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Ending the detention of "socially maladjusted" persons

Reply to Recommendation[1]: Recommendation 2275 (2024)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2275 (2024) "Ending the detention of "socially maladjusted" persons", which it has forwarded to the Steering Committee for Human Rights (CDDH) and to the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) for information and possible comments.

2. The Committee of Ministers agrees that the right to liberty is a key fundamental human right and takes note of the Assembly's concerns regarding the limitation to this right provided under Article 5.1.e of the European Convention on Human Rights in respect of persons of unsound mind, alcoholics or drug addicts or vagrants. It has the following observations.

3. Regarding the suggestion that Article 5.1.e reportedly stemmed from the eugenics movement, the Committee of Ministers recalls that the Convention was drawn up as a response to the crimes of the Nazi regime committed in the pursuit of so-called racial purity. It sees nothing in the text of the Convention nor of its *travaux préparatoires* that could justify this claim. It notes that Recommendation 24 (1950), unanimously adopted by the then-Consultative Assembly, expressed a favourable opinion on the final draft text of the Convention, with no reservations on the provision in question. Further, the Committee recalls that neither the initial draft of the Convention nor the finally adopted text contain reference to "socially maladjusted persons". The expression "social control" is also not used in the Convention nor by the Court in relation to Article 5.1.e.

4. As regards a worldwide paradigm shift to a human rights-based approach that would not allow for deprivation of liberty based on actual or perceived disability, the Committee of Ministers recalls that a person could not be detained under Article 5.1.e of the Convention on account of a disability, but rather because of a pressing need to protect that individual or the wider public. It further recalls that strong safeguards are provided in Articles 5.2 and 5.4 of the Convention to prevent risk of human rights violations in respect of deprivation of liberty, and Article 13 guarantees an effective remedy in case of violation.

5. Regarding the Assembly's recommendations in paragraph 4, the Committee of Ministers recalls that under the Convention differential treatment only amounts to discrimination in the absence of objective and reasonable justification. In certain circumstances, deprivation of liberty under Article 5.1.e may be a justified and appropriate means of fulfilling the positive obligations of States, for example under Article 2 of the Convention (right to life), by affording general protection to society against potential violent acts of an apparently mentally disturbed person, as well as protecting persons suffering from mental health problems from self-harm.

6. Further, given that all Council of Europe member States currently provide for involuntary placement in their national law, and in light of findings of violations of human rights of those suffering from mental health problems by the Court and the European Committee for the Prevention of Torture (CPT), the Committee of Ministers recalls that it entrusted the CDBIO with preparing a series of instruments aimed at improving the protection and the autonomy of persons with mental health problems, including a draft Additional Protocol to the Convention on Human Rights and Biomedicine (the Oviedo Convention) concerning the protection of

1. Adopted at the 1515th meeting of the Ministers' Deputies (11 December 2024).

human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services, and an accompanying draft Recommendation on promoting the use of voluntary measures in mental health care services. The Committee of Ministers expects to examine these texts at the beginning of 2025. It underlines the important participation and contribution of INGOs in this work, which also took due account of relevant UN legal instruments and specific works, in particular WHO QualityRights.

7. As concerns public awareness-raising campaigns to overcome stereotypes and prejudice, the Committee of Minsters assures the Assembly that this element will be taken into account in its above-mentioned draft Recommendation on promoting the use of voluntary measures in mental healthcare services.

8. Finally, the Committee of Ministers draws attention to other initiatives aimed at maximising individual autonomy and minimising and potentially eliminating involuntary placement of those with mental health problems, namely the CDBIO's Guide to health literacy and Compendium of good practices to promote voluntary measures in mental health services.