Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14199
16 November 2016

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

Reply to Recommendation[1]: Recommendation 2091 (2016)
Committee of Ministers

The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2091 (2016) on "The case against a Council of Europe legal instrument on involuntary measures in psychiatry" and has forwarded it to the relevant committees and bodies for information and comments.[2]

The Committee of Ministers agrees with the Assembly that the utmost should be done to promote alternatives to involuntary measures. It nevertheless considers that in exceptional situations where there is risk of serious harm to the health of the person concerned or to others, and in the absence of alternatives, involuntary measures could be justified subject to strict protective conditions. The Court has said that "*a mental disorder may be considered as being of a degree warranting compulsory confinement if it is found that the confinement of the person concerned is necessary as the person needs therapy, medication or other clinical treatment to cure or alleviate his/her condition, but also where the person needs control and supervision to prevent him/her from, for example, causing harm to him/herself or other persons*."[3] For this reason, involuntary measures in psychiatry continue to be provided for in the laws of member States and regularly applied.

The Committee of Ministers observes, however, that there is a wide variation in the application of such measures and notes in this context the number of cases regularly brought before the European Court of Human Rights that relate to violations as a result of involuntary measures. Bearing in mind this reality, the Committee considers that an Additional Protocol to the Oviedo Convention could be an effective tool to ensure that in all circumstances, involuntary measures are embedded with the guarantees required by the European Convention on Human Rights so as to (i) safeguard the human rights of the person concerned,[4] and in particular provide the possibility for the right to an effective remedy against such a measure and (ii) prevent violations of the Convention similar to those already found by the European Court of Human Rights. Better protecting the rights of the persons concerned both in law and in practice and strengthening the necessary safeguards would be essential to ensure that involuntary measures are exceptional and used as a last resort in the absence of alternatives.

The Committee of Ministers agrees on the importance of information exchange and sharing of best practices with a view to the complementary development of guidelines to reduce the use of involuntary measures and that the CAHDPH has a particularly important role to play in this context.

With regard to paragraph 12 of the Assembly recommendation, the Committee of Ministers notes that for the purpose of the preparation of the draft protocol, several consultation procedures have taken place, including with international non-governmental organisations (representing patients and their families, health

1. Adopted at the 1270th meeting of the Ministers' Deputies (9 November 2016).
2. Steering Committee for Human Rights (CDDH), Committee on Bioethics (DH-BIO), Ad hoc Committee of Experts on the Rights of Persons with Disabilities (CAHDPH).
3. *Bergmann v. Germany*, No. 23279/14, judgment of 7 January 2016, § 97.
4. Involuntary measures, in particular placement, raise important human rights questions especially concerning Article 5 §1(e) (right to liberty and security), but also in some cases Articles 3 (prohibition of torture and inhuman or degrading treatment) and 8 (protection of private and family life) of the European Convention on Human Rights.

professionals, human rights defenders and advocacy groups). However, as has been suggested by the Assembly, it would encourage the DH-BIO to directly involve disability rights organisations to participate in the work still to be undertaken.

Finally, the Committee of Ministers reiterates that involuntary measures should be exceptional and only be envisaged in the absence of alternatives. It is convinced that the possible drawing up of a legal instrument to lay down the necessary framework for such measures within the Council of Europe would not diminish in any way the credibility of the Organisation, but would on the contrary contribute to prevention of abuses and encourage the progressive transition to a more uniform application of voluntary measures in psychiatry by the member States, in accordance with the spirit of the United Nations Convention on the Rights of Persons with Disabilities.