Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 310 (2026)[1]

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

Parliamentary Assembly

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. It also welcomes the accompanying 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 involuntary 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 underlines that it has, in fact, already expressed its opposition to such a draft protocol in its 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 its 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 Commissioner for Human Rights of the Council of Europe, civil society organisations and various relevant United Nations bodies, including the Committee on the Rights of Persons with Disabilities, are firmly opposed to this 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.

1. *Assembly debate* on 28 January 2026 (6th sitting) (see Doc. 16309, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Carmen Leyte). *Text adopted by the Assembly* on 28 January 2026 (6th sitting).

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

7. The Assembly therefore issues a negative opinion on the draft protocol as it stands and recommends that, before considering the examination of 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 must focus their efforts on respect for the autonomy of persons, in line with the CRPD's guidance. Since the ultimate objective would be to phase out involuntary measures, it invites the Committee of Ministers to consider proceeding by means of a more flexible instrument than a protocol, for example a recommendation. Such a recommendation should be fully in alignment with the CRPD, its general comments and guidelines.

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.