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Draft additional protocol to the Convention on Human Rights and Biomedicine concerning the protection of human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services

Report[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Ms Carmen LEYTE, Spain, Group of the European People's Party

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1. Reference to committee: Doc. 16117, Reference 4860 of 7 April 2025.

A. Draft opinion[2]

1. The Parliamentary Assembly thanks the Committee of Ministers for having submitted the draft additional protocol to the Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention"), concerning the protection of human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services, together with its draft explanatory report, for opinion, and for accompanying them with the draft recommendation on respect for autonomy in mental healthcare, the report on the case law of the European Court of Human Rights on the rights of persons in relation to involuntary placement and treatment in mental healthcare facilities and the compendium of good practices to promote voluntary measures in mental health services.

2. The Assembly notes that although the drafting of the protocol began in 2012 and was completed in 2020, the draft was not submitted to the Assembly for opinion until February 2025 so that it could be accompanied by the above-mentioned texts.

3. The Assembly points out that it has, in fact, already expressed its opposition to such a draft protocol in Recommendations 2091 (2016) "The case against a Council of Europe legal instrument on involuntary measures in psychiatry", 2158 (2019) "Ending coercion in mental health: the need for a human rights-based approach" and 2227 (2022) "Deinstitutionalisation of persons with disabilities". Moreover, in Recommendation 2275 (2024) "Ending the detention of 'socially maladjusted' persons", the Assembly recommended that the Committee of Ministers, with regard to the further consideration of the draft protocol, ensure that any Council of Europe guidance was fully in line with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the guidance of the United Nations and its agencies.

4. The Assembly fully supports the stated aim of the draft protocol which is to protect the dignity and identity of all persons and to guarantee, without discrimination, respect for their autonomy, their integrity and their other rights and fundamental freedoms with regard to involuntary placement and involuntary treatment within mental healthcare services. The additional texts transmitted to the Assembly clarify the context in which the draft protocol was prepared.

5. It notes, however, that the former Council of Europe Commissioner for Human Rights, civil society organisations and various relevant United Nations bodies, including the Committee on the Rights of Persons with Disabilities, are firmly opposed to the draft protocol, in particular as they consider it to be incompatible with the CRPD, which has been ratified by all Council of Europe member States. They argue that the draft protocol would make it more difficult to abolish coercive practices in mental healthcare settings and would be contrary to the spirit and letter of the CRPD.

6. The Assembly reiterates that the Council of Europe, as the leading regional human rights organisation, must fully integrate the paradigm initiated by the CRPD shift into its work.

7. The Assembly therefore issues a negative opinion on the draft protocol as it stands and recommends that, before considering to examine the draft protocol, the Committee of Ministers commission a study to determine its compatibility with the CRPD.

8. While recognising the need to provide a framework for exceptional, last-resort measures, the Assembly considers that member States should focus their efforts on respect for the autonomy of persons, in line with the CRPD's guidance. It invites the Committee of Ministers to consider proceeding by means of a more flexible instrument, such as a recommendation rather than a protocol, since the ultimate objective would be to phase out involuntary measures.

9. In this context, the Assembly welcomes the draft recommendation on respect for autonomy in mental healthcare, which highlights the need to ensure respect for the autonomy of persons receiving mental healthcare and to prevent the use of coercion in the provision of such care. It fully supports this text, which is consistent with the values of dignity and humanity upheld by the Council of Europe and encourages all member States to implement it.

2. Draft opinion adopted unanimously by the committee on 4 December 2025.

B. Explanatory memorandum by Ms Carmen Leyte, rapporteur[3]

1. Introduction

1. The idea of developing an additional protocol to the Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention") arose from the observation made in 2004 by the Steering Committee on Bioethics (CDBI)[4] that involuntary measures were sometimes decided in member States without the necessary legal safeguards to ensure that they were applied only in exceptional circumstances and as a last resort, and to guarantee that the persons concerned could effectively exercise their rights.

2. The Committee of Ministers then mandated the Committee on Bioethics (DH-BIO) to develop an instrument to strengthen legal safeguards and ensure that involuntary measures were effectively applied only in exceptional circumstances and as a last resort. Work began in 2012 and was completed in 2020.

3. The Parliamentary Assembly was formally seized for opinion on this draft protocol in February 2025 and transmitted this request to the Committee on Social Affairs, Health and Sustainable Development. On this occasion, other texts were also submitted to it: the draft recommendation on respect for autonomy in mental healthcare, the report on the case law of the European Court of Human Rights on the rights of persons in relation to involuntary placement and treatment in mental healthcare facilities and the compendium of good practices to promote voluntary measures in mental health services.

2. Reminder of the Assembly's previous positions on the subject

4. The rapporteur recalls that, on several occasions, the Assembly has expressed its views on the appropriateness of a protocol on involuntary treatment and involuntary placement.

5. In its Recommendation 2091 (2016) "The case against a Council of Europe legal instrument on involuntary measures in psychiatry", the Assembly recommended that the Committee of Ministers instruct the DH-BIO to withdraw the proposal to draw up an additional protocol on the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment and, instead to 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.

6. In its Recommendation 2158 (2019) "Ending coercion in mental health: the need for a human rights-based approach", the Assembly reiterated the urgency for the Council of Europe, as the leading regional human rights organisation, to fully integrate the paradigm shift initiated by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into its work regarding the protection of human rights and dignity of persons with mental health conditions or psychosocial disabilities. It thus called on the Committee of Ministers to prioritise support to member States to immediately start transitioning to the abolition of coercive practices in mental health settings. Finally, noting the continued widespread opposition to work on a protocol, the Assembly invited the Committee of Ministers to redirect efforts from the drafting of the protocol to the drafting of guidelines on ending coercion in mental health.

7. Following on from this, in Recommendation 2227 (2022) "Deinstitutionalisation of persons with disabilities", the Assembly recommended that the Committee of Ministers refrain from endorsing or adopting draft legal texts which would make successful and meaningful deinstitutionalisation, as well as the abolition of coercive practices in mental health settings more difficult, and which go against the spirit and the letter of the CRPD – such as the draft protocol.

8. While bearing in mind these previous positions, the rapporteur examined all the texts that have been submitted to the Assembly and wanted to hold hearings in order to take a fresh look at the draft text.

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3. The explanatory memorandum is drawn up under the responsibility of the rapporteur. Its original French version was translated into English by a machine translation tool.

4. CDBI is the predecessor of the Committee on Bioethics (DH-BIO) and the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO).

3. Committee hearings

9. The Committee on Social Affairs, Health and Sustainable Development held two hearings, on 8 April and 16 May 2025. During the first hearing, it emerged that the CDBIO, which is responsible for drafting the protocol, believed that a binding instrument would strengthen the protection of fundamental rights in the context of involuntary measures by clarifying and developing the standards of protection applicable to involuntary treatment, based on the case law of the European Court of Human Rights. Conversely, for the Committee on the Rights of Persons with Disabilities, the draft protocol is in flagrant contradiction with the legal obligations of member States under the CRPD and risks setting a dangerous precedent by introducing less stringent standards that circumvent essential international treaties and undermine the rights of persons with disabilities.

10. At the second hearing, civil society organisations spoke out strongly against the draft protocol. They either highlighted its incompatibility with the CRPD and its ineffectiveness, or even its counterproductivity in practice, or, more pragmatically, its uselessness, pointing to the good practices of certain countries that have reduced the use of coercion.

4. Analysis by the rapporteur

11. As a doctor, the rapporteur is aware that, given current practices in Europe, involuntary measures cannot be phased out immediately. A paradigm shift is certainly necessary, but there is no doubt that it will take a long time. She therefore recognises that involuntary measures must be regulated, as they cannot be completely abandoned overnight. An appropriate legal framework should first seek to uphold the principle of autonomy and only then “temporarily” regulate exceptional measures of last resort.

12. The rapporteur notes that the additional texts transmitted to the Assembly clarify the context in which the draft protocol was prepared: it does not aim to encourage involuntary placement and involuntary treatment, but to regulate a practice that must be exceptional and a last resort. However, the protocol must be autonomous, and its objective should be clear without the need for accompanying texts.

13. The draft protocol should therefore have focused on respect for the principle of autonomy and only subsequently provided a framework for exceptional measures of last resort. The few limited changes made to the draft text over the years do not go in this direction and do not comply with the principle of non-discrimination. The rapporteur points out in particular that replacing “persons with mental disorders” with “persons” does not make any substantive change, as most of the persons affected by involuntary measures are persons with disabilities.

14. The rapporteur notes that the Committee of Ministers has decided to continue work on the protocol despite the Assembly's concerns, in particular regarding its incompatibility with the CRPD, concerns shared by several prominent human rights bodies, including the former Council of Europe Commissioner for Human Rights, the committee responsible for monitoring the implementation of the CRPD, and the United Nations High Commissioner for Human Rights.

15. In this regard, she proposes to recommend that the Committee of Ministers ensure the legal certainty of the draft protocol, in particular with regard to its compatibility with the CRPD, an instrument ratified by all Council of Europe member States.

16. The rapporteur would also like to make a few comments on the draft text. The provisions of the draft protocol would apply to involuntary placement and involuntary treatment “with mental healthcare services.” This territorial element, which is restrictive in principle, should be defined. For example, as a doctor, she does not see whether the case of a person who is experiencing a sudden and serious psychotic episode at home or in the street and requires emergency treatment could be covered. Yet it is precisely for this type of intervention that she herself is required to take involuntary measures. In mental healthcare services, including psychiatric institutions, it is much easier to put in place appropriate mental healthcare measures with the consent of the individuals concerned, in accordance with the CRPD.

17. The reference in the preamble to the draft protocol to the fact that “the work carried out at international level on the protection of the dignity and rights of persons with disabilities, in particular the United Nations Convention on the Rights of Persons with Disabilities” is taken into account therefore appears to be incorrect and should, if necessary, be amended. The same applies to the reference to “taking into account [...] the previous work [...] of the Parliamentary Assembly of the Council of Europe in this field” as the draft protocol does not accurately reflect the Assembly’s position.

5. The draft recommendation of the Committee of Ministers to member States on respect for autonomy in mental healthcare

18. The rapporteur welcomes the drafting of a recommendation on respect for autonomy in mental healthcare, which, like the CRPD, aims to eliminate coercion and promote practices based on autonomy. She also welcomes the publication of positive resources such as the compendium of good practices to promote autonomy in mental healthcare and refers to the World Health Organization's "QualityRights" initiative, which supports human rights-based health systems through training and reform.

19. The rapporteur considers that member States must focus their efforts on the autonomy of individuals in order to eliminate involuntary measures and thus comply with the CRPD. To this end, good practices must be shared, and sufficient financial resources must be allocated for early detection and treatment, as well as for the education and training not only of health personnel but also of those who come into contact with people with mental health problems. In addition, research aimed at promoting respect for autonomy must be supported. Member States must equip themselves with the means to eliminate involuntary measures.