



**TO:**

**Committee of Ministers of the Council of Europe**  
Council of Europe  
Avenue de l'Europe  
F-67075 Strasbourg Cedex, France

**CC:**

**Committee on Bioethics of the Council of Europe**

**Brussels, 15 September 2020**

**RE: Open letter to the Council of Europe's Committee of Ministers and Committee on Bioethics regarding the draft additional protocol to the Oviedo Convention**

Dear Ministers and Members of the Committee on Bioethics of the Council of Europe,

In 2014, the Council of Europe's Committee on Bioethics started to work on a protocol with the purpose to "protect the rights of people with mental disorders" subject to involuntary

treatment and involuntary placement in psychiatry. This project has been continuously opposed to by a number of stakeholders from the United Nations, the Council of Europe and civil society.

Six years later, we, Autism-Europe, Disabled People International Europe, the European Association of Service Providers for Persons with Disabilities, the European Disability Forum, the European Network of (Ex)-Users and Survivors of Psychiatry, the European Network on Independent Living, Human Rights Watch, Inclusion Europe, Mental Health Europe, the Society of Social Psychiatry P.Sakellariopoulos, Social Firms Europe CEFEC, Validity, the Commission for the Rights of Persons with Disability (Malta), the Slovak National Centre for Human Rights and UNIA, **continue to convey our deepest concerns and opposition to the development and adoption of this protocol**. This open letter highlights the arguments.

### **International standards against coercion in psychiatry**

Forced treatment and forced placement of persons on the basis of their disabilities, including persons with psychosocial disabilities and persons with mental health issues, is prohibited under the **UN Convention on the Rights of Persons with Disabilities** (CRPD) adopted in 2006. These practices, even if regulated by law, breach, among others, the rights of non-discrimination, legal capacity, liberty and security, physical and mental integrity, and health enshrined in the CRPD. The CRPD has been ratified by 46 of 47 Member States of the Council of Europe.

Several other bodies and mandate holders of the United Nations hold a similar position against involuntary treatment and placement, even when States try to justify these practices on the basis of a “medical necessity” or for the alleged security of the person or others.

In various reports adopted between 2018 and 2020, the **UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**, spoke out against the involuntary placement of persons with intellectual and psychosocial disabilities to mental health facilities ([A/HRC/38/36](#)), excessive medicalisation and discriminatory mental health laws that deprive people of liberty and their autonomy, often based on the myth that “individuals with certain diagnoses are at high risk of perpetuating violence and posing a threat to the public” ([A/HRC/41/34](#)). In its latest report, the Rapporteur called States to “undertake the legislative, policy and other measures required to fully implement a human rights-based approach to mental health with the inclusive participation of those with lived experience” ([A/HRC/44/48](#)).

Earlier this year, the **UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** recognised that “psychiatric intervention based on ‘medical necessity’ or the ‘best interests’ of the patient (...) may well amount to torture” ([A/HRC/43/49](#)).

Moreover, in a [resolution adopted in March 2020](#), the **UN Human Rights Council** expressed deep concerns that persons with mental health conditions or psychosocial disabilities, including persons using mental health services, continue to be subject to a variety of human rights violations, including overmedicalisation and treatment practices that fail to respect their autonomy, will and preferences. It called on States to promote a paradigm shift in mental

health, “through the promotion of community-, evidence- and human rights-based and people-centred services and supports that protect, promote and respect the enjoyment of the rights, autonomy, will and preferences of all persons” and through the involvement of people with psychosocial disabilities and mental health issues.

### **A growing consensus against coercion within the medical community**

Similarly, a growing number of practitioners in the medical and scientific community are now questioning the use of coercive measures in mental healthcare. Some have reached the conclusion that all forms of coercive practices are [inconsistent with human rights-based mental health care](#). They argue that lack of research and data suggests hardly “[any evidence pertaining to the generalisability or sustainability of individual programmes](#)”. The lack of evidence of their effectiveness is on the other hand accompanied by the [evidence that coercive practices](#) such as seclusion and restraint actively cause harm to physical and mental health. Evidence that contests coercive treatment also points to poor health outcomes and drastically shorter life-expectancy of those involuntary treated.<sup>1</sup>

### **Opposition within the Council of Europe**

The Council of Europe’s Commissioner for Human Rights and the Parliamentary Assembly are opposed to the draft additional protocol.

In a joint hearing on protecting the rights of people with psychosocial disabilities with regard to involuntary measures in psychiatry on [9 October 2018](#), and a follow up statement on 8 November 2018, the **Commissioner for Human Rights** expressed clear opposition against the text of the protocol and recommended instead “[developing minimum standards concerning alternatives to involuntary measures in psychiatry](#).”

In June 2019, the Parliamentary Assembly unanimously adopted a [resolution on ending coercion in mental healthcare](#), calling member states to immediately start the transition to the abolition of coercive practices in mental health settings. In addition, in its [recommendation 2158 \(2019\)](#), the Assembly invited the Committee of Ministers to redirect efforts from the drafting of the additional protocol to the drafting of guidelines on ending coercion in mental health.

### **Opposition from civil society and users of mental health services**

Civil society organisations, users of mental health services and survivors of psychiatry [have strongly opposed the draft additional protocol since 2014](#).

The Committee on Bioethics has failed to meaningfully involve and take into account the opinion of the people whose rights would supposedly be protected by this draft protocol. A very limited number of State authorities have been in contact with mental health service users

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<sup>1</sup> For examples of literature on the topic see: MONCRIEFF, J. 2013. The Bitterest Pills: The Troubling Story of Antipsychotic Drugs, Hampshire: Palgrave Macmillan; UK. MONCRIEFF, J. 2016. Myth of the Chemical Cure In: HALL, W. (ed.) Outside Mental Health: Voices and Visions of Madness. Northampton MA: Madness Radio, 155 -162.; WHITAKER, R. 2010. Anatomy of an Epidemic: Magic Bullets, Psychiatric Drugs, and the Astonishing Rise of Mental Illness in America New York: Broadway Paperbacks; KUPFER, D. 2013. Chair of DSM-5 Task Force Discusses Future of Mental Health Research. American Psychiatric Association news release,13-33.

while negotiating this draft protocol or even during their own reforms of mental health legislation.

Considering the level and extent of this opposition, the undersigned organisations again reiterate a **call to the Council of Europe to withdraw the draft additional protocol to the Oviedo Convention** and work together with them in order to involve persons with disabilities, and particularly persons with psychosocial disabilities, in all decisions that concern them as required under the CRPD and to lead the way in ending coercion in mental health practices and in promoting good practices.

Yours sincerely,

Civil Society Organisations

Harald T Neerland, President  
**Autism-Europe**

Jean-Luc Simon, Chairperson  
**Disabled People International – Europe**

Luk Zelderloo, Secretary General  
**European Association of Service Providers for Persons with Disabilities**

Yannis Vardakastanis, President  
**European Disability Forum**

Olga Kalina, Chair  
**European Network of (Ex)-Users and Survivors of Psychiatry**

Ines Bulic Cojocariu, Deputy Director  
**European Network on Independent Living**

Carlos Ríos Espinosa, Acting Deputy Director, Disability Rights  
**Human Rights Watch**

Jyrki Pinomaa, President  
**Inclusion Europe**

Claudia Marinetti, Director  
**Mental Health Europe**

Athina Fragkouli, Ph.D. RCLSLT, President of the Board  
**Society of Social Psychiatry P.Sakellaropoulos**

Felicitas Kresimon, President of the Board  
**Social Firms Europe CEFEC**

Steven Allen, Co-Executive Director  
**Validity**

National Human Rights Institutions and Equality Bodies

Oliver Scicluna, Commissioner for the Rights of Persons with Disability  
**Commission for the Rights of Persons with Disability (Malta)**

Tomáš Földes, Executive Director ad Interim  
**Slovak National Centre for Human Rights**

Patrick Charlier and Els Keytsman, Directors  
**UNIA**