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COMMITTEE ON BIOETHICS (DH-BIO)

Working document
concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment

This working document is made public for consultation under the responsibility of the Committee on Bioethics (DH-BIO). The purpose of this consultation is to elicit comments which will be taken into consideration in the finalisation of the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.

The DH-BIO would be interested in receiving comments on any of the parts of the draft Protocol, accompanied, if possible, by drafting proposals.

Comments should be as precise and concise as possible. They should refer to specific provisions in the document, indicating the line to which the comment makes reference.

Comments should be submitted in English or French, by 15 November 2015 via email to the following address: dgI.consultation@coe.int.

1 **Preamble**

2 The member States of the Council of Europe and the other signatories to this Additional Protocol to
3 the Convention for the Protection of the Human Rights and Dignity of the Human Being with regard
4 to the Application of Biology and Medicine (hereinafter referred to as “the Convention on Human
5 Rights and Biomedicine”, ETS No. 164),

6 Considering that the aim of the Council of Europe is the achievement of greater unity between its
7 members and that one of the methods by which this aim is pursued is the maintenance and further
8 realisation of human rights and fundamental freedoms;

9 Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of
10 4 November 1950 and in particular Article 5.1 thereof;

11 Taking into account the work carried out at international level on the protection of dignity and rights
12 of persons with mental disorders, in particular the United Nations Convention on the Rights of
13 Persons with Disabilities of 30 March 2007;

14 Considering that the aim of the Convention on Human Rights and Biomedicine, as defined in
15 Article 1, is to protect the dignity and identity of all human beings and guarantee everyone, without
16 discrimination, respect for their integrity and other rights and fundamental freedoms with regard to
17 the application of biology and medicine;

18 Recognising the potential vulnerability of persons with mental disorder;

19 Considering that placement and treatment of persons with mental disorder form an integral part of
20 the health services offered to the population and recalling the importance of taking appropriate
21 measures, taking into account health needs and available resources, with a view to providing
22 equitable access to mental health services of appropriate quality;

23 Recalling that any intervention in the health field must be carried out in accordance with relevant
24 professional obligations and standards;

25 Emphasising the need to support people to exercise their autonomy;

26 Stressing the importance of the principle of free and informed consent to interventions in the health
27 field;

28 Recalling that the existence of a mental disorder in itself shall in no case justify an involuntary
29 measure;

30 Recognising that restrictions on the rights set out in the Convention on Human Rights and
31 Biomedicine are permissible only if prescribed by law and are necessary in a democratic society in
32 the interests of public safety, crime prevention, protection of public health or the protection of the
33 rights and freedoms of others;

34 Taking into account national and international professional standards in the field of involuntary
35 placement and involuntary treatment of persons with mental disorders and the previous work of the
36 Committee of Ministers and the Parliamentary Assembly of the Council of Europe in this field;

37 Recognising that the use of involuntary placement and involuntary treatment has the potential to
38 endanger human dignity and fundamental rights and freedoms;

39 Stressing the importance of appropriate monitoring of the use of such measures;
40 Resolving to take such measures as are necessary to safeguard human dignity and ensure respect
41 for the fundamental rights and freedoms of persons with mental disorder by clarifying the standards
42 of protection applicable to the use of involuntary placement and of involuntary treatment,

43 Have agreed as follows:

44 **Chapter I – Object and scope**

45 **Article 1 – Object**

46 1. Parties to this Protocol shall protect the dignity and identity of all persons with mental disorder
47 and guarantee, without discrimination, respect for their integrity and other rights and fundamental
48 freedoms with regard to involuntary placement and involuntary treatment.

49 2. The provisions of this Protocol do not limit or otherwise affect the possibility for a member
50 state to grant persons with mental disorder a wider measure of protection than is stipulated in this
51 Protocol.

52 **Article 2 – Scope and definitions**

53 *Scope*

54 1. The provisions of this Protocol apply to involuntary placement and involuntary treatment of
55 persons with mental disorder.

56 2. The provisions of this Protocol do not apply to minors.

57 3. This Protocol does not apply to placement and treatment ordered in the context of a criminal
58 law procedure.

59 *Definitions*

60 4. For the purpose of this Protocol, the term:

61 - “mental disorder” is defined in accordance with internationally accepted medical standards;

62 - “involuntary” refers to a placement or treatment measure applied to a person with mental
63 disorder who objects to the measure;

64 - “treatment” means an intervention (physical or psychological) on a person with mental
65 disorder that has a therapeutic purpose in relation to that mental disorder;

66 - “placement” refers to placing a person in a specific environment for a particular purpose or
67 purposes;

68 - “therapeutic purpose” includes management or cure of the disorder and rehabilitation;

69 - “representative” means a person provided for by law to represent the interests of, and take
70 decisions on behalf of, a person who does not have, according to law, the capacity to consent;

71 - “person of trust” refers to a person chosen and expressly designated as such by the person
72 with mental disorder to assist and support him/her and who has accepted that role;

- 73 - “court” refers to a judicial body;
- 74 - “competent body” means an authority, or a person or body provided for by law that can take
75 a decision on an involuntary measure;
- 76 - “responsible authority” refers to the authority responsible for the facility in which the patient is
77 placed, or the authority with administrative responsibility for the doctors supervising the patient's
78 medical care.

79 **Chapter II – General provisions**

80 **Article 3 – Legality**

81 Measures for involuntary placement and involuntary treatment shall only be applied in conformity
82 with the provisions set out in domestic law, and in accordance with the safeguards established in
83 this Protocol.

84 **Article 4 – Necessity and proportionality**

85 Measures for involuntary placement and involuntary treatment shall only be used in accordance
86 with the principles of necessity and proportionality. Persons subject to involuntary placement
87 and/or involuntary treatment shall be cared for in the least restrictive environment available and
88 with the least restrictive or intrusive treatment available, taking into account their health needs and
89 the need to protect other persons from harm.

90 **Article 5 – Alternative measures**

91 Parties to this Protocol shall promote the development and use of alternatives to involuntary
92 placement and involuntary treatment.

93 **Article 6 – Person of trust**

94 Persons who are or may be subject to involuntary placement or involuntary treatment shall have
95 the right to choose a person of trust.

96 **Article 7 – Legal assistance**

97 A person who is or may be subject to an involuntary measure shall have the right to a lawyer and,
98 according to the conditions provided for by law, to free legal aid.

99 **Article 8 – Professional standards**

100 Persons subject to involuntary placement and/or involuntary treatment shall receive care delivered
101 in accordance with professional obligations and standards by staff having the requisite competence
102 and experience.

103 **Article 9 – Appropriate environment**

104 Parties to this Protocol shall take measures to ensure that any involuntary placement and
105 involuntary treatment takes place in an appropriate environment.

106

107 **Chapter III – Criteria for involuntary placement and for involuntary treatment**

108 **Article 10 – Criteria for involuntary placement**

109 Involuntary placement of a person with a mental disorder may only be used if the following criteria
110 are met:

- 111 i. a) the person's mental health condition represents a significant risk of serious harm to his or
112 her health and his or her ability to decide on placement is severely impaired or
- 113 b) the person's mental health condition represents a significant risk of serious harm to others;
- 114 ii. the placement has a therapeutic purpose; and
- 115 iii. no less restrictive means of addressing the risk are available.

116 **Article 11 – Criteria for involuntary treatment**

117 Involuntary treatment of a person with a mental disorder may only be used if the following criteria
118 are met:

- 119 i. a) the person's mental health condition represents a significant risk of serious harm to his or
120 her health and his or her ability to decide on treatment is severely impaired or
- 121 b) the person's mental health condition represents a significant risk of serious harm to others;
122 and
- 123 ii. no less intrusive means of addressing this risk are available.

124 **Chapter IV – Procedures concerning involuntary placement and involuntary treatment**

125 **Article 12 – Standard procedures for taking decisions on involuntary placement and on**
126 **involuntary treatment**

127 1. Involuntary placement and involuntary treatment shall only take place on the basis of
128 examination by at least one doctor having the requisite competence and experience, in accordance
129 with applicable professional obligations and standards.

130 2. The decision to subject a person to involuntary placement or to involuntary treatment shall,
131 subject to paragraph 3, be taken by a court or another competent body. The court or other
132 competent body shall:

- 133 i. act on the basis of the medical examination referred to in paragraph 1;
- 134 ii. ensure that the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s)
135 concerned, are met;
- 136 iii. take into account the opinion of the person concerned and, where appropriate, any relevant
137 previously expressed wishes made by that person;
- 138 iv. act in accordance with procedures provided by law based on the principle that the person
139 concerned shall be heard in person; and
- 140 v. consult the representative of the person, if any, and, according to law, his or her person of
141 trust, if any.

142 3. The law may provide that when a person is subject to involuntary placement the decision to
143 subject that person to involuntary treatment may be taken by a doctor having the requisite
144 competence and experience, after examination of the person concerned, and in accordance with
145 the requirements set out in paragraph 2 ii, iii, iv and v.

146 4. Decisions to subject a person to involuntary placement and/or to involuntary treatment shall be
147 documented and state the maximum period beyond which, according to law, this decision(s) shall
148 be reviewed.

149 **Article 13 – Procedures for taking decisions in emergency situations**

150 1. When there is insufficient time to follow the procedures set out in Article 12 because of the
151 imminent risk of serious harm, either to the health of the individual concerned, or to others, the
152 decision to subject a person to involuntary placement and/or to involuntary treatment may be taken
153 by a competent body, under the following conditions:

154 i. involuntary placement and/or involuntary treatment shall only take place for a short period of
155 time on the basis of a medical examination appropriate to the measure concerned;

156 ii. the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s) concerned, are
157 met;

158 iii. paragraph 2 iii, iv and v of Article 12 shall be complied with as far as possible;

159 iv. decisions to subject a person to involuntary placement or to involuntary treatment shall be
160 documented.

161 2. The law shall specify the maximum period for which the emergency measure may be applied.

162 3. If the measure is to be continued beyond the emergency situation, or the maximum period
163 referred to in paragraph 2, the decisions on the relevant measure shall be taken in accordance with
164 Article 12 promptly.

165 **Article 14 – Extension of involuntary placement and/or involuntary treatment**

166 The provisions of Article 12 shall also apply to procedures for taking decisions on the extension of
167 an involuntary placement or an involuntary treatment.

168 **Article 15 – Termination of involuntary placement and/or involuntary treatment**

169 1. Involuntary placement or involuntary treatment shall be terminated if any of the criteria set out
170 in Articles 10 or 11 respectively are no longer met.

171 2. The doctor in charge of the person's care shall be responsible for assessing whether any of
172 the relevant criteria set out in Article 10 in the case of a placement and Article 11 in the case of a
173 treatment is no longer met.

174 3. The doctor in charge of the person's care or other health personnel designated by law, and the
175 responsible authority, shall be able to take action on the basis of the assessment referred to in
176 paragraph 2, in order to terminate that measure, unless according to law, a court or another
177 competent body shall be involved in the termination procedure.

178

179 **Article 16 – Appeals and reviews concerning the lawfulness of involuntary placement and/or**
180 **involuntary treatment**

181 1. Member states shall ensure that persons subject to involuntary placement and/or involuntary
182 treatment can effectively exercise the right:

- 183 i. to appeal to a court against the decision to subject them to the measure, and
184 ii. to request a review by a court that the measure or its continuing application conforms to the
185 legal requirements.

186 An appeal may also be made and a review requested by the person's representative, where
187 appropriate, and, according to law, by the person's person of trust, if any.

188 2. The responsible authority shall ensure that the measure's continuing conformity with the legal
189 requirements is reviewed at reasonable and regular intervals.

190 3. Member states shall ensure that a person subject to involuntary placement or involuntary
191 treatment can effectively exercise the right to be heard in person or where necessary through his
192 or her representative and, according to law, to have his or her person of trust heard at such
193 reviews or appeals.

194 4. The person concerned, his or her representative and lawyer, and, according to law, his or her
195 person of trust shall have access to all the materials before the court subject to the protection of
196 the confidentiality and safety of others according to law. In exceptional cases, restrictions may be
197 placed by law on the exercise of this right by the person concerned in his or her interests.

198 5. The court shall deliver its decision promptly.

199 6. A procedure to appeal the court's decision shall be provided to the persons referred to in
200 paragraph 1.

201 7. If the court identifies any violations of the relevant national legislation it shall report these in the
202 framework of the monitoring referred to in Article 20.

203 **Chapter V – Information and communication**

204 **Article 17 – Right to information**

205 Appropriate information about their rights in respect to the involuntary measure(s) and of the
206 remedies open to them shall be promptly given to persons subject to involuntary placement and/or
207 treatment, and their lawyers and representatives, if any. They shall be informed regularly and
208 appropriately of the reasons for the decision and the criteria for its potential extension or
209 termination. The law may provide that the person of trust also receives this information.

210 **Article 18 – Right to communication of persons subject to involuntary placement**

211 1. Persons subject to involuntary placement have the right to communicate with their lawyers,
212 representatives, or any official body charged with the protection of the rights of persons subject to
213 involuntary measures, without restriction.

214 2. Their right to communicate with their person of trust and other persons and bodies, and to
215 receive visits, shall not be unreasonably restricted.

216 **Chapter VI – Record-keeping and monitoring**

217 **Article 19 – Record-keeping**

218 Comprehensive medical and administrative records shall be maintained for all persons subject to
219 involuntary treatment and/or involuntary placement. The conditions governing access to and the
220 period of storage of that information shall be specified by law.

221 **Article 20 – Monitoring**

222 1. Member states shall ensure that compliance with the provisions of this Protocol is subject to
223 appropriate independent monitoring.

224 2. Facilities designed for the involuntary placement of persons with mental disorder shall be
225 registered with an appropriate authority.

WORKING DOCUMENT