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Committee on Social Affairs, Health and Sustainable Development

Consideration of replies from the Committee of Ministers to recommendations emanating from the Committee

Recommendation 2227 (2022)

Deinstitutionalisation of persons with disabilities

(Rapporteur: Ms Reina de Bruijn-Wezeman, Netherlands, ALDE, [Doc 15496](#))

Comments by the Rapporteur:

1. I would like to thank the Committee of Ministers (CM) for its reply. I am content that the CM “agrees with the Assembly on the importance of supporting member States in their development of human rights-compliant strategies for deinstitutionalisation of persons with disabilities.”
2. Unfortunately, the CM does not seem to agree that this should apply to persons with mental health problems confined to institutions, since it considers “persons with disabilities” to be a group “distinct from [,] persons with mental health problems.”
3. Herein lies the crux of the matter. The Assembly has, since 2016, adopted three recommendations to the CM, underlining the urgent need for the Council of Europe, as the leading regional human rights organisation, to fully integrate the paradigm shift initiated by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into its work, and to thus support ending coercion in mental health. Instead, the CM, as it points out itself in this reply, “has replied to several Assembly recommendations by reaffirming the mandate it gave to the Committee on Bioethics to draft an 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.”
4. As the CM notes, this “draft Additional Protocol has been prepared and submitted to the Committee of Ministers”, but has not yet been submitted to the Assembly for its formal Opinion. The draft is not in alignment with the CRPD, has been prepared without meaningful participation of the INGO community concerned, and supports and regulates – rather than ends – coercion in mental health. It is thus opposed by all relevant stakeholders at international and European level (incl. the CRPD Committee, WHO, the UN Special Rapporteurs, the INGO community and the persons concerned, our own Commissioner on Human Rights – and, of course, the Assembly).
5. In this regard, I would like to underline that a set of guidelines which was in preparation when I prepared my report, has since been adopted by the CRPD Committee: “[Guidelines on deinstitutionalization, including in emergencies \(2022\)](#)”, adopted on 9 September 2022. Surprisingly, the Committee of Ministers in no way refers to these guidelines in their reply (adopted on 1 February 2023). Paragraph 58 of these guidelines clearly states: “All legislative provisions that authorize the deprivation of liberty or other restrictions on liberty and security of person based on impairment, including involuntary commitment or treatment based on “mental illness or disorder”, should be repealed.” The dichotomy between the draft Additional Protocol and international human rights law could not be clearer.
6. As is pointed out in this Committee of Ministers’ reply, on 11 May 2022, shortly after the adoption by the Assembly of this recommendation, it “instructed the CDBIO to prepare additional complementary measures by 31 December 2024, namely a draft recommendation promoting the use of voluntary measures in mental healthcare services and a report on the case law of the European Court of Human Rights relevant to mental

¹ Document declassified by the Committee on Social Affairs, Health and Sustainable Development at its meeting held on 22 May 2023.

health. [...] Furthermore, the Committee of Ministers agreed to prepare a declaration affirming the commitment of the Council of Europe to improving the protection and the autonomy of persons in mental healthcare services, to be finalised after the examination of the completed deliverables.”

7. I want to be very clear here: while I welcome the decision to draft a (soft-law) recommendation promoting the use of voluntary measures in mental healthcare services, as well as the plans of the CM to prepare a (non-binding) declaration affirming the commitment of the Council of Europe to improving the protection and the autonomy of persons in mental healthcare services, this does not make the draft Additional Protocol – which will be a binding instrument – any more palatable. Creating a “package” of desirable and undesirable legal instruments should not and cannot distract from the fact that the draft Additional Protocol is not fit for purpose (in the words of the Council of Europe Human Rights Commissioner), and is incompatible with the CRPD (in the view of the CRPD Committee and the responsible UN Special Rapporteurs).

8. I can thus but reiterate paragraph 2.3. of our Assembly’s Recommendation to the Committee of Ministers: “[...] refrain from endorsing or adopting draft legal texts which would make successful and meaningful deinstitutionalisation, as well as the abolition of coercive practices in mental health settings more difficult, and which go against the spirit and the letter of the CRPD – such as the draft additional protocol [...].”

9. As regards children, the CM “recalls its Recommendation [CM/Rec\(2010\)2](#) on deinstitutionalisation and community living of children with disabilities, which calls for all children with disabilities to live with their own family unless in exceptional circumstances, and for existing institutional placements to be replaced with a comprehensive network of community provision.” In many of our member States, in particular in Central and Eastern Europe, the implementation of this 13-year-old Recommendation remains a challenge. I thus welcome that “the [Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#) contains an implementing objective on “Protecting children without parental care and/or living in alternative care, by continuing promoting deinstitutionalisation”, and that the CM “has further entrusted the CDENF with the task of preparing an implementation review report on Recommendation [Rec\(2005\)5](#) on the rights of children living in residential institutions by the end of 2025.”

10. Regarding follow-up, I understand that my colleague Mr Stefan Schennach (Austria, SOC), will be following up on the Assembly’s work so far in the framework of the preparation of his report on the detention of the “socially maladjusted”, which includes “persons of unsound mind” (in the words of the European Court and Convention on Human Rights). I would like to suggest that this analysis of the Committee of Ministers’ reply be declassified, so that it can be brought to the attention of the different stakeholders at regional and international level with a view to co-ordinating efforts to end coercion in mental health and promote the human-rights compliant deinstitutionalisation of persons with disabilities.

PACE Recommendation 2227 (2022) (adopted on 26.04.2022)	Reply by the CM (adopted on 01.02.23) – Doc 15709
<p>1. The Parliamentary Assembly refers to its Resolution 2431 (2022) “Deinstitutionalisation of persons with disabilities”, its Resolution 2291 (2019) and Recommendation 2158 (2019) “Ending coercion in mental health: the need for a human rights-based approach”, and its Recommendation 2091 (2016) “The case against a Council of Europe legal instrument on involuntary measures in psychiatry”.</p>	<p>1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2227 (2022) “Deinstitutionalisation of persons with disabilities” and forwarded it to the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO), the Steering Committee for the Rights of the Child (CDENF) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), for information and possible comments.</p>
<p>2. The Assembly reiterates the urgent need for the Council of Europe, as the leading regional human rights organisation, to fully integrate the paradigm shift initiated by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into its work. It thus recommends that the Committee of Ministers:</p>	
<p>2.1 support member States in their development, in co-operation with organisations of persons with disabilities, of 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 in accordance with Article 19 of the CRPD;</p>	<p>2. The Committee notes that the Assembly’s recommendation focuses on “persons with disabilities” and the UN Convention on the Rights of Persons with Disabilities (CRPD). It fully agrees with the Assembly on the importance of supporting member States in their development of human rights-compliant strategies for deinstitutionalisation of persons with disabilities. However, it points out that this is a much broader group than, and distinct from, persons with mental health problems.</p>
<p>2.2 prioritise support to member States to immediately start transitioning to the abolition of coercive practices in mental health settings, and to child-centred, human rights-compliant deinstitutionalisation of children with disabilities;</p>	<p>5. The Committee draws attention to other relevant work undertaken by the CDBIO: a compendium on good practices to promote voluntary measures in mental health services, a guide on health literacy and, jointly with the CDENF, a guide on participation of children in decision-making processes in matters relevant to their health. These guides aim at promoting autonomy and ensuring better protection of persons in vulnerable situations, including persons with disabilities.</p> <p>6. Furthermore as regards children, the Committee recalls its Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities, which calls for all children with disabilities to live with their own family unless in exceptional circumstances, and for existing institutional placements to be replaced with a comprehensive network of community provision. The Council of Europe Strategy for the Rights of the Child (2022-2027) contains an implementing objective on “Protecting children without parental care and/or living in alternative care, by continuing promoting deinstitutionalisation”. The Committee has further entrusted the CDENF with the task of preparing an implementation review report on Recommendation Rec(2005)5 on the rights of children living in residential institutions by the end of 2025.</p>

<p>2.3 in line with the unanimously adopted Recommendation 2158 (2019), refrain from endorsing or adopting draft legal texts which would make successful and meaningful deinstitutionalisation, as well as the abolition of coercive practices in mental health settings more difficult, and which go against the spirit and the letter of the CRPD – such as 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.</p>	<p>3. The Committee of Ministers has replied to several Assembly recommendations by reaffirming the mandate it gave to the Committee on Bioethics to draft an 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.</p> <p>4. This draft Additional Protocol has been prepared and submitted to the Committee of Ministers. At its 1434th meeting on 11 May 2022, the Committee instructed the CDBIO to prepare additional complementary measures by 31 December 2024, namely a draft recommendation promoting the use of voluntary measures in mental healthcare services and a report on the case law of the European Court of Human Rights relevant to mental health. The Committee agreed to decide on the transmission of the draft Additional Protocol to the Parliamentary Assembly for its opinion at the time of examination of these additional deliverables. Furthermore, the Committee of Ministers agreed to prepare a declaration affirming the commitment of the Council of Europe to improving the protection and the autonomy of persons in mental healthcare services, to be finalised after the examination of the completed deliverables.</p>
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