basis of the involuntary treatment and placement, together with other criteria.

9. The Assembly notes that member States face challenges in reconciling the non-discrimination principles of the CRPD with traditional mental health-care and human rights provisions. It also notes that there is resistance from some member States with regard to accepting the above interpretation of the CRPD Committee. However, it considers that the Council of Europe's position ought to be independent from the position of some of its member States. Ignoring the interpretation of the CRPD by its monitoring body established under international law would not only undermine the Council of Europe's credibility as a regional human rights organisation, but would also risk creating an explicit conflict between international norms at the global and European levels.

10. The Assembly also notes that at their 1168th meeting, the Ministers' Deputies instructed the steering and ad hoc committees to assess the necessity or advisability of drafting additional protocols to the conventions for which they have been given responsibility. It considers that an additional protocol drawn up in such circumstances could not fulfil the "advisability" criterion required by the Committee of Ministers.

11. Consequently, the Assembly recommends that the Committee of Ministers instruct the Committee on Bioethics to:

11.1. withdraw the proposal to draw up an additional protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment;

11.2. instead focus its work on promoting alternatives to involuntary measures in psychiatry, including by devising measures to increase the involvement of persons with psychosocial disabilities in decisions affecting their health.

12. Should a decision to go ahead with the additional protocol nevertheless be taken, the Assembly recommends that the Committee of Ministers encourage the Committee on Bioethics to directly involve the disability rights organisations in the drafting process, as required by the CRPD and Assembly Resolution 2039 (2015) on equality and inclusion for people with disabilities.