

Committee on the Rights of Persons with Disabilities

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Member States of the Council of Europe supporting the draft Additional Protocol to the Oviedo Convention are in breach of their obligations under the Convention on the Rights of Persons with Disabilities.

The Committee on the Rights of Persons with Disabilities (the Committee) refers to and reiterates its earlier Open letter of 1 July calling the Committee of Ministers of the Council of Europe to withdraw the draft Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine, commonly referred to as the Oviedo Convention. <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

The Committee **recalls** that the Convention on the Rights of Persons with Disabilities (UNCRPD) is the primary universal human rights treaty protecting the human rights, fundamental freedoms and dignity of persons with disabilities, without discrimination. The Convention is legally binding on its States Parties (and every member state of the Council of Europe is a party to the UNCRPD).

In view of this the Committee is **deeply disturbed** learning that the Secretariat of the Committee of Ministers had commissioned a study to be used in the Ministers' Deputies discussions on the draft Additional protocol, that per the Secretariat of the Council of Europe concludes that the draft Additional Protocol cannot be regarded as being precluded by, or running counter to, the Convention on the Rights of Persons with Disabilities.

The Committee is **appalled** by the blatant disregard of the UNCRPD Committee's guidance, by bodies within the structures of the Council of Europe, including the recommendations based on its published authoritative guidance in which the Committee repeatedly has been calling for the withdrawal of the draft Additional Protocol detailing how it contradicts the Convention on the Rights of Persons with Disabilities. The Committee is also concerned that the Ministers' Deputies study has not been released to organizations of persons with disabilities. Member States shall give due consideration to their obligation pursuant to Article 4(3) of the Convention on the Rights of Persons with Disabilities requiring States Parties to "closely consult with and actively involve persons with disabilities through their representative organizations" in decision-making processes affecting their rights. The Committee requests the publication of the above-mentioned study.

The Committee has called on Member States of the Council of Europe to end coercion in mental health, to respect their obligation under the Convention on the Rights of Persons with Disabilities, and to acknowledge as well several resolutions and policy decisions of the World Health Organization, the United Nations General Assembly and the United Nations Human Rights Council insisting on a paradigm shift on the matter.

The Committee is **dismayed** that some Member States of the Council of Europe continue to advocate for the perpetuation of involuntary detention and treatment contrary to the dignity of persons with disabilities, and the human rights model of mental health. The Council of

Europe should take this modern human rights standard to heart rather than the continued belief, that isn't supported by scientific evidence, of a necessity for involuntary detainment and treatment which factually places the Council at a profound distance from the very pillars it so strongly professes to uphold: human rights, democracy, and the rule of law.

The Committee is also *deeply disappointed* to learn that the representatives of twelve countries have decided to continue the process of the draft Additional protocol through a revision of it, which permits "that involuntary placement and involuntary treatment are applied only as measures of last resort and under strict conditions of legality, necessity and proportionality".

The Committee **reminds** the Council of Europe that the Convention on the Rights of Persons with Disabilities prohibits involuntary placement and involuntary treatment, and institutionalization of persons with disabilities on the basis of disability, without exceptions. Involuntary placement and involuntary treatment, whether as measures of last resort or subject to certain safeguards are incompatible with the human rights model of disability set out in the Convention, which prohibits coercion in mental health services. Such measures infringe on the prohibition of deprivation of liberty on the basis of impairment (art. 14 (1) (b) of the Convention), alone or in conjunction with other criteria such as perceived dangerousness or therapeutic need, as stated in the Committee's Guidelines on Article 14. They also violate the requirement that health services or treatments be based on the free and informed consent of the person concerned (art. 25 (d) of the Convention).

Involuntary placement and involuntary treatment, including as measures of last resort or subject to safeguards, also constitute forms of discriminatory treatment and violence against persons with disabilities, as they perpetuate institutional power imbalances that have been widely documented as exposing persons with disabilities to torture and ill-treatment. Scientific studies have documented that involuntary and coercive interventions cause trauma and harm, and even death.

The Committee **stresses** that the draft Additional Protocol is fundamentally inconsistent with the Convention on the Rights of Persons with Disabilities, and its adoption and implementation will render Member States of the Council of Europe, also parties to the Convention on the Rights of Persons with Disabilities in breach of their obligations under the Convention. States parties to the Convention are under the general obligation to refrain from engaging in any act or practice that is inconsistent with the Convention (article 4 (1) (f)). States parties cannot derogate from their obligations under the Convention, and even worse in 2026 – 20 years after the adoption of the Convention – by creating exceptions, through a Protocol to a regional treaty, alleging that coercion is compatible with human rights.
