



Recommendation 2275 (2024)¹

Ending the detention of “socially maladjusted” persons

Parliamentary Assembly

1. The right to liberty is one of the most fundamental human rights. It is guaranteed in Article 5 of the European Convention on Human Rights (ETS No. 5, “the Convention”). However, the Convention includes a limitation to the right to liberty specifically on the basis of mental impairment, drug or alcohol use, or not having a fixed abode. The formulation of Article 5.1.e, reportedly stemming from the eugenics movement, states that “persons of unsound mind, alcoholics or drug addicts or vagrants” can be lawfully detained. These persons have been referred to as “socially maladjusted”, including in the past by the European Court of Human Rights (the Court), an approach that is considered discriminatory and stigmatising in the community of human rights defenders.

2. The Convention is the only international human rights treaty that excludes these groups from the full enjoyment of the right to liberty. This is problematic, as detaining such vulnerable persons effectively puts them at higher risk of systematic rights violations on the sole ground that they might hypothetically pose a danger to others or that their own interest may necessitate their detention. The initial draft of the Convention did not contain a reference to “socially maladjusted” persons; indeed, the Parliamentary Assembly, in 1949, had recommended a text closer to the Universal Declaration of Human Rights.

3. In the last seventy years, there has been a worldwide paradigm shift to a human rights-based approach, as exemplified by the United Nations Convention on the Rights of Persons with Disabilities, ratified by all member States of the Council of Europe except Liechtenstein. The United Nations’ interpretation of the rights of persons with disabilities and the interpretation given by the Committee on the Rights of Persons with Disabilities do not allow for the deprivation of liberty based on an actual or perceived disability. The interpretation provided by the United Nations is, however, very seldom applied in the context of the European Court of Human Rights, since the formulation of Article 5.1.e does not oblige the Court to do so.

4. The idea of social control – whether of persons with psychosocial disabilities, of persons who use drugs or alcohol or of persons without a fixed abode – is not compatible with our 21st-century understanding of human rights. The Assembly underlines the urgent need for the Council of Europe, as the leading regional human rights organisation, to fully integrate the worldwide paradigm shift to a modern human rights-based approach in its work. The time has come to move away from the discriminatory concept of excluding certain groups from human rights protection. The Assembly thus recommends that the Committee of Ministers:

4.1. support member States in taking the necessary steps for the full enjoyment of the right to liberty by the groups referred to in Article 5.1.e of the Convention, in co-operation with the European Union, the United Nations and its agencies (in particular the World Health Organization), non-governmental organisations and organisations of persons with lived experience, *inter alia*:

4.1.1. in removing discriminatory limitations on the full enjoyment of the right to liberty of the groups in question from their constitutions, their legislation and their policies;

4.1.2. in developing adequately funded, human rights-compliant strategies for deinstitutionalisation with clear time frames and benchmarks, with a view to a genuine transition to independent living for persons with disabilities, persons with mental health problems and persons who use drugs or alcohol;

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 24 May 2024 (see Doc. 15983, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Stefan Schennach).*



- 4.1.3. in running public awareness-raising campaigns in order to overcome stereotypes and prejudice surrounding persons with disabilities, persons with mental health problems, persons who use drugs or alcohol or who do not have a fixed abode, and promote the full inclusion in society of these persons;
- 4.2. call on the Council of Europe Development Bank, the World Bank and other social development funds such as the European Structural and Investment Funds to help member States to allocate adequate resources for support services that avoid the detention and/or institutionalisation of persons with disabilities, persons with mental health problems or persons who use drugs or alcohol – such as the strengthening, creation and maintenance of community-based services (including drug consumption rooms, therapeutic communities and supportive living arrangements);
- 4.3. in line with the unanimously adopted [Recommendation 2158 \(2019\)](#) “Ending coercion in mental health: the need for a human rights-based approach” and with [Recommendation 2227 \(2022\)](#) “Deinstitutionalisation of persons with disabilities”, adopt guidance to member States promoting voluntary measures in mental healthcare services and pay due attention, in its further consideration of the draft additional protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: 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, to ensuring that any Council of Europe guidance is fully in line with the United Nations Convention on the Rights of Persons with Disabilities, the guidance of the United Nations and its agencies and widely accepted best practice.