

CDDH comments on the Parliamentary Assembly Recommendation 2158(2019) – ENDING COERCION IN MENTAL HEALTH: THE NEED FOR A HUMAN RIGHTS-BASED APPROACH

92nd meeting - 26–29 November 2019 - CDDH(2019)R92

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach”, a subject on which the CDDH has already expressed itself in the past.
2. It commends to the Committee of Ministers the comments provided by the Committee on Bioethics (DH-BIO) at its 16th meeting (Strasbourg, 19-21 November 2019), which read as follows:
 1. At its 1351bis meeting at Deputies level, the Committee of Ministers agreed to communicate Recommendation 2158 (2019) – “Ending coercion in mental health: the need for a human rights-based approach” to the Steering Committee for Human Rights (CDDH) and to the Committee on Bioethics (DH-BIO), for information and possible comments “by the exceptional deadline of 6 December 2019, due to the sensitive issues involved”.
 2. The DH-BIO examined the recommendation at its 16th plenary meeting (19 – 21 November 2019).
 3. In its recommendation, the Assembly calls on the Committee of Ministers to “prioritise support to member States to immediately start to transition to the abolition of coercive practices in mental health settings” and to “redirect efforts from the draft of the additional protocol [concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment] to the drafting of guidelines on ending coercion in mental health”.
 4. The DH-BIO is of the opinion that it is of particular importance to carefully analyse any evolution of the situation concerning involuntary measures in the mental health care field, in particular as it comes to an “overall increase in the use of involuntary measures in mental health settings” in Europe evoked in the Parliamentary Assembly’s Resolution 2291 (2019). It agrees with the Parliamentary Assembly’s assessment of the need to reduce recourse to coercive measures in mental health care. The DH-BIO sees its work in the area of protecting human rights in mental health care as a contribution to reaching this shared aim.
 5. The DH-BIO made a Recommendation in 2004 to improve the protections namely against involuntary measures and has assessed the impact of this text on legislation and practices. It was in light of this assessment that the Committee agreed to prioritise a legally binding instrument to improve the protections against involuntary measures.
 6. The DH-BIO recalls the task with which it has been entrusted by the Committee of Ministers to conduct the work for the protection of human rights in the biomedical field. It reaffirms its commitment to promoting the rights and self-determination of all persons, and their participation in all decisions relating to their treatment and care.
 7. Against this background, the DH-BIO perceives the current elaboration of a legal instrument safeguarding the rights of persons with regard to involuntary measures in the field of mental health as one of the tools to ensure that measures implemented without the person’s consent or assent are only used subject to strict criteria and only as a last resort, thus contributing to the effective reduction of recourse to such measures.
 8. At the same time, the DH-BIO considers that certain provisions contained in such legal instrument could strengthen the State’s commitment to ensure the availability of a wide selection of appropriate, less restrictive and intrusive primary measures in mental health care.

9. The DH-BIO appreciates the Parliamentary Assembly's support for its future work aimed at collecting "Good practices in mental healthcare – how to promote voluntary measures". The DH-BIO sees this work, which it intends to launch with the participation of relevant stakeholders, as a complementary tool towards the same aim.
10. With regard to the "continued widespread opposition to the pursuance of work on an additional protocol" and reference to a perceived incompatibility with the CRPD, the DH-BIO refers to its comments on Recommendation 2091 (2019) and considers that the current draft text is not in conflict with other international instruments, and in particular with the Convention on the Rights of Persons with Disabilities. On the contrary, this draft proposes, as called for in the Recommendation, to adopt an approach which is founded on Human Rights, in line with the Convention on the Rights of Persons with Disabilities. These two international instruments, which have a different scope, would thus be complementary.
11. In view of the opinions received and the oral statements given by representatives of INGOs invited to the relevant sessions of its plenary meetings, the DH-BIO has decided that the current draft text had to be carefully reviewed, having particular regard to strengthening measures promoting autonomy in mental health care.

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Text of Recommendation 2158(2019)

"ENDING COERCION IN MENTAL HEALTH: THE NEED FOR A HUMAN RIGHTS-BASED APPROACH"

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2291 \(2019\)](#) "Ending coercion in mental health: the need for a human rights-based approach" and its [Recommendation 2091 \(2016\)](#) on the case against a Council of Europe legal instrument on involuntary measures in psychiatry.
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 regarding the protection of human rights and dignity of persons with mental health conditions or psychosocial disabilities. It thus calls on the Committee of Ministers to prioritise support to member States to immediately start to transition to the abolition of coercive practices in mental health settings.
3. The Assembly notes with satisfaction that the Council of Europe Committee on Bioethics (DH-BIO) is planning to engage in a study on "Good practices in mental healthcare – how to promote voluntary measures". It invites the Committee of Ministers to encourage the DH-BIO to carry out such a study, with the involvement of all relevant actors in the field and, in particular, relevant non-governmental organisations representing persons with mental health conditions or psychosocial disabilities.
4. The Assembly notes the continued widespread opposition to the pursuance of work on an additional protocol to the Convention on Human Rights and Biomedicine (ETS No. 164), concerning the protection of human rights and dignity of persons with mental disorder, with regard to involuntary placement and involuntary treatment. Taking into consideration the comments received during the consultations in 2015 and 2018 (including from the Assembly's competent committees), which underline the draft protocol's incompatibility with the CRPD and its incapacity to protect persons with mental health conditions or psychosocial disabilities from violations of their human rights, the Assembly invites 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.